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НАГЛЯД ТА КОНТРОЛЬ ЗА ОРГАНАМИ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ: ТЕОРЕТИЧНІ ТА ЮРИДИЧНІ ПІДХОДИ ДО РОЗРОБКИ КОНЦЕПЦІЙ

Анотація. Визначено теоретико-правову основу для розгляду сучасної системи нагляду органів місцевого самоврядування в Україні. Доведено, що українське законодавство у цій сфері орієнтоване на контроль за конституційною концепцією підзвітності органів місцевого самоврядування. Водночас зазначається, що правові підстави для організації чинної системи державного нагляду в цілому відповідають принципам адміністративного нагляду, викладеним у Європейській хартії місцевого самоврядування. Проте зазначається, що адміністративний нагляд не виявляє цілого комплексу питань, які потребують нагляду і контролю у процесі діяльності органів місцевого самоврядування та їхніх посадових осіб. Було підтверджено необхідність подальшого дослідження проблеми у зв'язку з питанням відповідальності органів місцевого самоврядування та посадових осіб.

Ключові слова: адміністративний нагляд, контроль, нагляд за органами місцевого самоврядування, відповідальність, реформа місцевого самоврядування.

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SUPERVISION AND CONTROL OF LOCAL SELF-GOVERNMENT BODIES IN UKRAINE: THEORETICAL AND LEGAL APPROACHES TO CLARIFICATION OF CONCEPTS

Abstract. Theoretical and legal basis for considering the modern system of supervision of local government bodies in Ukraine have been determined. It has been confirmed that Ukrainian legislation in this sphere is oriented towards supervision based upon constitutional concept of local government bodies' accountability. At the same time, it is noted that legal grounds for organization of the current system of state supervision in general is in line with the principles of administrative supervision laid down in the European Charter of Local Self-Government. However, it is noted that administrative supervision does not reveal the whole set of issues that require supervision and control in the process of the activities of local self-government bodies and their officials. The necessity for further research of the problem in connection with the issue of accountability of local government bodies and officials has been confirmed.

Keywords: administrative supervision, control, supervision over local self-government bodies, accountability, local government reform.

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НАДЗОР И КОНТРОЛЬ ЗА ОРГАНАМИ МЕСТНОГО САМОУПРАВЛЕНИЯ В УКРАИНЕ: ТЕОРЕТИЧЕСКИЕ И ЮРИДИЧЕСКИЕ ПОДХОДЫ К РАЗРАБОТКЕ КОНЦЕПЦИЙ

Аннотация. Определена теоретико-правовая основа рассмотрения современной системы надзора за органами местного самоуправления в Украине. Доказано, что украинское законодательство в этой сфере направлено на контроль за конституционной концепцией подотчетности органов местного самоуправления. В то же время отмечается, что правовые основания для организации существующей системы государственного контроля в целом соответствуют принципам административного контроля, изложенным в Европейской хартии местного самоуправления. Однако отмечается, что административный контроль не раскрывает целого комплекса вопросов, требующих наблюдения и контроля в процессе деятельности органов местного самоуправления и их должностных лиц. Была подтверждена необходимость дальнейшего исследования проблемы в связи с вопросом ответственности органов местного самоуправления и должностных лиц.

Ключевые слова: административный контроль, контроль за органами местного самоуправления, ответственность, реформа местного самоуправления.

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Problem setting and its connection with important scientific and practical tasks.

Changes in organization and functioning of local government in Ukraine actualize the issue of creating an efficient model of supervision over local government activities, which should be based upon democratic principles reflected in international standards in this field. Decentralization of power sets the task of reviewing approaches to regulating relations between the state and local government on the basis of the maximum realization and protection of rights and freedoms in the field of solving local problems and harmonizing the state and local government interests. The nature of these relationships is conditioned by a number of complex problems which require proper study and consideration.

Recent research and publications analysis and determination of previously unsettled parts of the general problem. Different aspects of administrative supervision, state control, public control over the activities of local government bodies have been considered by such researchers as T. Kolomojets, P. Matvienko (foreign experience in controlling the activities of local government bodies); L. Prokopenko, N. Goncharuk (comparison of Ukrainian and Polish experience in the implementation of control and supervisory functions by executive authorities with regard to local government bodies); V. Velychko (control in local government, determination of its forms and kinds); P. Lyubchenko, O. Smolyar (foreign experience of control organization in local government); P. Vorona, M. Drogomyretska (foreign experience of prefectural activity); M. Katshishyn (experience of Ukraine and other countries regarding state control over exercising powers by local government bodies, public control aspect); M. Petrishena, B. Strilets (administrative supervision and control over activities of local government bodies) [5; 10; 1; 7; 2; 4; 8].

The analysis of scientific works of recent years shows the growing attention of researchers to this problem, the attempt to reveal its legal, administrative aspects both in theoretical and practical planes. At the same time, it is possible to admit that scientific discourse lacks the clear definition and differentiation of the concepts of administrative supervision and control over the activities of local government bodies.

A characteristic feature of scientific study is the appeal to the relevant foreign experience what is explained, first of all, by the lack of established approaches to a number of issues in organization of control and supervision activities in this field. Common for most studies is the idea that the main factors determining the essence and content of the relationships between supervision and control over local government bodies is the form of government, the structure of the state, local government system etc [7, c. 20]. Besides, foreign experience is considered as a basis for finding a better practice for using the potential of control over the activities of local government bodies [5, c. 128].

Paper objective is to determine theoretical approaches to studying the supervision system over the activities of local government bodies and legal basis for its implementation in Ukraine at the present stage of its development.

Presentation of the main results and their substantiation. The research allows generalizing a number of specific features of Ukrainian experience that determine the current system of state supervision and control over local government bodies. The following characteristics can be added to their list:

– Existence of definite irrelevance between provisions given in the Constitution of Ukraine, where the category “accountability” of local government is used and in the European Charter of Local Self-Government, which refer to “administrative supervision” [1, c. 99];

branching, imperfection of regulatory acts on the issues of control regulation and administrative supervision of local government bodies, which results in duplication of control functions, insufficient level of coordination and focus on preventing violations of legal norms [1, c. 103; 8, c. 78];

– Exercise by local state administrations delegated authorities of rayon, oblast councils along with the absence of mechanism of their withdrawal is the way of centralization of power in Ukraine [1, c. 98];

– Existence of reverse delegation, when the wide range of powers is accompanied with the absence of executive bodies of rayon and oblast councils what is solved by their delegation to local state administrations [1, c. 99].

Accordingly, an important issue to be solved is to overcome a contradiction between centralization of power at the level higher than territorial community, weakness of local government at the level of rayon and oblast, and declared principles of decentralization, subsidiarity in local government reform. Besides, studies prove the existence of some uncertainty in application of control and supervision in scientific works. Such uncertainty, in some way, correlates with the existed norms in legislation.

The analysis of the provisions of the Constitution of Ukraine and the Law of Ukraine “On Local Government in Ukraine” allows pointing out that the nature of relationships between state authorities and local government bodies in the sphere of supervision and control can be disclosed through the issue of their responsibility to the state. In this regard, the subject of this responsibility is focused on two main aspects: responsibility in cases of violations of the Constitution and laws of Ukraine; their accountability to the relevant executive bodies on the issues of exercising delegated authorities (article 76) [9]. Talking about control over legality of their acts, the main subjects exercising this control are courts. In this regard the state guarantees non-interference into their legal activity and solving the issues related to their authority (articles 71) [9].

The essential point is that in the core law the formulation of the concept “state control over the activities of local government bodies and officials” is established (Article 20) [9]. In general, the analysis of domestic legislation confirms the tendency to use the concept of “control”. The basis for exercising state control over the activities of local government bodies and officials is delegated authorities. Such approach is determined by the Constitutional norm specified in Article 143, according to which local government bodies while exercising authorities delegated to them by executive bodies are accountable to the relevant executive bodies [6].

Exercise of the control by executive bodies is governed by a number of laws and subordinate regulatory acts, in particular, except the Law of Ukraine “On Local Government in Ukraine”, by Laws of Ukraine “On Local State Administrations”, “On the Cabinet of Ministers of Ukraine”, the Resolution of the Cabinet of Ministers “On Approval of the Procedure of Control over Exercising by Local Government Bodies Authorities Delegated by Executive Authorities” etc. The list of the possible forms of state control includes the following:

– To rule the acts of local government bodies and officials illegal judicially on the grounds of the non-compliance with the Constitution or laws of Ukraine (Article 59, the Law of Ukraine “On Local Government in Ukraine”);

– To appoint by the Verkhovna Rada of Ukraine extraordinary elections of rural, village, city, district in city, rayon, oblast councils: in cases of violations of the Constitution of Ukraine, laws, rights and freedoms of citizens; not conducting without any valid reasons a session of the council in time; in the presence of the court decision ruling the council acts illegal, the conclusions of the relevant committee of the Verkhovna Rada of Ukraine (Article 78 “On the Local Government Bodies”);

– To raise a question by a people’s deputy on the necessity of caring out inspections on compliance the activities of local government with laws; the appeal of a people’s deputy to the relevant local government bodies and officials to stop violation of frights and interests of a person and a citizen, and other violations of law (Article 17, the Law of Ukraine “On the Status of a People’s Deputy of Ukraine”).

In the sphere of realization of own powers, the forms of administrative supervision include: state registration of the territorial community status; financial accountability; control over consideration of appeals by citizens; approval of acts by the relevant public authorities in a certain area [8, c. 77 – 78].

If one turns to the European Charter of Local Self-Government, this act establishes the concept of “administrative supervision over local government activities”. The main attention is focused on the role and place of the state in regulating the implementation of local government, so it

is about administrative supervision. According to Article 8 of the Charter the main aspects of administrative supervision are that: it is carried out only in compliance with procedures and in cases stipulated in the Constitution or laws; it is, as a rule, directed at ensuring compliance with the laws and the Constitutional principles; along with this it can be carried out by higher authorities by virtue of performance of the tasks entrusted to local government bodies; this supervision should be carried out in such a way that its activities meet the importance of interests it protects [3]. The content of these provisions allows making a conclusion on their formal relevance to domestic legislation in this field.

Thus, it is possible to state that the content of “administrative supervision” (The European Charter of Local Self-Government), in general, coincides with “control over the activities of local government bodies” (the Law of Ukraine “On Local Government in Ukraine”). At the same time, at the level of theory and practice, it causes difficulties in distinguishing the concepts of control and supervision, determining the procedures for their implementation. A significant role in this is played by domestic experience of the previous years of regulation of relations between the state and local government on the basis of centralization of power. In general, the analysis of domestic practice makes it possible to note that in case of fulfillment of own authorities, in essence, it is a matter of supervision, but in cases of delegated powers – it is a matter of control over their implementation. At the same time, in the absence of clear legal definition of the concepts of control and supervision and the ways of their implementation, the process of determining the legal regulation of control and supervision activities in the field of local government is more complicated.

Due to the Recommendation № R (98) 12 of the Committee of Ministers of the Council of Europe “On Supervision over the Activities of Local Government Bodies” for the development of the administrative supervision system it is recommended to take into account the following: supervision should be aimed at ensuring transparency in the activities of local government bodies; citizens should play a critical role in political supervision; it is considered the possibility to apply the removal (dismissal) elected at local level, the dissolution of these bodies; it is necessary to resolve internal conflicts in local government bodies independently [11]. Thus, it is obvious, that in conditions of decentralization of power and enlargement of local government bodies’ authorities, the nature of administrative supervision should be changed; its range should be reduced. Besides, the role of citizens, their influence on ensuring effective exercise of functions and powers by local government bodies and officials is increasing.

The research is grounded on the fact that further development of administrative supervision of the activities of local government bodies in Ukraine is closely connected with the following aspects:

- Concretization of authorities of local government bodies and responsibility for their fulfillment, clarification of their nature – own or delegated authorities;
- Clearer determination of norms and procedures for termination, abolition of regulatory acts of local government bodies and officials;
- Specification of provisions for procedures, adoption of regulatory acts of local government bodies and officials;
- Improvement of relations between control and accountability for spending state budget funds;
- Detailed procedures for ensuring openness, accountability of local government bodies and officials at the level of local regulatory acts.

At the same time, at the current stage of development there is a need to use a wider approach to studying supervision system of local government bodies’ activities not limiting to administrative supervision only. International acts can be some guidelines in this, in particular, the mentioned Recommendation № R (98) 12 of the Committee of Ministers of the Council of Europe “On Supervision over the Activities of Local Government Bodies”. Thus, for further development of the system of regulation of relations in the field of local government it is important to take into account principles of the development of mechanisms that is an alternative for administrative supervision. They include: strengthening the dialogue between central and local authorities; strengthening the

consultative and evaluation functions of some authorities, among other things, in financial and administrative fields, and strengthening internal mechanisms of supervision in these fields; increasing participation of independent bodies (such as human rights authorities, mediators etc.) [11].

Of particular interest are the guiding principles for supervision over financial and administrative activities, which include minimizing the influence of supervision of such activities, as it can affect the choice of the relevant decision made by the elected local bodies; supervision over these kinds of activities should be aimed at successful practice in financial sphere and efficient administration, preventing financial instability, support of bodies which have financial difficulties, wide informing citizens about the state of affairs [11]. Subsequently, the practice of further development of the system of supervision over the activities of local government bodies is aimed at creating the most favorable conditions for effective regulation and administration of local issues. The important role plays the issue of internal control in local government bodies, orientation towards conducting evaluation and consultation by state authorities.

Conclusions and perspectives for further research. Thus, the research makes it possible to clarify the essence and the content of state supervision over the activities of local government bodies, and specific features of its implementation in Ukraine. The orientation of the domestic legislation towards application of the concept “control”, which is based upon the constitutional provision on accountability of local government bodies to executive authorities in regard to their fulfillment of delegated powers, has been found.

The practice confirms the existence of the certain specialization in fulfillment of control functions related to the activities of local government bodies (supervision, control, financial verification): executive authorities (in particular, rayon and oblast state administrations) control the implementation of the delegated powers, including the spending of funds; the parliament conducts control on the basis of legal determination of norms of regulation regarding relations in the field of local government; judicial power – makes decisions whether or now there are violations of law, any harm caused by activity or inaction, a decision made by a local government body or an official. In addition, today the role of the public as a subject of monitoring the actions and decisions in terms of their correspondence with citizens` interests and needs is increasing.

The key issues of organization of the current state control system in Ukraine in general are in line with the principles of administrative supervision stated in the European Charter of Local Self-Government. However, administrative supervision, in its essence, is more oriented towards monitoring legality of decisions and actions and does not disclose the whole set of issues that need supervision and control in the process of the activities of local government bodies and officials. In particular, it means that their administrative activity is directed at solving local problems. Obviously, there is a need for wider consideration of supervision which is to expand the range of subjects, forms and variants of its exercise.

Further legal provision of modern needs of regulation of relations in this sphere actualizes the necessity for specification of the supervision system over the activities of local government bodies, which would meet the requirements and demands of democratic state, capable of ensuring the implementation of rights and freedoms in the field of solving local problems. The important issue in this regard is creation of a new model of local power organization. If it is in general determined and enshrined in legislative acts at the basic level, it requires further clarification and establishment at rayon and oblast levels. It is connected with expectations to adopt changes to the Constitution of Ukraine in regard to decentralization, law of Ukraine “On the Administrative and Territorial System”, “On Rayon System”, “On Prefects” etc.

The research results allow pointing out that:

- To create the efficient supervisory system it is necessary to distinguish administrative activity of local government bodies and officials as a sphere of supervision over effectiveness of fulfillment of their functions and powers, as well as forms of this supervision;
- The inevitability of further specialization of control and supervisory functions which are fulfilled by: executive authorities, citizens; and development of internal control (self-control) forms

are aimed at independent decision-making and settling the issues of compliance of local government bodies and officials with the existed demands;

– There is an importance of development of forms of state assistance in the forms of advice, recommendations, consultations regarding local government organization and functioning, performing their tasks and functions.

The paper confirms the necessity for further study of supervision over the activities of local government bodies in connection with their accountability, which will more fully reveal the forms of supervision, control, specific features of their provision in various spheres of their activity.

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