

THE CONCEPT AND LEGAL FRAMEWORK OF LOCAL PUBLIC ADMINISTRATION POWERS IN THE REPUBLIC OF MOLDOVA: FOUNDATIONS AND PRACTICAL CHALLENGES

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Abstract

This article examines the scientific and legal dimensions of the concept of "powers of local public administration" in the Republic of Moldova, situating the discussion within the broader framework of post-Soviet democratic transition and European integration. Drawing on constitutional provisions, organic legislation, and comparative administrative law scholarship, the article critically analyses how the notion of local public administration powers has been theorised, codified, and implemented in Moldova's two-tier territorial structure. The study identifies a persistent tension between formal constitutional guarantees of local autonomy – rooted in Article 109 of the 1994 Constitution and the European Charter of Local Self-Government – and the practical constraints imposed by inadequate fiscal decentralisation, ambiguous competence delimitation, and asymmetric institutional capacities. The article also briefly considers the additional legal complexity arising from the special status of the Autonomous Territorial Unit of Gagauzia. Through doctrinal legal analysis and comparative reference to other Central and Eastern European experiences, the article argues that meaningful empowerment of local authorities in Moldova requires not only legislative clarity but also sustained institutional investment and genuine political commitment to subsidiarity. The article systematises the principal legal and conceptual issues concerning the powers of local public authorities in Moldova and outlines several areas in which the existing framework could be clarified or strengthened.

Keywords: local public administration, Moldova, administrative decentralisation, powers and competences, European Charter of Local Self-Government, subsidiarity, Gagauzia.

INTRODUCTION

The relationship between central state authority and local governance has been one of the defining tensions in the constitutional design of post-Soviet republics. For the Republic of Moldova – a small landlocked state navigating the competing pressures of European integration, internal territorial complexity, and inherited Soviet administrative culture – this tension is especially acute. Since the adoption of the 1994 Constitution, Moldovan law has formally

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committed to the principles of local autonomy, decentralisation of public services, and elected local governance. Yet the practical realisation of these principles has remained contested and, by many accounts, incomplete.

At the heart of this challenge lies a conceptual problem: the term "powers of local public administration" (*competențele administrației publice locale*) remains undertheorised in Moldovan legal scholarship and inconsistently applied in legislative practice. What precisely constitutes a "local matter"? Where does exclusive local competence end and concurrent or delegated state authority begin? How should the allocation of powers be understood in a constitutional system that simultaneously recognises a general regime of local autonomy and a special regime for the Autonomous Territorial Unit of Gagauzia?

These questions are not merely academic. They carry direct consequences for the quality of public service delivery, the accountability of elected officials, and the viability of democratic governance at the sub-national level. International monitoring bodies have identified continuing challenges in Moldova's local government reform, including the allocation of competences between central and subnational levels, the financial capacity of municipalities, and the administrative viability of small local authorities (Congress of Local and Regional Authorities, 2012; European Commission, 2023).

This article seeks to contribute to the clarification of these issues by addressing the following research objectives: (1) to trace the conceptual evolution of "local public administration powers" in Moldovan constitutional and legislative doctrine; (2) to map the normative architecture within which local authority competences are defined and delimited; (3) to identify the principal structural deficiencies in the current framework; and (4) to situate the Moldovan experience within comparative European administrative law.

The article is structured as follows. Section 2 reviews the relevant scholarly literature. Section 3 sets out the methodological approach. Section 4 presents the main findings concerning conceptual and normative dimensions of local powers. Section 5 discusses the implications of these findings for governance reform. Section 6 concludes with recommendations and suggestions for future research.

LITERATURE REVIEW

Theoretical Foundations of Local Government Powers

The concept of local self-government has been theorised along two principal axes in public law scholarship. Two broad approaches can be distinguished in the legal understanding of local self-government. The first regards local communities as possessing a sphere of self-government that is recognised, rather than entirely created, by the state. The second treats local authorities primarily as statutory bodies whose powers derive from legislation. Contemporary European systems generally combine elements of both approaches, recognising a legally protected sphere of local autonomy while leaving its precise scope to constitutional and legislative regulation (Loughlin, 2001). Most contemporary European systems occupy an intermediate position,

recognising a sphere of guaranteed local autonomy while acknowledging that its practical scope is defined through legislation.

The Council of Europe's European Charter of Local Self-Government (1985) represents the dominant normative expression of this intermediate position at the international level. Article 3 defines local self-government as the "right and the ability" of local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. The Charter's emphasis on "substantial" competence, "own responsibility," and "local interests" has been influential in shaping both the terminology and the aspirations of post-communist local government law (Swianiewicz, 2014; Horga, Brie, 2011).

Post-Communist Transitions and Local Government Reform

The literature on democratic transition in Central and Eastern Europe has devoted considerable attention to local government reform as both a dimension and a driver of democratisation (Illner, 1999; Baldersheim et al. 1996). Decentralisation is widely regarded as a mechanism for bringing governance closer to citizens, improving public service efficiency, and building civic capacity (Falleti, 2010; Rondinelli and Cheema, 2007). At the same time, scholars have cautioned against treating decentralisation as inherently democratising, pointing to risks of elite capture, fiscal irresponsibility, and the reproduction of centralised control through new forms (Brinkerhoff and Azfar, 2010; Popa, 1998).

In the specific context of Moldova, a relatively small body of scholarly work has examined local government reform. Cobăneanu (2005) provides a detailed analysis of local administration within Moldova's reintegration context, emphasising the institutional fragmentation produced by the combination of a general local government regime and special statuses for Gagauzia and left-bank Transnistria. Simboreanu (2008) offers a systematic treatment of public administration theory as applied to Moldovan conditions, highlighting the conceptual ambiguities that continue to hamper effective competence delimitation. Popa (1998) and Cârnaț (2010) examine constitutional dimensions of local autonomy, stressing that Moldova's constitutional text, while formally aligned with European standards, has not been matched by adequate legislative implementation.

At the comparative level, the experiences of Romania, Ukraine, and Georgia – states sharing post-Soviet administrative legacies and European integration aspirations – offer instructive parallels. Comparative research on local government systems in Central and Eastern Europe indicates that formal decentralisation may advance more rapidly than the fiscal and administrative capacity required for its effective implementation (Swianiewicz, 2014).

Competence Delimitation in Administrative Law

The question of how to delimit competences between different tiers of government has been extensively addressed in administrative law scholarship. Faseyev (2008) identifies the core problem as the absence of sufficiently precise criteria for distinguishing "local matters" from state

functions that merely have a local dimension. Bialkin (2006) notes that in transitional systems, the ambiguity of competence boundaries tends to benefit central authorities at the expense of local ones, since courts typically resolve ambiguities in favour of the entity that holds the legislative initiative. Shugurina (2006) further analyses the forms and limits of state intervention in local authority activity, arguing that effective autonomy requires not just the formal allocation of competences but the procedural guarantees needed to defend them.

This body of literature collectively suggests that the scientific and legal concept of "local public administration powers" cannot be adequately understood merely by mapping legislative provisions. It requires attention to the constitutional philosophy underlying competence allocation, the institutional dynamics that shape its application, and the practical conditions – fiscal, administrative, human – that determine whether formally allocated powers can be meaningfully exercised.

METHODOLOGY

This article adopts a doctrinal legal analysis as its primary methodological approach, supplemented by comparative law analysis. Doctrinal analysis involves the systematic examination of legal texts – constitutional provisions, organic and ordinary legislation, and authoritative commentaries – with a view to clarifying the content, structure, and normative implications of legal concepts and rules (Hutchinson, Duncan, 2012). This approach is appropriate for a study primarily concerned with conceptual and normative questions, rather than empirical outcomes.

The principal primary sources examined include: the Constitution of the Republic of Moldova (1994), particularly Articles 109–113; the Law on Local Public Administration No. 436-XVI of 28 December 2006; the Law on Administrative Decentralisation No. 435-XVI of 28 December 2006; the Law on the Special Legal Status of Gagauzia No. 344 of 23 December 1994; and the Statute (Ulozhenie) of Gagauzia of 5 June 1998. Reference is also made to the European Charter of Local Self-Government (1985) and the National Decentralisation Strategy of Moldova (2012–2018).

Limited comparative references are made to the experiences of Romania, Georgia, and Ukraine in order to place selected aspects of the Moldovan framework in a broader regional context. The countries are selected on the basis of their shared experience of post-communist administrative transformation and varying trajectories of European integration. Comparative material is drawn from both primary legal sources and the secondary scholarly literature identified in the literature review.

The article does not undertake empirical field research or quantitative analysis. Its limitations accordingly lie in the realm of implementation: the gap between the normative framework as analysed and the day-to-day realities of local governance in Moldova requires empirical investigation beyond the scope of the present study.

The analysis focuses primarily on the legal and policy framework developed after the adoption of the 1994 Constitution, while taking account, where relevant, of more recent reforms and policy developments concerning local public administration and territorial consolidation.

RESULTS AND FINDINGS

Conceptual Foundations: Defining "Local Public Administration" in Moldovan Law

The term "local public administration" (*administrația publică locală*) entered Moldovan constitutional law with the 1994 Constitution, which established it as one of the foundations of the constitutional order. Article 109 provides that public administration in administrative-territorial units is grounded in four principles: local autonomy, decentralisation of public services, elected local governance, and consultation of citizens on matters of local importance. These principles are not mere programmatic statements; they constitute binding norms that condition the validity of all sub-constitutional legislation concerning local governance.

What is noteworthy about the Moldovan constitutional text is its deliberate pluralism with respect to the concept of "local public administration." Rather than adopting a single unitary definition, the Constitution acknowledges the coexistence of a general regime applicable to villages, communes, towns, and districts, and a special regime for Gagauzia (Article 111) and the left-bank settlements (Article 110). This structural pluralism reflects the political compromises of the post-independence period but has generated enduring legal uncertainty concerning the scope of "local powers" across different territorial contexts.

In the scholarly literature, Sîmboteanu (2008) defines local public administration as a "sub-statutory system of authority functioning within the legislative framework established by the state, exercising authoritative decisions within the functions determined by law." This definition captures the essential legal character of local bodies as creatures of statute – their powers are neither inherent nor unlimited – while affirming their relative autonomy within the framework so established. Cobăneanu (2005) adds a relational dimension, emphasising that local public administration is not merely an administrative apparatus but a mechanism through which local communities exercise collective self-determination within constitutionally guaranteed limits.

The Normative Architecture of Local Powers

The detailed normative architecture of local authority powers is primarily set out in two organic laws adopted simultaneously in December 2006: the Law on Local Public Administration (No. 436-XVI) and the Law on Administrative Decentralisation (No. 435-XVI). Together, these instruments establish a two-tier system of local governance and define the competences applicable to each tier.

First-level units (*unități administrativ-teritoriale de nivelul întâi*) – villages, communes, and towns – are governed by elected local councils and mayors (*primars*). Their competences are broadly defined under Article 14 of Law No. 436-XVI and encompass the following functional domains:

- Management of local public and private property;
- Local fiscal decisions within legally prescribed limits (local taxes and fees);
- Infrastructure management (roads, housing, public utilities);
- Organisation of public social services (health, education, culture, welfare);
- Environmental protection and land use planning;
- Internal organisation and rule-making of local bodies.

Second-level units (*unități administrativ-teritoriale de nivel al doilea*) – districts, the municipality of Chișinău, and Gagauzia – exercise competences of a coordinating and strategic character, including: district-level infrastructure and social services; coordination of inter-communal matters; management of district budgets and fiscal planning; and oversight of subordinate local bodies.

A critical structural feature of this framework is the distinction between *own* (exclusive) competences, *shared* (concurrent) competences, and *delegated* state competences. Law No. 435-XVI defines own competences as those pertaining exclusively to local authorities, exercised without prior central authorisation. Shared competences are exercised jointly by local and central authorities. Delegated competences are state functions transferred to local bodies, which must be accompanied by the corresponding financial resources – a requirement that has, in practice, been frequently and problematically honoured in form but not in substance (Faseyev, 2008).

The European Charter of Local Self-Government, ratified by Moldova in 1997, provides the overarching normative standard for this architecture. Article 4.4 of the Charter prescribes that powers conferred on local authorities shall "normally be full and exclusive" – a principle that directly informs the Moldovan legislature's formal commitment to clarity and completeness in competence allocation, even if the practical implementation has fallen short of this standard.

The Concept of "Powers" versus "Competences": A Doctrinal Distinction

Moldovan legal doctrine, following the French-Romanian administrative law tradition, distinguishes between *competență* (competence) and *atribuții* (powers or functions). Competence refers to the total body of rights and obligations legally assigned to a given public authority; it encompasses both the subject matter (*obiect*), the territorial scope (*circumscripția teritorială*), and the material scope (*sfera de atribuții*) of that authority's activity. Powers are the specific rights and duties through which competence is exercised (Orlov, Belecciu, 2005; Creangă, 2005). This distinction has important practical consequences. A local council may have *competence* over local property management as a general matter, but the *powers* through which this competence is exercised – including the right to alienate property, grant concessions, or levy local charges – require specific legislative authorisation. Ambiguities or gaps in legislative enumeration therefore directly constrain the practical authority of local bodies, even where their general competence is constitutionally recognised.

Cârnaț (2010) notes that Moldovan legislation has not always maintained this distinction rigorously, sometimes using "competence" and "powers" interchangeably in a manner that creates interpretive difficulties. The Law on Local Public Administration itself, while structurally sound, contains provisions whose precise scope has been subject to divergent administrative and judicial interpretations.

Sources of Local Public Administration Law

The sources of local public administration law in Moldova operate at three levels. At the national level, the primary source is the Constitution, supplemented by organic laws (principally Laws No. 436 and No. 435 of 2006), sector-specific legislation (Tax Code, Electoral Code, Education Code, etc.), and subordinate executive acts. At the regional level – applicable to Gagauzia – sources include the Law on the Special Legal Status of Gagauzia (1994), the Statute of Gagauzia (1998), and the normative acts of the People's Assembly of Gagauzia (*Halk Topluşu*). At the local level, municipal statutes, locally adopted regulations, and decisions taken through local referenda constitute the primary sources.

An important and sometimes overlooked source is international law, particularly the European Charter of Local Self-Government, which – by virtue of Article 8 of the Moldovan Constitution – forms part of the domestic legal order and takes precedence over domestic legislation in case of conflict. This hierarchical superiority has been invoked in legal challenges to central government measures that were argued to infringe local autonomy, though the Constitutional Court's jurisprudence in this area remains relatively underdeveloped.

The Gagauzia Variable: Asymmetric Autonomy and Its Legal Implications

The Republic of Moldova's constitutional order is notable in the European context for accommodating two concurrent regimes of sub-national governance: the general local government regime applicable throughout the country, and the special autonomy regime applicable to Gagauzia. This asymmetric structure introduces significant complexity into the legal architecture of local powers.

Under the 1994 Law on the Special Status of Gagauzia, the autonomous territorial unit enjoys a broad range of self-governing powers that exceed those of ordinary second-level units. These include the power to adopt *local laws (legi locale)* in the fields of education, culture, and local economic development – a prerogative that sits in tension with Article 60 of the Constitution, which designates Parliament as the "unique legislative authority of the state." The unresolved conflict between these provisions has been a persistent source of jurisdictional uncertainty and political friction (Ангели, 2006).

The Statute of Gagauzia further provides for an autonomous budget, distinct electoral procedures, and a directly elected executive head (Başkan), creating in effect a three-tiered sub-national governance structure within a nominally unitary state. From the perspective of competence delimitation, this asymmetry means that the framework applicable to first- and second-level units

cannot simply be transposed to Gagauzia, requiring a distinct analytical framework for understanding how "powers" operate in that context.

DISCUSSION

Structural Deficiencies in Competence Delimitation

The foregoing analysis reveals a number of structural deficiencies in Moldova's legal framework for local authority powers. The most significant is the lack of sufficiently precise criteria for distinguishing own local competences from shared and delegated ones. In the absence of clear boundaries, central authorities retain extensive discretion to encroach upon local spheres of activity under the guise of "state supervision" or legislative clarification. This structural asymmetry is compounded by the fiscal dependency of local budgets on central transfers, which effectively conditions local autonomy on central goodwill (Bartsits, 2011; Dobrynin, 2010).

A second structural problem concerns the gap between competence allocation on paper and the practical conditions for exercising those competences. The Law on Administrative Decentralisation formally requires that delegated competences be accompanied by corresponding financial transfers; in practice, this requirement has been inconsistently observed, leaving local bodies responsible for functions they lack the resources to perform. This phenomenon – sometimes called "unfunded mandates" – is well-documented in the comparative literature on post-communist local government (Swianiewicz, 2014; O'Neill, 2005).

The Subsidiarity Principle and Its Application

The principle of subsidiarity – the idea that public functions should be exercised at the lowest level of governance capable of performing them effectively – is formally embedded in both the European Charter (Article 4.3) and the National Decentralisation Strategy (2012–2018). Yet its practical application in Moldova has been limited. Central ministries have shown persistent reluctance to transfer genuine decision-making authority, particularly in fiscally significant domains such as education and social welfare (Sîmboteanu, 2008; Cobăneanu, 2005).

This reluctance reflects not merely institutional self-interest but also a genuine concern, not without foundation, about the administrative capacity of many small local units. Moldova's territorially fragmented local government system includes a significant number of small local units with limited administrative and financial capacity, whose human and financial resources are genuinely insufficient for effective exercise of broad autonomous powers. The tension between the normative commitment to local autonomy and the practical requirements of effective governance thus cannot be resolved through legislative design alone; it requires sustained investment in local administrative capacity.

Comparative Perspectives and Lessons for Reform

The comparative experience of Romania, Georgia, and Ukraine offers both cautionary lessons and positive models for Moldovan reform. Romania's experience provides a relevant regional

point of reference for examining the relationship between European integration, administrative reform, and local autonomy. Georgia's post-2004 reforms demonstrate that rapid and comprehensive decentralisation can be achieved but requires strong central political will, coherent sequencing, and attention to the fiscal architecture underpinning local powers. Ukraine's experience underlines the risks of partial decentralisation – the transfer of administrative functions without the corresponding financial and regulatory autonomy – which can actually increase rather than reduce local dependency on central authority.

For Moldova, these comparative reflections suggest the following reform priorities: (1) legislative consolidation of the criteria for classifying competences as own, shared, or delegated; (2) systematic audit and rectification of unfunded mandates; (3) strengthening of local administrative capacity, including through voluntary communal amalgamation schemes; and (4) judicial reinforcement of local autonomy guarantees, including through more active use of constitutional review.

CONCLUSION

This article has examined the scientific and legal dimensions of the concept of "powers of local public administration" in the Republic of Moldova, tracing the conceptual, normative, and structural dimensions of a framework that, while formally aligned with European standards, continues to face significant implementation challenges.

The analysis has established that the Moldovan constitutional and legislative framework provides a sound formal basis for local authority powers, rooted in the principles of local autonomy, subsidiarity, and the European Charter of Local Self-Government. However, three principal deficiencies undermine the effectiveness of this framework in practice: conceptual ambiguity in the delimitation of own, shared, and delegated competences; fiscal dependency that conditions local autonomy on central resource transfers; and asymmetric institutional capacities across a fragmented territorial landscape.

The case of Gagauzia adds a further layer of complexity, introducing an asymmetric autonomy regime whose interaction with the general local government framework has not been satisfactorily resolved either in legislation or in jurisprudence.

Future research should address two dimensions that lie beyond the scope of this article. First, empirical investigation of how local authorities in practice exercise – or fail to exercise – their formally allocated powers would provide essential grounding for reform proposals. Second, a more systematic analysis of the Constitutional Court's jurisprudence on local autonomy would help clarify the judicial dimension of competence protection, which this article has examined only in passing.

The broader lesson from the Moldovan case is that the concept of "local public administration powers" cannot be adequately understood as a purely technical legal question. It is, at its core, a question about the distribution of political authority and the conditions of democratic self-

governance in a transitional state navigating competing pressures of Europeanisation, territorial complexity, and administrative inheritance.

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