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COMPARATIVE LEGAL ANALYSIS OF THE PECULIARITIES OF STATE CONTROL OVER THE ACTIVITIES OF LOCAL SELF-GOVERNMENT IN UKRAINE AND POLAND

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Within the framework of European integration, the institution of control over the activities of local self-government bodies in Ukraine is gaining relevance. This is a fairly new institution that has not been fully regulated at the level of national legislation. The Law of Ukraine ‘On Local Self-Government’ contains only one provision that mentions that state control over local self-government bodies is carried out on the basis of the law. Thus, this article is devoted to the study of control over the decisions of local self-government bodies, which is inextricably linked to the decentralisation process. Thus, this article is devoted to the study of control over the decisions of local self-government bodies, which is inextricably linked to decentralisation, and to a comparative legal analysis of the State’s control over the activities of local self-government in Ukraine and Poland.

The author emphasises the importance of legal regulation of state control over the activities of local self-government in Ukraine. Having analysed the legislative activity of reforming this institution, one can observe a number of shortcomings that may affect the legality in general and the quality of work of local self-government bodies. At this stage, a number of draft laws are still being considered in the second reading by the Verkhovna Rada of Ukraine and are expected to be adopted soon.

Today, the reform of local self-government in the context of the national legislation of Ukraine involves the adoption of new laws, the development of new draft laws and amendments to certain other legislative acts of Ukraine regulating the activities of local self-government bodies. The Law of Ukraine ‘On International Territorial Cooperation of Ukraine’ was recently adopted, which will regulate international territorial cooperation between regions and territories of Ukraine and other countries. Starting from 14 August 2024, each local council is obliged to record, store and publish videos of its plenary sessions and meetings of its standing committees. These innovations have been introduced because the Law ‘On Amendments to the Law of Ukraine “On Local Self-Government in Ukraine” on Ensuring Transparency of Local Self-Government’ has come into force. On 24 May 2024, the Verkhovna Rada of Ukraine registered in the second reading the Law of Ukraine ‘On

Amendments to the Law and Other Legislative Acts of Ukraine on the Development of Democracy at the Local Self-Government Level’, which is still awaiting the signature of the President of Ukraine as well as one of the most important draft laws, which is currently at the second reading stage, the Law of Ukraine ‘On Amendments to the Law of Ukraine “On Local State Administrations” and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organisation of Executive Power in Ukraine’.

Keywords: local self-government, voivode, prefect, local state administrations, decentralisation, public authority.

Formulation of the problem. In Poland, unlike in Ukraine, control over local self-government is provided for by a separate law. The main entity exercising this control is the voivode as a representative of the state authorities. In Ukraine, in 2019, a draft law on amendments to the Constitution of Ukraine (on decentralisation of power) was registered, which provided for the institution of a prefect, similar to that in Poland. However, the draft law was withdrawn from consideration. According to the new draft law, this function will be taken over by local state administrations, which has a number of drawbacks, including the lack of a clear procedure for its implementation. The Cabinet of Ministers of Ukraine will be responsible for adopting the relevant regulation.

Analysis of the study of the problem. Leading Polish and Ukrainian researchers have studied the issue of the institute of control over local self-government: W. Kubiida, O. Marceliak, G. Makarov, B. Kalynowski, T. Panchenko, A. Skibinski, M. Stets, K. Bagdazhevski, D. Dombek and others.

The purpose of the article. The goal is to conduct a comparative legal analysis of the features of state control over the activities of local government bodies in Ukraine and Poland based on the national legislation of the two legal systems.

Presenting main material. Local self-government exercises extremely important powers on the ground. It exercises broad powers granted by the central government as a result of decentralisation reforms. Therefore, local authorities must also understand the importance and consequences of their decisions to avoid corruption or other usurped actions. According to the Law of Ukraine ‘On Local Self-Government, Article 20 stipulates that state control over the activities of local self-government bodies and officials may be exercised only on the basis, within the powers and in the manner provided for by the Constitution and laws of Ukraine, and should not lead to interference by state authorities or their officials in the exercise by local self-government bodies of their own powers [1]. Analysing this provision of the article, it is not clear which of the subjects is authorised to supervise the decisions of local self-government bodies. The Code of Administrative Procedure states that district administrative courts, pursuant to part 2 of Article 264, ‘conduct proceedings in cases of appeal against regulatory legal acts of executive authorities, the Verkhovna Rada of the Autonomous Republic of Crimea, local self-government bodies and other subjects of power’ [2]. Every citizen of Ukraine who has legal grounds that his or her rights have been violated as a result of an action or inaction on the part of local self-government has the right to file a claim. The law also provides that local authorities have the right to file a lawsuit with an administrative court (for example, in cases of banning demonstrations or rallies) if there are threats to human life or health.

During researching the institution of local self-government in Ukraine, including its control, one can conclude that its legal regulation is unfortunately not systematised. Its legal regulation should be sought in a number of other legislative acts. However, the Law on Local Self-Government should have regulated its procedure. Instead, in 2020, the parliament registered a draft law ‘On Amendments to the Law of Ukraine “On Local State Administrations” and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organisation of Executive Power in Ukraine’. It provides for control by the district state

administration to ensure the legality of the activities of local self-government bodies and officials of village, town and city territorial communities.

The content of the draft law is general and somewhat unclear. It is unclear exactly what procedure will be followed. The draft law has been submitted for the second reading and is still awaiting parliamentary consideration. The draft law states that a district state administration is a body that ensures the legality of the activities of village, town, city, district councils and their executive bodies in the territory of the respective district. In order to ensure the legality of the activities of local self-government bodies, an oblast state administration:

- 1) analyses, summarises and publishes the practice of application of legislation by rayon councils, submits relevant information to the central level law enforcement body;
- 2) interacts with state bodies, local self-government bodies, their officials, other legal entities and individuals;
- 3) provides consultations to district councils and, if necessary, also to village, settlement, city, district councils and their executive bodies on ensuring legality;
- 4) checks acts of district councils for compliance with the Constitution and laws of Ukraine;
- 5) take measures to ensure legality of acts of district councils;
- 6) executes orders of the central level law enforcement body [3].

It is strange why the legislator abandoned the idea of creating a prefecture. More recently, in 2023, the Prime Minister of Ukraine Denys Shmyhal announced a new institution of prefects to control the activities of local governments. Experts believed that the position of prefect would be enshrined in the Law of Ukraine 'On Local State Administrations', but this is not the case.

Nevertheless, monitoring the acts of local self-government bodies is important for the transparency of democracy in order to ensure that the law is not violated and to avoid hasty local acts. The position of prefect is necessary in our country, because if a local government body adopts a resolution that violates the law in whole or in part, it can appeal against this decision in the district administrative court in accordance with the procedure provided by law. This would be much more effective if it were a specific single executive body. If the legislator assigns these responsibilities under the draft law to local state administrations, the relevant procedure for its implementation should be prescribed, as well as amendments to the Code of Administrative Procedure of Ukraine. This may lead to problems in practice. Again, the final and transitional provisions of the draft law indicate that the procedure for monitoring acts of local self-government bodies covered by the subject of ensuring legality will be established by the Cabinet of Ministers of Ukraine.

In the Polish model, local self-government operates in accordance with public law, is subject to state legislation, and its activities are controlled by state authorities in terms of compliance with applicable law. Local authorities perform decentralised state functions as a result of delegated powers, which means that they are also responsible to the state. In this respect, both parties – the state and local authorities – are equal. However, this does not mean that the limits of decentralisation in Poland are not defined.

By delegating public tasks to local authorities, the Polish government has retained supervisory powers. The purpose of supervision of local self-government is primarily to ensure compliance with the law and to ensure that the public interest prevails over local interests. Supervisory bodies can and should interfere in the activities of local self-government bodies only in cases specified by law, and therefore supervisory powers are of a legal nature. It should be emphasised that supervision over the activities of local self-government bodies applies only to the activities of local self-government bodies, i.e. it is objective in nature. Supervision over the activities of local self-government bodies also serves to harmonise the activities of the decentralised local state administration and the centralised state administration. Pursuant to Article 171.1 of the Constitution of the Republic of Poland, such supervision may be based solely on the criterion of legality.

A similar wording is contained in the Act on Commune Local Self-Government, which states that supervision of municipalities is based on the criterion of legality. The Constitution also provides under

Article 171.2 that supervision is carried out by: 1) by the Prime Minister, 2) by voivodes, and 3) in the field of finance – by the regional control and audit chamber. As an exception to the above rule, systemic supervisory powers are vested in the Sejm [4]. According to Article 171(3) of the Constitution of the Republic of Poland: ‘The Sejm, at the request of the Prime Minister, may dissolve the governing body of local self-government if this body grossly violates the Constitution or laws’. Supervision is carried out on the basis of the following criteria: 1) compliance with generally binding laws; 2) compliance with the policy of the Council of Ministers; 3) compliance with the principles of justice and economy [5].

The following provisions of the Act of 23 January 2009 on the Voivode and Public Administration in the Voivodeship provide for the voivode’s supervisory powers over local self-government bodies 1) Article 3(2), according to which the voivode supervises, from the point of view of legality, economy and reliability, the performance by local self-government bodies of tasks of the state administration, which they perform on the basis of the law or an agreement with the state administration bodies; 2) Article 12, according to which the voivode supervises the activities of local self-government bodies and their associations on the basis of the principles defined by separate laws. The principles of control of local law acts established by public administration bodies are regulated by the Prime Minister’s Regulation of 23.12.2009 on the method of control of local law acts established by the voivode and non-associated public administration bodies [6]. They differ from the principles characterising the control over the legality of local law acts of local self-government bodies.

The voivode supervises the activities of local self-government bodies on the basis of the criterion of legality, based on the provisions of self-government acts, namely:

- The Law of 8 March 1990 on Communal self-government;
- The Law of 5 June 1998 on Poviats Self-Government;
- The Law of 5 June 1998 on Voivodeship self-government;
- The Law of 23 January 2009 on the Voivode and Public Administration in the Voivodeship.

Following the example of municipal self-government, and in accordance with Article 90.1 of the Act on communal self-government, the mayor, president or burgomaster is obliged to submit to the voivode the resolutions adopted by the commune council within 7 days of their adoption (the same applies to the head of the powiat and the head of the voivodeship within 7 days). Acts establishing a mandatory procedure are submitted by the mayor within 2 days of their adoption. (2) The mayor submits to the regional court of auditors, in accordance with the principles set out in paragraph (1), the budget resolution, dismissal decisions and other decisions of the city council and the mayor’s orders falling within the scope of supervision of the regional court of auditors. Pursuant to Article 91.1 of the same Act, decisions or orders of a municipal authority contrary to the law are null and void.

If the voivode decides to invalidate the decision or order in whole or in part, he must do so within no more than 30 days from the date of delivery of the decision or order. As long as the local legal act is not delivered to the voivode, the time limit for making a decision under the supervisory procedure does not start to run. Thus, the period during which the voivode can exercise his supervisory powers is limited in time, i.e. from the date of receipt of the local self-government act to the date of the voivode’s supervisory decision. However, this period does not extend to the date of delivery of the supervisory decision to the local self-government body [7], and the 30-day period for the voivode to make a supervisory decision is of a substantive nature.

In the case of a minor violation of the law, the supervisory authority does not declare the decision or order completely invalid, but only indicates that the decision or order was issued in violation of the law. In addition, after the expiry of the 30-day period, the supervisory authority cannot invalidate the decision or order, but may appeal the decision or order to the administrative court. The administrative court, when accepting a complaint against a local government act, shall declare the act invalid in whole or in part or declare it issued in violation of the law, if a specific provision excludes the invalidation (Article 147 § 1 p.p.s.a.).

The supervisory authority may suspend their execution upon opening proceedings to invalidate a resolution or order or during such proceedings. The legislator has specified that the decision of the supervisory authority must contain factual and legal justification and an indication of the admissibility of filing a complaint with an administrative court. This right is considered in legal science as a kind of 'continuation' of supervision [8, p. 17].

In order to ensure proper verification of acts, the supervisory procedure was extended from 30 days to a maximum of 4 months and 5 days, and this should be assessed positively. This greatly increases the possibility of proper verification of the legality of the act of the local self-government body under review without the need to appeal it to an administrative court.

In case of repeated violations of the Constitution or laws by the head of the local self-government body, the voivode summons the head of the local self-government body to stop the violations, and if the summons has no effect, the voivode applies to the Prime Minister with a petition to dismiss the head of the local self-government body. In the event of dismissal of the mayor, the Prime Minister, on the proposal of the minister responsible for public administration, appoints a person to perform the functions of the mayor until a new mayor is elected. The Prime Minister supervises acts of local law adopted by the voivode or bodies of unassociated state administration.

As regards judicial control over local self-government acts in Poland, it is properly distributed in the judicial system, with the dominant role of administrative courts. Among the types of judicial control over local law acts by administrative courts, it is worthwhile to further distinguish direct, indirect and inactive control. Each type of control is also distinguished by different procedural legitimacy and its own construction of a complaint against a local law act. Internal (common) law acts adopted by local self-government bodies are subject to judicial review, as are other decisions of public administration; review of such acts is possible directly in the case of a voivode's complaint, indirectly through the review of supervisory acts and through complaints of subjects whose legitimate interest or right has been violated (which – in the case of internal law acts – may occur in exceptional situations) [9, p. 41–75].

Thus, a complaint to the court can be filed against all acts of local law adopted by them, as well as by territorial bodies of state executive power in accordance with the Law on Proceedings in Administrative Courts. Of course, this does not mean that only a voivode has the right to appeal to an administrative court regarding the legality of a local act. For example, if a local authority does not agree with the voivode's decision on the legality of a local act, it may file a counter-appeal against the decision in the supervisory procedure with the administrative court. The court must schedule a hearing no later than 30 days after the date of receipt of the complaint (Article 92a u.s.g.). In order for the municipal council to lodge a supervisory appeal against the voivode's decision, it must first decide to appeal against the decision. Otherwise, the court will dismiss the appeal [10].

Conclusions. Thus, the establishment of the prefect institution in Ukraine would be extremely relevant for effective oversight of the constitutionality and legality of decisions of local self-government bodies. This person should be a civil servant who does not belong to any political party and should perform his/her duties regardless of the change of the President. It is important to draw on the Polish experience, where the voivode controls the activities of local self-government at the level of a separate law. He is a representative of the state executive branch and has clearly defined responsibilities and in his activities adheres to the law and the Code of Administrative Procedure. Finally, if the prefect institution is not created, the powers provided for in the draft law to exercise control over local self-government by rayon state administrations should include a clear procedure for their review and appeal with specified deadlines.

The Polish experience of organising control over local self-government shows similarity of legal systems in particular, the form of government, the form of state structure, the form of political regime, the model of local self-government in the country, etc. In addition, when developing a legislative act and

borrowing the experience of implementing public control in Ukraine the national specifics should be taken into account in order to make the result as effective as possible. In addition, the main guidelines and recommendations of international organisations should be taken into account regarding organisation of control and supervision activities in the field of local self-government.

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ПОРІВНЯЛЬНО-ПРАВОВИЙ АНАЛІЗ ЩОДО ОСОБЛИВОСТЕЙ ДЕРЖАВНОГО КОНТРОЛЮ НАД ДІЯЛЬНІСТЮ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ ТА ПОЛЬЩІ

В рамках європейської інтеграції інститут контролю над діяльністю органів місцевого самоврядування в Україні стає актуальним. Це досить новий інститут, який не було повною мірою врегульовано на рівні національного законодавства. В законі України “Про місцеве самоврядування” лише в рамках однієї норми міститься згадка, що державний контроль над органами місцевого самоврядування здійснюється на підставі закону. Отже, ця стаття присвячена дослідженню контролю над рішеннями органів місцевого самоврядування, яке невід’ємно пов’язане з проведенням децентралізації, та здійсненню порівняльно-правового аналізу щодо контролю з боку держави на діяльність місцевого самоврядування в Україні та Польщі. Автор

наголошує на важливості нормативно-правового регулювання державного контролю над діяльністю місцевого самоврядування в Україні. Проаналізувавши законопроектну діяльність реформування цього інституту, можна спостерігати низку недоліків, які можуть повпливати на законність загалом та якість роботи органів місцевого самоврядування. На цьому етапі низка законопроектів ще перебуває на розгляді в другому читанні Верховної Ради України і невдовзі має бути прийнята.

Сьогодні реформування місцевого самоврядування в контексті національного законодавства України передбачає прийняття нових законів, розроблення нових законопроектів та внесення змін до окремих інших законодавчих актів України, які регулюють діяльність органів місцевого самоврядування. Нещодавно прийнятий ЗУ “Про міжнародне територіальне співробітництво України”, який врегулює міжнародну територіальну співпрацю між регіонами і територіями України та інших країн. Починаючи з 14 серпня 2024 року, кожна місцева рада зобов’язана вести відеофіксацію, зберігати та оприлюднювати відео своїх пленарних засідань, а також засідань постійних комісій. Такі нововведення з’явилися, бо набула чинності норма закону “Про внесення змін до Закону України “Про місцеве самоврядування в Україні” щодо забезпечення прозорості місцевого самоврядування”. 24 травня 2024 року Верховна Рада України зареєструвала в другому читанні Закон України “Про внесення змін до закону та інших законодавчих актів України щодо розвитку демократії на рівні місцевого самоврядування”, який досі чекає на підпис Президента України, а також один з найважливіших законопроектів, який перебуває на етапі другого читання, Закон України “Про внесення змін до Закону України “Про місцеві державні адміністрації” та деяких інших законодавчих актів України щодо реформування територіальної організації виконавчої влади в Україні”.

Ключові слова: місцеве самоврядування, воєвода, префект, місцеві державні адміністрації, децентралізація, публічна влада.