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ISSUES OF LEGAL REGULATION AND CORRELATION OF STATE CONTROL AND SUPERVISION IN THE FIELD OF LOCAL SELF-GOVERNMENT

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INTRODUCTION

The further development of local self-government in Ukraine is linked to the completion of the decentralisation reform. Given that the measures taken to implement this reform from 2014 to 2021 covered mainly the competence, territorial, material and financial aspects of the local self-government reform, today considerable attention should be focused on ensuring mechanisms for controlling its functioning and rule-making activities. This is also determined by the programme legal acts adopted recently[1].

The issues of the state legal mechanism of control and supervision are crucial for the democratisation of local self-government and increasing public confidence in the decisions it makes. The effectiveness of the local self-government system depends on the quality of control measures. At the same time, Ukrainian legislation has traditionally provided for supervision of local self-government in addition to control. These procedures are different and each has its own purpose.

The issues of control and supervision in the system of local self-government have been paid attention to by various domestic and foreign scholars – V. O. Velychko[2], T. O. Kolomoyets[3], P. M. Lyubchenko[4],

[1] Про затвердження плану заходів з реформування місцевого самоврядування та територіальної організації влади в Україні на 2024-2027 роки: Розпоряження Кабінету Міністрів України від 26 березня 2024 р. № 270-р. https://zakon.rada.gov.ua/laws/show/270-2024-%D1%80#n14

[2] Величко В.О. Державний контроль та нагляд за додержанням законності в діяльності органів та посадових осіб місцевого самоврядування. Державне будівництво і місцеве самоврядування. 2016. № 32. С. 95-114.

[3] Коломоєць Т.О. Зарубіжний досвід контролю за діяльністю органів місцевого самоврядування як суб'єктів адміністративного права [Електронний ресурс] – Режим доступу до ресурсу: http://www.stattionline.org.ua/pravo/76/12542-zarubizhnij-dosvid-kontrolyu-za-diyalnistyu-organiv-miscevogosamovryaduvannya-yak-sub-yektiv-administrativnogo-prava-ta-osnovni-napryamki-jogo-zapozichennya-vukra%D1%97ni.html

[4] Любченко П.М., Смоляр О.А. Зарубіжний досвід організації контролю у сфері місцевого самоврядування. – 2015. – 20 с. – Режим доступу до ресурсу – file:///C:/Users/Admin/Downloads/dbms_2015_29_4%20(3).pdf.

E. V. Minakova[5], O. Skorokhod[6], O. A. Smolyar[7] and others. However, the dynamics of legislative changes in the regulation of control and supervision requires constant analysis of these issues.

In addition, the issue of the correlation between related categories of supervision, administrative supervision and control in the field of local self-government remains relevant.

1. Peculiarities of legal regulation of control and supervision in the field of local self-government

The basis for the introduction of a mechanism for controlling the activities of local self-government is laid down by international legal acts in this area, the main of which is the European Charter of Local Self-Government. It is this Charter that enshrines the exercise of 'administrative supervision' over local self-government[8] as a generally accepted standard, which requires implementation in national legislation. This need for implementation is a consequence of Ukraine's ratification of the text of this international document in accordance with the Law[9]. Therefore, the use of the category of 'administrative supervision' in the text of the Charter was the impetus for its differentiation from the related concept of 'control', which is more widely used in the municipal legislation of Ukraine.

These provisions of the Charter became the starting point for formulating the principle of supervision and control in national legislation. Thus, the European Charter of Local Self-Government in its Article 8 enshrines 'administrative supervision of local authorities', stipulating that 'any administrative supervision of local authorities may be exercised only in accordance with the procedures and in the cases provided for by the constitution or laws'. This requires the state to enshrine in the current legislation the fundamental provisions for supervisory and control activities in the field of local self-government, to define the system of subjects and the limits of their implementation.

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[5] Мінакова Є.В. Правове регулювання контролю за діяльністю органів місцевого самоврядування в Україні в умовах децентралізації влади та євроінтеграції. Нове українське право. 2022. Вип. 6. Том 2. С. 64-72.

[6] Скороход О. Громадський контроль за діяльністю органів місцевого самоврядування [Електронне джерело] 186, 187 с. – Режим доступу до ресурсу: file:///C:/Users/Admin/Downloads/znpnadu_2010_1_20%20(1).pdf

[7] Смоляр О. А. Державний контроль у сфері місцевого самоврядування: особливості правового регулювання. Проблеми законності : зб. наук. пр. Харків, 2015. Вип. 129. С. 59-68.

[8] Європейська хартія місцевого самоврядування м. Страсбург, 15 жовтня 1985 року. https://zakon.rada.gov.ua/laws/show/994_036#Text

[9] Про ратифікацію Європейської хартії місцевого самоврядування: Закон України від 15.07.1997 р. № 452/97-ВР. *Відомості Верховної Ради України. 1997. № 38. Ст.249*

Thus, the very title of this provision of the European Charter contains a number of provisions that are contradictory to national legislation.

Firstly, it refers to the supervision of bodies. In this regard, those subjects of local self-government that are not bodies (territorial community, village, town or city mayor, village or town starosta, secretary of village, town or city council, chairman and deputy chairmen of regional, district, city councils, etc.) fall outside the scope of this article. Therefore, supervision of this category of persons is not possible from the point of view of the European Charter, but only certain control measures can be applied. This puts on the agenda a controversial legal issue regarding the need to extend the requirements of administrative supervision in the formulation of relevant legal provisions of national legislation to the above-mentioned subjects. That is, to consolidate these provisions more broadly, indicating local self-government entities in general.

Secondly, regarding the possibility of administrative supervision over acts adopted by the primary subject – the territorial community. The latter has a whole system of forms of direct resolution of issues of local importance, which result in the adoption of a relevant legal act by the territorial community. The most important such acts are adopted by them at local referendums, but in modern realities there is a certain legal vacuum in their implementation, due to the absence of a special law, the mandatory existence of which is required by paragraph 20 of Article 92 of the Constitution of Ukraine[10]. At the same time, the Law 'On Local Self-Government in Ukraine' contains the principles of organising and conducting other forms of direct resolution of local issues by the territorial community, which result in the adoption of a certain decision – Part 2 of Article 8 (decisions of the general meeting), Part 3 of Article 13 (proposals of public hearings)[11]. These forms of participation of the territorial community are detailed at the level of its charter, so today the issue of their organisation and conduct is linked only to the availability of an approved charter. Given the direction of the decentralisation reform, which is associated with the consolidation of territorial communities and the creation of new amalgamated territorial communities, as well as the procedure for adopting a charter that is more complicated than the adoption of a regular council decision, not all newly created territorial communities have adopted such a charter. However, where it is available, territorial communities or parts of them may well make these decisions. Therefore, a logical question arises as to the possibility of exercising administrative supervision over them

[10] Конституція України від 28.06.1996 р. Відомості Верховної Ради України. 1996. № 30. Ст. 141

[11] Про місцеве самоврядування в Україні: Закон України від 21.05.1997 р. № 280/97-ВР. Відомості Верховної Ради України. 1997. № 24. Ст.170.

in cases specified by law. At the same time, it should be borne in mind that under the current legal regulation of the forms of direct resolution of local issues by territorial communities, in the vast majority of cases, the decisions of the latter are put into effect by decisions of the relevant local councils. However, this should not exclude the possibility for certain competent authorities to monitor and control the legality of the primary decisions of territorial communities. Perhaps, at the current stage of Ukraine's development, when the legal regime of martial law has been introduced in the country[12], the territorial community's ability to implement forms of direct decision-making is significantly limited, but we should talk about a universal model of control that will be applied mainly in peacetime and which should also apply to acts adopted by the primary subject of local self-government.

Thirdly, Article 8 of the European Charter refers to 'administrative supervision', which implies supervision by a certain entity that is hierarchically higher than local self-government bodies in terms of its legal status. At the same time, the Charter uses the term 'higher authorities'. This also gives rise to several controversial opinions. Firstly, given that administrative supervision of local self-government in Ukraine is carried out by state authorities, and not by institutions within the local self-government system itself, the Charter's understanding of the concept suggests that it is state authorities that are 'higher authorities' in relation to local self-government bodies. Second, the legal national policy in the field of local self-government is based on other approaches. Thus, Ukrainian legislation provides for and enshrines the autonomy and independence of local self-government, without any subordination to other systems of government, their bodies, officials or officers. This is one of the key, special principles of local self-government enshrined in Article 4 of the Law 'On Local Self-Government in Ukraine'. This provision details a number of constitutional norms, which include the provisions of Article 144, which states that local self-government bodies, within the limits of their powers defined by law, make decisions that are binding on the respective territory, and Article 143, which defines the main powers of local self-government bodies and the principles of their exercise. This is what gives them a specific legal status, which determines the possibilities of legal, organisational, material and financial independence within the powers defined by the Constitution and laws of Ukraine.

The Constitution of Ukraine contains a number of provisions related to the control of local self-government by state authorities (part 4 of Article 143), but they relate only to the scope of delegated powers.

[12] Про введення воєнного стану в Україні: Указ Президента України від 24.02.2022 р. № 64/2022. Офіційний вісник України. 2022. № 46. Стор. 16

With regard to supervisory activities, Article 144 of the Constitution stipulates that decisions of local self-government bodies on the grounds of their inconsistency with the Constitution or laws of Ukraine are suspended in accordance with the procedure established by law with simultaneous appeal to the court. Article 144 of the Constitution of Ukraine is currently declarative, as there is no institution whose legal status allows for the suspension of a decision of a local self-government body. In the historical retrospective, the provisions of Article 144 were the subject of consideration by the Constitutional Court of Ukraine, which in its decision[13] drew attention to the Law of Ukraine 'On the Prosecutor's Office', which was in force at the time, and which provided for the procedure for suspending decisions of local self-government bodies on the grounds of their inconsistency with the Constitution or laws of Ukraine. This law stipulated that in case of violations of the law, the prosecutor, within the limits of his/her competence, has the right to appeal against acts of executive bodies of local councils and to make submissions or protests against decisions of local councils, depending on the nature of the violations. The prosecutor's protest is brought to the body that issued the act and suspends its effect; the prosecutor was entitled to file a petition with the court to declare the act illegal, and the filing of such a petition suspended the effect of the legal act (Article 21(1), (3), (4) of the Law of Ukraine 'On the Prosecutor's Office'). In view of the above, the Constitutional Court of Ukraine concluded that within the meaning of Article 144(2) of the Constitution of Ukraine and Article 59(10) of the Law 'On Local Self-Government in Ukraine', decisions of local self-government bodies on the grounds of their inconsistency with the Constitution or laws of Ukraine are suspended by the prosecutor in accordance with the procedure established by the Law of Ukraine 'On the Prosecutor's Office' with simultaneous appeal to the court. Subsequently, the amendments to Article 1311 of the Constitution of Ukraine affected the legal status of the prosecution authorities. The provisions of the Basic Law clearly set out the scope of the prosecutor's office's jurisdiction: 1) support of public prosecution in court; 2) organisation and procedural guidance of pre-trial investigation, resolution of other issues in criminal proceedings in accordance with the law, supervision of covert and other investigative and detective actions of law enforcement agencies; 3) representation of the state in court in exceptional cases and in accordance with the procedure established by law.

[13] Рішення Конституційного Суду України у справі за конституційним поданням Харківської міської ради щодо офіційного тлумачення положень частини другої статті 19, статті 144 Конституції України, статті 25, частини чотирнадцятої статті 46, частин першої, десятої статті 59 Закону України "Про місцеве самоврядування в Україні" (справа про скасування актів органів місцевого самоврядування). Справа № 1-9/2009 від 16.04.2009. Офіційний вісник України. 2009. № 32. стор. 77.

At the same time, Article 144 of the Constitution has not been amended due to changes in the status of the prosecutor's office, which has created a legal vacuum for its implementation and some legal uncertainty in this area. It is clear that the Constitution in Article 144 stipulates that, first, there should be a certain supervision over the rule-making work of local self-government bodies, second, the scope of such supervision includes the possibility to suspend the act of a local self-government body and simultaneously apply to the court, and third, in terms of the current constitutional provision, it should be exclusively about decisions of local self-government bodies.

In our opinion, the state policy in the field of control and supervision over local self-government should take into account that social relations in this area are constantly evolving and changing. Therefore, this constitutional provision can only partially satisfy the requirements of the state at the present stage, and while maintaining the general principle of supervision over the rule-making work of local self-government entities, it may not be sufficient to limit such supervision exclusively to local self-government bodies and only over decisions (if we consider the concept of 'decision' in a narrow aspect). In addition, the question of whether a supervisory institution can suspend an act of local self-government remains controversial. In the modern interpretation of these relations and in order to deprive the supervisory structure of the opportunity to abuse the 'right to suspend acts of local self-government', it is considered appropriate to suspend such an act by the court, after the supervisory entity has applied to it. All of this demonstrates the need to update the state legal policy of control and supervision relations, to form modern models of control and supervision, and to change the constitutional provisions on supervision and control over local self-government.

2. Problems of correlation of related legal categories of control and supervision and specifics of their regulation in legislation

It should be noted that both control and supervision are mainly elements of external relations arising between different organisational systems of power. Therefore, the subject of control or supervision activities should be a public authority or a public body authorised by law to perform such actions. Internal control that arises within a particular organisational system is also possible, but such relations reflect the peculiarities of the structural organisation of local self-government and do not reflect the aspects of interaction with other subjects of public-power relations.

Thus, in accordance with the provisions of the European Charter, administrative supervision can only be carried out within the framework of external relations of local self-government bodies with other bodies or subsystems of power, in particular with state authorities or public entities

vested with supervisory powers. In fact, the European Charter, using the category 'administrative', reduces supervision to control over a certain subject area of the local self-government body. Therefore, in our opinion, administrative supervision, on the one hand, can be equated in the Charter's understanding with subject (sectoral) control, and on the other hand, if such supervision is carried out by an independent, specially created institution and is of a general nature, it can be considered supervision in the classical sense.

In this regard, it can be argued that by using the category of 'administrative supervision', the European Charter tries to combine in this concept elements of supervision and control that are different in their legal nature, procedure and consequences. Perhaps, this is acceptable for consolidation in the form of a general norm-principle, as is typical for the European Charter, but when detailed at the level of legislation, the procedural aspects of its implementation will lead to a mixing of fundamentally different concepts that should exist in parallel and receive their own legal regulation.

Supervision of local self-government, in our opinion, is possible only in one form – supervision of the rule-making activities of local self-government. At the same time, such supervision should not be limited to local self-government bodies. It should also cover acts of the territorial community and elected local self-government officials, i.e. acts of such entities, which will be difficult or even impossible to verify through the control procedure. At the same time, the European Charter expands on this approach and speaks of the supervision of any activity. The very concept of 'activity' is not a purely legal category, has no legal basis and can be interpreted quite broadly. Thus, this sphere may include financial and economic activities of a local self-government body, procedural issues in the implementation of organisational forms of work (sessions, hearings, meetings of permanent commissions, etc.), execution of assignments by deputies, etc. The implementation of such provisions of the European Charter in the national context may lead to unauthorised, unjustified interference in the sphere of local self-government activities, which will block the work of a local self-government body or a certain official, making it impossible not only for them to adopt unlawful acts, but also for them to take measures to adopt any acts at all.

At the same time, it is important to decide whether all acts should be subject to supervision or only regulatory legal acts should be supervised. As is well known, the system of local self-government acts is quite extensive. However, one of the main criteria for their classification is the division into normative legal acts and acts of individual (law enforcement) nature. These acts differ significantly in their individual characteristics. Thus, acts of an individual nature are not characterised by a permanent effect in time, space and on a range of persons, which is a defining characteristic of normative acts.

They are adopted for the purpose of implementing a particular rule of law. However, such acts should not be confused with adopted rules, regulations, and procedures, the adoption of which is provided for in a particular legal act. These rules, regulations and procedures are normative acts, since they are designed for repeated use and their effect is not limited to one-time implementation. In our opinion, when addressing the above issue, it is necessary to take into account the need to verify the validity of the adoption of any legal act, so supervisory measures should apply to all legal acts in the field of local self-government.

Supervision also differs from control by the system of forms of its implementation. Thus, control has a more extensive system of forms of implementation, and can take the form of audits, inspections, inspections of documents, obtaining information upon request, receiving and analysing reports, etc. Control is usually exercised in the field of a particular industry (subject to the authority's jurisdiction) and does not imply permanence. For example, the sphere of education, science, healthcare, social security, other services, or control may relate to entire areas of work of local self-government bodies, for example, ensuring the rule of law at the local level. This is a permanent (not permanent) mechanism for analysing the activities of the controlled entity, related to the extent and completeness of the exercise of powers by the controlled entity. Control implies that the controlling entity must have the authority to take measures. In turn, supervision is carried out in the form of an analysis of decisions made by the local self-government entity and, in some cases, their projects. Such analysis is carried out by a special entity that does not belong to the systemic and structural organisation of local self-government and does not have any signs of hierarchy with local self-government, including the exercise of delegated powers. It is a public institution specially formed for the purpose of supervising local self-government, which occupies a special place in the mechanism of state power.

The line between supervision and control is quite thin. Supervision should be exercised over the rule-making activities of the local self-government body and to ensure compliance with the Constitution and laws of Ukraine. And the implementation of the adopted acts in the relevant area of economic activity should be controlled by competent entities on a sectoral basis, either within the local self-government system itself or in court. At the same time, the European Charter of Local Self-Government defines administrative supervision as supervision of the proper performance of tasks entrusted to local self-government bodies.

These issues of inconsistency between national and international legislation, the lack of an extended official interpretation of the Charter's provisions and the justification of the principles it contains, lead to ambiguous

approaches in the process of rule-making, formulation of constitutional provisions and proposals for control and supervision. V. M. Garashchuk notes that interference with the operational activities of the supervised body and the right to independently bring perpetrators to legal liability are the main differences between control and supervision[14]. According to the authors of the administrative law textbook, the purpose of supervision is to detect and prevent offences, eliminate their consequences and bring the perpetrators to justice without the right to interfere with the operational and economic activities of the supervised objects, change or cancel management acts[15].

In addition, attention should be paid to certain territorial peculiarities of control and supervision. The subjects of control activities, which involve internal organisational control, are located at all levels – village, town, city, district within a city, district, region. They carry out control measures on their territory. For example, the controlling powers of a village, town or city mayor over the rule-making activities of the respective council, or the controlling powers of the council over the activities of their executive bodies, or control over the activities of the council by the territorial community.

External control, which today is mainly manifested in the control over the exercise of powers delegated by state authorities to local self-government bodies, provides for the territorial involvement in this mechanism of only those bodies to which the powers are delegated. Thus, according to national legislation, such powers are delegated by law to the executive bodies of village, town and city councils, and therefore, local self-government bodies of villages, towns and cities are subject to this type of control. Thus, local governments at the district, city district and regional levels are excluded from this territorial list.

The supervisory authorities do not need to conduct as many forms of interaction with the supervised entities as the controlling authorities. Therefore, one such institution is sufficient to organise this work. Geographically, it should be located in the largest administrative-territorial unit – the region (oblast) and extend its jurisdiction to its entire territory, including the territorial entities that make up the region. For the supervisory structure to be effective, its territorial spread is not important, but it is important to have the necessary and sufficient apparatus to ensure timely and objective supervisory activities.

[14] Гаращук В. М. Теоретико-правові проблеми контролю та нагляду у державному управлінні : дис.... доктора юрид. наук : 12.00.07 / Гаращук Володимир Миколайович. Х., 2003. 412 с.

[15] Адміністративне право України : підручник для юрид. вузів і фак. / за ред. Ю. П. Битяка. Х. : Право, 2000. С. 223.

The fundamentals of state legal control over local self-government and the specifics of its implementation are enshrined in the legislation.

1. Thus, state authorities, when exercising sectoral control, do not have the right to cancel acts of local self-government bodies and officials. According to the law, the competent entity has the right to demand only that activities be brought into compliance with the applicable law on its own or to apply to the authorised body. The cancellation of local self-government acts can only take place in court. This approach is part of the important constitutional principle of guaranteeing local self-government (Article 7 of the Constitution of Ukraine).

2. Control over the activities of local self-government does not apply to the issues of citizens' appeal to the court for the protection of their concurrent rights, including the actions of local self-government bodies, appointment or election of any individual or body that would control the activities of local self-government.

3. Control is carried out by a specially authorised entity whose legal status, as defined by law, contains all the elements necessary for the implementation of control activities, including the responsibility of such an entity in cases of abuse of the control powers granted to it.

4. The control exercised over local self-government bodies must fulfil an important requirement of the European Charter of Local Self-Government – to ensure that the measures of the controlling body are proportionate to the importance of the interests it intends to protect. This means that the supervisory authority cannot block the work of a local self-government body by exercising control. Due to the fact that, by its legal nature, control involves interference with the activities of the local self-government body in respect of which it is carried out, such interference should not lead to the suspension of the body's work, the inability to exercise its powers, provide services to the population, etc. In addition, this means that the supervisory authority should assess the scope of work carried out by the local self-government body, the availability of material and financial resources for the exercise of the powers under control, the existence of violations by the local self-government body, the facts of which are confirmed by decisions of the judiciary, and other circumstances. This, in our opinion, will determine the proportionality of the measures. It is another matter when, as a result of control measures, the facts of violation by the local self-government body of the Constitution and laws of Ukraine are established, which are related to gross violations of the rights and freedoms of citizens, affect the sovereignty and territorial integrity of Ukraine, the level of its defence capability, etc. In such circumstances, the controlling entity should be able to act more decisively and adequately to the facts of violations.

5. The procedure for organising and exercising public control over the activities of local self-government, which should be carried out in parallel with state legal measures, requires more detailed regulation. It is public control that can serve as an indicator for the state of the existence of violations by local self-government, the extent of such violations, their resonance for society and the need for appropriate intervention to eliminate them. As of today, the general principles of public control, unlike sectoral state and legal control enshrined in various sectoral legislative acts, are provided for only at the legislative level (No. 4697 of 14.04.2014, No. 2737-1 of 13.05.2015, No. 9013 of 07.08.2018, and others). Public control without proper legal regulation cannot become an effective mechanism of influence. To ensure the effectiveness of this type of control, in our opinion, it is necessary to ensure interaction between the authorities and society, clearly define the forms of involvement of the population in solving local issues and implementation of control measures; ensure legal freedom of each individual and equal legal opportunities for implementation in local self-government.

Thus, control over the activities of local self-government bodies is a targeted influence of competent entities in certain forms and ways on the procedure for carrying out activities by local self-government bodies and officials in order to ensure that they are within the limits established by law.

It should be emphasised that state control over the activities of local self-government has not received comprehensive legal regulation. Only the sphere of control over the exercise of delegated powers is detailed, and the provisions for this are currently under discussion and need to be improved. The application of a comprehensive approach to the regulation of state legal control over local self-government is associated with a number of factors. Firstly, local self-government is a necessary tool for ensuring democratic governance and interaction between the government and the community, and therefore it cannot remain uncontrolled by the state. Secondly, the European Parliament adopted a resolution on enhancing the process of Ukraine's accession to the EU[16], which calls on the Ukrainian government to continue decentralisation and implement reforms, integrating them into the overall context of recovery and reconstruction of Ukraine, which brings the issue of administrative control over local self-government to the forefront of the solution.

The mechanism of oversight of local self-government is also not currently properly regulated in Ukraine. For a long time, the only legal possibility to appeal against an act of a local self-government body or official has been to go to court. However, the process of applying to court must also meet certain

[16] Резолюція Європейського парламенту від 15 червня 2023 року щодо сталої реконструкції та інтеграції України до євроатлантичної спільноти (2023/2739(RSP))

requirements, in particular, that the adopted act violates the subjective rights of a person. Thus, according to Article 5 of the Code of Administrative Procedure of Ukraine, every person has the right to apply to an administrative court in accordance with the procedure established by this Code if he or she believes that a decision, action or inaction of a public authority has violated his or her rights, freedoms or legitimate interests. This creates a certain framework for applying to administrative courts to declare a regulatory act or its individual provisions unlawful and invalid; to declare an individual act or its individual provisions unlawful and invalid; to declare actions of a public authority unlawful and to oblige it to refrain from taking certain actions; to declare inaction of a public authority unlawful and to oblige it to take certain actions; to establish the presence or absence of competence (authority) of a public authority, etc. The passivity of some citizens, and sometimes the lack of material and financial capabilities, will create conditions where they will not always go to court even when their subjective rights are violated. At the same time, a legal act whose provisions are in violation or which was adopted in violation of the established procedure will continue to operate, violating the interests of other persons. In addition, the procedure for considering a case in court can take quite a long time.

That is why, in our opinion, there should be a more mobile, permanently functioning, professional mechanism for monitoring the rule-making activities of local self-government bodies and their elected officials with the possibility of applying adequate consequences to these subjects when they adopt acts with violations. In the theory of constitutional and municipal law, such a monitoring mechanism is called 'supervision over the rule-making activities of local self-government'. In most countries of the world, this supervision is carried out by a special entity formed in the system of state power – a representative of the government at the local level (prefect (France), government commissioner (Italy), voivode (Poland), burgomaster (Germany)).

Ukraine has not created such an entity, although the preconditions for this have been formed. To introduce such an institution, the Basic Law of Ukraine needs to be amended, which is significantly more difficult in the context of socio-political conflicts in the government, and currently in a state of war. At the same time, draft laws on prefects were registered in the parliament, which redefine the model of management and control and supervision at the local level. However, these draft laws are currently removed from the website of the Verkhovna Rada of Ukraine, which indicates that the parliament is still uncertain about the appropriate model of supervision and control. It should be noted that the organisational basis for the formation of the prefect institute is entirely created at the level of local state administrations, whose management

functions should be reduced in the context of decentralisation and eventually transformed into supervisory activities.

In Ukrainian legislation, control and supervision are often formulated as identical categories[17]. Thus, in the science of municipal law, there are fundamentally different positions on the correlation of control and supervision, the identification of features for their distinction, which makes it important to study the issue of their relationship, analyse public policy regarding models of control and supervision and develop recommendations for their legal consolidation. Some scholars also point out the expediency of correlating supervision and control[18].

CONCLUSIONS

Thus, 'supervision' implies 'control', as well as 'control' implies 'supervision', and although the very fact of simultaneous coexistence of the terms 'control' and 'supervision' in the texts of legal acts can be considered as a formal basis for their identification, the actual implementation of these activities shows their differences, which we have analysed above.

We believe that today several issues remain unresolved (debatable) with regard to state control and supervision:

1. The future of local state administrations and the introduction of the prefect system.

2. At what territorial levels should the supervisory institution be formed (region and district, or only region).

3. Whether the supervisory institution should be a public authority or an official.

4. Which public authority should be involved in the formation of such a supervisory body or the appointment of an official (the President alone, or the Government alone, or the President upon the Government's proposal).

5. What scope of powers should be exercised by such an institution (exclusively supervisory powers, or both supervisory and controlling powers over delegated powers, or supervisory, controlling and also executive powers at the local level).

6. Which local self-government entities will be subject to control and supervision.

[17] Про забезпечення санітарного та епідемічного благополуччя населення: Законі України від 24.02.1994 р. № 4004-XII. Відомості Верховної Ради України. 1994. № 27. Ст. 218.; Про метрологію та метрологічну діяльність: Закон України від 05.06.2014 р. № 1314-VII. Відомості Верховної Ради. 2014. № 30. Ст. 1008.; Про основні засади державного нагляду (контролю) у сфері господарської діяльності: Закон України від 05.04.2007 р. № 877-V. Відомості Верховної Ради України. 2007. № 29. Ст. 389.

[18] Руденко М. Про співвідношення державного контролю і прокурорського нагляду (концептуальні зауваження на перехідний період). Право України. 1997. № 5. С.29

7. What forms of influence should such an institution have on local self-government entities in the exercise of control and supervisory powers (whether it should first demand that local self-government bodies eliminate violations, whether it can independently cancel acts, or whether it can suspend them, or whether it can only appeal to the court, and the latter will suspend them and consider the case on the merits).

8. In what cases and under what procedure can it appeal to the President to terminate the powers of local self-government bodies early.

9. What is the mechanism for bringing this person to justice or appealing his/her decisions.

10. What are the legal and organisational guarantees of such an entity and ways to protect it?

The resolution of these issues will allow for the introduction of an effective system of supervisory activities in the field of local self-government and enhancement of the existing control mechanism.

SUMMARY

This chapter of the monograph deals with the current issues of legal regulation of state control and supervision. The author analyses national and foreign legislation ratified by Ukraine, which enshrines the issues of control and supervision. The author defines the essence of the concept of control, examines its features and characteristics. The essence of supervision is analysed, and the key factors that distinguish it from control are presented. The author proposes models of state legal control and supervision that can be implemented in Ukraine. The main problems that exist at the present stage of implementation of control and supervision in the system of local self-government are identified. The author proposes directions for improving supervision and control in the system of local self-government.

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