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ISSUES IN THE NORMATIVE FRAMEWORK OF STATE SUPERVISION OVER THE ACTIVITIES OF LOCAL SELF-GOVERNMENT BODIES AND OFFICIALS IN UKRAINE

Abstract. Purpose. The purpose of this article is to identify and outline the range of problems in this area, which may serve as a foundation for future scholarly contributions and the development of initiatives for a comprehensive improvement of the mechanisms for its implementation. **Results.** The study draws attention to the directions for developing the examined area, as outlined in the *Concept for the Reform of Local Self-Government and the Territorial Organization of Power in Ukraine*. It is established that this Concept has so far failed to achieve the objectives it originally set. The provisions of the Draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On Local State Administrations’” (No. 4298 of 30 October 2020) and several other legislative acts concerning the reform of the territorial organization of executive power in Ukraine are analyzed. It is revealed that despite the undoubted relevance and necessity of this legislative initiative, the draft contains a number of controversial provisions. The study demonstrates that the normative and legal framework for state supervision over the activities of local self-government bodies in Ukraine requires further improvement in line with European standards. This includes the adoption of legislative acts to regulate the legal status of the *prefect*, expansion of public oversight mechanisms, enhancement of transparency and accountability of local authorities, and ensuring an appropriate balance between the autonomy of local self-government and state oversight. Special emphasis is placed on the role of the prefect as a key figure in ensuring the legality of decisions adopted by local self-government bodies, in exercising delegated state powers, and in coordinating interaction between the state and local communities. Taking into account European experience, the prefect institution must have clearly defined powers that do not contradict the principle of local self-government autonomy and should remain accountable to state bodies within the framework of legality and proportionality of intervention. **Conclusions.** The article concludes that the normative and legal framework for state supervision over the activities of local self-government bodies in Ukraine requires further improvement in accordance with European standards. This includes: adoption of legislation regulating the legal status of the prefect, expansion of public control mechanisms, improvement of the transparency and accountability of local government bodies, and ensuring a proper balance between the autonomy of local self-government and state supervision.

Key words: state supervision, local democracy, local self-government, normative and legal framework, organization and functioning, issues of legal regulation, local affairs governance.

1. Introduction

It is worth noting that due to the complexity and multi-dimensional nature of the relationships arising in the process of organizing and functioning of local self-government bodies, the norms governing and implementing state supervision are diverse in their legal domain. These norms may fall within the scope of constitutional, administrative, financial, civil, labor, or municipal law. According to their role in the mechanism of implementing state supervision over the activities of local

self-government bodies and officials, these norms are classified into substantive and procedural ones (Sokha, 2024).

Substantive norms establish the purpose and scope of permissible and required behavior of the entities exercising state supervision, their structural units, and their officials and staff within the relevant legal relations. Procedural norms define the legal procedure, order, and conditions for the exercise of the functions and powers provided for by substantive norms, thereby

granting this process a legal and, to some extent, organizational form (Sokha, 2024).

At the same time, the practical application of both substantive and procedural norms of current legislation reveals a number of gaps and inconsistencies that undermine the effectiveness of the normative and legal framework for the exercise of state supervision over the activities of local self-government bodies and officials in Ukraine. Therefore, the purpose of this article is to identify and outline these problems, which may serve as a relevant scholarly contribution toward the development of initiatives for a comprehensive improvement of the mechanisms of its implementation.

2. Normative and Legal Features of the Foundations of State Supervision over the Activities of Local Self-Government Bodies and Officials in Ukraine

The Constitution of Ukraine establishes two systems of power at the local level: local state administrations, which serve as local executive authorities, and local self-government as the form of public authority exercised by territorial communities. The Basic Law guarantees local self-government and thus does not permit its substitution by local state administrations. Accordingly, the issue of interaction between local executive authorities and local self-government bodies—and the need to create a model of administration that combines broad local democracy with a stable, responsible, and effective state policy at the local level—has become particularly pressing (Maistro, 2012).

In turn, the *Concept of the Reform of Local Self-Government and the Territorial Organization of Power in Ukraine*, approved by Order No. 333-r of the Cabinet of Ministers of Ukraine dated April 1, 2014, envisaged the introduction of a mechanism through which both local state administrations and the population would exercise control over the provision of public services by local self-government bodies and territorial subdivisions of central executive authorities. This approach effectively transformed local state administrations from general competence bodies into supervisory and oversight entities within the system of executive power, with the added function of coordinating the activities of territorial units of central executive authorities in the respective regions (*Order of the Cabinet of Ministers of Ukraine On Approval of the Concept of Reforming Local Self-Government and the Territorial Organization of Power in Ukraine*, 2014).

However, it is necessary to agree with experts who note that despite the reforms implemented, Ukraine remains the only European country that lacks a mechanism for monitoring the legality of decisions adopted by local self-government bodies. The current legislation—namely, the *Law of Ukraine "On Local Self-Government in Ukraine"* and the *Law of Ukraine "On Local State Administrations"*—does not contain

detailed procedures for exercising such oversight. In other words, a comprehensive mechanism ensuring legality in the activities of local self-government bodies on behalf of the state is absent (*Ensuring the Legality of Decisions of Local Self-Government Bodies: When, How, and Why? Discussion Results*, 2024).

Currently, local self-government bodies are not subject to oversight by a specially authorized state authority. As a result, the function of supervision is, in practice, delegated to the territorial community. While public oversight may be effective, it remains a rarely used mechanism due to a lack of legal regulation and public awareness. Professional state supervision over the activities of local self-government bodies remains relevant even under the conditions of decentralization (Minakova, 2023).

The situation is further complicated by the introduction of martial law, under which local state administrations have been transformed into military administrations. Local self-government bodies are now required to report to and consult with the heads of military administrations on certain matters. This arrangement has further complicated and obscured the regulation of relations between various levels of local self-government and state representatives. Therefore, there is an urgent need for high-quality legislation that, first, would establish mechanisms for oversight and supervision of community-level decisions, thereby enhancing their capacity, and second, would clearly delineate the spheres of competence and interactions among different levels and branches of government to ensure legality in the functioning of local self-government in Ukraine (*Ensuring the Legality of Decisions of Local Self-Government Bodies: When, How, and Why? Discussion Results*, 2024).

It is worth noting that work began in 2020 on a draft law of Ukraine "On Amendments to the Law of Ukraine 'On Local State Administrations'" (No. 4298 of October 30, 2020) and other legislative acts concerning the reform of the territorial organization of executive power in Ukraine. This draft was prepared by the Verkhovna Rada Committee on State Building, Local Governance, Regional Development, and Urban Planning. As stated in the explanatory note, "The purpose of the draft law is to create the legal prerequisites and foundations for the functioning of local state administrations of the prefectural type, pending relevant amendments to the Constitution of Ukraine (regarding decentralization of power), and to align legislation on local state administrations with the contemporary challenges faced by officials of regional and district state administrations in the exercise of their constitutional powers within the respective regions and districts. Another goal is to implement the constitutional provisions concerning the functioning of a system for ensuring legality

in the activities of local self-government bodies and officials, with the aim of reinforcing a system of checks and balances in terms of compliance with the Constitution and laws of Ukraine by all subjects of public power in the state. The objective of the draft law is to establish the legal foundations for the activities of reorganized district and regional state administrations in accordance with current socio-political and financial-economic realities, and to restore the functioning of the system for ensuring legality in the activities of local self-government bodies and officials in Ukraine, as enshrined in Part 2 of Article 144 of the Constitution of Ukraine” (*Draft Law on Amendments to the Law of Ukraine ‘On Local State Administrations’ and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organization of Executive Power in Ukraine*, 2020).

At the same time, despite the attempt to regulate the issue of state supervision over the activities of local self-government bodies, the draft law contains a number of highly ambiguous and, in some places, internally inconsistent provisions. For instance, according to Part 3 of Article 16 of the Law (as proposed in the draft), “the powers related to ensuring legality include powers to ensure legality and public order, the observance of human and citizens’ rights and freedoms, the implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive authorities by territorial bodies of central executive authorities operating within the respective administrative-territorial units, as well as the implementation of the Constitution and laws of Ukraine by village, settlement, city, and district-in-city councils, their executive bodies, village, settlement, and city mayors, as well as regional and district councils.”

However, under Article 119 of the Constitution of Ukraine, the powers concerning:

1. implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive authorities (paragraph 1);
2. legality and public order, observance of citizens’ rights and freedoms (paragraph 2);
3. interaction with local self-government bodies (paragraph 6) – are established as separate and independent powers. Therefore, the Constitution does not authorize local state administrations (LSAs) to *ensure the implementation of the Constitution and laws of Ukraine by village, settlement, city, district-in-city councils, their executive bodies, mayors, and regional or district councils*.

Moreover, as can be inferred from paragraph 6 of Article 119 of the Constitution of Ukraine, LSAs are to *interact* with local self-government bodies. Given the guarantees of local self-government enshrined in Articles 5, 7, 140, 142, and 143 of the Constitution, such interaction suggests

not subordination, but partnership between two equal subjects of public authority through which the people exercise power as its sole source.

Part 2 of Article 144 of the Constitution of Ukraine, which stipulates that decisions of local self-government bodies may be suspended on the grounds of their non-compliance with the Constitution or laws of Ukraine and referred to a court, was originally intended as a tool of general prosecutorial oversight in the absence of administrative justice in Ukraine. However, since the establishment of the administrative judiciary system and the constitutional redefinition of the Prosecutor’s Office—no longer empowered to conduct general oversight of legal compliance—this constitutional provision has not been developed further in legislation (*Draft Law on Amendments to the Law of Ukraine ‘On Local State Administrations’ and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organization of Executive Power in Ukraine*, 2020).

In this context, it is worth recalling that the *Draft Law on Amendments to the Constitution of Ukraine regarding the Decentralization of Power* (Reg. No. 2217a of July 1, 2015) proposed the introduction of the *prefect* institution, with powers to:

1. oversee compliance with the Constitution and laws of Ukraine by local self-government bodies;
2. coordinate the activities of territorial bodies of central executive authorities and supervise their compliance with the Constitution and laws of Ukraine (*Draft Law on Amendments to the Constitution of Ukraine (regarding the decentralization of power)*, 2015).

The introduction of the prefect post in Ukraine is intended to balance national interests with the rights of local self-government (Minakova, 2023). The draft law received a positive opinion from the Constitutional Court of Ukraine and was preliminarily approved by the Verkhovna Rada of Ukraine. However, the constitutional procedure for its adoption was not completed, and the draft was withdrawn from consideration.

Thus, in our view, without corresponding constitutional amendments defining the legal status of local state administrations, it is premature to authorize them to supervise the implementation of the Constitution and laws of Ukraine by village, settlement, city, and district-in-city councils, their executive bodies, mayors, and regional and district councils, or to coordinate the activities of territorial bodies of central executive authorities and oversee their compliance with the Constitution and laws of Ukraine (*Draft Law on Amendments to the Law of Ukraine ‘On Local State Administrations’ and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organization of Executive Power in Ukraine*, 2020).

3. Implementation of European Standards in Ukraine

It is important to clarify that the purpose of the prefect institution is to ensure constitutionality, the rule of law, and legality within the respective administrative-territorial unit, as well as to guarantee human and citizen rights and freedoms, which define the content and direction of state activity as a whole (Hanushchak, Chypenko, 2015). The prefect, as a representative of state authority, does not obstruct any activities of local self-government bodies but challenges genuinely unlawful acts. Should the prefect abuse this right without proper grounds, questions regarding their competence and, consequently, the advisability of holding the position arise. At the same time, as noted by French experts, the issue of dismissing a prefect can be raised at any time without prior notice or explanation to the prefect themselves (Hanushchak, Chypenko, 2015). Therefore, a key characteristic of the prefect is that they act as a supervisory authority over local self-government bodies; however, this does not imply unchecked power or arbitrariness, as effective restrictions on their activities are envisaged (Minakova, 2023).

Accordingly, to ensure effective state supervision and oversight of compliance with the Constitution and laws of Ukraine by local self-government bodies, the necessity arises to adopt a series of normative legal acts regulating the activities of the prefect institution in Ukraine. The prefect should play a key role in ensuring the legality of decisions made by local self-government bodies, executing delegated state powers, and coordinating interactions between the state and local communities. Taking into account European experience, the prefect institution must have clearly defined powers that do not contradict the principle of local self-government autonomy, and must remain accountable to state authorities within the bounds of legality and proportionality of intervention.

Additionally, it is appropriate to briefly highlight some other issues, including, for example: – For the full transition to a decentralized, multi-level governance system, Ukraine must amend the Constitution to formally enshrine the legal basis of local self-government and state authority. Such amendments will clearly define the division of powers between the state and local self-government but will only be possible after the legal regime of martial law is lifted (*Conclusion on the “Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine”*, 2024); – Until constitutional amendments are made, a clear separation should be established between: (a) subdivisions of local state administrations responsible for coordinating territorial subdivisions of central executive authorities; (b) subdivisions respon-

sible for supervision of legality; and (c) subdivisions performing certain local self-government functions. This functional demarcation will facilitate the gradual transformation of local administrations into prefectural-type bodies in the future (*Conclusion on the “Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine”*, 2024); – I. Bodrova points to the lack of implementation of European standards in this area (Bodrova, 2019), since according to Article 8 of the European Charter of Local Self-Government, any administrative supervision over local self-government bodies may only be exercised in accordance with procedures and cases established by the constitution or law (European Charter of Local Self-Government, 1985). Consequently, it must be acknowledged that the existing legal regulatory model governing state supervision over local self-government relations contradicts the requirements of the Constitution and laws of Ukraine, supranational acts, as well as the principle of legal certainty—given that the applicable Resolution No. 339 “On Approval of the Procedure for Control over the Implementation by Local Self-Government Bodies of Delegated Powers of Executive Authorities,” among other issues, is generally an outdated act (Kryvnyi, Staryna, 2024).

In our view, the proposal to adopt the Law of Ukraine “On State Control over the Activities of Local Self-Government Bodies” is well-founded, as it aims to eliminate the existing legislative gap in regulating the mechanism of such control. However, the issue of public oversight will remain legally unregulated (Kryvnyi & Staryna, 2024).

4. Conclusion

In conclusion, this study reiterates that the normative and legal foundations of state supervision over the activities of local self-government bodies in Ukraine require further improvement in accordance with European standards. This includes the adoption of legislative acts to regulate the status of the prefect, the expansion of mechanisms for public oversight, the enhancement of transparency and accountability of local authorities, as well as ensuring an appropriate balance between the autonomy of local self-government and state supervision.

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ПРОБЛЕМИ НОРМАТИВНО ВИЗНАЧЕНИХ ЗАСАД ЗДІЙСНЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ ЗА ДІЯЛЬНІСТЮ ОРГАНІВ І ПОСАДОВИХ ОСІБ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ

Анотація. Метою статті є окреслення кола таких проблем, що стане доречним науковим доробком задля розробки ініціатив комплексного вдосконалення механізмів його реалізації. **Результати.** Звернено увагу на визначені напрями розвитку досліджуваної сфери Концепцією реформування місцевого самоврядування та територіальної організації влади в Україні. Констатовано, що донині вона не вирішила поставлених завдань. Піддано аналізу положення проекту закону України про внесення змін до Закону України «Про місцеві державні адміністрації» (№ 4298 від 30 жовтня 2020 року) та деяких інших законодавчих актів України щодо реформування територіальної організації виконавчої влади в Україні. Виявлено, що попри його беззаперечну актуальність та доцільність, він містить низку суперечливих положень. Доведено, що нормативно-правові засади державного контролю за діяльністю органів місцевого самоврядування в Україні потребують подальшого вдосконалення відповідно до європейських стандартів. Це включає ухвалення законодавчих актів щодо врегулювання статусу префекта, розширення механізмів громадського контролю, підвищення рівня прозорості та підзвітності місцевих органів влади, а також забезпечення належного балансу між автономією місцевого самоврядування та державним наглядом. Окремо зауважено, що префект має відігравати ключову роль у забезпеченні законності рішень органів місцевого самоврядування, виконанні делегованих державних повноважень та координації взаємодії між державою і місцевими громадами. Враховуючи європейський досвід, інститут префекта повинен мати чітко визначені повноваження, що не суперечать принципу автономії місцевого самоврядування, а також бути підконтрольним державним органам у межах законності та пропорційності втручання. **Висновки.** Зроблено висновок, що нормативно-правові засади державного контролю за діяльністю органів місцевого самоврядування в Україні потребують подальшого вдосконалення відповідно до європейських стандартів. Це включає ухвалення законодавчих актів щодо врегулювання статусу префекта, розширення механізмів громадського контролю, підвищення рівня прозорості та підзвітності місцевих органів влади, а також забезпечення належного балансу між автономією місцевого самоврядування та державним наглядом.

Ключові слова: державний контроль, місцева демократія, місцеве самоврядування, нормативно-правові засади, організація та функціонування, проблеми правового регулювання, управління місцевими справами.

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