AJEE
ACCESS TO JUSTICE IN EASTERN EUROPE
Peer-reviewed Journal

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print)
ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

Research Article

CONCEPTUAL FOUNDATIONS AND PRINCIPLES OF LEGAL REGULATION OF DECENTRALISATION IN SELECTED EUROPEAN COUNTRIES AND UKRAINE

Alina Murtishcheva*

ABSTRACT

Background: *This research paper aims to enhance theoretical understanding and explore the conceptual foundations and principles of legal regulation of decentralisation. Establishing a well-defined categorical apparatus is an important prerequisite for drafting effective legal regulation, and decentralisation is no exception. A precise understanding of this concept allows for the development of clear stages of its implementation in national legislation. No less important is the proper formulation of the principles of legal regulation of decentralisation. These principles allow further development of a system of legal regulation that will ensure the autonomy of local self-government.*

Methods: *The study provides a comparative analysis of the principle of decentralisation implementation experience in such countries as Belgium, Italy, France, Lithuania, Poland, Ukraine and the United Kingdom, which have chosen both centralised and decentralised forms of public administration. The paper employs a multi-faceted methodology to analyse legal aspects of decentralisation in countries under study, focusing on the observance of the European Charter of Local Self-government standards and the evolution of constitutional frameworks of decentralisation. This approach includes a comparative analysis of constitutional models of decentralisation and their historical backgrounds, as well as an analysis of the practical application of decentralisation and recentralisation as phenomena in modern national policy. Particular attention is given to the influence of the martial law regime on these processes in certain countries.*

Results and Conclusions: *The main research findings clarify the primary problems of European standards of local-self-government implementation in studied countries. They highlight the distinction of specific approaches to decentralisation, including its combination with deconcentration, devolution or even centralisation of power. Additionally, the research*

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

provides an analysis of the historical aspect of the development of the constitutional framework for decentralisation. Lawyers and legislators can use these insights to improve the effectiveness of legislation regarding local self-government development in the studied countries.

1 INTRODUCTION

European integration processes determine the convergence of legal systems and the sharing of experience in the modernisation of constitutional institutions. Moreover, the globalisation tendency, challenges to democracy and peace caused by the Russian invasion of Ukraine, and other global conflicts require searching for general international landmarks of governmental development, including local self-government. The coordination of state authority and local self-government functioning is essential to the rational distribution of public affairs. It enables state authorities to solve the most important questions at a time of economic, political, war and other challenges. The European Charter of Local Self-Government (hereinafter the Charter) embodies the municipal values and landmarks common to European countries.[1] One of such common landmarks is considered decentralisation.

Decentralisation as a phenomenon is characteristic of most European Union (hereinafter EU) countries at different historical stages. For Ukraine, as a country that has clearly defined a European integration vector of development, understanding both the legal and theoretical basis of decentralisation processes in European countries is an important prerequisite for further reforms. However, although decentralisation is based on common ideas and values such as democracy, participation, and the rule of law, not all European countries currently implement broad decentralisation in their political, legal and economic practices. Some countries are gradually moving in this direction, while others remain quite centralised. There is also a new, insufficiently studied tendency of recentralisation, which may be defined as the strengthening of centralisation tendencies in countries previously considered decentralised.

Countries such as Belgium, Italy, France, Lithuania, Poland, Ukraine and the United Kingdom demonstrate different approaches to centralised and decentralised forms of public administration implementation. France is still considered a rather centralised European country despite the decentralisation course proclaimed in Article 1 of the Constitution. Meanwhile, Belgium, the United Kingdom and Italy are mainly regarded as decentralised. Lithuania, Poland, and Ukraine are post-Soviet countries where the development of local self-government is characterised by different tendencies. Lithuania and Ukraine remain relatively centralised, although Ukraine, from 2014 until the Russian full-scale invasion in 2022, had been carrying out decentralisation reform in several stages. At the same time,

1 European Charter of Local Self-Government (adopted 15 October 1985) ETC 122 <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=122> accessed 3 April 2024.

amendments to the Constitution of Ukraine regarding the establishment of the principle of decentralisation, which was repeatedly proposed during this period, were not officially adopted. Poland has also passed the path of decentralisation; however, now scientists, as well as the Congress of Local and Regional Authorities, have noticed recentralisation trends that require analysis.[2]

The reasons for recentralisation in Poland include the central government's desire to create appropriate conditions for the implementation of centrally-made decisions and to improve the effectiveness of public services provision. However, such a reason can serve as a kind of "cover" for the political line of limiting local self-government. Comparing recentralisation and centralisation, scholars determine the first term as strengthening (restoring) the role of central authorities at various levels of management of individual areas of public tasks. Centralisation, in turn, is related to the principle of deconcentration, where local and regional authorities perform administrative activities but are managed by the central government.[3]

Despite being recognised and implemented in European countries in the 1990s – 2000s, the concept of decentralisation has not been equally understood and assessed in the academic literature. Some authors emphasise decentralisation as a transfer of power,[4] others consider it a transfer of finances or authority, responsibility, and accountability.[5] Despite decentralisation receiving a fair amount of scholarly attention as well as the focus of legislators in European countries, this phenomenon has not received an explicitly positive assessment and, therefore, is not considered an absolute benefit. Moreover, the state development practice of specific European countries shows that national governments are developing their approaches to combining the principles of decentralisation and centralisation. Thus, scrutinising the conceptual basis of decentralisation is becoming an important and relevant scientific task.

Given the context above, the paper's main purpose is to analyse the constitutional framework of decentralisation and the level of implementation of European standards of local self-government introduced in the Charter. The research aims to identify the

2 Wirginia Aksztejn and others, 'The Multiple Faces of Recentralization: A Typology of Central-Local Interactions' [2022] Journal of Urban Affairs doi:10.1080/07352166.2022.2124916; 'Poland: Relatively Alarming Developments for Local and Regional Democracy' (*Council of Europe - Congress of Local and Regional Authorities*, 2 April 2019) <https://www.coe.int/en/web/congress/-/council-of-europe-congress-report-finds-alarming-developments-for-local-and-regional-democracy-in-poland> accessed 6 April 2024.

3 Lucyna Rajca, 'Reforms and Centralization Trends in Hungary and in Poland in a Comparative Perspective' (2020) 160(5) Przegląd Sejmowy 133, doi:10.31268/PS.2020.69.

4 Akampurira Abraham, *Decentralisation, Local Governance and Development: An Aspect of Development* (Anchor Academic Publ 2014).

5 Camille Cates Barnett, Henry P Minis and Jerry VanSant, *Democratic Decentralization* (Research Triangle Institute 1997); Eglė Gaulė, 'Public Governance Decentralization Modelling in the Context of Reforms' (2010) 32 Public Policy & Administration 47.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

main problems of the Charter implementation, classify approaches, determine constitutional models of regulation of the decentralisation principle and examine the practice of their development in the countries under study, especially under the influence of martial law in Ukraine.

The above-mentioned EU countries implement both decentralised and centralised principles of public administration and have different historical backgrounds for developing decentralisation ideas. Therefore, studying these countries is representative of understanding different political and legal scenarios and outlines development tendencies for the decentralisation concept and its legal regulation. This research will also contribute to establishing an efficient local self-government system in Ukraine following the lifting of martial law.

The main method adopted in this paper is a comparative legal analysis approach to delineate the legal framework for decentralisation in countries under the study. The critical analytical method allowed an analysis of the practical problems of implementing the Charter. The methodology involved a thorough examination of constitutional frameworks, and the study conducted an empirical examination of various state constitutional models of decentralisation regulation, determining their positive and negative peculiarities. The historical method allowed the author to identify certain features of constitutional models of regulation of the decentralisation principle. Methods employed in this study also included a review of existing literature and an analysis of case studies of decentralisation application, as well as its change and adaptation to external factors, including the war in Ukraine.

2 EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT IMPLEMENTATION

The processes of globalisation and international cooperation are becoming key areas of development in the modern world. In particular, the processes of European integration that began after the Second World War resulted in the development of common standards in various spheres of public life, including local self-government. In 1970, the Consultative Assembly of the Council of Europe (since 1974 – the Parliamentary Assembly of the Council of Europe), based on Resolution 64,[6] developed Recommendation 615, formulating the first general principles of local self-government for the Council of Europe member countries. These principles include the obligation to enshrine the principle of local autonomy in the constitution, the right of local communities to manage their finances, and the right of local communities to meet common interests and others.[7]

6 Resolution 64 (1968) on a declaration of principles of local autonomy debated by the European Conference of Local Authorities and adopted on 31 October 1968 (7th Sess, 28-31 October 1968).

7 PACE Recommendation 615 (1970) 'Declaration of Principles on Local Autonomy' (adopted 25 September 1970) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=14649&lang=en> accessed 3 April 2024.

However, the general nature of the Declaration did not allow specific measures to be taken to implement it, so since 1981, at the initiative of the Standing Conference of Local and Regional Authorities of Europe, the development of a more specific document continued. A non-binding declaration "cannot do justice to local autonomy or the threats to which it is exposed".[8] This work resulted in the presentation of the European Charter of Local Self-Government at the 6th Conference of Ministers of European Countries Responsible for Local and Regional Self-Government on 6-8 November 1984 and its subsequent opening for signature on 15 October 1985.[9]

Nowadays, compliance with the principles of the Charter is often regarded as adherence to the principle of decentralisation. For instance, it is mentioned that political decentralisation has strong links to the fundamental principles of the Charter, including Art. 2, 3, 4, etc.[10] Although the Charter does not use the term "decentralisation" or the "principle of decentralisation", its preamble refers to building Europe on the principles of democracy and decentralisation of power. Some researchers point out that the Charter was signed as a treaty protecting "the autonomy of local governments versus central government".[11] The concepts of "local autonomy" and "decentralisation" are also recognised as being somewhat related, although decentralisation refers to values such as efficacy and efficiency, not limited to local autonomy.[12] Despite the fact that under this approach, decentralisation is not considered a "very meaningful concept", we would like to note that for many countries, including Ukraine, decentralisation has become not just a concept but a set of tools for implementing European standards in the field of local self-government. These standards are most fully and systematically embodied in the Charter. That is why we believe the definition of decentralisation introduced by the Organisation for Economic Co-operation and Development (OECD) is more accurate. On the contrary, the OECD considers decentralisation as the process of transfer of a range of powers, responsibilities and resources from central government to subnational governments, having some degree of autonomy.[13] Such an approach makes local autonomy and decentralisation interrelated concepts and corresponds to the spirit of the Charter.

Protecting common values, the Congress of Local and Regional Authorities provides an article-by-article comparative analysis of article ratifications and compliance in the

8 Council of Europe, *European Charter of Local Self-Government and Explanatory Report* (Local&Regional Reference, Council of Europe Publ 2010).

9 European Charter of Local Self-Government (n 1).

10 Camille Borrett and others, *Developing a Decentralisation Index for the Committee of the Regions Division of Powers Portal, European Committee of the Regions* (European Committee of the Regions CIVEX 2021) doi:10.2863/841455.

11 Frederik Fleurke and R Willemse, 'Approaches to Decentralization and Local Autonomy: A Critical Appraisal' (2004) 26(4) Administrative Theory & Praxis 524.

12 ibid 533.

13 OECD, *Making Decentralisation Work: A Handbook for Police-Makers* (OECD Multi-level Governance Studies, OECD Publ 2019) 25-58, doi:10.1787/g2g9faa7-en.

46 member states of the Council of Europe based on the monitoring missions. Table 1 below consolidates these data for the countries under study.

***Table* 1. Current level of implementation of the principles of the European Charter of Local Self-Government in the countries under study**

Country	Non ratified articles (if any)	Articles ratified with reservation (if any)	Remarks of the Council of Europe monitoring mission
Belgium	3(2), 9(6), 9(7)	8(2), 9(2),	The most significant remark concerned the Flemish Government's influence on the burgomasters' appointment. This influence affects both compliance with Article 3 (2) of the Charter and Article 8 (3). Also, it is stressed that while the federal level discussing or adopting decisions and laws on matters that directly or indirectly concern the finances of local authorities, the latter are not consulted with (Report CG(2022)43-16; Rec 487 (2022)).[14]
France	7(2)	3(2)	Despite the fact that the right of local authorities to be consulted is considered to be one of the fundamental principles of European legal and democratic practice this right is violated in France. For instance, it was violated during the merging of regions. The second remark concerned the risk for the financial autonomy of sub-national territorial governments due to the tendency to reduce or eliminate the discretion of territorial collectives on tax rates and bases (Report CG30(2016)06; Rec 384 (2016)).[15]
Italy	12		The lack of qualified personnel was mentioned, so the requirements of Article 6 (2) are not met. Provinces do not have the adequate financial resources to accomplish their tasks so the requirements of Article 9 (1) are not met also (Report CG33(2017)17; Rec 404 (2017)).[16]
Lithuania	-	-	The Council of Europe monitoring mission stated inadequacy and insufficiency of the financial resources to the responsibilities assigned to municipalities (breach of Article 9(1) and 9(2).

14 'Belgium – Monitoring Report' (*Carta-Monitor: Monitoring of the European Charter of Local Self-Government*, 27 October 2022) <https://www.congress-monitoring.eu/en/3-pays.html> accessed 2 April 2024.

15 'France – Monitoring Report' (*Carta-Monitor: Monitoring of the European Charter of Local Self-Government*, 22 March 2016) <https://www.congress-monitoring.eu/en/1-pays.html> accessed 11 April 2024.

16 'Italy – Monitoring Report' (*Carta-Monitor: Monitoring of the European Charter of Local Self-Government*, 18 Octobe 2017) <https://www.congress-monitoring.eu/en/6-pays.html> accessed 5 April 2024.

			Moreover, the interference by state authorities within the municipal independent functions was fixed. It undermines the attribution to local authorities of full and exclusive powers (Report CPL35(2018)02; Rec 420 (2018)).[17]
Poland	-	-	Despite of Joint Commission of Government and Local Government[18] establishment the lack of consultation between central and local governments was detected. It influenced on Article 9 (6) compliance also, because the lack of consultations contradicts the finance legislation. Additionally, the requirements of Article 9 (4) are not met, as municipalities have not sufficiently diversified financial resources to enable them to carry out their tasks (Report CG36(2019)13; Rec 431 (2019)).[19]
Ukraine	-	-	The absence of appropriate administrative structures and resources for the tasks of local authorities was observed. The monitoring mission also emphasized structural weakness in local and regional authorities' financial powers, a lack of proportion between their own resources and the powers assigned, under-financing of the powers delegated by central government and other peculiarities of Ukraine's financial system (Report CG(25)8; Rec 348 (2013)).[20] As a result, Article 9 was considered to be partly complied with.
United Kingdom	-	-	The principle of local self-government is absent in domestic legislation (both in the UK and its constituent parts). A high degree of local financial dependence on national government was observed. The non-compliance of Article 9 (7) due to earmarked grants from higher-level authorities to local and regional authorities was noted. Financial systems of local

17 'Lithuania – Monitoring Report' (*Carta-Monitor: Monitoring of the European Charter of Local Self-Government*, 6 November 2018) <https://www.congress-monitoring.eu/en/28-pays.html> accessed 15 April 2024.

18 Joint Commission of Government and Local Government (JCGaLG) was established as a common body involving in developing a common position the government and local government. Created in 1993 JCGaLG was aimed to guarantee local governments' powers to influence government policy regarding local government matters. See: 'Komisja Wspólna Rządu i Samorządu Terytorialnego' (*Ministerstwu Spraw Wewnętrznych i Administracji*, 14 grudnia 2018) <https://www.gov.pl/web/mswia/komisja-wspolna-rzadu-i-samorzadu-terytorialnego> accessed 13 April 2024; 'Joint Commission of Government and Local Government', *Encyklopedia Administracji Publicznej* (2019) <http://encyklopediaap.uw.edu.pl/index.php/Joint_Commission_of_Government_and_Local_Government> accessed 13 April 2024.

19 'Poland – Monitoring Report' (*Carta-Monitor: Monitoring of the European Charter of Local Self-Government*, 2 April 2019) <https://www.congress-monitoring.eu/en/25-pays.html> accessed 9 April 2024.

20 'Ukraine – Monitoring Report' (*Carta-Monitor: Monitoring of the European Charter of Local Self-Government*, 31 October 2013) <https://www.congress-monitoring.eu/en/38-pays.html> accessed 15 April 2024.

			government funding are diversified, but most of the resources are restricted by national governments. Local authorities do not always have sufficient level of their own financial resources; although the funding is collected locally, the central government decides how it is allocated among councils (Report CG(2022)42-18; Rec 474 (2022)).[21] All these factors give rise to the conclusion that certain paragraphs of Article 9 of the Charter are being violated.

The analysis of monitoring missions' remarks allows us to identify the main problems of Charter compliance:

1) excessive administrative supervision by the regions as well as by the central government;
2) lack of consultation between central and local governments;
3) financial resources problems, including but not limited to inadequacy and insufficiency of the funding to the responsibilities assigned to municipalities, high level of local financial dependence on national governments;
4) lack of appropriate administrative structures and qualified personnel;
5) implicit or insufficient statement of local governance foundations, including the principle of local self-government.

It is known that the principle of local self-government, according to the Charter, is recommended to be incorporated into the constitution.[22] However, this study focuses on the principle of decentralisation rather than the principle of local self-government. The principle of decentralisation is considered one of the important features of the modern democratic state, which is also recognised by the Charter. At the same time, decentralisation is not absolutely beneficial, and its practical implementation can threaten the integrity of the state. This tendency is especially dangerous for countries where decentralisation is combined with devolution.

The most general approach to decentralisation describes it as "the transfer of powers from central government to lower levels in a political-administrative and territorial hierarchy".[23] However, a specific tendency can be observed in countries that have devolved a significant part of powers to their parts (subnational entities, such as geographical and historical parts of the United Kingdom or the federal entities in Belgium). The ability to introduce their own legal regulation in such subnational entities has led to a lack of compliance with the

21 'United Kingdom – Monitoring Report' (*Carta-Monitor: Monitoring of the European Charter of Local Self-Government*, 24 March 2022) <https://www.congress-monitoring.eu/en/10-pays.html> accessed 10 April 2024.

22 European Charter of Local Self-Government (n 1) art 2.

23 Elizabeth Linda Yuliani, 'Decentralization, Deconcentration and Devolution: What do they Mean?' (Workshop on Decentralization, Interlaken, Switzerland, 27-30 April 2004) <https://www.cifor.org/publications/pdf_files/interlaken/Compilation.pdf> accessed 13 April 2024.

standards of the European Charter of Local Self-Government. As a result, the implementation of the decentralisation principle has been put into question. Another consequence of this tendency is that decentralisation in Belgium and the United Kingdom is considered of an "asymmetric" nature.[24] The United Kingdom is also recognised as an asymmetrically decentralised unitary state by the European Committee of the Regions.[25] Moreover, among asymmetrically decentralised countries, Italy is also named.[26] This asymmetry means receiving different political, administrative or fiscal powers by local self-government bodies of the same order. Some scholars consider asymmetric decentralisation effective for countries where there are regions with cultural, ethnic, linguistic or historical differences or where some regions have had historical experience of autonomy.[27] Despite this, it can negatively influence the implementation of European standards. Therefore, the principle of decentralisation constitutional framework and the reasons for its asymmetry is an important aspect of the research.

3 CONSTITUTIONAL FRAMEWORK OF DECENTRALISATION

The Constitution, being the fundamental law of any law-governed and democratic state, should establish the basic principles of public authority organisation. According to this research topic, the principle of decentralisation was scrutinised. The results of the analysis are presented in table form (Table 2) and the following comments.

***Table* 2. Constitutional level of regulation of the decentralisation principle**

Country	Main constitutional provisions concerning the decentralisation principle
Belgium	Art. 162: Provincial and municipal institutions are regulated by the law. The law guarantees the application of the following principles: … the decentralisation of competences to provincial and municipal institutions".[28]
France	Art. 1: "France shall be an indivisible, secular, democratic and social Republic… It shall be organised on a decentralised basis".[29]

24 UCLG, CEMR and PLATFORMA, *The Localization of the Global Agendas: How local action is transforming territories and communities: The GOLD V Regional Report on Europe* (UCLG 2020).

25 'United Kingdom' (*European Committee of the Regions: Division of Powers*, 2020) <https://portal.cor.europa.eu/divisionpowers/Pages/UK-intro.aspx> accessed 11 April 2024.

26 Saldi Isra, Bertus de Villiers and Zainal Arifin, 'Asymmetry in a Decentralized, Unitary State: Lessons from the Special Regions of Indonesia' (2019) 18(2) Journal on Ethnopolitics and Minority Issues in Europe 44.

27 OM Boryslavska and others, *Decentralization of Public Authority: The Experience of European Countries and Prospects for Ukraine* (CPLR 2012) 77.

28 Constitution of Belgium of 7 February 1831 (amended 2014) <https://www.constituteproject.org/constitution/Belgium_2014> accessed 6 April 2024.

29 Constitution of France of 4 October 1958 (amended 8 March 2024) <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958> accessed 8 April 2024.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

Italy	Art. 5: "The Republic is one and indivisible. It recognises and promotes local autonomies, and implements the fullest measure of administrative decentralisation in those services which depend on the State. The Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralisation".[30]
Lithuania	*The principle of decentralisation is not incorporated in the Constitution of the Republic of Lithuania*
Poland	Art. 15: "The territorial system of the Republic of Poland shall ensure the decentralisation of public power".[31]
Ukraine	Art. 132: "The territorial structure of Ukraine shall be based on the principles of unity and integrity of the State territory, the combination of centralisation and decentralisation in the exercise of the state power…".[32]
United Kingdom	*The laws and rules composing the United Kingdom constitution are not codified.*

The countries under study can be categorised into the following groups based on their constitutional approaches to decentralisation:

1. Those where decentralisation is included among their fundamental principles (Italy and France).
2. Those where decentralisation principles are integrated into their territorial system (Poland and Ukraine).
3. Those specifically addressing decentralisation within special chapters focused on municipal authorities (Belgium).
4. Those that do not explicitly mention decentralisation as a constitutional principle (Lithuania and the United Kingdom).

For the former group, decentralisation is included among the list of fundamental principles as an attempt to introduce new governmental approaches in response to the mid-20th century crisis caused by the Second World War. Neither the Albertine Statute[33] nor the Constitution of the French Fourth Republic and Constitutional Laws of 1875, which established the Third French Republic, mentioned decentralisation, although they regulated local self-government. In addition, decentralisation in Italy was a reaction to Fascist Dictatorship (from 1922 until 1943). It manifested liberation from the dictatorial regime and its accompanying high centralisation.

In our opinion, the attempt to strengthen local self-government as an institution led to the mention of decentralisation as a fundamental principle of the constitutional order in Italy

30 Constitution of the Italian Republic of 22 December 1947 (amended 7 Novembre 2022) <https://www.senato.it/sites/default/files/media-documents/COST_INGLESE.pdf> accessed 9 April 2024.

31 Constitution of the Republic of Poland of 2 April 1997 (amended 21 October 2009) <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> accessed 8 April 2024.

32 Constitution of Ukraine of 28 June 1996 no 254 k/96-BP (amended 01 January 2020) <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> accessed 8 April 2024.

33 Albertine Statute ("Statuto Albertino" in Italian) – the constitution of the Kingdom of Italy being in force science 1848 until 1948.

and France. Moreover, the Italian constitution specified the type of decentralisation – administrative one. In France, the constitutional provision regarding decentralisation is detailed in the General Code of Local Authorities.[34] Book 1 of this Code is called "General Principles of Decentralisation" and includes ethical principles for local elected representatives (Art. L1111-1-1), principles of public engagement in local life (Art. L1111-2), prohibition of some local self-government bodies to control others (Art. L1111-3), differentiation of powers, taking into account objective differences in the position of territorial authorities (Art. L1111-3-1), principles of division of powers (Art. L1111-4), principles of delegation of powers (Art. L1111-8 to L1111-8-2) and others.

It should be noted that France has been on a long path of decentralisation, starting at the turn of the 18th and 19th centuries when the departments were created in France to decentralise power and establish real local government. However, Alexis Tocqueville, who considered a decentralised state synonymous with a democratic state, wrote of France that in the 18th century, the government was "already highly centralised, very powerful, prodigiously active".[35] The modern stage of decentralisation reforms in France dates back to the end of the 20th century. However, the reform itself is considered to be ongoing. Furthermore, France is still considered to be centralised.[36]

The situation differs in the second group of countries, represented by Poland and Ukraine. Both countries have a historical tradition of local self-government. For instance, local government was proclaimed in the Polish Constitution adopted in 1921[37] and the Constitution of the Ukrainian People's Republic of 1918.[38] However, having in mind their experiences under Soviet Union influence, these countries aimed to establish a fundamentally new approach to the public authorities in the 1990s after the collapse of the Soviet Union. Despite their effort, their lack of prior decentralised governance experience affected their constitutional framework.

As a result, the principle of decentralisation was included not in the special chapter concerning the local self-government but as a territorial structure principle. Following this

34 Code général des collectivités territoriales (amended 7 June 2024) <https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070633> accessed 15 June 2024.

35 Alexis de Tocqueville, *The Old Regime and the Revolution* (Harper & Brothers 1856) III.

36 Stéphanie Jamet, 'Meeting the Challenges of Decentralisation in France' (2007) 571 OECD Economics Department Working Papers 29, doi:10.1787/127050885680.

37 Ustawa z dnia 17 marca 1921 'Konstytucja Rzeczypospolitej Polskiej' <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19210440267> accessed 8 April 2024.

38 Constitution of the Ukrainian People's Republic (Statute on the State System, Rights and Freedoms of the Ukrainian People's Republic) of 29 April 1918 <https://zakon.rada.gov.ua/laws/show/n0002300-18#Text> accessed 14 April 2024.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

idea, the Constitutional Court of Ukraine stressed that the decentralisation of state power in Ukraine as a unitary state is the formation of the Autonomous Republic of Crimea.[39]

The positive feature of the Ukrainian Constitution is that it links two principles: centralisation and decentralisation. This combination is also called "optimal decentralisation" in Ukrainian science.[40] Moreover, some scholars associate optimal decentralisation with compliance with the subsidiarity principle.[41] While there is no single optimal model of decentralisation, countries are encouraged to strive for a balance.

At the same time, Ukraine's constitutional framework explicitly aims for this balance. However, recent events, such as the full-scale invasion in 2022, have necessitated some centralised powers. After all, in a crisis, efficiency and promptness of decision-making may sometimes be put above democracy. It is premature to label the functioning of public authority during martial law as a process of recentralisation. Nonetheless, there are several indicators that local democracy is threatening.

The Law on the Legal Regime of Martial Law,[42] in the event of martial law, allows temporary state bodies called military administrations. If such administrations are established at the level of districts (*rayons*) or regions (*oblasts*), they can function simultaneously with local self-government bodies. This is confirmed in practice, as the military administrations of the regions were formed on the first day of the full-scale invasion and have been successfully operating alongside the local governments of the regions ever since. However, the situation is more complicated when military administrations of settlements are introduced.

According to this law, "*military administrations of settlements are formed within the territories of territorial communities where village, town, city councils and/or their executive bodies and/or village, town, city mayors do not exercise the powers assigned to them by the Constitution and laws of Ukraine, as well as in other cases provided for by this law*" (Pt. 3, Art. 4).[43] These cases may include facts of violation of the Constitution or laws of Ukraine by village, town or city mayors in the exercise of additional powers granted by the Law on the Legal Regime of Martial Law (Pt. 4-6, Art. 9).

39 'Local Self-Government; Decentralisation of Power', *Catalogue of Legal Positions of the Constitutional Court of Ukraine (by decisions, conclusions)* (Constitutional Court of Ukraine 2023) <https://ccu.gov.ua/storinka-knygy/39-misceve-samovryaduvannya-decentralizaciya-vlady> accessed 12 April 2024.

40 Anatoly P Hetman, 'Modernisation of the Territorial Structure of Ukraine as a Factor of the Ecological Paradigm' (Decentralisation of Power as a Factor in the Development of Agrarian, Environmental, Land and other Natural Resource Branches of Law: All-Ukrainian Round Table, Kyiv, 22 September 2017) 18.

41 Vasyl Melnychuk, 'Implementation of the Principles of the European Charter of Local Self-Government in the Context of Decentralisation of Power' (2019) 1(13) Bulletin of the Precarpathian University, Political Science 113.

42 Law of Ukraine no 389-VIII of 12 May 2015 'On the Legal Regime of Martial Law' (amended 18 May 2024) art 4 <https://zakon.rada.gov.ua/laws/show/en/389-19?lang=uk#Text> accessed 4 June 2024.

43 ibid, art 4, para 3.

Previously, Pt. 3, Art. 4 (until May 2022) clarified that failure to exercise the power is, in particular, the actual self-dissolution or self-disposition from the exercise of powers. Consequently, while the simultaneous operation of military administrations and local self-government bodies at the level of cities, settlements, and villages is not explicitly provided for, it is not prohibited by law. The introduction of military administrations indicates the institution of local self-government is temporarily invalid. This is further evidenced by the geographical placement of military administrations in areas primarily affected by active hostilities.

For example, Presidential Decree № 406/2022 of 11 June 2022 established the Lysychansk City Military Administration,[44] Presidential Decree № 374/2023 of 5 July 2023 on the establishment of military administrations of settlements in Zaporizhzhia region,[45] among others.

Scholars argue that the main purpose of military administrations should not be to replace the local self-government system but to respond institutionally to military aggression, enabling rapid, operational decision-making.[46] Additionally, the purpose of military administrations of settlements introduction is to ensure the exercise of public authority where local self-government cannot fulfil its tasks.

However, there is a tendency towards some recentralisation of public power through the introduction of military administrations in settlements without sufficient grounds. For example, Presidential Decree № 69/2023 of 7 February 2023[47] established the Chernihiv City Military Administration without sufficient evidence. The only formal reason was the removal from office of the Chernihiv city head. At the same time, according to the Law on Local Self-Government in Ukraine,[48] mechanisms exist to temporarily transfer the city head's powers to the secretary of the local council, thereby enabling the preservation of local self-government functions without state interference.

Moreover, as mentioned above, the Law on the Legal Regime of Martial Law does not explicitly require the termination of local self-government bodies' powers in the event of the introduction of military administrations in settlements. Moreover, Pt. 2 of Art. 9 underlines that local authorities and bodies of state power should continue to exercise their

44 Decree of the President of Ukraine no 406/2022 11 June 2022 'On the Establishment of a Military Administration' [2022] Official Gazette of Ukraine 49/2747.

45 Decree of the President of Ukraine no 374/2023 of 5 July 2023 'On the Establishment of Military Administrations of Settlements in Zaporizhzhia Region' [2023] Official Gazette of Ukraine 66/3774.

46 Oleksii Lialiuk, 'Military and Military-Civil Administrations in the System of Territorial Organization Power in Ukraine: A Comparative Analysis' (2022) 157 Problems of Legality 6, doi:10.21564/2414-990X.157.256296.

47 Decree of the President of Ukraine no 69/2023 of 7 February 2023 'On the Establishment of a Military Administration' [2023] Official Gazette of Ukraine 22/1196.

48 Law of Ukraine no 280/97-BP of 21 May 1997 'On Local Self-Government in Ukraine' (amended 18 May 2024) <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80?lang=en#Text> accessed 4 June 2024.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

powers. Art. 10 also provides that *in case of establishment of the military administration of a settlement (settlements), the Verkhovna Rada of Ukraine, upon the proposal of the President of Ukraine, may decide that during the period of martial law and 30 days after its termination or cancellation, the head of the military administration, in addition to the powers referred to his competence by this Law, shall exercise the powers of a village, settlement, city council, its executive committee, village, settlement, city head.*[49]

The Verkhovna Rada of Ukraine has already made such decisions in relation to the settlements of the Kherson region,[50] and the President of Ukraine has submitted a draft of a similar resolution regarding Chernihiv to the Verkhovna Rada of Ukraine in February 2023.[51] However, this resolution has not yet been approved by the parliament, and now Chernihiv has both local self-government authorities and military administration. The case of Chernihiv consequently threatens the local self-government as an institution.

Since any kind of election is prohibited during martial law, establishing military administrations may serve to strengthen state power and de facto recentralisation.[52] Ukraine, in this regard, is navigating a unique experience of fully transferring municipal powers to state bodies, potentially resulting in adverse political consequences. A clear manifestation of this is the conflict between local self-government and the Chernihiv City Military Administration. In fact, this conflict has already arisen. For instance, the city's military administration filed a lawsuit against the council secretary concerning the exercise of self-government powers, particularly budget authority.[53] Furthermore, the head of Chernihiv City Military Administration explicitly stated that while decentralisation is crucial, martial law necessitates a centralisation of authority in the face of war challenges.[54]

49 Law of Ukraine no 389-VIII of 12 May 2015 'On the Legal Regime of Martial Law' (amended 18 May 2024) <https://zakon.rada.gov.ua/laws/show/en/389-19?lang=uk#Text> accessed 7 April 2024.

50 Resolution of the Verkhovna Rada of Ukraine no 2778-IX of 16 November 2022 'On the Exercise by the Heads of Military Administrations of Settlements in Kherson Region of the Powers Provided for in Part Two of Article 10 of the Law of Ukraine "On the Legal Regime of Martial Law"' [2022] Official Gazette of Ukraine 93/5789.

51 Draft Resolution of the Verkhovna Rada of Ukraine no 9055 of 23 February 2023 'On the Exercise by the Head of the Chernihiv City Military Administration of the Chernihiv District of the Chernihiv Region of the Powers Provided for in Part Two of Article 10 of the Law of Ukraine "On the Legal Regime of Martial Law"' <https://itd.rada.gov.ua/billInfo/Bills/Card/41434> accessed 15 April 2024.

52 Alina Murtishcheva, 'The Concept of Decentralization: Modern Challenges for the EU Countries, Prospects for Further Implementation in Ukraine' (IRC 2023 XVII international research conference, Istanbul, Türkiye, 17-18 August 2023) 177.

53 'Chernihiv Military Administration demands in court to withdraw funds to support military units and budget payments from 10,000 Chernihiv residents - Lomako' (*Interfax-Ukraine: Ukraine news Agency*, 25 April 2023) <https://interfax.com.ua/news/political/906083.html> accessed 15 June 2024.

54 Valentina Havrylenko, 'Dmytro Bryzhynskyi: "Military administration is a bridge between the war and people who have forgotten about it"' (*0462: Chernihiv city website*, 3 June 2023) <https://www.0462.ua/news/3606738/dmitro-brizinskij-vijskova-administracia-ce-mist-miz-vijnou-i-ludmi-aki-pro-nei-zabuli> accessed 15 June 2024.

Belgium represents the third group. This country's legislative framework of local self-government, including the principle of decentralisation, stands out among other countries under study for several reasons. Firstly, the state is an untypical federation with elements of confederation. Secondly, it has such a form of government as a monarchy, which determines the specificity of sources of law in various areas, including local self-government.

In accordance with Art. 162 of the Belgian Constitution, the decentralisation of competencies to provincial and municipal institutions is guaranteed by law. Historically, Belgium's approach to decentralisation dates back to its 1831 Constitution, which emphasised the decentralised nature of the country, applying the best British and French experience of this period. While the original Constitution of 1831 does not explicitly recognise decentralisation as a principle, Art. 108 established fundamental aspects of local self-government. These included direct election, the relegation to provincial and communal councils of all provincial and communal affairs, the publicity of council sittings, the publicity of budgets and accounts, and the provisions for intervention by the King or legislative power in cases where local councils exceeded their powers.[55]

After Belgium transformed into a federal state, it organised communities and regions while preserving its foundational system of municipalities and provinces. Moreover, the principle of decentralisation appeared in the Belgian Constitution. At the same time, another important foundation, the principle of local self-government, although not explicitly mentioned in the constitutional text, is deemed protected and included by the Congress of local and regional authorities.[56] It is considered that "the right to local self-government is explicitly included in and protected by the constitution".[57]

Belgium, as a federal country, has dissimilar legislation. Regions have the authority to amend municipal legislation, leading to varying approaches across the country. For example, Flanders adopted the Municipal Decree of 15 July 2005[58] modifying the "New Municipalities Act".[59] This Decree does not proclaim the principle of decentralisation, focusing on the principle of subsidiarity in determining the competence of the municipalities. Similarly, the Flemish Decree on Local Government of

55 John Martin Vincent and Ada S Vincent, 'Constitution of the Kingdom of Belgium' (1896) 7 The Annals of the American Academy of Political and Social Science 297 <https://www.jstor.org/stable/1009491?seq=39> accessed 15 April 2024.

56 Belgium – monitoring report (n 14).

57 Boštjan Brezovnik, Istvan Hoffman and Jarosław Kostrubiec (eds), *Local Self-Government in Europe* (Institute for Local Self-Government Maribor 2021) 3, doi:10.4335/978-961-7124-00-2.

58 Décret communal du Gouvernement Flamande du 15 juillet 2005 <https://etaamb.openjustice.be/fr/decret-du-15-juillet-2005_n2005036063.html> accessed 11 April 2024.

59 The Royal Decree of 24 June 1988 on the codification of municipal law called "New Municipal Law" became an important normative act on the issue of local self-government development, see: L'arrêté royal du 24 juin 1988 'Nouvelle loi communale' <https://wallex.wallonie.be/eli/loi-decret/1988/06/24/1111111111/1989/06/01?doc=7577&rev=6844-2130> accessed 14 April 2024.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

22 December 2017[60] continued this approach, replacing the Municipal Decree of 15 July 2005, which introduced the same approach to the principles of local self-government. Wallonia, in turn, enshrined the principle of decentralisation while adopting the Code of Local Democracy and Decentralisation.[61]

Belgium's decentralisation process is intended to maintain political unity without weakening it, but the country's experience indicates otherwise. The challenge of sovereignty preservation is significant, especially as a member of the EU, where sovereignty is inherently limited for all member states. However, Belgium, additionally, has taken the second step – since 1970, the federal authority has been transferring its legislative and executive powers to two types of federated entities. The Belgian logic is therefore considered as a dissociation mechanism.[62]

This tendency extends to the local governance, where federated entities' authority to legislate on local self-government can restrict local self-government and abolish decentralisation. While the ongoing transfer of powers is intended to address political problems, it paradoxically exacerbates these issues by complicating the governance structure.

Lithuania and the United Kingdom represent the fourth group of countries. As already indicated above, the United Kingdom does not explicitly recognise the principle of local self-government in its domestic legislation. Instead, the House of Commons recognises the potential for establishing joint principles of union and devolution,[63] emphasising the idea that the United Kingdom comprises four countries.

As it is known, the United Kingdom has no written constitution; hence, there can be no formal "protection" for or entrenchment of local government in the constitutional order. Despite this, British scientists consider the local government a strong constitutional characteristic.[64] However, the Council of Europe monitoring mission thinks otherwise, stressing that it is of high importance to comply both with the spirit and the letter of the Charter.[65]

For a country with an unwritten constitution like the United Kingdom, one potential solution could be to incorporate the principle of local self-government in domestic legislation. However, the lack of influence of the national parliament over the legislative

60 Decreet over het lokaal bestuur van 22 december 2017 <https://codex.vlaanderen.be/PrintDocument.ashx?id=1029017&datum&geannoteerd=true&print=false> accessed 14 April 2024.

61 Code de la démocratie locale et de la decentralization (en vigueur du 30/09/2019). <https://wallex.wallonie.be/files/medias/10/CDLD.pdf> accessed 6 April 2024.

62 Étienne Arcq, Vincent de Coorebyter et Cédric Istasse, 'Fédéralisme et Confédéralisme' (2012) 1(79) Dossiers du CRISP 11, doi:10.3917/dscrisp.079.0011.

63 UK Parliament House of Commons, *The UK Constitution: A Summary, with Options for Reform* (Political and Constitutional Reform Committee 2015) 14.

64 Angel-Manuel Moreno, *Local Government in The Member States of the European Union: A Comparative Legal Perspective* (INAP 2012) 663-83.

65 United Kingdom – monitoring report (n 21).

actions of its constituent parts contributes to the absence of clear decentralisation and local self-government principles in practice.

The United Kingdom has a specific understanding of the principle of decentralisation, which is transferring and devolving legislative competence to constituent units.[66] This understanding of decentralisation has a historical basis. After all, even though the country is considered unitary, English scholars note that it is also described as a "union state" of four countries (England, Scotland, Wales and Northern Ireland) retaining territorial, legal and cultural distinctions of their own.[67] However, devolution is also considered a principle with different meanings.

Comparing decentralisation and devolution, experts from the OECD highlight that devolution is a subcategory and a stronger form of decentralisation.[68] The nature of devolution transfers powers not to the local self-government institutions but to the lower-level autonomous government, which is recognised as a distinct level of government.

Moreover, in the context of the United Kingdom, the process of devolution is underscored by the concept of "localism", which involves transferring power from the state to civil society and local governments.[69] Thus, the political processes in the UK show an exaggerated decentralisation, which is associated with the transfer of legislative powers to the constituent parts of the country. At the same time, such processes do not always indicate that local government autonomy is being strengthened. Therefore, they cannot be assessed as positive.

The Constitution of Lithuania does not explicitly include the principle of decentralisation, nor does it provide a clear answer to whether, as a country, it is centralised. However, scholars suggest that there are grounds to consider the country a unitary and fairly centralised one due to administrative supervision, the inability of local budgets to receive tax revenues directly and the lack of regional traditions.[70] Moreover, the inability of municipalities to collect taxes negates municipalities' constitutional right to a separate, autonomous budget free from central government influence.

4 CONCLUSIONS

The European Charter of Local Self-Government plays a crucial role in protecting local autonomy by establishing guarantees and promoting decentralisation in European countries. However, there are many problems with meeting the standards set by the Charter.

66 Amir Asgari Dehabadi and Erfan Shams, 'The British Perception of Decentralization' (2022) 4(11) The Journal of Modern Research on Administrative Law 117, doi:10.22034/mral.2022.549394.1277.

67 Moreno (n 64) 663.

68 OECD (n 13) 26.

69 ibid 26-7.

70 Vaidotas A Vaičaitis, 'The Republic of Lithuania' in Leonard Besselink and others (eds), *Constitutional Law of the EU Member States* (Kluwer 2014) 1051.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

Chief among these problems is the complex relationship between local self-government, regional authorities, and national governments. We consider it the core issue, influencing the sufficiency of financial resources and the intention of central authorities to consult local self-government. Furthermore, such a relationship is directly connected with administrative supervision because the latter reflects the degree of local self-government autonomy guaranteed by the central government.

The analysis of the countries under study reveals varied approaches to constitutional regulation of the decentralisation principle. While this principle may be defined as an important foundation of local self-government, its constitutional guarantee is not universal. Also, even in countries where decentralisation is enshrined in legislation, its effective implementation is not always ensured. The practice of implementing this principle is also asymmetrical and flexible, with varying combinations of deconcentration, devolution or centralisation of power.

Under the influence of the principle of devolution, decentralisation may have a different meaning. Namely, it means increasing the powers of subnational units, which does not ensure the broad autonomy of local governments at the basic level. Countries that have little experience in democratic state-building may not seek to implement the decentralisation principle on a large scale, leaving political manoeuvre for recentralisation tendencies. Therefore, it is important for countries that are on the way to reforming local self-government to find their national way of implementing the decentralisation principle. For Ukraine, the legal regime of martial law also affects the next steps of the reform of decentralisation. Further implementation of the decentralisation principle should consider the need for effective centralised decision-making during post-war reconstruction, combined with the gradual restoration of local autonomy.

REFERENCES

1. Abraham A, *Decentralisation, Local Governance and Development: An Aspect of Development* (Anchor Academic Publ 2014).
2. Aksztejn W and others, 'The Multiple Faces of Recentralization: A Typology of Central-Local Interactions' [2022] Journal of Urban Affairs doi:10.1080/07352166.2022.2124916.
3. Arcq É, Coorebyter V et Istasse C, 'Fédéralisme et Confédéralisme' (2012) 1(79) Dossiers du CRISP 11, doi:10.3917/dscrisp.079.0011.
4. Barnett CC, Minis HP and VanSant J, *Democratic Decentralization* (Research Triangle Institute 1997).
5. Borrett C and others, *Developing a Decentralisation Index for the Committee of the Regions Division of Powers Portal, European Committee of the Regions* (European Committee of the Regions CIVEX 2021) doi:10.2863/841455.

6. Boryslavska OM and others, *Decentralization of Public Authority: The Experience of European Countries and Prospects for Ukraine* (CPLR 2012).

7. Brezovnik B, Hoffman I and Kostrubiec J (eds), *Local Self-Government in Europe* (Institute for Local Self-Government Maribor 2021) doi:10.4335/978-961-7124-00-2.

8. Dehabadi AA and Shams E, 'The British Perception of Decentralization' (2022) 4(11) The Journal of Modern Research on Administrative Law 117, doi:10.22034/mral.2022.549394.1277.

9. Fleurke F and Willemse R, 'Approaches to Decentralization and Local Autonomy: A Critical Appraisal' (2004) 26(4) Administrative Theory & Praxis 523.

10. Gaulė E, 'Public Governance Decentralization Modelling in the Context of Reforms' (2010) 32 Public Policy & Administration 47.

11. Hetman AP, 'Modernisation of the Territorial Structure of Ukraine as a Factor of the Ecological Paradigm' (Decentralisation of Power as a Factor in the Development of Agrarian, Environmental, Land and other Natural Resource Branches of Law: All-Ukrainian Round Table, Kyiv, 22 September 2017) 18.

12. Isra S, Villiers B and Arifin Z, 'Asymmetry in a Decentralized, Unitary State: Lessons from the Special Regions of Indonesia' (2019) 18(2) Journal on Ethnopolitics and Minority Issues in Europe 43.

13. Jamet S, 'Meeting the Challenges of Decentralisation in France' (2007) 571 OECD Economics Department Working Papers 29, doi:10.1787/127050885680.

14. Lialiuk O, 'Military and Military-Civil Administrations in the System of Territorial Organization Power in Ukraine: A Comparative Analysis' (2022) 157 Problems of Legality 6, doi:10.21564/2414-990X.157.256296.

15. Melnychuk V, 'Implementation of the Principles of the European Charter of Local Self-Government in the Context of Decentralisation of Power' (2019) 1(13) Bulletin of the Precarpathian University, Political Science 111.

16. Moreno AM, *Local Government in The Member States of the European Union: A Comparative Legal Perspective* (INAP 2012).

17. Murtishcheva A, 'The Concept of Decentralization: Modern Challenges for the EU Countries, Prospects for Further Implementation in Ukraine' (IRC 2023 XVII. international research conference, Istanbul Türkiye, 17-18 August 2023) 173.

18. Rajca L, 'Reforms and Centralization Trends in Hungary and in Poland in a Comparative Perspective' (2020) 160(5) Przegląd Sejmowy 133, doi:10.31268/PS.2020.69.

19. Tocqueville A, *The Old Regime and the Revolution* (Harper & Brothers 1856).

20. Vaičaitis VA, 'The Republic of Lithuania' in Besselink L and others (eds), *Constitutional Law of the EU Member States* (Kluwer 2014) 1027.

21. Vincent JM and Vincent AS, 'Constitution of the Kingdom of Belgium' (1896) 7 The Annals of the American Academy of Political and Social Science 297.

22. Yuliani EL, 'Decentralization, Deconcentration and Devolution: What do they Mean?' (Workshop on Decentralization, Interlaken, Switzerland, 27-30 April 2004).

AUTHORS INFORMATION

Alina Murtishcheva*
PhD (Law), Associate Professor, Scientific Fellow in the project "Balance of local authority functions: Ukraine actualities in EU view, Institute of public law of Law school, Mykolas Romeris University, Lithuania, Vilnius
a.murtishcheva@gmail.com
https://orcid.org/0000-0001-6520-7297
Corresponding author, responsible for writing, reviewing and editing of this article.

Competing interests: No competing interests were disclosed.

Disclaimer: The author declares that his opinion and views expressed in this manuscript are free of any impact of any organizations.

ACKNOWLEDGEMENTS

This project has received funding from the Research Council of Lithuania (LMTLT), agreement № P-PD-22-194.
The author is deeply grateful to scientific supervisor Prof. Dr. Eglė Bilevičiūtė for her support and constructive feedback and also to Dr. Dovilė Sagatienė for her expert advice throughout the project.

ABOUT THIS ARTICLE

Cite this article
Murtishcheva A, 'Conceptual foundations and principles of legal regulation of decentralisation in selected European countries and in Ukraine' (2024) 7(3) Access to Justice in Eastern Europe 201-22 <https://doi.org/10.33327/AJEE-18-7.3-a000317>

Submitted on 19 Apr 2024 / Approved 27 May 2024
Published: 05 Aug 2024
DOI https://doi.org/10.33327/AJEE-18-7.3-a000317

Managing editor – Mag. Yuliia Hartman**. Assistant Editor –** Bohdana Zahrebelna**. English Editor** – Julie Bold.

Summary: 1. Introduction. – 2. European Charter of Local Self-Government Implementation. – 3. Constitutional Framework of Decentralisation. – 4. Conclusions**.**

Keywords: *constitutional principles, decentralisation, Europe, European Charter of Local Self-Government, local autonomy, local self-government, martial law, recentralisation.*

RIGHTS AND PERMISSIONS

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

КОНЦЕПТУАЛЬНІ ЗАСАДИ ТА ПРИНЦИПИ ПРАВОВОГО РЕГУЛЮВАННЯ ДЕЦЕНТРАЛІЗАЦІЇ В ОКРЕМИХ ЄВРОПЕЙСЬКИХ КРАЇНАХ ТА В УКРАЇНІ

Аліна Муртіщева*

АНОТАЦІЯ

Вступ. *Ця наукова стаття має на меті покращити теоретичне розуміння концептуальних основ та принципів правового регулювання децентралізації та дослідити їх. Встановлення чітко визначеного категоріального апарату є важливою передумовою для розробки ефективного правового регулювання, і децентралізація не є винятком. Точне розуміння цього поняття дозволяє розробити чіткі етапи його впровадження в національне законодавство. Не менш важливим є правильне формулювання засад правового регулювання децентралізації. Ці принципи дозволяють надалі розвивати систему правового регулювання, яка забезпечить автономію місцевого самоврядування.*

Методи. *У дослідженні проведено порівняльний аналіз досвіду впровадження принципу децентралізації в таких країнах, як Бельгія, Італія, Франція, Литва, Польща, Україна та*

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

Велика Британія, які обрали як централізовану, так і децентралізовану форми державного управління. У статті використовуються загальноправові методи для аналізу правових аспектів децентралізації в досліджуваних країнах, увага зосереджується на дотриманні стандартів Європейської хартії місцевого самоврядування та еволюції конституційних засад децентралізації. Цей підхід передбачає здійснення порівняльного аналізу конституційних моделей децентралізації та їх історичного походження, а також аналізу практичного застосування децентралізації та рецентралізації як явищ у сучасній національній політиці. Особливу увагу приділено впливу режиму воєнного стану на ці процеси в окремих країнах.

Результати та висновки. *Основні результати дослідження з'ясовують головні проблеми впровадження європейських стандартів місцевого самоврядування в досліджуваних країнах. Вони підкреслюють різницю між конкретними підходами до децентралізації, включно з деконцентрацією, передачею або навіть централізацією влади. Крім того, дослідження містить аналіз історичного аспекту розвитку конституційних засад децентралізації. Юристи та законодавці можуть використати ці знання для підвищення ефективності законодавства щодо розвитку місцевого самоврядування в досліджуваних країнах.*

Ключові слова: *конституційні принципи, децентралізація, Європа, Європейська хартія місцевого самоврядування, місцева автономія, місцеве самоврядування, воєнний стан, рецентралізація.*