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## LEGAL REGULATION OF PUBLIC CONTROL OVER THE ACTIVITIES OF LOCAL GOVERNMENT BODIES IN UKRAINE

*The article discloses the legal regulation of public control over the activities of local self-government bodies, as a result of which the directions for its improvement determined by European integration in the conditions of modern democratic processes in Ukraine are determined.*

*Legal provision of public control over the activities of local self-government bodies provides for: organization and regulation of the functioning of control subjects; methods and forms of implementation of public control and supervision; principles of interaction between local self-government bodies and control subjects; ensuring legality in conducting public control, as well as observing the rights and interests of the community and society. The system of normative legal acts in the field of public control over the activities of local self-government bodies includes: 1) the Constitution of Ukraine; 2) international legal acts; 3) laws of Ukraine; 4) subordinate legal acts.*

*Public control over the activities of municipal bodies is ensured at the legislative level and is characterized in detail through local rule-making by local self-government bodies. Local self-government bodies enjoy broad discretionary powers in matters of organization and legal support of internal control. The legal concept of state control over the activities of local self-government bodies is in the process of formation. One of the key tasks of power decentralization was the establishment of a new approach to the organization of public control over the observance of legality during the exercise of own and delegated powers of local self-government bodies. In the national legal system, public control over the activities of local self-government bodies is established fragmentarily and conditionally. For the comprehensive development of democracy in Ukraine, we support the idea of enshrining the institution of public control in the Law of Ukraine «On Public Control».*

**Keywords:** local self-government, public control, control, rule of law, democracy, decentralization of power.

**Чудик Н.**

**Правове регулювання громадського контролю за діяльністю органів місцевого самоврядування в Україні**

*У статті розкрито правове регулювання громадського контролю за діяльністю органів місцевого самоврядування в результаті чого визначено його напрями удосконалення що зумовлені євроінтеграцією в умовах сучасних демократичних процесів в Україні,.*

*Правове забезпечення громадського контролю за діяльністю органів місцевого самоврядування передбачає: організацію та регламентацію функціонування суб'єктів контролю; методи і форми реалізації громадського контролю та нагляду; принципи взаємодії органів місцевого самоврядування і суб'єктів контролю; забезпечення законності при проведенні громадського контролю, а також дотримання прав та інтересів громади і суспільства. До системи нормативно-правових актів у сфері громадського контролю за діяльністю органів місцевого самоврядування входять: 1) Конституція України; 2) міжнародні нормативно-правові акти; 3) закони України; 4) підзаконні нормативно-правові акти.*

*Громадський контроль за діяльністю муніципальних органів забезпечується на законодавчому рівні та детально характеризуються через локальну нормотворчість органів місцевого самоврядування. Органи місцевого самоврядування користуються широкими дискреційними повноваженнями у питаннях організації і правового забезпечення внутрішнього контролю. Правова концепція державного контролю за діяльністю органів місцевого самоврядування перебуває у процесі формування. Одним із ключових завдань децентралізації влади стало встановлення нового підходу до організації громадського контролю за дотриманням законності під час здійснення власних та делегованих повноважень органів місцевого самоврядування. У національній правовій системі громадський контроль за діяльністю органів місцевого самоврядування закріплюється фрагментарно*

*та умовно. Для всебічного розвитку демократії в Україні підтримуємо думку, щодо закріплення інституту громадського контролю у Законі України «Про громадський контроль».*

**Ключові слова:** *місцеве самоврядування, громадський контроль, контроль, верховенство права, демократія, децентралізація влади.*

**Statement of the problem.** Ukraine's European integration prospects dictate the need to improve and strengthen local self-government as a democratic form of public power. This political factor directly affects the level of democracy and the rule of law. The need to study various aspects of legal regulation of control over the activities of local self-government bodies is due to the non-linear development of legislation in this area of public relations. The study of the content of normative legal acts in this area contributes to the identification and solution of the main problems of control over the activities of local self-government bodies, will help to improve the European integration process and strengthen the effectiveness of municipal authorities.

**The state of research of the problem.** The issue of legal provision of public control over the activities of local self-government bodies received a fragmentary study within the scope of scientific research by such domestic researchers as I. Skvirsky [2], A. Neugodnikov [3], O. Smolyar [8], V. Kravchuk [10], E. Kasyanenko [11], E. Minakova [14] etc. The relevance of further research is enhanced by the fact that modern legislation on local self-government in general and on control over its activities in particular must be brought into line with international and regional (European) standards in order to create conditions for the European integration of Ukraine.

**Presentation of the main research material.** Legal provision of control over the activities of local self-government bodies is the process of creation, implementation and constant support of the normatively determined qualities of the relevant activity, ensuring the achievement of its goal with the help of regulatory and legal means. Constitutional-legal and administrative-legal regulation has priority in the legal provision of control over the activities of local self-government bodies.

Legal provision of control over the activities of local self-government bodies provides for: regulation and organization of the functioning of control subjects; forms and methods of implementation of control and supervision; principles of interaction between local self-government bodies and control subjects; guaranteeing legality during control, as well as guaranteeing compliance with the rights and interests of the community and society.

The system of normative legal acts in the field of control over the activities of local self-government bodies consists of: 1) the Constitution of Ukraine; 2) international legal acts ratified by the Verkhovna Rada of Ukraine; 3) laws of Ukraine; 4) subordinate legal acts.

The legal basis for monitoring the activities of local self-government bodies is the Constitution of Ukraine, which establishes the principles of local self-government. Control over the activities of local self-government bodies is established by Art. 143 of the Constitution of Ukraine. Local self-government bodies, territorial communities and the state in the person of their bodies have the right to carry it out directly. In accordance with Part 4 of Art. 143 bodies of local self-government are subject to the control of the relevant bodies of executive power in matters of their exercise of the powers of executive bodies [1]. Further legal provision of internal and external state control over the activities of local self-government bodies is implemented in relevant laws and by-laws, which cannot be said about external public control.

Public control over local self-government bodies is enshrined in the Constitution of Ukraine indirectly and follows from the content of Art. Art. 34, 36, 38, 40, 140, 143. In particular, in accordance with Part 1 of Art. 143 of the Constitution of Ukraine, territorial communities have the right directly or through local self-government bodies formed by them to manage communally owned property; approve programs of socio-economic and cultural development and monitor their implementation; to approve the budgets of the relevant administrative-territorial units and monitor their implementation; establish local taxes and fees in accordance with the law; to ensure the holding of local referenda and the implementation of their results; to form, reorganize and liquidate communal enterprises, organizations and institutions, as well as exercise control over their activities; to solve other issues of local importance, assigned by law to their competence [1]. The Constitution of Ukraine forms the basis for the development of the system of laws regulating relevant social relations.

Formation of the constitutional principles of control over the activities of local self-government bodies took place under the influence of international and European standards of local self-government. The concept of monitoring the activities of local self-government bodies is actively developing in the world and is an internationally recognized technology. Such international institutions as the UN, the Council of Europe, the European Union, the Organization for Security and Cooperation in Europe, etc., influence the formation of relevant legal frameworks

in the world. The contribution of such respected bodies as the European Court of Human Rights and the European Commission «For Democracy through Law» (Venice Commission) should be singled out.

These institutions have created a significant number of rules, recommendations and standards related to the organization and implementation of public control in certain spheres of public life and which must be implemented in national legislation [2]. Global and regional (European) standards of public control make up a system of norms that cover the most important aspects of public participation. This system is not stable, it constantly develops with the development of social relations within the framework of the concepts of public administration (such as «Good Governance» and «Democratic Governance»), which have been tested by the experience and practice of the European Union states [3]. International legal acts ratified by the Verkhovna Rada of Ukraine are part of the national legislation regulating control over the activities of local self-government bodies. But the majority of such documents have a framework, recommendation nature and are not based on a stable and effective guarantee mechanism. In addition, the standards of local self-government of the European Union did not receive due attention.

Laws regulating the legal status of local self-government bodies, subjects of control and the forms of its implementation occupy a special place in the system of ensuring control over the activities of local self-government bodies, organically developing and supplementing the provisions of the Constitution of Ukraine and reproducing international standards.

A separate law that would regulate the exercise of control over the activities of local self-government bodies in Ukraine has not been created [11]. The relevant norms are established in a large number of different and often unrelated acts.

The system of laws and by-laws in the field of control over the activities of local self-government bodies is not integral and uniform. Laws and bylaws in this area, depending on the subject of legal regulation, are divided into those that regulate internal and external (state and public) control over the activities of local self-government bodies. So, first of all, the legal provision of internal control in local self-government bodies deserves attention.

Regulatory and legal principles of internal control over the activities of local self-government bodies. The main principles of internal control are enshrined in the Law of Ukraine «On Local Self-Government in Ukraine» dated 05/21/1997. Local councils control the activities of executive bodies created by them (Article 11), executive committees (Article 51), departments, departments and other bodies (Article 54), as well as village, settlement, and city heads (paragraph 6 of Article 42). At the request of at least half of the deputies of the relevant council, the head of the village, settlement, or city is obliged to report to the council on the work of the executive bodies of the council at any given time. Local councils have the right to form temporary control commissions to carry out control over issues specifically determined by the council, which belong to the powers of local self-government (Article 48) [4]. These declarative norms are strengthened by the mechanisms of mutual influence of these bodies defined in the law, which form an internal system of checks and balances in local self-government.

Yes, according to Art. 78 of the Law of Ukraine «On Local Self-Government in Ukraine» dated 05/21/1997, the head of a village, settlement, or city, as well as at least 1/10 of the residents, may raise the issue of early termination of the powers of the local council in the event that it adopts illegal decisions, not holding sessions without valid reasons, etc. At the same time in Art. 79 of the Law establishes that the powers of a village, settlement, or city mayor may also be prematurely terminated if he violates the Constitution or laws of Ukraine, the rights and freedoms of citizens, does not ensure the exercise of the powers granted to him by the decision of a local referendum or by the decision of the relevant local council. In Art. 79-1 of the Law also provides for the early termination of the powers of the headman by the decision of the local council, if he violates the Constitution or laws of Ukraine, the rights and freedoms of citizens, does not ensure the exercise of the powers granted to him [4]. Therefore, based on the results of internal control, local self-government bodies and officials have the right to use a fairly effective, but complex mechanism for responding to detected violations.

Such internal control of local councils is quite large-scale, which affects its systematicity and permanence. To ensure constant and uninterrupted control in local self-government bodies, it is rational to form a separate structural unit.

In order to create an effective mechanism of internal control over their own activities and to prevent violations of legislation, to prevent deficiencies in work, local self-government bodies form structural subdivisions (more often management). The Law of Ukraine «On Local Self-Government in Ukraine» dated 05/21/1997 does not provide for their mandatory creation, so currently a number of local self-government bodies do not have such structural subdivisions. An exception is the organization of internal budget control.

Another direction that receives the status of «under control» in local self-government bodies is the prevention and counteraction of corruption. In accordance with the laws of Ukraine «On service in local self-government bodies» dated 07.06.2001 [5], «On prevention of corruption» dated 14.10.2014 [6] local self-government bodies approve internal acts regarding the procedure for conflict of interest settlement, ethical codes and procedures for preventing and detecting corruption, mechanisms for responding to risks related to corruption.

According to the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Management of State and Communal Property Objects» dated June 2, 2016, city councils are empowered to form collegial supervisory councils to monitor the activities of communal enterprises [7]. The introduction of internal control in local self-government bodies through the supervisory board is a timely trend [12]. In the conditions of decentralization of power in local self-government bodies with expansion of powers and spheres of responsibility, there is a need to increase the number of communal enterprises, and therefore, the need to control their work is becoming more urgent. At the same time, such control of local self-government bodies can be considered external, although it significantly affects their effectiveness and authority in general.

Internal control over the activities of local self-government bodies is the most regulated by law and is detailed through the local rule-making of these bodies. In matters of organization and legal provision of internal control, local self-government bodies enjoy broad discretionary powers. The right to independently decide the issue of internal control is realized through the orders of local heads and decisions of councils, which approve internal regulations and procedures on control.

The problem is that not all local self-government bodies are interested and recognize the need to organize internal control. This process is complicated by the lack of experience of local self-government bodies in matters of organization of the internal control system, lack of a clear understanding of how to ensure its effective functioning.

Regulatory and legal principles of public control over the activities of local self-government bodies. The legal principles of public control over the activities of local self-government bodies are objectified in laws and by-laws in a non-systematic and inconsistent manner.

Laws, the object of legal regulation of which, among other things, is public control, can be divided into three main groups:

- laws determining the legal status of local self-government bodies: «On local self-government in Ukraine», «On service in local self-government bodies», «On the status of deputies of local councils», etc.;

- laws providing access to information: «On appeals by citizens», «On information», «On access to public information», «On the procedure for covering the activities of state authorities and local self-government bodies in Ukraine by mass media», «On protection personal data» etc.;

- laws determining the legal status of civil society institutions (subjects of public control): «On public associations», «On trade unions, their rights and guarantees of activity», «On professional creative workers and creative unions», «On organization of employers, their association, rights and guarantees of their activity», «On charitable activities and charitable organizations», «On freedom of conscience and religious organizations», «On self-organization bodies of the population», «On printed media (press) in Ukraine», «About television and radio broadcasting», «About information agencies», etc.

Despite the extensive system of laws, public control over the activities of local self-government bodies is mentioned mostly in fragments. It is appropriate to focus attention on the main ones.

According to the Law of Ukraine «On Local Self-Government in Ukraine», the primary subject of local self-government, the main bearer of its functions and powers is the territorial community of a village, town, or city (Article 6). Local referendums (Article 7), general meetings of citizens (Article 8), local initiatives (Article 9) and public hearings (Article 13) are defined as forms of direct participation of citizens in solving local issues [4]. Therefore, the Law defines public control in separate forms. But the existing provisions of the Law are not sufficient for their practical implementation, since such forms have not received an effective officially defined procedure of implementation at the level of by-laws.

The analysis of the current legislation of Ukraine and law enforcement practice gave O. Smolyar grounds to ascertain the presence of gaps and vaguely defined, conflicting provisions in the legal framework that regulates relations in the field of local self-government, which negatively affects the provision of constitutional rights of territorial communities and their bodies independently solve issues of local importance [8].

Publicity and openness of the activities of local self-government bodies is an indispensable component of the development of the institution of public control. The principle of glasnost was enshrined in the current Law of Ukraine «On Local Self-Government in Ukraine» (Article 4) [4]. Despite the fact that this principle is not strengthened by an effective mechanism for its implementation, local self-government bodies actively choose and

implement a policy of openness and transparency. This especially applies to regional councils. The mechanism for ensuring transparency and openness of local self-government bodies needs to be systematized and improved within the limits of separate theoretical and legal studies.

A component of the principles of transparency and openness, which enables public control, is the access of citizens and their organizations to information about the work of local self-government bodies. In this aspect, the right of citizens to apply to local self-government bodies in accordance with their functional duties with comments, complaints and proposals related to their statutory activities, a statement or petition regarding the implementation of their socio-economic, political and personal rights and legitimate interests and a complaint about their violation [9]. But the most effective mechanism, which citizens use most often, is access to information obtained or created in the process of local self-government bodies performing their powers and duties, provided for by the laws of Ukraine «On Information» and «On Access to Public Information».

We would like to note that the acquisition and processing of information by subjects of public control over the activities of local self-government bodies is the primary stage of the control procedure. Public control can be truly effective only if its conclusions are taken into account in the work of the subject under control. Currently, the results of public control are recommendatory, which nullifies the efforts of civil society institutions to ensure the proper functioning of local self-government bodies. However, the data obtained in the process of public control about the violation of the current legislation by the local self-government bodies is the basis for applying to the court.

Scientists propose to enshrine the detailed regulation of legally established forms, directions and mechanisms of public control in the field of local self-government in the charters of territorial communities, in particular, with the aim of reflecting the specifics of public control over the activities of local self-government bodies of the respective territorial community [10]. We believe that establishing forms of public control over the activities of local self-government bodies only in the statutes of territorial communities will not contribute to their full use and development of the institution of public control as a whole.

In the national legislation, public control over the activities of local self-government bodies is established conditionally and fragmentarily. In the scientific literature and the expert environment, there is an opinion about the expediency of adopting the law «On Public Control». During the last twenty years (the first project was created on 13.07.2001), more than ten attempts have been made to develop the corresponding draft law. The latest project «On civil control over the activities of authorities, their officials and officials» No. 9013 dated August 7, 2018 was also withdrawn. We would like to note that the specified draft laws are not characterized by completeness, content and systematicity.

In order to create the conditions for the comprehensive development of democracy in Ukraine, the formation of an effective, independent system of local self-government that would function on the basis of transparency, and to expand the legal capabilities of civil society, we support the establishment of the institution of public control at the legislative level – in the Law of Ukraine «On Public Control». In this law, it is expedient to regulate a single, integrated mechanism of control of citizens and their associations over the entire system of public authorities.

The problems of developing and adopting the law on public control are caused by the complexity of relevant social relations, the lack of political will, and the risk of limiting the potential opportunities of civil society institutions as a result of an ill-conceived and non-systematic approach.

**Conclusions.** Based on the conducted research, the following conclusions and generalizations can be made:

Legal provision of control over the activities of local self-government bodies is the process of creation, implementation and constant support of normatively determined qualities of the relevant activity, ensuring the achievement of its goal with the help of normative and legal means. Control over the activities of local self-government bodies develops in the system of international acts. Norms regulating the exercise of control over the activities of local self-government bodies are established in a large number of different, unrelated legal acts. Depending on the subject of legal regulation, laws and bylaws in this area are divided into those that regulate internal and external (state and public) control over the activities of local self-government bodies.

Internal control over the activities of local self-government bodies is ensured at the legislative level and is detailed through the local rule-making of municipal bodies. In matters of organization and legal provision of internal control, local self-government bodies enjoy broad discretionary powers. To ensure constant, systematic and uninterrupted internal control in local self-government bodies, it is rational to form a separate structural unit.

One of the tasks of the decentralization of power was the definition of a new approach to the organization of state control over the observance of legality during the exercise of both own and delegated powers of local self-

government bodies. State control over the activities of local self-government bodies is, albeit unsystematically, detailed in the current legislation. In the national legislation, public control over the activities of local self-government bodies is established conditionally and fragmentarily. For the comprehensive development of democracy in Ukraine and the creation of conditions for European integration, we support the establishment of the institution of public control in the Law of Ukraine «On Public Control».

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