

ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА, КОНСТИТУЦІЙНЕ ПРАВО. МІЖНАРОДНЕ ПРАВО

УДК 351.745

DOI: 10.31733/2078-3566-2021-2-8-13



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CONTROL OVER THE ACTIVITIES OF LOCAL SELF-GOVERNMENT BODIES: CONCEPTS AND TYPES, OBJECT AND SUBJECT

Лариса Наливайко, В'ячеслав Медяник, Євгенія Мінакова. Контроль за діяльністю органів місцевого самоврядування: поняття і види, об'єкт та предмет. У статті досліджено поняття контролю за діяльністю органів місцевого самоврядування, його місце у системі соціального контролю. Соціальний контроль досліджено як систему, що включає в себе контрольну діяльність як державних органів, так і безпосередньо громадянського суспільства. Обґрунтовано співвідношення контролю за діяльністю органів місцевого самоврядування з суміжними поняттями. Актуалізовано вимоги до такого виду контролю.

Охарактеризовано діяльність органів місцевого самоврядування як об'єкт контролю. Публічно-правова діяльність органів місцевого самоврядування є об'єктом контролю. Контроль може здійснюватись за реалізацією як об'єктних (політична, економічна, соціальна, культурно-духовна, екологічна, інформаційна та ін.), так і технологічних (нормотворча, виконавча, правозастосовна, правозахисна, правоохоронна, установча, контрольна, планування, облік та ін.) функцій органів місцевого самоврядування і відповідних повноважень. Предметом контролю за діяльністю органів місцевого самоврядування може виступати реалізація окремих повноважень органів місцевого самоврядування чи окремої функції.

Здійснено класифікацію видів контролю за діяльністю органів місцевого самоврядування через застосування обґрунтованих класифікаційних критеріїв, що дозволило сформулювати його цілісне бачення. Дослідники формують по-різному перелік класифікаційних критеріїв, але завжди акцентують увагу на його невичерпному характері. Провідними його видами визначено внутрішній та зовнішній (державний, громадський, наддержавний) контроль.

Ключові слова: *місцеве самоврядування, соціальний контроль, державний контроль, громадянське суспільство, децентралізація.*

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Relevance of the research. Building the rule of law in Ukraine is a complex and long process. Despite the various factors that hinder it, today in society there is an increased interest in the state of observance and ensuring the rule of law, and responsibility of public authorities to man and society. In the conditions of decentralization of power, the issues of organization of control over the activity of the whole system of public authorities and, especially, local self-government bodies, are taken to a new level.

The relevance of the study of control over the activities of local self-government bodies is not only theoretical, but also important practical significance for the effective functioning of the entire mechanism of the state, ensuring political stability and coherence of all state bodies.

Recent publications review. O. Berdanova, I. Valentiuk, B. Vynnytskyi, S. Denysiuk, T. Kolomoiets, V. Kostylev, S. Kosinov, V. Kostytskyi, V. Kravchenko, P. Matviienko, O. Muzychuk, I. Pavlyk, V. Paraschuk, O. Perederii, M. Pittsyk, Y. Rateichak, O. Savchenko, I. Sanzharovskiy, O. Skopych, O. Smoliar, O. Sokolenko, D. Sukhinin, V. Taroieva, A. Tolstoukhov, I. Trokhanenko, V. Shestak, O. Polinets and many others devoted their research to various issues of control in the state.

The article's objective is to study the concept, classification criteria and types, object and subject of control over the activities of local self-government bodies in the context of decentralization of power in Ukraine.

Discussion. Control as a legal phenomenon is mediated by social content. This concept denotes the form of activity of public authorities and civil society institutions, the type of legal process, independent branches of government, the function of the state and civil society, and so on. The general definition of the concept of control in legal research acquires a peculiar meaning, which is due to the importance of relevant activities in ensuring the principles and norms of law.

Social control is broad in its content and includes control activities of both government agencies and civil society itself. Social control is defined as an element of social organization, the system of methods of activity of individuals and subgroups, the actions of institutions and means of social control, social roles and values that ensure the common life of members of society, harmonize their aspirations and directions, establish acceptable means of meeting needs, etc. [1, p. 183]. Social control performs three important social functions: regulatory function: control is one of the main elements of social regulation of human behaviour; precautionary function contributes to the preservation of general features of significant values; stabilizing function contributes to the establishment of social and legal order. Due to the triad of these functions, social control is manifested as a certain social mechanism, which without significant deviations helps to carry out the transmission of social experience from generation to generation. These functions remain unchanged regardless of the scope of institutions of social control [2, p. 225]. It is important to focus on the types of social control that operate at the level of public relations in the state. The leading subjects of social control are the rule of law and civil society, the types are state and public control. Taking care of the problems of democratic transformations in the world, ensuring the rule of law, human development and potential, international institutions exert direct and indirect influence on states, setting the vector of their activities. Thus, as a means of ensuring the state's fulfillment of international obligations, it is possible to single out international (supranational) control exercised by international institutions on behalf of the international community.

Currently in the scientific literature there are a number of definitions of control: a set of different forms of action carried out by the subjects of control over human behaviour or its own behaviour, relationships arising in society, or to establish any scientific and other cognitive goals in the study of the material world [3, p. 89]; control as a legal form of state activity is an essential element in the system of guarantees of the effectiveness of legal norms, stability and optimality of the state and legal regime, as well as legal protection and security of public structures and organizations [5, p. 10]; control as a function of management and exercise of power determines the content, and its forms are the means of implementing this function [4, p. 31]. The structure of control is determined by its external manifestation in the form of organized activities and includes: subjects of control; object and subject of control; grounds, purpose and tasks; forms, principles and methods of control; regulated control procedure – its interrelated stages.

There are a number of requirements for control activity, according to which it must be: 1) by-law, i.e. control should be carried out only within the framework of specific regulations; 2) systematic, i.e. to be regular; 3) time-bound, i.e. conducted in a well-timed manner, which significantly increases its efficiency; 4) comprehensive, i.e. to cover the most important issues, to apply to all services and structures of controlled bodies; 5) deep, i.e. not only those divisions which have weak results of work, but also those which have good results should be checked; 6) objective, i.e. to exclude bias; 7) open, i.e. its results must be known to those who were subject to control; 8) meaningful (effective) [6, p. 17]. The content and tasks of control, requirements for its organization and quality are determined by the object to which this activity is directed.

It is important to describe the activities of local self-government bodies as an object of control. The main activities of local self-government bodies aimed at addressing issues of local importance in theory are denoted by the concepts of 'functions' and 'powers'.

The concepts of tasks, functions, powers and competencies are interrelated. All governmental or non-governmental bodies are created for a specific purpose. It is in the tasks of the latter that this goal is reflected. However, without the functions due to which the tasks set before the body are realized, the goal remains only on paper. Therefore, in order to perform its functions, each body is endowed with the rights and responsibilities that can be defined by the concept of authority. In turn, the set of these structural elements is a concept of competence [7, p. 235]. Therefore, it is necessary to disclose the content of the activities of local self-government bodies as an object of control through a study of the functions and powers of municipal authorities. The list of functions of local self-government bodies is wide.

The functions of local self-government are aimed at ensuring the stability and orderliness of relations at the local level and guaranteeing the constitutional right of citizens to local self-government, i.e. the ability to resolve local issues independently. The legal nature of the functions of local self-government emerges from the essence of democracy, the ability to independently resolve issues of local importance by the relevant subject of local self-government. Each subject performs the relevant functions within its powers [8, p. 182-183; 9, p. 5]. The functions of local self-government bodies have been widely covered in the scientific and educational literature.

V. Fedorenko divides the functions of local self-government by objects (political, economic, social, cultural (spiritual), ecological, informational); by types of legal activity (human rights, law-making, law-enforcement functions of local self-government) [10, p. 595]. The latter are called technological functions, to which it is advisable to add constituent, control and law enforcement functions. Thus, among a number of criteria for classifying the functions of local self-government, the leading one is their division into object and technological.

Powers are a set of specific rights and responsibilities that are provided for the implementation of the functions assigned to the body [11, p. 102]. The whole system of local self-government is involved in the implementation of local self-government powers, so the concept of "local self-government powers" is generally a broader concept than "powers of local self-government bodies".

The main powers of the territorial community as a subject of local self-government include: economic development, infrastructure development, formation of development strategy of the respective territorial community, urban planning, socio-cultural powers, provision of housing and communal services, provision of transport services, guarantee and provision of public services, security, education, health, landscaping [12, p. 187]. Although the territorial community, as the primary subject of local self-government, has the right to directly decide local issues (elect local mayors and representative bodies of local self-government; exercise the will in local referendums, general meetings, etc.), most local self-government powers are exercised by its bodies.

Public law activities of local self-government bodies are subject to control. Control can be exercised over the implementation of both object (political, economic, social, cultural, spiritual, environmental, informational, etc.) and technological (rule-making, executive, law enforcement, human rights, law enforcement, installation, control, planning, accounting and etc.) functions of local self-government bodies and relevant powers.

As for the exercise of powers directly by the territorial community, control over this process violates the principles of democracy. Subjects of control can control only the provision and organization of the relevant procedure (election process, referendum, etc.), its legality.

The subject of control over the activities of local self-government bodies may be the implementation of certain powers of local self-government bodies or a separate function.

Thus, control over the activities of local self-government bodies is a type of social control, regulated, systematic activities of authorized entities aimed at preventing, identifying and eliminating deficiencies and violations in the activities of local self-government bodies and officials in the interests of the community and society.

Scientific classification of types of control over the activities of local self-government bodies is important to clarify the specifics of its implementation. The typology of such control through the application of sound classification criteria will form its holistic vision.

Scholars distinguish different classification criteria and types of control in public administration and local self-government. For example, O. Sushynskyi proposes to classify the types of control according to the scope of control powers; features of subjects of control activity; entities exercising control; areas of control; the nature of the relationship of the subject of control with the controlled object; time of control, etc. [4, p. 33]. O. Smoliar proposes to divide control over the nature of the relationship between the subject and the object of control into internal

(departmental) and external (non-departmental). In internal control, the subject and the object of control operate within the same system, and in external – a separate subject acts autonomously, independently of the object [12, p. 22]. It should be noted that researchers form a different list of classification criteria, but always emphasize its inexhaustible nature.

V. Shestak classifies state control into types according to the following criteria: by the subject of control activity; by legal qualification (legal and illegal); by degree of significance (ordinary, relevant, extraordinary); by the method of exercising control powers (direct and indirect); by quantitative composition of subjects (single, compatible); by affiliation of control powers (own and delegated); in relation to the control activity of the subject (real and formal); on the territory of distribution of control powers (national and local); by time of implementation (previous, current and next); based on the evaluation of the object (positive and negative); according to the stage of research of the object (primary, intermediate, final); by the volume of coverage of the object by the study (general or partial) [13, p. 120]. These classification criteria are relevant in the context of the study of types of control over the activities of local self-government bodies.

Noteworthy is the generalization of O. Smoliar, who proposes to classify control in the field of local self-government according to the following criteria: the entities that exercise it (control by public authorities, public formations, citizens); on controlled objects (control over local self-government bodies, officials); by level of control (departmental, interdepartmental and suprdepartmental / extradepartmental control); by subject area of activity (education, health care, use of natural resources, finance, etc.); by the time of its holding (preliminary, current, final); by level of specialization (general and special) [14, p. 62]. This list, despite its completeness and integrity, can be extended.

We propose to classify the types of control over the activities of local self-government according to the following criteria:

- by levels of control over the activities of local self-government bodies: 1) international (supranational) – indirect control through international legal regulation of standards of local self-government bodies, their interaction with civil society and the state; 2) national – indirect control exercised by the highest central bodies of state power through their rule-making activities, as well as direct control of national human rights and control and supervisory institutions, national institutions of civil society; 3) regional – direct control exercised by subjects of control at the regional level; 4) local – control over the activities of local self-government bodies, which is carried out by local institutions.

- by purpose of control: general – its subject covers all activities of local self-government as a whole; target – its subject includes a separate direction of work or a separate function of the local self-government.

- by areas of activity of local governments, which are the subject of control: financial and budgetary; anti-corruption; anti-discrimination; for the implementation of decisions; for work with citizens' appeals; for the implementation of programmes and plans; on the quality of administrative services and many others.

- by type of powers that are the subject of control: control over the implementation of their own powers – attributed to the competence of local self-government by applicable law; control over the implementation of delegated powers – transferred to local self-government bodies from state executive bodies.

- depending on the time of control: preliminary (prospective) – aimed at preventing possible violations by local governments of the requirements of current legislation; current – aimed at checking and adjusting the activities of local governments directly during its implementation; final – aimed at verifying the results of activities already carried out, its compliance with the law, the planned purpose, etc.

- by organizational and legal forms of control: monitoring, audit, audit, inspection, verification, examination, hearing, appeal, survey, initiation, etc.

- on the authenticity of control: real – effective, influential and purposeful control, initiated and conducted in accordance with the law and able to achieve its goal; formal – control that is not aimed at the actual achievement of the goal, is carried out for visibility and has a fictitious result.

- according to the degree of legal consolidation of the grounds for control: directly enshrined in law; follows from the content of the legislation; not provided by law.

- by the way of influencing local self-government bodies: direct; indirect (indirect) control.

- on the grounds of control over the activities of local self-government bodies: mandatory (planned, unscheduled); initiated (externally initiated, internally initiated).

- depending on the subject, the activity of which is controlled: control over the activities of village, settlement, city councils; control over the activities of village, settlement, city mayors;

control over the activities of elders; control over the activities of the executive bodies of the village, settlement, city council; control over the activities of district and regional councils; control over the activities of bodies of self-organization of the population.

- depending on the entity exercising control: control of state bodies; control of civil society institutions, organized public, individuals; control of local governments; control of international institutions.

- according to the qualification of the subject conducting the control: professional – is carried out with the participation of competent, experienced specialists (experts); non-professional – conducted by persons who do not have the relevant competencies and experience.

- depending on the direction of control and the nature of the relationship between the subjects of control and local self-government bodies: external and internal.

Conclusions.

1. Control over the activities of local self-government bodies is a type of social control – regulated, systematic activities of authorized entities aimed at preventing, identifying and eliminating shortcomings and violations in the activities of local self-government bodies and officials in the interests of the local community and society.

2. The structure of control over the activities of local self-government bodies includes: subjects of control; object and subject of control; grounds, purpose and tasks of control; forms, principles and methods of control; regulated control procedure – its interrelated stages. Public law activities of local self-government bodies are subject to control. Control can be exercised over the implementation of both objective (political, economic, social, cultural, spiritual, environmental, informational) and technological (rule-making, executive, law enforcement, human rights, law enforcement, constituent, control) functions of local self-government bodies and relevant powers. The subject of control over the activities of local self-government bodies may be the implementation of certain powers of local self-government bodies or a separate function.

3. It is proposed to classify the types of control over the activities of local self-government according to the following criteria: according to the levels of control over the activities of local self-government bodies (supranational, national, regional, local); by purpose of control (general, target); by areas of activity of local self-government bodies, which are the subject of control (financial; anti-corruption; anti-discrimination, etc.); by the type of powers that are the subject of control (over the implementation of their own and delegated powers); depending on the time of control (preliminary, current, final); by organizational and legal forms of control (monitoring, audit, audit, inspection, examination, hearing, appeal, etc.); on the authenticity of control (real, formal); according to the degree of legal consolidation of control (directly enshrined in law; follows from the content of legislation; not provided by law); by the way of influencing local self-government bodies (direct, indirect); on the grounds of (mandatory, optional) (initiated), depending on the entities whose activities are controlled (over the activities of local councils, local mayors, elders, executive bodies of local councils, district and regional councils, bodies of self-organization of the population); depending on the entities that exercise control (control of state bodies; control of civil society institutions, organized public, individuals; control of local governments; control of international institutions); according to the qualifications of entities that control (professional, non-professional); depending on the direction of control and the nature of the relationship between the subjects of control and local self-government bodies (external and internal).

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Надійшла до редакції 14.06.2021

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ABSTRACT

The article examines the concept of control over the activities of local self-government bodies, its place in the system of social control. Social control is in its content and includes control activities of both government bodies, and directly civil society. The ratio of control over the activities of local self-government bodies with related concepts is substantiated. The requirements for this type of control have been updated.

The activities of local self-government bodies as an object and subject of control are described. The classification of types of such control is carried out through the application of reasonable classification criteria, which allowed to form its holistic vision.

Keywords: local self-government, social control, state control, civil society, decentralization.