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**TRANSFORMATION OF THE STATE-LEGAL MODEL OF
OVERSIGHT OVER LOCAL SELF-GOVERNMENT IN UKRAINE**
a collective monograph



2025

Mezinárodní Ekonomický Institut s.r.o. (České republika)

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PREFACE

This work was initiated under specific politico-legal conditions that served as a decisive factor in the formation and implementation of legal policy concerning state control over local self-government. This context is threefold. Firstly, it pertains to the necessity of completing the current stage of the domestic reform of the territorial organization of power, which requires an effective mechanism of state control over the exercise by local self-government bodies of a significantly expanded scope of both their own and delegated powers—a mechanism capable of providing effective legal instruments to balance local and national interests. Secondly, the constitutionally enshrined irreversibility of the state's European development vector has necessitated a more comprehensive implementation of European standards, as defined in the European Charter of Local Self-Government and Recommendation No. R (98) 12 of the Committee of Ministers of the Council of Europe on the supervision of local authorities' activities, thereby ensuring a proper, systemic, and effective legal basis for control and supervision activities. Thirdly, in the context of Ukraine's engagement in a hybrid war, the emergence of tangible threats to the proper functioning of public administration, national security, and territorial integrity required the state to formulate an effective toolkit for an adequate state-legal response to challenges associated with attempts to destabilize the socio-political situation in the regions, undermine trust in the activities of municipal entities, and complicate the functioning of local self-government in certain districts of the Donetsk and Luhansk oblasts. The state was compelled to formulate a viable mechanism for ensuring the rule of law, protecting the rights and freedoms of citizens, and preserving unitarity and territorial integrity while guaranteeing the autonomy of local self-government in its decision-making and in the realization of the legitimate interests of territorial communities. These factors underscored the urgency of developing and substantiating a concept for the modernization of the state-legal model of control over local self-government.

The objective of the research was defined as the development of a concept for the

legal model of state control and supervision within the system of local self-government, in the context of ensuring the national security and territorial integrity of Ukraine. This objective involves elaborating the legal foundations of the control and supervision mechanism in its scholarly and practical dimensions; formulating a roadmap for the constitutional, legislative, institutional, functional, and organizational transformations necessary for the effective implementation of a renewed model of state-legal control; and preparing legislative proposals aimed at implementing European standards in this sphere.

The full-scale invasion of Ukraine by the Russian Federation on February 24, 2022, while intensifying the relevance of the initiated research, simultaneously necessitated adjustments to its content, driven by the following factors:

- the introduction of the legal regime of martial law in Ukraine and the attendant organizational and functional peculiarities in the operation of public authorities under its conditions, which were characterized by increased centralization, changes in institutional actors, an unprecedented expansion of sole-person powers, and a significant shift in focus within the control and supervision mechanism over local self- government;

- the adoption by executive authorities of a series of legal decisions in the sphere of control and supervision activities, related to the implementation of a “control and supervision moratorium” policy, which had specific implications for its application in the sphere of local self-government;

- the development of the legislative framework for the further reform of the territorial organization of power and the creation of a legal basis for the recovery of territories from the consequences of war. For instance, the issue of reforming and introducing state supervision over the legality of acts of local self-government bodies is part of the Ukraine Plan within the framework of the Ukraine Facility, is enshrined among the objectives of the updated State Strategy for Regional Development until 2027, and is included in the Action Plan for the Reform of Local Self-Government and Territorial Organization of Power in Ukraine for 2024-2027.

The systemic nature of the conducted research made it possible to consider the aforementioned factors, adapt its focus to the current politico-legal realities, and propose a concept of state control and supervision within the system of local self- government. This concept takes into account international standards, deepens the understanding of the strategy and tactics for the legal development of the control and supervision mechanism under the conditions of existing challenges and threats to the national security and territorial integrity of Ukraine, and addresses the aggregate of its institutional, functional, organizational, and procedural aspects.

INTRODUCTION

Local self-government plays a vital institutional and functional role in the exercise of public authority in Ukraine. Within the framework of the decentralization of power reform, this role has been significantly enhanced: the scope of governmental functions and powers has been expanded; the informational, infrastructural, material- financial, natural, and other resources available to municipal bodies have increased; and the subject matter of municipal norm-creation has broadened, all while guaranteeing independence and autonomy in resolving matters of local significance. The legality, efficacy, and efficiency of municipal activities are becoming crucial factors in ensuring the democratic constitutional order, national interests, the stability of the socio-political situation, and the territorial integrity of the state. However, the current stage of state- building transformation in Ukraine—during which the prosecutor's office was divested of its general oversight function, while local executive authorities, as well as the central level of the executive branch, failed to acquire effective control and supervision powers—has exacerbated the problem of formulating a model of state control over the adherence by local self-government bodies to the Constitution and laws of Ukraine in the course of their norm-creative, law-enforcement, and other ongoing activities.

The process of searching for a national model of local self-government is accompanied by extensive scholarly debates regarding the nature and essence of this politico-legal phenomenon, the subjects, object, character, limits, and means of state control, the problems of the legal regulation of its organization and activities, as well as practical issues concerning the legal framework for the model of control in the sphere of local self-government and municipal norm-creation in Ukraine. Nevertheless, these issues remain insufficiently studied and scientifically substantiated to date. The peculiarities of the normative-legal regulation of control in the sphere of local self- government and municipal norm-creation primarily include the absence of a definition for the terminological concept of "control," its delimitation from other related concepts ("supervision," "guardianship," etc.), and the lack of a clearly, legislatively defined mechanism for its implementation. Warranting separate attention in this context is the

problem of the scientific substantiation and legal regulation of municipal-legal liability, which today constitutes an institution that is still in its formative stages.

The main outcomes of domestic scholarly research in this field include, *inter alia*, the following: 1) the refinement of the concept of modern local self-government, including consideration of international legal standards; 2) theoretical-legal developments in the sphere of the establishment and evolution of the domestic model of local self-government; and 3) the development of propositions concerning the necessity and importance of formulating a municipal-legal policy under conditions of decentralization and European integration. At the same time, issues related to the transformation of the model of relations between public authorities in the context of municipal reform require in-depth study and improvement, with the aim of forming capable local self-government in Ukraine. This is especially pertinent given the need to balance the control and supervision functions of state authorities to prevent unlawful activities during the period of martial law, while preserving the ability of local self-government bodies to implement their functions and powers at an appropriate level to meet the vital needs of the members of territorial communities.

An analysis of foreign research in the sphere of supervision (control) over local self-government activities indicates, *inter alia*: 1) the recognition of the necessity and importance of a complete and clear constitutional-legal regulation of these issues (see, e.g., *The Future of Local Self-Government. European Trends in Autonomy, Innovations and Central-Local Relations*, 2021, 291p.); 2) the substantive changes that have occurred in public administration theory, particularly towards increasing the weight of local self-government and reducing state influence over it (see, e.g., K. Gurdon-Nagy. *Paradigmatic Changes, or are Local Self-Governments Before or After Changes in Hungary? Transformation of the Regulation of Local Self-Governments*, 366 – 367); 3) the principle that the possibility of forming capable local self-government is directly linked to the legislatively established model of control (supervision) over its activities (see, e.g., E. Pál. *Models of Legal Supervision over Local Self-Governments in Continental Europe (Excluding France)*. *Pécs Journal of International and European Law*. 2018/II. 6 – 20; *Local Governments` Capacity to Act: A European Comparison*.

Autonomy, Responsibilities and Reforms. Federal Office for Building and Regional Planning (BBR), Bonn. 2020. 70 p.); 4) the necessity of studying both the positive and negative foreign experiences of implementing municipal reform, including in the aspect of transforming the state-legal model of control in the sphere of local self-government (Manojlović T. R.; Vukojičić T., T.; Koprić, I. Unsuccessful Europeanisation of Croatian Sub-Municipal Government: Insufficient Attractiveness or Bad Institutional Design. *Godišnjak Akademije pravnih znanosti Hrvatske*, Vol. X, No. 1, 2019. 185 – 210; S. Bentkowski. Evaluation of assessments in supervision over the territorial self-government. *Journal of Modern Science*. Tom 4/35/2017, 235 – 248; M. Shala; S. Shala. Supervision and Control of Local Governance in the Republic of Kosovo. *European Journal of Interdisciplinary Studies*. Vol. 4, 2016. January-A. 74 – 84); 5) the principles upon which an optimal model of control in the sphere of local self-government should be based (see, e.g., P. Sadowski; W. Mojski. Normative Model of Supervision over the Activities of Communes in Poland. *Lex Localis. Journal of Local Self-Government*. Vol. 18, No. 4 (2020). 791 – 805). However, these studies, while having significant theoretical and practical value, including from the perspective of the European doctrine of local self-government, do not provide in-depth and comprehensive coverage of the entire legal problematique of state control within the system of local self-government in its conceptual, scholarly, and practical dimensions.

Therefore, contemporary legal science must formulate a holistic doctrine of the state-legal model of control over local self-government. This will allow for a systemic and comprehensive renewal of the corresponding control and supervision mechanism and its constitutional and legislative foundations; the modernization of its institutional and functional aspects; the rationalization of the procedural and processual components of control activities; and the formation of an effective toolkit for an adequate state-legal response to challenges to national security and territorial integrity.

The results achieved contribute to the implementation of European standards in the researched sphere; to the Europeanization of relevant Ukrainian legislation; to imparting a purposeful, comprehensive, and systemic character to specific directions of the reform of territorial organization of power; to meeting the needs of society and the

state for the modernization of legislation and the transformation of the legal model of state control and supervision in the context of the modern concept of municipal authority; and to identifying ways and means of increasing the effectiveness of control and supervision activities. This research involves the application of a new, systemic, interdisciplinary approach to the elaboration of the doctrinal foundations of the state- legal model of control over local self-government in its ideological, scholarly, and practical dimensions, taking into account international standards. It thereby fills an existing gap in contemporary legal science concerning specialized research on the transformational processes in the sphere of legal regulation of state control and supervision within the system of local self-government, at a stage of the country's European integration and under conditions of external and internal challenges to its national security and territorial integrity.

Svitlana Serohina¹

DOCTRINAL AND CONCEPTUAL FRAMEWORKS FOR STATE CONTROL AND SUPERVISION OF LOCAL SELF-GOVERNMENT

The development of a democratic, rule-of-law state in Ukraine is accompanied by the need to form an adequate system of state control that would function coherently to achieve the tasks facing society, as well as to define modern principles and forms for the implementation of control powers by authorized state bodies. The exercise of state control must consider the needs of society and not permit an increase in administrative pressure on various spheres of public life. These aspects indicate the necessity of accounting for various factors in the process of forming the system of state control in Ukraine, as the effectiveness of ensuring legality and public order in the state as a whole largely depends on the success of their combination.

The objective necessity of control has been convincingly proven by the history of states of all types and forms; moreover, a direct correlation is observed between the stability of power and the efficacy and efficiency of state control. It is the control activity of state authorities that can add dynamism to the reforms taking place in the country and to transformations that correspond to the realities of the modern world.

The scholarly conceptualization of the phenomenon of control has for many decades been the subject of research in both general legal theory and branch-specific legal sciences, primarily constitutional and administrative law. An analysis of the current state of scholarly research in this sphere indicates the existence of various approaches to understanding the essence and legally significant characteristics of control.

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Specifically, from the perspective of sociology, control is viewed as a mechanism of self-regulation in social systems, implemented through the normative (legal, moral, etc.) regulation of individual behavior. Among the sociologists who have studied this issue, it is worth noting O.H. Danylian, K.Ye. Ihoshev, S.S. Novikova, and Ye.M. Penkov. In general theoretical terms, control was considered a legal form of activity by V.M. Horsheniov and I.B. Shakhov. In the science of administrative law and state-building (V.M. Harashchuk, V.B. Averianov, V.O. Serohin, O.N. Yarmysh), control is examined in organizational-legal terms as a function, a legal form, and an organizational method of the activity of public authorities.

Various approaches substantiate the understanding of control as a certain means, factor, prerequisite, element, function, activity, system, feedback, regulator, guarantor, phenomenon, institution, method, power, attribute, and so on. Therefore, the current state of research into the problems of the institutionalization of state control is associated with the presence of a whole range of disputed issues of a substantive and functional nature.

In its general social sense, control is regarded as the implementation of one of the functions of social management, the essence of which is to check, observe, and monitor a particular phenomenon.

Control over public authorities in general, and local self-government bodies in particular, is a type of social control designed to ensure the preservation and development of the social system, the orderly functioning of its elements, and interaction with the environment. Social control is a mechanism for maintaining social equilibrium, which ensures the vitality of modern society and the effectiveness of its social management.

In scholarly literature, it is considered in a broad sense as the aggregate of mechanisms in a social system (society, social group, organization, etc.) through which its self-organization and self-preservation are ensured by establishing and maintaining a certain normative order and using corresponding patterns of behavior, which can be individual values, legal and moral norms, administrative orders, customs, traditions, etc. In a narrow sense, it is understood as the aggregate of means and methods of society's

influence on undesirable forms of deviant behavior with the aim of their elimination or reduction and minimization [42, p. 221].

Social control is a complexly organized, multi-stage system consisting of a series of interacting elements, among which the following can be distinguished: (a) institutions of social control; (b) norms; (c) values; (d) monitoring (control) of compliance with established norms and values; (e) sanctions, etc. Researchers attribute the state, public organizations, educational institutions, mass media, the church, social groups, the family, and others to the main institutions of social control [42, p. 223].

The science of social management proceeds from the fact that control is carried out in the following main directions: 1) defining the limits (conditions) that guide the behavior of the object and within which its behavior is considered desirable; 2) ensuring, through specific methods and instruments, the movement of the object in a given direction; 3) detecting and ceasing deviation from socially recognized behavior [60, p. 50].

Proponents of the social interpretation of the category of control assert that it is carried out mainly by the state, as well as by social groups. This is expressed in the mutual control of participants in any process, in various forms of expression of public opinion, and also in verifying the compliance of the activities of participants in social relations with the prescriptions established in society, within which they must operate. The main objects of social control are legal and moral norms, customs, administrative decisions, and so on. The action of social control is reduced to the use of various sanctions against violators of social restrictions [83, p. 94].

The behaviorist approach is based on the characterization of control as a type of socially significant activity of relevant subjects. Control is not a primary activity, as it pertains to actions carried out independently of control, but at the same time, control is an independent type of activity; its essence lies in observing the correspondence of the controlled object's activity with the prescriptions that the object received from the governing body or official.

The managerial approach considers control as an element of the management process. From the position of representatives of the science of public administration,

control is an important function of management, which is a complex of measures carried out by the subject of management to observe the preparation, adoption, and progress of the implementation of managerial decisions, as well as to verify the actual state of the object of management [3, p. 218].

Representatives of this school of thought characterize control as an integral part (element) of management, the essence of which is to monitor the state of affairs at the controlled object, ensuring a systematic check on the execution of the Constitution, laws of Ukraine, and other normative-legal acts, compliance with discipline and public order, and is manifested in the intervention of control bodies in the operational activities of controlled objects, giving them mandatory instructions, suspending, amending, or annulling acts of management, and applying coercive measures to controlled bodies [26, p. 278].

In particular, T. O. Kolomoiets believes that control is a function of management, a means of accomplishing management tasks, the peculiarity of which is that it has an active character, i.e., the subjects of control are endowed with the right to intervene in the activities of controlled objects [54, p. 128]. O.P. Orliuk also considers control as a function of management. She argues that control exists at all stages of management, occupying a special place in such a process and acting as a function that allows not only to identify but also to prevent mistakes and shortcomings in the work of subjects and objects of management, and also acts as the concluding stage of the management process [73, p. 144].

The main goal of control is to guarantee the execution of managerial decisions, the successful completion of tasks, and the avoidance of possible errors. It is an important component of the management process, aimed at ensuring the effective functioning of the organization and achieving the set goals. Control is aimed at: the collection, processing, and analysis of information (systematic collection, detailed processing, and analysis of information about the actual results of the activities of all organizational units); comparison with planned indicators (comparing actual results with planned indicators defined at the management planning stage); identification of deviations and analysis of their causes (identifying any deviations between actual and

planned indicators and conducting a detailed analysis of the causes of these deviations); and development of measures to achieve goals (developing and implementing specific measures necessary to correct identified deviations and achieve the planned goals) [59, p. 313].

The theoretical-legal approach is based on viewing control activity as one of the legal forms of activity of public authorities. Under this approach, control and supervision activity is a "legal form of activity, which is expressed in the performance of legally significant actions regarding the supervision and verification of compliance and adherence by controlled subjects to legal prescriptions and the cessation of offenses by appropriate organizational-legal means" [46, p. 399].

Proponents of the functional approach interpret control as one of the main directions of the state, as well as of public authorities, in which their essence and social purpose are reflected. Thus, D.V. Sukhinin argues that control is a function of the state and society, their institutions and structures, which consists in the application of various supervisory and evaluative mechanisms over the activities of bodies, structures, organizations, and personal execution and compliance with legislation and various norms that can be established by both the state and a separate organization for standards of executive discipline, quality of work, and management [115, p. 288].

The organizational approach considers control as an organizational method for exercising authority. It is noted that, unlike the function of the same name, the method of control characterizes not the substantive-target purpose of the public authority's activity, but only the way of ensuring the proper execution of adopted decisions [43, p. 68].

The guarantee-based approach consists in the fact that control is considered as one of the special legal means of ensuring legality and discipline in public administration [26, p. 244].

A comparative analysis of the presented approaches gives grounds to assert that they are not only non-contradictory but also complementary to each other: by focusing on specific aspects of legal control, they make its understanding more complete and comprehensive. Indeed, in its external manifestations, control acts as a certain

purposeful activity of authorized subjects. But at the same time, one cannot forget that the state (as well as local self-government) is characterized by a legal form of activity, and control is one of the varieties of this legal form. In a broad sense, the activities of state authorities and local self-government bodies are of a managerial nature, i.e., aimed at ordering public life. Instrumentally, the management process consists of a series of sequential operations, one of which is control over the execution of adopted decisions, which acts as a certain organizational method. On the other hand, the management of public affairs cannot be effective without awareness of the current state of affairs, which control provides. In turn, awareness implies obtaining information, and therefore, communication channels. The importance of control for maintaining public processes in a proper state naturally makes it one of the main directions of the activity of public authorities, turning it into a function. Finally, the proper state of public life in the legal dimension means compliance with legality and public order, which control also serves.

It should be noted that the term "control," although of English-language origin, has acquired a somewhat different meaning in domestic jurisprudence than in Great Britain, the USA, or other English-speaking countries. In English dictionaries, the verb "to control" means "to prevent, restrain, direct, set the direction of movement" or "to perform testing or verification," and the noun "control" means "a check," "a device for directing," and in jurisprudence (usually in the plural - "controls") - "legal or official means of regulation or restriction." In contrast, the term closest to the domestic understanding of control in English-language jurisprudence is "controlling," which is understood as the systematic monitoring and tracking of the progress of tasks with simultaneous work adjustment.

An analysis of the functions and properties of controlling cited in the literature shows a rather diverse understanding of its role in the management system. A number of them to one degree or another duplicate such management functions as control, planning, coordination, accounting, analysis, and direct management. Alongside this, it is noted that controlling is a specific management tool oriented towards the future, whereas control has a retrospective character and is directed towards the past, at identifying errors [77, pp. 91-101].

Controlling is contrasted with the very well-known and frequently used term "monitoring," which is understood as a continuous process of observing and recording the parameters of an object in comparison with given criteria, but without intervention in the object's functioning process.

In the state-legal sense, control is considered through the prism of the state's activity as a means of verifying the execution of the prescriptions (commands) of state power. From the foregoing, it can be concluded that the essence of state control lies in obtaining and analyzing information about the actual state of affairs and processes occurring in society, and applying the means and techniques defined and enshrined in normative-legal acts to prevent or stop unlawful actions and decisions and violations of legal norms.

State control is an integral element of ensuring such a function of governing bodies as public administration. It is a function of public administration, carried out by the state in the person of authorized bodies for the purpose of verifying compliance with and execution of set tasks and adopted decisions, their legality, and lawfulness. State control makes it possible to obtain reliable and objective information about the actual state of affairs at the controlled object, the state of execution of laws and state discipline, the progress of implementation of relevant decisions and recommendations, and to take operational measures to prevent, detect, and stop actions that contradict the norms established by the state [34, p. 173].

In modern state-legal doctrine, the concept of "state control" is considered as a function, principle, form, and method of activity. Thus, S.H. Stetsenko notes that state control is a function of public management, which consists in assessing the lawfulness of the activity of the object of control and is carried out by the relevant bodies of public administration [114, p. 196]. According to O.F. Andriiko, state control is a function of the state, consisting in observing and analyzing the compliance of the activities of all subjects of social relations with the parameters established by the state, as well as in a certain "correction" of deviations from these parameters [28, p. 2]. O.M. Bandurka considers state control as a principle that includes the requirement to maintain legality, discipline, order, organization, and ensure the rights and freedoms of citizens in the

process of state activity [30, p. 215].

The essence of state control lies in obtaining and analyzing information about the actual state of affairs and processes occurring in society, and applying the means and techniques defined and enshrined in normative-legal acts to prevent or stop unlawful actions and decisions and violations of legal norms.

At the same time, the distinction of state control as an independent type of control does not exclude the features inherent in the general concept of control: identifying the cause of deviations, preventing such deviations, uncovering unused opportunities and reserves, and actively promoting the execution of adopted decisions. That is, like any control activity, state control aims to identify deviations from established norms and standards; compare actual indicators with pre-established values; evaluate the information received; and develop and implement the necessary measures to ensure the most effective use of all resources of the controlled objects in achieving the goals set for them.

State control as a type of public control is distinguished by the following features: 1) it is carried out by state authorities and their officials, or by those subjects to whom it is delegated; 2) it is carried out within the competence of the relevant subjects; 3) it is ensured by measures of state coercion; 4) it is a normatively regulated and documented activity; 5) it includes a set of legally significant actions of various forms, such as verification, analysis, direction, and correction of the activities of controlled subjects; 6) it is carried out for the purpose of ensuring legality, the effectiveness of public administration, and the rights and freedoms of man and citizen.

In the conditions of the formation of a civil society and the rejection of a monistic interpretation of public power that equates it with state power, a diversification of control in society is naturally occurring. Alongside state control, non-state control begins to function. This primarily concerns municipal control, i.e., control by bodies and officials of local self-government on matters of local significance. In addition, public control is becoming increasingly important, including public control over the activities of state authorities and their officials. In the context of globalization, control by international organizations, which is also non-state (more precisely, supranational or

interstate), is gaining in significance.

The features of non-state public control include, first and foremost, its dispositive character. While for state (as well as municipal) bodies and officials control is a duty, an integral part of their powers, for subjects of civil society it is a right, an expression of an active civic position, a negative attitude towards any violations of legality and public order. As S.V. Shestak notes, exercising control over power can be recognized as a moral duty of citizens, but not a legal one. The most important component of non-state control is public consciousness and public opinion, which are formed as a result of assessing the state's activities in the person of its bodies and officials. While state control bodies are created by the will of the state and in its interests, non-state control can develop without its participation at all, even contrary to the wishes of the ruling elite—as a counterweight to the state in the form of independent public organizations, mass movements, and non-governmental mass media [121, p. 49].

The legal regulation of state control is carried out through general norms that establish general requirements for the organization and implementation of state control, and special norms regarding the implementation of state control in specific areas of administration.

Among international acts in the sphere of state control, the Lima Declaration of Guidelines on Auditing Precepts, adopted by the IX Congress of the International Organization of Supreme Audit Institutions in Lima from October 17-26, 1977, stands out. According to this act, control is an integral part of a regulatory system whose purpose is to identify deviations from accepted standards and violations of the principles of legality, efficiency, and economy in the expenditure of material resources at the earliest possible stage, in order to be able to take corrective measures, in certain cases—to bring the guilty parties to justice, obtain compensation for damages caused, or take measures to prevent or reduce such violations in the future [64].

The concept of state control is enshrined in the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity." According to it, state control is the activity of central executive authorities authorized by law, their territorial bodies, state collegial bodies, executive authorities of the

Autonomous Republic of Crimea, local state administrations, and local self-government bodies (hereinafter - bodies of state supervision (control)) within the powers provided by law, regarding the detection and prevention of violations of legislative requirements by business entities and ensuring the interests of society, in particular, the proper quality of products, works, and services, and an acceptable level of danger for the population and the natural environment [99].

However, the application of this Law is limited and does not extend to such areas as: tax control; customs control; control in the field of television and radio broadcasting; control in the spheres of energy and communal services; and some other spheres of state control that are regulated by special legislation, in particular, control over compliance with license conditions; over compliance with labor legislation; over compliance with nuclear and radiation safety requirements; architectural and construction control, and others.

Thus, as of today, there is no single normative-legal act in Ukraine that would regulate issues of state control in a way that meets the requirements of all spheres of activity, including local self-government.

State control is a significant component of the effective functioning not only of the state apparatus, but of the entire state, as it creates a system of checks and balances that contributes to the development of the state and its positive perception in the international arena. The very organization of state control in Ukraine is one of the components of the Euro-integration processes. The effectiveness of state control depends on its regulation at the state level, which consists in creating effective legislation that is approximated to European practices. As Ukraine continues on its path to European integration, improving the system of state control and its proper normative- legal regulation becomes a pressing task, contributing to the creation of a modern, open, and democratic state.

Local self-government bodies, as centers for making decisions of local significance with their own processes for developing and approving such decisions, do not stand apart from the state's legal order; they are not "states within a state"; like other public authorities, they are obliged to act exclusively on the basis, within the limits of

their powers, and in the manner prescribed by the Constitution and laws of Ukraine (Part 2 of Art. 19 of the Constitution of Ukraine). Compliance with legislation is an indispensable factor in a democratic state and, according to the will of the Basic Law, cannot be violated.

To ensure compliance with legislation by local self-government bodies, state control over them by the relevant state authorities has been established—from parliamentary to judicial control. According to Art. 20 of the Law of Ukraine "On Local Self-Government in Ukraine," such control must be carried out in strict compliance with the aforementioned requirements of Part 2 of Art. 19 of the Constitution 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. This approach generally corresponds to the requirements of Art. 8 of the European Charter of Local Self-Government, although its text refers not to state control, but to administrative supervision [8]. In any case, under this approach, state control over the activities of local self-government bodies is one of the foundations of municipal autonomy.

If local self-government means the ability of local authorities to make decisions without political interference from "higher" levels of government, then any form of "control" or "supervision" must be carefully analyzed and justified. If control or supervision over municipal bodies significantly affects the very essence and content of their activities, their autonomy becomes fictitious; conversely, if the central administration has no real ability to control the legality of acts of local self-government, the sovereignty of the state may be called into question.

Municipalities, after all, do not exist without limits; they must act within the framework of the law. State control over local self-government under these conditions should be seen as potentially threatening to municipal autonomy, but a necessary element for ensuring legality and public order even in a decentralized democratic state. At the same time, within the scope of their own (exclusively municipal) powers, state control over local self-government bodies should be of a purely legal character: its subject can only be the legality of the legal acts of said bodies. According to Part 10 of Art. 59 of the Law of Ukraine "On Local Self-Government in Ukraine," acts of local

self-government bodies and their officials are declared illegal by a court on the grounds of their non-compliance with the provisions of the Constitution or laws of Ukraine. In this context, it is worth agreeing with the conclusion widespread in specialized literature that in the absence of special legislation on administrative supervision, the only effective control mechanism at present remains judicial review of the legality of acts of bodies and officials of local self-government [70, p. 25].

However, local self-government bodies perform not only their own but also delegated (state in their legal nature) powers; this "transferred" sphere of competence covers all matters that have been entrusted by law to municipalities for administration on behalf of the state or other public law institutions. In matters belonging to the "transferred" sphere, state control extends beyond the purely legal and applies to the exercise of municipal discretion. In this case, the subject of control is not only legality, but also the reasonableness and expediency of the adopted authoritative decisions. This means that control bodies have the right under certain conditions to intervene with directives in the exercise by local self-government bodies of their administrative powers, to correct them in a certain way. This is quite logical, as local self-government bodies in the "transferred" sphere perform tasks that the state has specifically delegated to them. Therefore, the state's interest in ensuring that these tasks are performed as it wishes and deems expedient is quite understandable.

Today in Ukraine, there are about thirty state bodies that exercise control and supervision over local self-government bodies. The subject and procedure for exercising such control are generally defined in the legislation on the status of the relevant state bodies.

The interaction between state control bodies and local self-government bodies has never been "cloudless." However, the realities of today add additional tension to these relations.

The main challenges currently facing the system of local self-government in Ukraine are quite clearly and comprehensively set out in the opinion on the "Concept for the reform of local self-government and territorial organization of power in Ukraine," prepared by the Centre of Expertise for Good Governance, which operates

within the Secretariat of the Congress of Local and Regional Authorities of the Council of Europe [35].

In general, they can be grouped into four categories. The first group includes problems of systemic-structural organization of local self-government: oblast and raion councils lack executive bodies, and the role of raions is still unclear, with minimal powers, which complicates overall coordination. The second group of challenges is financial: despite some progress in financial decentralization, local authorities still face budgetary constraints that hinder their financial autonomy. The third group of problems is of a functional-competence nature; in particular, problems related to the lack of powers in the field of land resource management remain relevant. The fourth group consists of personnel problems: local self-government faces a low level of professionalism and a personnel deficit, which is further complicated by migration and mobilization. Finally, political problems should also be taken into account: a lack of transparency and inconsistency in sectoral reforms also limit further progress in the sphere of local self-government and territorial organization of power. In addition, of course, the large-scale Russian invasion of 2022 created additional challenges, destabilizing already fragile local budgets and necessitating a temporary change in the configuration of power at the local level through the introduction of military administrations.

A significant obstacle to the proper organization of control in the sphere of local self-government is the shortcomings of the current legislation, in particular, the insufficient normative-legal provision for the formation of a holistic system of control in the state. This primarily concerns: the general procedure of control activity; the list of subjects entitled to exercise specialized state control, their status, functions, and powers, interrelations, and accountability; the contradictoriness of current legislative norms; a unified methodological support for state control in terms of establishing a system of indicators that reflect the real state of discipline in local self-government bodies, and the methodology for their determination; and the issue of normative definition of the main criteria by which inspection programs can be planned.

Of particular concern is the problem of ensuring legality in the norm-creative activity of local self-government bodies. Cases of violation of the procedure for discussing and adopting such acts in terms of observing established deadlines, stages, quorum for voting, etc., have become widespread. The situation is further complicated by the legislative permission not to publish draft normative-legal acts and decisions of local self-government bodies during the period of martial law (Part 10 of Art. 9 of the Law of Ukraine "On the Legal Regime of Martial Law").

After the abolition of the institution of general oversight by the prosecutor's office, the sphere of norm-creative activity of local self-government bodies has effectively "fallen out" of the field of view of state control, which leads to grave consequences in terms of ensuring legality and public order.

The way out of the current situation in the system of state control over local self-government requires new systemic steps. This can be done within the framework of a new (more precisely, renewed) Concept for the reform of local self-government and territorial organization of power in Ukraine. The relevant ministry (the Ministry for Communities and Territories Development of Ukraine) has already come forward with a corresponding initiative [69]. One of the important elements of the renewed Concept, in our opinion, should be the specification of the list of state authorities authorized to exercise control over the activities of local self-government, their subject-matter jurisdiction, forms of control, as well as the nature of response acts and corresponding control procedures. This can be done by adopting a special law "On State Control over Local Self-Government" or, at least, by expanding the content of Art. 20 of the Law of Ukraine "On Local Self-Government in Ukraine." And after the martial law regime is lifted, it will be worthwhile to return to the constitutional reform of the territorial organization of power in Ukraine and introduce the institution of prefects, oriented towards exercising control over local self-government.

The fundamental role in exercising control functions in the sphere of local self-government today belongs to state authorities, while the huge resource of public control remains untapped. Despite some positive measures taken in recent years to improve and increase the effectiveness of control, its legal foundations in the field of local self-

government are still characterized by uncertainty and non-specificity, a declaratively broad statement of tasks, and equally limited powers for their implementation. The significant volume of unfulfilled powers, abuses, crimes, and corruption that take place in the activities of municipal authorities testifies to the fact that the established system of control in the field of local self-government is ineffective and requires further optimization.

It is worth significantly expanding the grounds and scope of public control over the activities of local self-government bodies, which is more consistent with the specifics of their legal nature. It seems expedient to strengthen the role of the public and self-control at any stage of control activity, shift the emphasis to the preventive- educational component of the goal of control, diversify the forms and methods of control, including through the introduction of non-traditional ones for Ukraine (mediation, conciliation, public consultations, various manifestations of internal control, guardianship, video recording, on-line mode), without neglecting traditional forms and methods (monitoring, raid, audit, inspection, review, etc.) [55, pp. 121-129].

Furthermore, control bodies should not be fixated on identifying violations by local self-government bodies, but should provide them with consultative- methodological assistance, thereby contributing to the improvement of the organization of work of local self-government bodies and increasing the level of competence of relevant officials. Such an approach will allow the relationship between state control bodies and local self-government to be moved into a more constructive channel, taking into account the indisputable fact that they are all elements of a single, nationwide, decentralized apparatus of public power.

Thus, the conducted research allows us to draw the following conclusions. A comprehensive approach to understanding control presupposes the recognition of the dialectical interconnection between all its aspects, which each of these approaches emphasizes. In a modern pluralistic society, state control should be seen as the leading type of public control, functioning alongside non-state (municipal, public, and international) control within a single control mechanism. Moreover, state and non-state control complement each other; their specificity lies in the fact that control activity is

carried out by authorized subjects united by a common goal—to promote the effective functioning of the state and the formation and establishment of a civil society. At the present stage, state control ceases to be a purely managerial concept and represents a complex, integrated socio-legal institution based on the dualism of civil society and the state, designed to ensure compliance with social regulators and the implementation of the principles and tasks of a rule-of-law state. A significant obstacle to the proper organization of state control in Ukraine is the insufficient normative-legal provision for the formation of a holistic system of control. To ensure an effective system of control over local self-government, it is necessary to specify the list of state authorities authorized to exercise control in this sphere, their subject-matter jurisdiction, forms of control, the nature of response acts, and the corresponding control procedures.

NATIONAL LEGAL POLICY ON STATE CONTROL OF MUNICIPAL ACTIVITIES: TOWARDS THE IMPLEMENTATION OF INTERNATIONAL STANDARDS

National policy in the sphere of state-legal control is an inalienable element of the state's municipal-legal policy. The contemporary development of local self-government in Ukraine requires the completion of the decentralization of power reform. Considering that the measures undertaken within this reform have predominantly covered the competence-based, territorial, and material-financial aspects of reforming local self-government, significant attention must now be focused on ensuring the mechanisms of control over its functioning and its norm-creative activity.

The foundation for introducing control measures over the activities of local self-government is provided by international legal acts that define standards in this sphere. Furthermore, the development examples of individual European states are becoming a subject of research in the context of choosing a future model of control in Ukraine. The primary international document in this regard is the European Charter of Local Self-Government, which enshrines the exercise of administrative supervision over local self-government as a universally accepted standard. Therefore, the text of this international document uses the category of "administrative supervision," which requires implementation into national legislation. This need for implementation is a consequence of Ukraine's ratification of the text of this international document in accordance with the Law [105]. Thus, the use of the category "administrative supervision" in the Charter's text has created the necessity to differentiate it from the concept of "control" for the purpose of their correct enshrinement in national

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legislation.

It is precisely these provisions of the Charter that have become the starting point for formulating the principle of supervision and control in national legislation. Specifically, Article 8 of the European Charter of Local Self-Government speaks of "administrative supervision of the activities of local authorities," stipulating that "any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute." This requires the state to enshrine in the norms of current legislation the fundamental provisions regarding the exercise of supervisory and control activities over the sphere of local self-government, and to define their essence, subjects, and the limits of their exercise.

Thus, the very title of this norm of the European Charter contains a series of provisions that are contradictory with respect to national legislation. First and foremost, it refers to supervision over authorities. Consequently, the effect of this article does not extend to those subjects of local self-government that are not authorities (the territorial community, village, settlement, or city mayor, village or settlement headman, secretary of a village, settlement, or city council, the head and deputy heads of an oblast, raion, or raion-in-city council, the leadership of a body of public self-organization). Therefore, with respect to the specified category of persons, supervision from the perspective of the European Charter is impossible, and only certain control measures can be applied. This places on the agenda the debatable legal question of the need to extend the requirements of administrative supervision to the aforementioned subjects when formulating the relevant legal norms of national legislation. That is, to enshrine these provisions more broadly by specifying subjects of local self-government in general.

Simultaneously, a question arises regarding the possibility of exercising administrative supervision over acts adopted by the primary subject of local self-government—the territorial community. The latter has a whole system of forms for the direct resolution of matters of local significance, the result of which is the adoption of a corresponding legal act by the territorial community. The most important such acts

are adopted by it in local referendums; however, in current realities, there is a certain legal vacuum in their implementation. This is due to the absence of a special law, the mandatory existence of which is required by paragraph 20 of Article 92 of the Constitution of Ukraine [58].

At the same time, the Law of Ukraine "On Local Self-Government in Ukraine" contains the principles for the organization and conduct of other forms of direct resolution of matters of local significance by the territorial community, which result in the adoption of a certain decision—Part 2 of Art. 8 (decisions of general meetings), Part 3 of Art. 13 (proposals of public hearings) [96]. The detailed regulation of the procedure for these forms of territorial community participation occurs at the level of its charter. Therefore, today, the issue of their organization and conduct is linked only to the existence of an approved charter for the territorial community. Considering the direction of the decentralization of power reform, which is associated with the amalgamation of territorial communities and the creation of new united territorial communities, as well as the more complicated procedure for adopting a charter compared to an ordinary council decision, not all newly created territorial communities have adopted such a charter to date. However, where one exists, territorial communities are fully capable of making such decisions. Therefore, a rather logical question arises regarding the possibilities of exercising administrative supervision over them in cases defined by legislation.

It should be taken into account that under the current conditions of legal regulation of the forms of direct resolution of matters of local significance by territorial communities, in the vast majority of cases, the decisions of the latter are put into effect by decisions of the respective local councils. However, this should not exclude the possibility for certain competent bodies to monitor and control the legality of the primary decisions of the territorial communities themselves. Perhaps at the current stage of Ukraine's development, when a legal regime of martial law has been introduced in the state [84], the capabilities of the territorial community to implement forms of direct decision-making are significantly limited. However, the discussion should be about a universal model of control that will be applied predominantly in

peacetime and that must extend, among other things, to acts adopted by the primary subject of local self-government.

Furthermore, Article 8 of the European Charter speaks of "administrative supervision," which implies supervision by a certain subject that, by its legal status, stands hierarchically above local self-government bodies. The text of the Charter uses the concept of "higher-level authorities." Several contradictory judgments arise in this regard. Firstly, considering that administrative supervision over local self-government in Ukraine is carried out by state power institutions, and not by institutions within the system of local self-government itself, the Charter's understanding leads to the realization that it is the state power institutions that are "higher-level authorities" in relation to local self-government bodies. Secondly, national legal policy in the sphere of local self-government as a whole adheres to somewhat different approaches. Specifically, Ukrainian legislation provides for and enshrines the autonomy and independence of local self-government, without any subordination to other systems of power, their bodies, or officials. This is one of the key, special principles of local self-government, enshrined in Art. 4 of the Law "On Local Self-Government in Ukraine." This provision is a detailing of a series of constitutional norms, the system of which includes the provision of Art. 144, that local self-government bodies, within the powers defined by law, adopt decisions that are binding on the corresponding territory, as well as Art. 143, which defines the main powers of local self-government bodies and the principles of their exercise. It is this that endows them with a specific legal status, which determines the possibilities for legal, organizational, and material- financial independence within the powers defined by the Constitution and laws of Ukraine.

The domestic legislator approaches the regulation of control and supervision somewhat differently compared to the European Charter of Local Self-Government. For instance, the Constitution of Ukraine contains separate provisions related to control activities over local self-government by state authorities (Part 4 of Art. 143), but they pertain only to the sphere of delegated powers.

Regarding supervisory activity, the norm of Art. 144 of the Constitution

stipulates that decisions of local self-government bodies are suspended on the grounds of their non-compliance with the Constitution or laws of Ukraine in the manner prescribed by law, with a simultaneous appeal to the court. Article 144 of the Constitution of Ukraine is currently declarative, as there is no such institution whose legal status allows for the suspension of a decision of a local self-government body. In historical retrospect, the provisions of Art. 144 were the subject of consideration by the Constitutional Court of Ukraine, which in its decision [111] drew attention to the then-current Law of Ukraine "On the Prosecutor's Office," which provided for the procedure for suspending decisions of local self-government bodies on the grounds of their non-compliance with the Constitution or laws of Ukraine. This law established that upon detecting violations of the law, a prosecutor within their competence has the right to protest acts of executive bodies of local councils and to submit proposals or protests against decisions of local councils depending on the nature of the violations. A prosecutor's protest is brought to the body that issued the act and suspends its effect; the prosecutor was given the right to apply to a court to have the act declared illegal, and the filing of such an application suspended the effect of the legal act (Parts 1, 3, 4 of Art. 21 of the Law of Ukraine "On the Prosecutor's Office"). In view of the above, the Constitutional Court of Ukraine concluded that according to the content of Part 2 of Art. 144 of the Constitution of Ukraine and Part 10 of Art. 59 of the Law "On Local Self-Government in Ukraine," decisions of local self-government bodies are suspended by the prosecutor on the grounds of their non-compliance with the Constitution or laws of Ukraine in the manner prescribed by the Law of Ukraine "On the Prosecutor's Office," with a simultaneous appeal to the court. Subsequently, amendments made to Article 131-1 of the Constitution of Ukraine affected the legal status of the prosecutor's office. The norms of the Basic Law clearly enshrined the subject-matter jurisdiction of the prosecutor's office: 1) upholding public prosecution in court; 2) organizing and providing procedural guidance for pre-trial investigations, resolving other issues in accordance with the law during criminal proceedings, and supervising covert and other investigative and search actions of law enforcement bodies; 3) representing the interests of the state in court in exceptional cases and in the

manner prescribed by law.

At the same time, Art. 144 of the Constitution of Ukraine was not amended in connection with the changes in the status of the prosecutor's office, which created a certain legal vacuum for its implementation and some legal uncertainty in this sphere. It is clear that Art. 144 of the Constitution of Ukraine stipulates that (1) there must be state supervision over the norm-creative work of local self-government bodies, (2) the functional limits of such supervision include the ability to suspend the effect of an act of a local self-government subject and simultaneously appeal to a court, and (3) the subject of supervision can only be decisions of local self-government bodies. In this regard, it should be noted that the greatest threat to the functioning of local self-government and the conduct of its activities may be posed by the constitutional provision on the ability of a control and supervision institution to independently suspend the effect of a local self-government act. In the modern interpretation of these relations and in order to deprive the supervisory structure of the opportunity to abuse the "right to suspend acts of local self-government," it is considered expedient for such an act to be suspended by a court on the basis of an appeal to it by the supervisory subject. Therefore, we believe that the specified constitutional provision should be clarified.

In our opinion, state policy in the sphere of control and supervision activities over local self-government must take into account that public relations in this area are constantly developing and changing. Therefore, this constitutional norm can only partially meet the requirements of the state at the present stage, and while retaining the general principle of supervision specifically over the norm-creative work of local self-government subjects, it may be insufficient to limit such a supervisory sphere exclusively to local self-government bodies and only to their decisions (if the concept of "decision" is considered in a narrow sense). Furthermore, the issue of the supervisory institution's ability to suspend the effect of a local self-government act remains debatable. All this indicates the need to formulate an updated state-legal policy on control and supervision relations, to form modern models of control and supervision, and to amend the constitutional provisions regarding supervisory activity

and control over local self-government.

It should be noted that control and supervision are predominantly elements of external relations, relations between different organizational systems of power. Therefore, the subject of control or supervisory activity must be a body of state power or the public, which are authorized by law for such actions.

Internal control, which arises within a certain organizational system, is also possible; however, such relations reflect the peculiarities of the structural organization of local self-government and do not reflect aspects of interaction with other subjects of public-power relations.

Thus, according to the essence of the norms of the European Charter, administrative supervision can be carried out only within the framework of external relations of local self-government bodies with other bodies or subsystems of power, in particular with state power or public formations endowed with supervisory powers. In fact, the European Charter, by using the category "administrative," reduces supervision to control over a certain subject-matter sphere of activity of a local self-government body. Therefore, from our point of view, administrative supervision on the one hand can be equated, in the understanding of the Charter, to subject-matter (sectoral) control, and on the other hand, if such supervision is carried out by an independent, specially created institution and is of a general nature, then it can be considered supervision in the classical sense. In this connection, it can be argued that by using the category "administrative supervision," the European Charter attempts to combine in this concept the procedures of supervision and control, which are somewhat different in their legal nature, procedure, and consequences. Perhaps for enshrinement in the form of a general norm-principle, as is characteristic of the European Charter, this is perceived normally; however, when detailing the procedural aspects of its implementation at the legislative level, this leads to the mixing of fundamentally different concepts that should exist in parallel and receive their own legal regulation.

Supervision over local self-government, in our view, is possible only in one form—supervision over the norm-creative activity of local self-government. At the

same time, such supervision should not be limited only to local self-government bodies. Acts of the territorial community and elected officials of local self-government should also fall under its influence. That is, effectively, the acts of those subjects for whom it will be difficult, or even impossible, to carry out a check by applying a control procedure. At the same time, the Charter expands this approach and speaks of supervision over any "activity." The very concept of "activity" is not a purely legal category, has no legal enshrinement, and can be interpreted quite broadly. Thus, this sphere may include not only the direct implementation of the powers of a local self-government body, but also its financial and economic activities, procedural issues in the implementation of organizational forms of work (sessions, hearings, meetings of standing committees, etc.), the issuance and execution of instructions by council deputies, and so on. The implementation of such provisions of the European Charter into national realities could lead to unauthorized, groundless interference in the sphere of activity of local self-government, which would block the work of a local self-government body or a specific official, making it impossible not only for them to adopt illegal acts, but to carry out measures to adopt any acts at all. As a consequence, this could call into question the provisions of Art. 7 of the Constitution of Ukraine, according to which local self-government is recognized and guaranteed in Ukraine.

At the same time, it is important to resolve the issue of whether supervision should be carried out over all acts, or whether it should be carried out only over normative-legal acts. As is known, the system of acts in the sphere of local self-government is quite extensive. However, one of the main criteria for their classification is the division into normative-legal acts and acts of an individual (law-enforcement) nature. By their characteristics, these acts differ significantly. For instance, acts of an individual nature are not characterized by continuous effect in time, space, and circle of persons, which is a defining characteristic for normative acts. They are adopted for the purpose of implementing a certain rule of law, which, as a rule, is enshrined in a law. However, such acts should not be confused with adopted rules, regulations, or procedures, the adoption of which is provided for in a certain normative-legal act and which detail a certain order of activity of a local self-

government body in one sphere or another. These rules, regulations, and procedures are normative acts, as they are designed for repeated application and their effect is not exhausted by a one-time execution (the local self-government body is constantly guided by its provisions in specific situations). In our opinion, when resolving this issue in the process of carrying out supervisory work, the need to verify the justification for adopting any legal act should be taken into account; therefore, supervisory measures should apply to all legal acts.

Furthermore, it should be noted that supervision differs from control in the system of forms of their implementation. For instance, control has a more extensive system of forms of implementation and can take place in the form of inspections, audits, document checks, obtaining information upon request, receiving and analyzing reports, etc. Control, as a rule, is carried out in a certain sector (by the subject matter of the authority's competence) and does not imply permanence. For example, the sphere of education, science, healthcare, social security, and other services, where control can relate to entire areas of work of local self-government bodies, for example, ensuring legality at the local level. It is a periodic mechanism for analyzing the activity of the controlled subject, related to the measure and completeness of the execution of powers by the controlled subject. Control presupposes the mandatory presence of powers in the controlling subject to carry out measures. In turn, supervision is carried out in the form of an analysis of decisions adopted by the subject of local self-government and, in some cases, their drafts. Such analysis is carried out by a special subject that does not belong to the systemic-structural organization of local self-government and has no signs of any hierarchy with local self-government, including the execution of delegated powers. It is a public-power institution specially formed for the purpose of exercising supervision over local self-government, which occupies a special place in the mechanism of state power.

When characterizing control, its classification is important. Thus, the most significant features for the classification of control are its division into internal and external. However, with such a classification, external control does not turn into supervision, but is carried out by a subject within a common system or sector, for

example, within the vertical of executive authorities. That is, such control is carried out by a subject that has a direct sphere of influence on the activity of the controlled subject. An example of such control can be the control by local state administrations over the execution by local self-government bodies (executive bodies of village, settlement, city councils) of powers delegated to them in accordance with the law. This is control carried out by another system of public power, has a sectoral focus taking into account the spheres of delegated powers. Supervision, as a rule, is carried out without taking into account any sectoral principle, so its character is more general. It should be carried out over all acts of subjects of local self-government, regardless of the sphere in which they were adopted.

Another important classification of control is its division into general and special (sectoral). In particular, the parliament, the president, the government, the court, and the public have control powers. However, they have powers of a general nature. Such control powers are realized externally (by an external subject of control activity), but do not fall into the category of supervisory, since the object of supervision is precisely the legality of legal acts, generally binding rules, instructions, and other acts of administration. The specified subjects do not check the legality of legal acts, but exercise control over the actions of persons in connection with their execution of legal acts, generally binding rules, and also check the actual availability of assets. This indicates that supervision and control differ in the scope of their influence, as supervisory bodies are limited to checking compliance with certain rules, while external control bodies, in addition to this, also deal with issues of economic activity, the implementation of planned tasks, and so on.

The European Charter of Local Self-Government also enshrined the principle of competence-based exercise of control, stating that any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the Constitution or by law. The procedures in question are precisely a clearly established mechanism of control, which includes the subjects of control, forms of control, terms of control, scope of control, etc.

The main way of decentralizing power in Ukraine has been the transfer of

powers from central authorities to the level of local self-government. As the practice of the legal enshrinement of the transfer of such powers has shown, they are almost never transferred to the category of "own powers" of local self-government bodies, but are enshrined by law in the system of delegated powers. In addition, the system of delegated powers was formed long before the decentralization of power reform and was enshrined in the original version of the Law "On Local Self-Government in Ukraine." In the process of implementing the decentralization of power reform, this type of power of local self-government bodies has only expanded with new ones. Thus, state authorities retain the power to control their implementation, since the legal nature of these powers does not change (by the nature of their origin and exercise, they remain state, not local). In addition, the implementation of any power (both own and delegated) is important for satisfying the interests of certain persons, so regardless of which classification it belongs to and its material-financial provision, such a power must be realized. At the same time, it should be noted that the unchanged nature of the power, i.e., its legal nature, limits the ability of the territorial community to directly make decisions on it (since it is not a matter of local significance), and also creates the threat of the eventual removal of such a power from the system of powers of local self-government, i.e., actual re-centralization.

When exercising supervision, its boundary with control is quite thin. Supervision should be carried out over the norm-creative activity of a local self-government body and for the purpose of ensuring compliance with the Constitution and laws of Ukraine. The implementation of adopted acts in the relevant sphere of economic activity should be controlled by competent subjects on a sectoral basis, either within the system of local self-government itself, or through judicial procedure. At the same time, the European Charter of Local Self-Government calls administrative supervision that which is carried out over the proper performance of tasks entrusted to local self-government bodies. This leads to ambiguous approaches in the process of norm-creative activity, the formulation of constitutional prescriptions, and proposals regarding control and supervision. V. M. Harashchuk notes that interference in the operational activity of the controlled body and the right to independently bring guilty

persons to legal responsibility constitute the main differences between control and supervision [39]. According to the authors of a textbook on administrative law, the purpose of supervision is to identify and prevent offenses, eliminate their consequences, and bring the guilty to justice without the right to interfere in the operational and economic activities of the supervised objects, or to amend or annul acts of administration [25, p. 223].

Alongside this, attention should be paid to certain territorial peculiarities of exercising control and supervision. The subjects of control activity, which involves internal organizational control, are territorially located at all levels—village, settlement, city, raion-in-city, raion, oblast. They carry out control measures on their territory. For example, the control powers of a village, settlement, or city mayor over the norm-creative activity of the respective council, or the control powers of a council over the activities of its executive bodies, or control over the activities of a council by the territorial community. External control, which today is mostly manifested in control over the execution of powers delegated by state authorities to local self-government bodies, involves the territorial involvement in this mechanism exclusively of those bodies to which powers are delegated. Thus, according to national legislation, such powers are delegated by law to the executive bodies of village, settlement, and city councils, and therefore, territorially, local self-government bodies of the village, settlement, and city are subject to this type of control. Thus, local self-government bodies at the raion, raion-in-city, and oblast levels fall out of this territorial list. The subjects of supervisory activity do not need to conduct as many forms of interaction with supervised subjects as control structures do. Therefore, for the organization of this work, the presence of even one such institution is sufficient. Territorially, it should be located in the largest administrative-territorial unit—the region (oblast)—and extend its jurisdiction over its entire territory, including the territorial formations that make up the region. For the efficiency of the supervisory structure's work, its territorial branching is not important, but what is important is a necessary and sufficient apparatus in terms of volume to ensure the timely and objective implementation of supervisory activities.

The state's legal policy in the sphere of control over municipal activity today lacks a uniformity of approaches. Draft legal acts developed for the purpose of implementing the provisions of the European Charter, including amendments to the Constitution of Ukraine regarding state-legal control, also do not differ in their uniform approaches. Therefore, they require detailed analysis and a certain doctrinal unification, which will ultimately allow for the practical implementation of a clearly understandable model of control. In our opinion, the basis for solving this issue lies in the need to analyze the state's legal policy in this sphere, which can be done precisely by analyzing existing ratified international documents, as well as adopted national legal acts and draft acts developed on this issue. The future model of control and supervision over local self-government in Ukraine will depend on it.

When analyzing the general categories of this part of the issue, one should agree with D.V. Zadykhailo, who noted that the politico-legal phenomenon of "state policy" has not received in the legislative provision of the state's activity a legal institutionalization adequate to its meaning and role [47, p. 1]. The scholar notes that the phenomenon of "state policy" is only a separate link in the complex dialectical relationship between the state and society, where one can also distinguish the policy of society or its political components towards the state (since according to Art. 5 of the Constitution of Ukraine, the bearer of sovereignty and the sole source of power in Ukraine is the people), as well as the policy of the state towards society, taking into account a whole range of functional tasks of the state regarding the latter. In this regard, it can be assumed that what is important is not just state policy, but state legal policy, i.e., one whose provisions are enshrined in the system of current legislation, and in draft laws whose provisions are accepted in society.

The foundations of state-legal control over local self-government and the peculiarities of its implementation are enshrined in legislation and form the basis for national legal policy in this sphere.

1. Thus, state authorities, while exercising sectoral control, do not have the right to annul acts of bodies and officials of local self-government. According to the legislation, a competent subject has the right only to demand that the activity be

brought into compliance with the norms of current legislation independently, or to appeal to an authorized body on this matter. The annulment of acts of local self-government can only occur through judicial procedure. Such an approach is part of the important constitutional principle of guaranteeing local self-government (Art. 7 of the Constitution of Ukraine).

2. Control is exercised by a specially authorized subject, whose legal status, defined by legislation, contains all the necessary elements for carrying out control activities, including the responsibility of such a subject in cases of abuse of the control powers granted to it.

3. The control exercised over local self-government bodies must fulfill an important requirement of the European Charter of Local Self-Government—to ensure the proportionality of control measures to the importance of the interests it protects. This means that a controlling body cannot, by exercising control, block the work of a local self-government body. Due to the fact that, by its legal nature, it is control that involves interference in the activity of the local self-government body over which it is exercised, such interference should not lead to a stoppage of the body's work, an inability to exercise its powers, provide services to the population, etc. In addition, this means that the controlling body must assess the volume of work carried out by the local self-government body, the availability of material and financial resources for the exercise of powers whose execution is being controlled, the presence of violations by the local self-government body, the facts of which are confirmed by decisions of judicial authorities, and other circumstances. It is this, in our opinion, that will determine the proportionality of measures. It is another matter when, as a result of control measures, facts of violation by a local self-government body of the Constitution and laws of Ukraine are established, which are associated with a gross violation of the rights and freedoms of citizens, affect the ensuring of sovereignty and territorial integrity of Ukraine, the level of its defense capability, etc. Under such conditions, the controlling subject must be given the opportunity to act more decisively and adequately to the identified facts of violations.

4. The procedure for organizing and implementing public control over the

activities of local self-government, which should be carried out in parallel with state- legal measures, requires more detailed regulation. It is public control that can serve as an indicator for the state regarding the existence of facts of violations by local self-government, the extent of such violations, their resonance for society, and the need for proportional intervention to eliminate them. To date, the general principles of public control, unlike sectoral state-legal control enshrined in various sectoral legislative acts, are provided for only at the draft law level (Reg. No. 4697 of 14.04.2014, Reg. No. 2737-1 of 13.05.2015, Reg. No. 9013 of 07.08.2018, and others). Public control without proper legal regulation cannot become an effective mechanism of influence. For the effectiveness of organizing this type of control, in our opinion, it is necessary to ensure interaction between authorities and society, clearly enshrine the forms of public involvement in resolving matters of local significance and its implementation of control measures; and ensure the legal freedom of each individual and equal legal opportunities for realization in local self-government.

When analyzing the legal category of control, the distinction between types of control—state and administrative—immediately draws attention. Administrative control, which is an important component of the system of state control, belongs to the sphere of control exercised over the execution of delegated powers by local self- government bodies. This control covers not only the executive-administrative activities of local bodies but also includes checking the legality of their adopted acts and decisions. Thus, it is important to understand that administrative control is exercised over various aspects of the functioning of local self-government, ensuring the execution of their powers within the law. Administrative control is carried out by executive authorities, primarily the Cabinet of Ministers of Ukraine, central executive authorities, local state administrations, and territorial bodies of central executive authorities. It is important to note that the Cabinet of Ministers of Ukraine determines the procedure for control over the exercise of delegated powers of executive authorities by local self-government bodies. Administrative control is also mentioned in the Concept for the reform of local self-government and territorial organization of power in Ukraine.

In turn, state control includes a much broader circle of controlling subjects. For example, state control covers various aspects, including legislative control. Legislative control consists of a number of components, among which is constitutional control, defined by the provisions of the Constitution of Ukraine concerning local executive authorities and the system of local self-government. This control presupposes mandatory compliance with the norms set out primarily in Articles 7, 19, 119, as well as 140-146 of the Constitution of Ukraine. In addition, "status" legal acts regulating the activities of the Cabinet of Ministers of Ukraine, central executive authorities, and local self-government bodies also form part of legislative control. This applies to normative-sectoral control, which is focused on aspects of the activities of bodies and officials of local self-government related to the respective sectors. Thus, the consideration of control in the context of its legislative aspect must be carried out within the framework of components that are clearly defined in constitutional principles and normative-legal acts.

Administrative control over local self-government has a preventive and/or operational character. While the former is aimed at preventing possible violations and conducting prophylactic measures, the latter involves the direct resolution of emerging problems. A disadvantage of administrative control over local self-government is that it deprives the possibility of preventive or immediate response to violations.

The absence of an effective model of administrative control leads to systemic violations of legislation by bodies and officials of local self-government. Several key points should be highlighted here.

1. Control is exercised over powers that are delegated by the state to local self-government bodies in accordance with the Law. That is, local self-government bodies are effectively excluded from the process of receiving these powers on a voluntary basis. The final decision on this matter is made by the Parliament. At the same time, the legislation does not even provide for mandatory consultations with local self-government bodies regarding such powers.

2. The effective exclusion of local self-government bodies from participation in the process of the state delegating powers to them places on the current agenda the

issue of changing the approaches and grounds for delegation. The practice of implementing the Law "On Local Self-Government in Ukraine" shows that delegated powers have been exercised by local self-government bodies for decades, and the scope of these powers does not change. This gives reason to assert that these powers have already passed into the category of own powers, and their legal nature should be reviewed. In addition, the delegation of powers by Law effectively makes the delegation indefinite, which ignores the essence of the institution of delegation, which should have time limits. In this regard, proposals to move to contractual forms of delegating powers, endowing such a contract with a public-power character, are well-argued.

3. The question arises regarding the legal status of the authority that will carry out control functions over the execution of these powers by local self-government bodies. Today, such functions are performed by local state administrations, whose legal nature remains unclear and somewhat blurred. On the one hand, they are part of the system of state executive power, being subordinate to the Cabinet of Ministers of Ukraine and central executive authorities, acting as a local link, and on the other—the head of the local administration is appointed by the President. Due to the fact that the President does not belong to any of the branches of power, the status of local administrations cannot be considered in a pure form as executive bodies. They also combine the control and supervisory functions of the President of Ukraine. Thus, the question arises, in what capacity do local state administrations exercise control powers over local self-government bodies—as executive bodies or as control and supervisory structures of the President. According to the legislation, it is the powers of executive authorities that are delegated to local self-government, so it can be concluded that local state administrations exercise control as executive bodies. In the case of expanding these control powers by including supervisory functions over local self-government in the sphere of competence of local state administrations, their powers would go beyond purely executive power. In the process of reforming the mechanism of state-legal control, in our opinion, the question will arise regarding the regulation of the legal status of the

controlling body at the level of the Constitution of Ukraine.

4. Considering that administrative control over the exercise of delegated powers is external control, i.e., carried out by state authorities belonging to a separate subsystem of public power, the problem of regulating internal control in the system of local self-government remains unresolved. Such forms of control are the subject of local norm-creation, but the principles for this should be enshrined in the Law "On Local Self-Government in Ukraine." This concerns such forms of control as (1) control of the territorial community over the local council, (2) control of the territorial community over the village, settlement, or city mayor, (3) control of the territorial community over a body of public self-organization, (4) control of the territorial community over a village or settlement headman, (5) control of the village, settlement, or city council over the village, settlement, or city mayor, (6) control of the village, settlement, or city council over the executive bodies of the council, (7) control of the village, settlement, or city council over bodies of public self-organization, (8) control of the village, settlement, or city council over a village or settlement headman, (9) control of the village, settlement, or city mayor over the village, settlement, or city council, (10) control of the village, settlement, or city mayor over the executive bodies of the village, settlement, or city council, (11) control of the village, settlement, or city council over the oblast or raion council, (12) control of the oblast, raion, or raion-in-city council over the head of the council. At the same time, the absence of control over the activities of the oblast and raion council by the territorial community, which is effectively absent in a monolithic form within the borders of an oblast or raion, is noteworthy. As is the presence of control by oblast and raion councils over local state administrations, which is already external in nature, although it is exercised over powers of local (oblast and raion) significance. The latter problem is closely related to the problem of ensuring the existence of appropriate administrative structures of local self-government at the oblast and raion level (Art. 6 of the European Charter). This problem must be solved in conjunction with the introduction of a system of supervision over local self-government and the improvement of the control system within the system of local self-government.

The mechanism of supervision over local self-government has also not received proper legal regulation in Ukraine to date. The only legal possibility for challenging an act of a body or official of local self-government for a long time has been to appeal to a court. However, the process of appealing to a court must also meet certain requirements, in particular, regarding the violation of a person's subjective rights by the adopted act. Thus, according to Art. 5 of the Code of Administrative Procedure of Ukraine, every person has the right, in the manner prescribed by this Code, to apply to an administrative court if they believe that their rights, freedoms, or legitimate interests have been violated by a decision, action, or inaction of a public authority. This creates certain frameworks for applying to administrative courts for: the recognition of a normative-legal act or its individual provisions as unlawful and invalid; the recognition of an individual act or its individual provisions as unlawful and their annulment; the recognition of the actions of a public authority as unlawful and an obligation to refrain from certain actions; the recognition of the inaction of a public authority as unlawful and an obligation to take certain actions; the establishment of the presence or absence of competence (powers) of a public authority, etc. The passivity of some citizens, and sometimes the lack of material- financial means, will create conditions where they will not always appeal to a court, even when their subjective rights are violated. At the same time, a legal act whose norms cause a violation, or one that was adopted in violation of the established procedure, will continue to operate, violating the interests of other persons as well. In addition, the procedure for considering a case in court can be quite lengthy.

That is why, in our opinion, there must be a more mobile, constantly functioning, professional mechanism for monitoring the norm-creative activity of local self-government bodies and their elected officials, with the possibility of applying adequate consequences to these subjects when they adopt acts with violations.

In the theory of constitutional and municipal law, such a monitoring mechanism has been called "supervision over the norm-creative activity of local self-government." In most countries of the world, this supervision is carried out by a special subject formed in the system of state power—a representative of the government at the local

level (prefect (France), government commissioner (Italy), voivode (Poland), burgomaster (Germany)).

In Ukraine, such a subject has not been created, although significant prerequisites for it have been formed. The introduction of such an institution requires changes to the Basic Law of Ukraine, which is significantly complicated in conditions of socio-political conflicts in government bodies, and today—a state of war. At the same time, draft laws on prefects were registered in parliament, which define a new model of governance and control-supervisory activity at the local level. However, today these draft laws have been removed from the website of the Verkhovna Rada of Ukraine, which indicates the parliament's final uncertainty regarding the corresponding model of supervision and control. It should be noted that the organizational basis for forming the institution of prefects is fully created at the level of local state administrations, whose managerial functions in the conditions of decentralization should decrease and ultimately transform into supervisory activities.

In foreign countries with a developed institution of supervision, the latter is divided into two main types—preliminary and subsequent. Preliminary supervision is carried out in clearly defined cases, while subsequent supervision is carried out over all types of powers. In our opinion, it is such supervisory powers that should be vested in local state administrations, whose legal status should be changed in the conditions of the parallel creation of executive bodies of oblast and raion councils as bodies of local self-government. As a result, oblast and raion councils will receive an additional direction of internal control—over their executive bodies, and local state administrations will: (1) retain the ability to control the powers delegated to the executive bodies of village, settlement, and city councils (however, the mechanism of delegation must change), (2) receive supervisory powers (without interference in the functioning processes) over local self-government bodies, and (3) retain the ability to coordinate the territorial bodies of central executive authorities, which in turn will perform the functions of local executive authorities.

A debatable issue in this regard is the transformation of all local state administrations, without exception, into control-supervisory structures—both oblast

and raion. In our opinion, it is expedient to assign such functions only to oblast state administrations. As for raion administrations, they should lose their current purpose and disappear as an element of the systemic-structural organization of state power. In this regard, at the raion level, it is expedient to leave for functioning only the territorial bodies of central executive authorities, which will be coordinated by oblast state administrations and be accountable, controlled by, and responsible to higher-level executive authorities.

Thus, during the years of decentralization reform, two possible models for introducing state-legal control and supervision have been formed. The first, analyzed in detail by us above, is associated with changing the legal status of local state administrations, leaving this familiar public institution, but in a qualitatively new functional-competence form. With this approach, issues of supervision are also comprehensively resolved (the specific powers of the local state administration in this sphere are defined, issues of external control at the regional and sub-regional levels are regulated, as well as issues of internal control over the executive bodies of oblast and raion councils at these territorial levels). In the aspect of internal control, its system at the village, settlement, and city level will require improvement. It is expedient to do this by clearly enshrining the types of control (by the subjects of implementation) in the Law "On Local Self-Government in Ukraine" and providing within each specified type of control its directions, scope, forms of implementation, and methods of responding to identified violations. In addition, it should be taken into account that local state administrations have received their constitutional regulation, and for expanding or changing the scope of their powers, legislative changes are sufficient. The second model of state-legal control and supervision is based on borrowing foreign experience of the functioning of prefect-type institutions for Ukrainian realities. It involves the introduction of a new public-power structure—the prefect, who receives the ability to exercise supervision over the norm-creative activity of local self-government. The term "prefect" has its roots in the Latin word "praefectus," which means chief, manager, or supervisor.

In the modern sense, the post of prefect was established in France. The

experience of France in forming systems of prefectural control is particularly important for Ukraine, as existing concepts and projects regarding the post of prefect effectively use a model similar to the French one. In essence, in Ukrainian realities, a prefect is an official who is to exercise administrative supervision over the constitutionality and legality of decisions made by territorial communities, village, settlement, city councils, raion, oblast, and raion-in-city councils, their executive bodies, as well as the village, settlement, or city mayor.

The main idea behind the introduction of the institution of prefects is to delegate real power and the resources necessary for its exercise from the state to local self-government bodies, leaving prefects in the role of a supervisory subject. The main goal of the innovation, according to D. V. Holubova, is to create effective supervision over the constitutionality and legality of decisions of local self-government bodies [40, p. 64]. It is proposed to give the prefect the power to appeal acts of local self-government in which they see a violation of the Constitution or laws of Ukraine. However, in cases of urgent need for an operational response to obviously illegal acts of local self-government bodies, the prefect can immediately apply to a court with a motion to take interim measures, which is considered no later than two days from the date of its receipt. The institution of prefects proves to be key for the reconstruction of the governance system after the war, but its successful implementation depends on making changes to the Constitution of Ukraine.

The reform of administrative control over local self-government with the participation of the institution of prefects, who will take on supervisory-coordinating functions, will, in our opinion, lead to the transfer of a significant volume of powers from oblast and raion state administrations to local self-government bodies at various territorial levels. In general, a redistribution of the powers of local state administrations between local self-government bodies and the territorial bodies of central executive authorities is expected. The latter will receive a redistribution of sectoral powers, and local self-government bodies—general ones, taking into account the principle of subsidiarity.

At the same time, such a transfer of powers will contribute to strengthening the

autonomy of local self-government and create conditions for the development of institutions of public self-organization and forms of public involvement in resolving local issues. The regional level of local self-government will receive the greatest development, as for the first time since gaining independence, an exclusively municipal system of governance will be formed at this level.

The institution of prefects in Ukraine as an element of public power was first envisaged by the draft law "On Amendments to the Constitution of Ukraine (regarding decentralization)" No. 2217a of 01.07.2015, which fully complied with European and international standards and took into account the relevant conclusions and remarks of the Venice Commission. However, after its preliminary approval on 31.08.2015, the further fate of this project did not work out, as political circumstances did not allow the Verkhovna Rada of Ukraine to adopt the corresponding changes regarding decentralization.

The President of Ukraine submitted a new version of the draft law "On Amendments to the Constitution of Ukraine (regarding decentralization)" No. 2598 of 13.12.2019 to the parliament, the title of which coincided with the previous one, but some changes were made to the content of the document that directly concern the institution of prefects in Ukraine [89].

Without waiting for the adoption of amendments to the Basic Law and the constitution of a clear model for the further development of control and supervision institutions in Ukraine, the draft Law of Ukraine "On Prefects" of 16.11.2015 was developed [103]. This draft law was developed jointly with Polish expert-practitioners of local self-government reform. In accordance with the Constitution of Ukraine, it defines the organization and procedure of prefects' activities, in particular, the main directions and principles of their activities, legal status, appointment and dismissal procedure, competence, relations with state bodies, local self-government bodies, civic associations, enterprises, institutions, organizations, as well as the peculiarities of ensuring the activities and responsibility of prefects.

According to Art. 118 of the Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding the decentralization of power)," executive power in

oblasts and okruhs is exercised by the territorial bodies of central executive authorities. The representative of the state in okruhs and oblasts, and in the city of Kyiv, are prefects; they are appointed to and dismissed from office by the President of Ukraine upon the proposal of the Cabinet of Ministers of Ukraine. The term of a prefect's tenure in one okruh, oblast, or the city of Kyiv may not exceed three years. A prefect is a civil servant who, during the exercise of their powers, is accountable and controlled by the President of Ukraine and the Cabinet of Ministers of Ukraine [89]. In comparison with the draft law "On Amendments to the Constitution of Ukraine (regarding decentralization)" No. 2217a of 01.07.2015, the powers of the prefect in the updated version of the draft law were somewhat expanded by including a new power, according to which the prefect received the right to submit to the President of Ukraine a proposal to suspend an adopted act that does not comply with the Constitution of Ukraine. Article 119 of the updated draft law "On Amendments to the Constitution of Ukraine (regarding decentralization)" No. 2598 of 13.12.2019 provides that the prefect in the corresponding territory: 1) exercises administrative supervision over the observance of the Constitution and laws of Ukraine by local self-government bodies;

2) coordinates the activities of territorial units of central executive authorities and exercises administrative supervision over their observance of the Constitution and laws of Ukraine; 3) directs and coordinates the activities of territorial units of central executive authorities, ensures their interaction with local self-government bodies in conditions of martial law or a state of emergency, or an extraordinary ecological situation; 4) submits to the President of Ukraine a proposal to suspend the effect of an act adopted by a council, the head of a community, the executive body of a community, an okruh or oblast council of communities, or their executive committees, which does not comply with the Constitution of Ukraine and creates a threat of violation of state sovereignty, territorial integrity, or a threat to national security; 5) exercises other powers defined by the laws of Ukraine.

In view of the proposed powers, it can be said that Ukraine plans to create a position that will combine two functions at the territorial level, namely: the function of state representation and coordination of the activities of structural units of central

executive authorities, and the function of supervision over the legality of the activities of subjects of local self-government.

At the same time, within the formation of the state's legal policy regarding state control and supervision, several questions remain finally unresolved (debatable): 1) regarding the future fate of local state administrations (either these bodies will be liquidated and prefectures will be formed on their basis, or they will function in parallel with the activities of the prefect, exercising the functions of state executive power at the local level); 2) at which territorial levels this institution should be formed (oblast and raion, or only oblast); 3) should it be a body of power, or can it be an official; 4) which state authorities should participate in the formation of such a body or the appointment of an official (the President alone, or the Government, or the President upon the proposal of the Government); 5) what scope of powers should such an institution perform (exclusively supervisory powers, or simultaneously supervisory and control powers over delegated powers, or supervisory, control, and also executive power powers at the local level); 6) over which specific subjects of local self-government will control and supervisory activities be carried out; 7) what forms of influence should such an institution have on subjects of local self-government during the implementation of control and supervisory powers (should it first demand the elimination of violations from local self-government bodies, or can it independently annul acts, or can it suspend them, or can it only appeal to a court, and the latter will suspend them and consider the case on its merits); 8) in which cases and by what procedure can it appeal to the President for the early termination of the powers of local self-government bodies; 9) what is the mechanism for bringing this person to justice or appealing their decisions; 10) what are the legal and organizational guarantees for the activities of such a subject and the means of its protection.

As of today, the most important step in forming the policy of state control over local self-government is to determine the specific model that is expedient to introduce in Ukraine. However, the state's legal policy regarding the state-legal model of control over local self-government has not been updated since the adoption of the Concept for the reform of local self-government and territorial organization of power and the

formation on its basis of draft amendments to the Constitution of Ukraine. We believe that the approaches to defining the model of state-legal supervision should be reviewed conceptually already at the present stage and be reflected in the Concept for the reform of state control and supervision in the system of local self-government in Ukraine.

The application of a comprehensive approach to the regulation of issues of state-legal control over local self-government is associated with a number of factors. Firstly, local self-government is a necessary instrument for ensuring democratic governance and interaction between the government and the community, and therefore it cannot remain without control from the state. Secondly, the European Parliament adopted a resolution on intensifying the process of Ukraine's accession to the EU [109], which calls on the Ukrainian government to continue decentralization and implement reforms, integrating them into the general context of Ukraine's recovery and reconstruction, which brings the issue of administrative control over local self-government to the forefront for resolution.

Anton Chyrkin³

THE EUROPEAN EXPERIENCE IN REFORMING THE ORGANIZATIONAL AND LEGAL MODEL OF STATE SUPERVISION OF LOCAL SELF- GOVERNMENT

The issue of reforming and introducing state administrative supervision over the legality of acts of local self-government bodies is part of the Ukraine Plan within the framework of the Ukraine Facility and is enshrined among the tasks of the updated State

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Strategy for Regional Development until 2027. As a future member of the European Union (hereinafter – EU), Ukraine must establish a lawful and effective system of state supervision. Recommendation CM/Rec(2019) of the Committee of Ministers of the Council of Europe requires member states to create normative-legal and institutional frameworks for the supervision of the activities of local authorities. The Council of Europe has also provided its opinion on draft law 4298 [87], in which it emphasized that Ukraine is the only European country where a mechanism of administrative supervision over the legality of decisions of local self-government bodies is absent [10]. It is hoped that the corresponding draft law will be adopted in the near future. At the same time, this topic still requires the study of foreign experience and practice in reforming state supervision over local self-government.

The Establishment of the Institution of the Prefecture: The Experience of France.

In the French Republic, a practice historically developed whereby the prefect acted as a delegate from the central government within a strict hierarchy, from the central government to the prefect at the level of each department, and from the prefects to the sub-prefects (one sub-prefect in each arrondissement, which corresponds to a raion in Ukraine). The prefect was endowed with very broad powers regarding general administration and security. Local self-government began its renewed development with the French Revolution (1830s) but particularly evolved with the growth of parliamentarism during the Third Republic, from the early 1880s. Simultaneously with this development, the prefect became the supervisory body over local self-government bodies. During this period and up to the 1960s, central state ministries also developed a network of their own local bodies to carry out their tasks, typically at the department level [36, pp. 104-144].

At the same time, the relationship between prefects and the local bodies of central state ministries was perceived as a major problem of public administration. In 1964, a decision was made to create regional prefects (the prefect of the main department was appointed as the regional prefect) and to grant the prefect powers (and not merely coordinating ones) to control the heads of local bodies of central state ministries (with

some exceptions) at the department and regional levels. From that time, the minister's powers could only be delegated to the prefect, and not to the heads of the respective local bodies. The prefect would then typically delegate their signing authority to the heads of these agencies but retained the right to revoke their decisions and make them independently.

This is a true manifestation of what is called "deconcentration": a network of local bodies of central state ministries and the delegation of powers from ministers to prefects. Nevertheless, the implementation of this reform took a long time, occurring in 1982, 1997, 2004, and 2010.

We draw attention to the fact that before the 1982 reform, the prefect was not only a local body of state power; he was also the executive body of the elected department council. That is, the prefect was simultaneously an agent of a local self-government body and a representative of the central government.

The prefecture, as a structure directly under the prefect's leadership, was responsible for performing state functions (e.g., security, law enforcement (police), election organization) and deconcentrated tasks (public works decided by the department council, social assistance). The executive committee of the department council was supposed to control the prefect's execution of the council's decisions, but such a council had no administration of its own [27].

The same scheme was applied with the creation of regional councils (which were not directly elected) in 1972: the regional prefect was also the executive body of the regional council. Until 1940, there were also elected district councils (Conseil d'arrondissement), but with somewhat limited powers in matters of taxation; they disappeared with the start of the war and were not restored after the war [24].

It is worth noting that this model is quite close to the current organization of executive power at the local level in Ukraine.

The decentralization reforms to some extent supported the reform initiated in 1964, related to the transfer of a large number of personnel and tasks from the local bodies of 5 central state ministries to local self-government bodies (councils of departments and regions). Thus, many operational tasks were redistributed, and the

local bodies of central state ministries were forced to focus on functions of regulation, supervision, and policy implementation. In this context, the prefect's powers became more justified, both technically and politically. But the main change initiated by the 1982 decentralization reform was the complete separation of local self-government bodies from the local state administration. Since then, the powers, personnel, and resources for executing the tasks of the department council or, accordingly, the regional council, were transferred to the head of the respective council (elected by the council). The prefect—along with the prefecture and staff performing state functions—remained exclusively a representative of the central government. The prefect became responsible for upholding the law and implementing the policies of the central government. If necessary, the Prefect must reach agreements with local self-government bodies. The prefect is the supervisory body for local self-government bodies. The prefect is responsible for the protection of the population in the broadest sense of the word.

Moreover, after 1982, the prefect lost the right to control the council's decisions regarding their expediency. Nevertheless, the prefect retained the right to control decisions for legality, though the annulment of illegal decisions became possible only through an administrative court. At the same time, the law obliged the council to transmit its adopted decisions to the state representative, and a council's decision is considered to have entered into force only after its transmission to the prefect or sub-prefect and its announcement (publication, promulgation).

If the prefect considers a decision to be illegal, within two months from the date of receiving the decision, they can appeal to the administrative court to have the decision declared illegal, or to urgently suspend the execution of the decision until its final consideration by the court [65, p. 19].

Thus, the prefect has a dual function: on the one hand, they are a representative of the state at the regional and departmental level and, as such, reflect the political dimension of the state as a political body; on the other hand, the prefect was from the very beginning recognized as a higher administrative body endowed with general functions and powers. Thus, the prefect was considered a professional civil servant. Nevertheless, for a long time, there were only disparate provisions regarding the status

of prefects. The situation changed after the Second World War with the creation of the National School of Administration (hereinafter – ENA). From that time, prefects were appointed from among sub-prefects, and sub-prefects from among senior civil servants of the Ministry of the Interior (*administrateurs civils*), initially as seconded employees, and only later confirmed in their new functions. In 1964, the first comprehensive descriptions of the careers of prefects and sub-prefects were published (two government decrees that are still in force with some later amendments). These reforms strengthened the professional status of prefects as senior civil servants [38, p. 117].

And thus, the term "prefect" embodies a dual meaning:

- Function – the highest state body at the department or regional level;
- Rank/specialization, which is divided into several classes with career progression.

Thus, a prefect, as a member of the corps (*corps préfectoral* – the prefectural corps), can be appointed to perform various functions: for example, as the head of a state company, the head of a ministry unit, a project manager, etc. Some of them are also hired as directors-general of the administration by the heads of regions or departments. As prefects of a department or region, they are appointed by a decree of the President of the Republic in the Council of Ministers. Their positions are determined by the government, which can appoint or dismiss a prefect *ad nutum* (without notice). Currently, most prefects are graduates of the ENA. According to a provision, one-third of the members of the corps can be freely appointed by the government, including from outside the ranks of administrators [67, p. 58].

However, in practice, this procedure is used to ensure greater mobility within the civil service, and typically, members of other high-level civil service corps are appointed as prefects through this procedure, but they are also usually graduates of the ENA. Nevertheless, there are cases where people with other backgrounds are also appointed as prefects (e.g., former trade union leaders). It is noteworthy that despite all the political turmoil that France has suffered throughout its history, the institution of the prefect has never been seriously challenged. The worst that happened to it was a change of name: for example, to "Commissioner of the Republic" (*commissaire de la*

République") in 1944-45, and also between 1982 and 1988. All governments have appreciated the reliability and power of such high officials in implementing their policies and ensuring the security and unity of the country. Despite further steps in the decentralization reform, the current government has declared its intention to strengthen the powers of prefects, but there is no reason to expect a significant change in their status [56, p. 121].

Today, French prefects still retain considerable powers in the sphere of general administration.

The reform of local and regional self-government, which took place during 2014-2015 and resulted in a smaller number of regions (12 + Corsica on the European territory of France), introduced a reorganization of regional prefectures and the regional bodies of central state ministries. Therefore, the reform led to the transfer of new powers to regional self-government bodies, and the government announced its intention to strengthen the powers of prefects.

Regarding general administration, the decree of May 7, 2015, changed the meaning of the principle of "deconcentration" as the main principle for the distribution of tasks and resources between central and territorial state administrations. Deconcentration is not a new principle. As an administrative tool, it has been applied since the middle of the last century. In 1964, it was generalized and codified by legislation through the decree of July 1, 1992 (Charter on Deconcentration), which was recently replaced by the decree of May 7, 2015. Deconcentration also received a constitutional basis with the new wording of Article 72 resulting from the constitutional amendment of March 28, 2003: it is determined that the state representative in the "local communities of the Republic" is also the representative of all members of the government, which means that he/she acts under their direct leadership [37, p. 5].

According to the decree of May 7, 2015, deconcentration consists in allocating to local bodies of central state ministries the "powers, means, and capacity for initiative" necessary for the implementation of national (and European) public policies. It relies on a network of prefectures and local bodies of central state ministries acting as state administrative bodies subordinate to the central government, and the delegation of

decision-making powers from administrations to prefects. The functions of central state ministries should concern conceptual issues, development and support, as well as the implementation of management, evaluation, and supervision of "deconcentrated services" (services déconcentrés). This includes policy formulation, preparation of draft laws, general administrative organization, and management [68, p. 68].

Management takes the form of "multiannual national management directives," which are prepared by ministers to define priority measures for achieving set goals. Later, by the decree of May 7, 2015, the respective functions of territorial state administrations (at the regional and departmental levels) were divided. The regional level is intended to manage and coordinate the implementation of central government policies, support administrative modernization and improve relations with consumers and local self-government bodies and other deconcentrated services, as well as to rationalize the use of administrative premises and the distribution of personnel.

The department level remains the level of "general purpose" for the implementation of national policies at the local level. The powers of prefects had already been strengthened by previous reforms in relation to the local bodies of central state ministries. The decree of May 7, 2015, provides for several more steps forward. Indeed, state territorial administration in France is divided into four levels: 1) region; 2) department; 3) arrondissement; 4) municipality. At the municipal level, part of the state functions is performed by the municipal administration under the leadership of the mayor, and on matters related to these functions, the mayor is subordinate to the prefect (e.g., organization of elections, issuance of identity cards and passports; regarding the registration of civil status acts, the mayor is subordinate to the justice authorities) [71, p. 67].

At the regional, departmental, and arrondissement levels, there is a corresponding state administration: the prefecture, and sub-prefectures at the arrondissement level; and the local bodies of central state ministries. The prefecture itself can be considered a local unit of the Ministry of the Interior, and the prefecture within a region—as a local unit of the ministry responsible for planning and territorial development. In connection with the transfer of numerous units and personnel to local self-government bodies (self-

government bodies at the regional and departmental levels), those remaining responsible for performing state functions were consolidated into multifunctional units. But, after the 1982 reform, prefects have direct authority over the local bodies of central state ministries, and the heads of such local bodies are subordinate to them. Powers are delegated by ministers only to prefects, not to the heads of the local bodies of their ministries.

Thus, administrative decisions regarding specific civil servants working in deconcentrated state bodies can be delegated, as a rule, to the prefect, subject to the agreement of the head of that body/service/ministry (this reform took a long time due to resistance from ministries and trade unions; and accordingly, there are limitations to such delegation). The figure on the next page shows the results of this reform of the state territorial administration, which began in 2007. This reform was aimed at reducing administrative costs after the transfer of functions and personnel to the leadership of the heads of departments and regions and streamlining the functional distribution of deconcentrated state administration.

The organizational structure of the prefecture itself is not presented. The regional prefect is assisted by a secretary-general for regional affairs and staff (about 900 civil servants in total, including for overseas territories), responsible for monitoring the implementation of state policy by local bodies of central state ministries and, in particular, discussing and monitoring the implementation of the State-Region program/convention jointly with the head of the region.

The departmental prefect is assisted by a service that provides him/her with direct support, and a secretary-general as the head of the prefecture's administration; the structure of the prefecture includes units for regulatory work and issues of elections, local self-government, coordination of interdepartmental policy, a support unit (logistical support and personnel service), as well as units for security and civil protection. The regional prefect is always the prefect of the main department of the region.

The local units of several departments are not subordinate to the prefect regarding their main functions: the departments of public finance at the regional and departmental

levels (responsible for creating tax bases, collecting taxes, and making public expenditures), the departments of education, and labor legislation. Obviously, matters of justice and defense remain outside the authority of prefects. Nevertheless, prefects have more general powers regarding the implementation of a unified policy on state property and real estate. In addition, there are a number of national agencies subordinate to ministries that have their own territorial branches. Among the most important of these are the "Regional Health Agencies" (Agences régionales de santé): these are public law corporations responsible for implementing general health policy, monitoring the capacity of hospitals and managing them, and planning the resolution of specific health problems in a particular region. The chairman of their board is the regional prefect.

In France, the healthcare sector has not been decentralized, unlike the sphere of social assistance. Other examples include the Agency for Energy Saving and Energy Development (ADEME), the Public Investment Bank (BPI), and the Caisse des dépôts et consignations, the main state bank which, in particular, finances social housing. The decree of May 7, 2015, expands the prefect's powers with respect to these agencies: henceforth, "Public institutions with territorial units participating in the implementation of national public policy must perform their functions in coordination with the prefect, in accordance with the policy of deconcentrated public services," and they may also appoint the prefect as their representative on the ground (Art. 15).

The main area of responsibility for prefects in the sphere of general administration is control over the observance of laws. Thus, by the decree of January 15, 1997, the departmental prefect was the body responsible for making all individual decisions falling within the competence of the State, with the exception of certain decisions specified in separate normative-legal acts that fall under the competence of other bodies (e.g., the regional prefect or a minister). The departmental prefect is also the main police authority: on matters of issuing police orders and permits, and the body for managing the police to guarantee security and public order.

Traditionally, prefects are directly subordinate to the central government. This applies to both the departmental prefect and the regional prefect. However, the decree of February 16, 2010 (amending the decree of April 29, 2004, on the powers of prefects

and the deconcentration of services in regions and departments) introduced a hierarchical link between the regional prefect and the departmental prefects. The regional prefect has "authority" over the departmental prefects regarding the implementation of state policy in the region, and EU policy within the competence of the State, and the departmental prefects must follow the instructions of the regional prefects (Art. 2 of the decree of April 29, 2004, as amended). However, ensuring the implementation of policy in the field of healthcare was excluded from the competence of regional prefects after the creation of the Regional Health Agencies (but here departmental prefects gain a sphere of responsibility if the matter concerns public order), and the departmental prefects are accountable directly to the Minister of the Interior (not the regional prefect) on matters of public order and population security, immigration, and asylum.

To ensure unity and cohesion in the implementation of state policy, the regional prefect heads the Regional Administration Committee. The members of the Committee are the departmental prefects, the head of the education administration (recteur), the regional director for public finance, the secretary-general for regional affairs, the directors of deconcentrated regional units of central state ministries, the director of the Regional Health Agency; the heads of regional units of national agencies are invited to the Committee. Finally, the prefect is the supervisory body with respect to local self-government bodies. The main administrative acts and procurement/concession agreements are transferred to the prefect for an assessment of their legality; the prefect can file an appeal with the administrative court regarding actions they consider illegal. The prefect is also responsible for budgetary control with the support of regional audit chambers. For regional-level self-government bodies, the regional prefect is the supervisory body [29, p. 73].

The Reform of the Prefecture Institution as a Mechanism of State Supervision over Local Self-Government in Italy.

The Italian Consulate of Napoleon Bonaparte created the same system as in France in 1802: prefects at the departmental level, sub-prefects at the district level, and mayors, all appointed by the head of state or his representative. The system was

maintained even after the collapse of the empire and the restoration of the monarchy in Piedmont-Sardinia, as it proved useful and effective, only changing its name and the division of provinces. In 1861, after the unification of Italy, the system was extended to the rest of the country by the law of 1865.

Like the French prefect, the Italian prefect was endowed with powers of general administration and special powers for ensuring security and public order. As in France, the prefect was the executive officer of the elected provincial council. But, unlike in France, he was even the head of the provincial council, and from 1889, Italian legislation separated the concepts of the State and provincial administration. Another difference was that the appointment of prefects from among politicians continued until the end of the 19th century, while sub-prefects were generally recruited from among the employees of prefectures. The fascist regime instrumentalized the prefects, but only one-third of the prefects appointed during that period were associated with the fascist party: in 1937, 2 out of 5 prefects were appointed from outside the civil service. After the war, the question of abandoning the institution of prefects was discussed; prefects are not mentioned in the Constitution of 1948 (which came into force), however, in general, the institution was preserved [49].

In Italy, prefects have the same name (*prefetti*) and are today career civil servants. One prefect is appointed in each province (the *provincia* corresponds to the French *département*) as the head of the prefecture (official name: *prefettura – ufficio territoriale del governo*). The administrative units of the prefecture are headed by a deputy prefect, who is assisted by a second deputy prefect. In Italy, there is no regional prefect, despite the role of the regions. Until 2001, there was the position of "government commissioner," who was appointed at the regional level (usually the prefect of the capital province was *ex officio* the regional prefect) as a deputy to the head of the region; the "government commissioner" headed a control commission responsible for supervising the activities of local self-government bodies. As a result of the constitutional revision in 2001, this commission and the functions of the government commissioner were abolished. Nevertheless, the prefect of the capital province of the

region has retained some additional powers in the relations between the central government and the regional-level self-government body.

However, the prefect does not have the powers of a French regional prefect. While the work of civil servants in regional and local authorities is now regulated by labor law based on collective agreements, prefects, like a small number of senior civil servants and judicial employees, are an exception to this rule, and they still have a status regulated by public law (decree of May 19, 2000, No. 139). This normative act provides for a career of 4 ranks, which correspond in the hierarchy to the status of "Dirigente"—senior civil servants who can hold the highest positions in state administrations. Entry into service as a prefect is conditioned by passing special competitive examinations, open to persons with a higher education in law, economics, history, or sociology, who are not yet 35 years old.

Successful candidates are admitted as councilors (*consiglieri*), then undergo a two-year training course with theoretical and practical seminars and internships, which alternate with periods of operational work. An evaluation at the end of the first year determines the possibility of granting the rank of second deputy prefect. This two-year training course is organized by the Higher School of Administration of the Interior (*Scuola Superiore dell'Amministrazione dell'Interno*). A second deputy prefect is promoted to the rank of deputy prefect after at least 9 years of practice and evaluation, and a list of candidates for promotion is submitted by an independent commission as a proposal to the Minister of the Interior; this list is not absolutely binding on the minister, who may deviate from it when making decisions on individual appointments. Prefects are appointed as prefects and as heads of territorial state bodies by a decree of the President of the Republic after consideration by the Council of Ministers of their candidacies, presented by the Minister of the Interior. As in France, Italian law distinguishes between ranks and functions. Regarding the exercise of the functions of the head of a territorial state body, the government is obliged to appoint to 5 leadership positions only 3 individuals from the prefectural corps (from among deputy prefects); other heads may be appointed from outside the ranks of career prefects. The government, however, is vested with broad powers regarding the appointment,

dismissal, and suspension of prefects from work (from their position). However, they are protected according to their rank.

Currently, the prefect in Italy is the representative of the government in the province and the head of the "prefecture – territorial office of the government." According to legislative decree 300/1999, the prefecture must perform its tasks in accordance with the law and coordinate the activities of the various local bodies ("peripheral administrations") of the central government that have been preserved at the local level, as well as ensure their cooperation with regional and local self-government bodies. The standard organization of an Italian prefecture is as follows. There is a relatively horizontal organization that operates in five functional areas and two support areas. The functional areas include: 1) public order and public security; 2) local self-government; 3) administrative sanctions; 4) civil rights and immigration; 5) civil protection. The support areas include: 1) economic and financial services; 2) general administration and procurement. Deputy prefects are appointed as heads of cabinet to represent the prefect and are the heads of the functional areas [49].

It is expedient to separate the direct functions of the prefecture and the issues of relations between the prefecture and other peripheral state administrations. The system is easier to understand if we start with the latter. With the strengthening of regional autonomy, by law 59/1997, the government was instructed to reorganize the peripheral state administrations. Legislative decree 300/1999 [63] contains a reference to "territorial offices of the government" (Uffici territoriali del Governo) at the provincial level with the aim of integrating into these offices all peripheral administrations of central state ministries, with several important exceptions (treasury, finance, education, cultural heritage, institutions created by law). By a decree of the President of the Republic (DPR 287/2001), a list of services to be transferred to the territorial offices of the government was established.

After the 2001 constitutional amendments, which significantly expanded the powers of regional self-government bodies, the provincial prefects, as representatives of the regional government, became representatives of the state in relation to regional and local self-government bodies [14, p. 46].

However, the government failed to implement the corresponding reform, and in 2004, the territorial authorities once again became "prefectures – territorial offices of the government."

Thus, the main change was granting the prefect exclusive powers to coordinate peripheral services; integration and complete subordination to prefects were abolished. As a result, the Presidential Decree DPR 287/2001 was repealed, and a new Presidential Decree (DPR 180/2006) reduced the role of the prefect and the permanent provincial conference headed by him, which included all heads of peripheral bodies/services and major elected local officials. The prefect lost direct powers to replace non-compliant heads of peripheral bodies/services and could initially only mediate, and only later convene a meeting of the provincial conference on the issue, request the application of necessary measures, and only as a last resort carry out the relevant measures independently [62].

Due to the economic crisis, the Italian government resumed its policy of rationalizing and optimizing its administrative organization. The main step was decree 138/2011 of August 13, 2011, on the "spending review" program, which provides for the rationalization of all peripheral structures with the aim of integrating them into a single government unit at the provincial level, again with a few exceptions.

It was implemented in accordance with decree 2012/95 of July 6, 2012, as amended by law 135/2012 of August 7, 2012. Again, the prefecture – territorial office of the government is endowed with the function of ensuring the "unitary representation of the State in the territory," but this time the function is put into effect by practical measures (Art. 10). The law provides for the creation of a unique apparatus for ensuring relations between citizens and the State, the performance by a single office of all instrumental and logistical functions of the peripheral units of State administrations under the "direct and exclusive responsibility" of the prefect (in particular, regarding premises, vehicles, e-government...). The province remains the territorial district for state administration, taking into account changes in metropolitan cities (*città metropolitana*), or where there are special problems in the sphere of public order or ensuring the level of satisfaction of basic needs requires measures of other scales [49].

Again, in accordance with Law 124/2015 of August 7, the government is instructed to issue legislative acts within the next twelve months to replace the "prefecture – territorial office of the government" with the "State Territorial Office" (Ufficio territoriale dello Stato) as a single point of contact between State peripheral administrations and citizens, and to grant full authority to the prefect over all heads (dirigenti) of services transferred to the state territorial office, including the power of substitution. This should be achieved by eliminating units that overlap or duplicate such functions. The law also clearly defines the responsibility of state territorial offices in matters of public security. In essence, the 2012-2015 reform is a new attempt to achieve the goals of the 1999 reform. In addition, its aim is also to strengthen the functional link with peripheral administrations that will remain outside the state territorial office (namely, concerning the treasury, finance, education, cultural heritage).

Besides the issue of relations with other peripheral services, the prefect and the prefecture also have special duties and powers. The prefect is the main authority in the province on matters of public order and public security. He/she has the right to give commands and coordinate all relevant services and to dispose of police forces, as well as the Carabinieri, who represent a military corps.

The prefect is assisted in this matter by the provincial committee for public order and public security. The prefect also has important supervisory powers over regional and local self-government bodies. The 2001 constitutional amendments removed the provisions on control by the regional commission over the legality of general and special acts of regional and local self-government bodies. But the prefect can temporarily suspend the powers of the heads of local self-government bodies in case of violation of the Constitution or serious and repeated violation of the law, or in case of serious grounds for a final decision by the Minister of the Interior; he/she can initiate the procedure for the dissolution of a local council. The prefect can also conduct inspections of public services at the local level. If necessary, the prefect can appoint an "extraordinary commissioner" (commissario straordinario) as the head of a local administration in case the relevant self-government body has been liquidated or dissolved [75, p. 120]. Such commissioners are usually members of the prefectural

corps. Such powers are applied, in particular, in the case of existing influence or control over a local self-government body by organized criminal groups [49].

The prefect of the capital province of the region, who is also the regional prefect, can also refer acts of the regional self-government body to the government for consideration of their unconstitutionality (in a limited number of cases).

The prefect also has the right to take all necessary measures in the event of an emergency resulting from serious threats to the security and inviolability of persons, in order to prevent or overcome these threats, or in the case of serious violations, in the event of a state of emergency declared by the government. The prefect is endowed with a wide range of powers: for example, he/she can mediate in labor disputes; he/she must guarantee the provision of mandatory public services; he/she is vested with the authority to impose administrative sanctions on various issues if the offense has been decriminalized (e.g., in matters of road traffic payment) [120].

The Development of the Institution of Administrative Supervision over Municipalities in Spain.

It is interesting to note that, for example, in Spain, the term "prefect" was not used, but the territorial organization of public administration was borrowed from the French model. Thus, the Royal Decree of 1833 created provinces with senior officials called "sub-delegates of the State" (*subdelegado de Fomento*), responsible for the general administration and development of the province; the instruction for the reform directly refers to French prefects. In 1834, the prefect came to be called the "civil governor" (*gobernador civil*) with a greater focus on the function of ensuring public order in the province. Later, the political connection of this function with the central government transformed the civil governors into an "organ of political and social control" (M. Sánchez Morón), which influenced the development of local bodies of central state ministries throughout the monarchy during the authoritarian rule of General Franco (at that time—1939-1975—the civil governor had few powers).

The civil governor also acted as the executive body of the provincial council (*diputación provincial*). After the new democratic constitution of 1978, the state administration with its local bodies was preserved according to constitutional

provisions, while most of the functions and personnel of the local bodies of central state ministries were transferred step by step to the regional-level self-government bodies.

The remaining functions/services of the local bodies of central state ministries were transferred to the state representative in each "autonomous community" (*comunidad autónoma*), with a new name, "government delegate" (*delegado del gobierno en la comunidad autónoma*). Paradoxically, regionalization led to a horizontal expansion of the duties of government delegates compared to the former civil governor and added to them the functions of ensuring security and police. In each province, a sub-delegate (*subdelegado*) is appointed by the government delegate and is subordinate to them.

In Spain, government delegates and sub-delegates (*delegados del gobierno* and *subdelegados*) are defined in law as "executive bodies" (*órganos directivos*), which are under the management of "higher bodies" (*órganos superiores*), corresponding to the political level (Law 6/1997 "On the Organization and Functioning of the General State Administration": Art. 6 – Delegates have the rank of sub-secretary, the highest administrative level, above them are only members of the government (minister and secretary of state)). This is a way to restore their authority compared to the strong heads of regional-level self-government bodies. Delegates are appointed and dismissed by a royal decree of the Council of Ministers (Art. 22). They can be appointed from outside the civil service, but paragraph 10 requires that their appointment be based on criteria of "professional capacity and experience." They receive instructions and assignments directly from the head of government and from the Minister of the Interior [49].

Conversely, sub-delegates are appointed from among experienced civil servants of the state administration, regional administrations, or municipal/provincial administration, taking into account qualification requirements. They have the rank of deputy director-general, which corresponds to the third level of "executive bodies," and are subordinate to the secretary-general and the director-general. Sub-delegates are appointed and dismissed by delegates. In practice, as a rule, delegates are appointed from among senior civil servants.

The normative framework for government regional administrations in Spain and Italy has quite similar features, although Spanish regional authorities have more powers.

From the point of view of regional competence, the main differences are observed in the fields of education and police. In Italy, education and the personnel of educational institutions are still within the competence of the central government, while in Spain they have been transferred to the subordination of regional authorities, and a number of regional authorities have expanded obligations in matters of security and police, unlike in Italy. Again, unlike in Italy, the Spanish government has succeeded in integrating peripheral administrations (the term is the same as in Italy) into the structure of government offices/units at the regional level. This is another difference: the state representative is appointed in Spain as an analogue of the government office/unit at the regional level. Law 6/1997 "On the Organization and Functioning of the General State Administration" [13] provides for the integration of regional bodies of central state ministries into general administrative bodies—delegates and sub-delegates of the government. This integration was organized by Royal Decree 1330/1997 of August 1, with subsequent amendments providing for further transfer of powers and personnel.

However, the integration of peripheral administrations only concerned the following areas: 1) development (Fomento); 2) education and culture: services of the higher inspectorate for education and administrative units of the former department of culture, which were liquidated; 3) industry and energy; 4) agriculture, food industry, and environment, with the exception of two institutions that remain under the direct leadership of the minister; 5) health and consumption. Most operational capacities were indeed transferred step by step to government offices/units at the regional level, and state administrations are endowed mostly with regulatory and supervisory functions. Financial administrations and the legal service remain outside the authority of government delegates. Government "delegations" are subordinate to the units of the central government's state administrations. "Sub-delegations" are also integrated into government delegations, and sub-delegates, as already mentioned, are subordinate to delegates.

The General Secretariat of a government delegation includes units responsible for support functions and relations between citizens and territorial administrations. Sub-delegations perform various tasks on matters of protecting citizens' rights, elections, licenses, civil protection, immigration, and asylum [112].

Government delegations cover the functional areas that fall within the competence of the respective central government ministries. There are four functional areas: 1) development; 2) industry and energy; 3) agriculture or agriculture and fisheries in coastal areas; 4) health. Only seven regions have units of the Higher Inspectorate for Education and cover this functional area. Government delegates are assisted by a cabinet. The heads of functional areas have competence throughout the territory of the autonomous community (Comunidad Autónoma – region), directly or through services of a lower territorial level when necessary.

In the latter case, the respective functional areas are established for sub-delegations. Government delegates exercise various powers that relate to different functional areas in accordance with Article 5 of Royal Decree 1330/1997. In general terms, the delegate is responsible for representing the relevant central state ministries at the regional level, for cooperation, coordination, and communication with the regional government and local self-government bodies, and exercises higher management of the functional areas. In addition, the government delegate, in relation to the Department of Development, must take emergency measures concerning infrastructure in accordance with their duties, perform tasks that are not assigned to a separate administrative unit, and control and monitor the issuance of building permits and the provision of housing.

Regarding the Department of Industry and Energy, he/she exercises powers of alienation concerning electricity infrastructure, supports state programs for the modernization and competitiveness of industry, and issues licenses for weapons and explosives. School inspection protocols (secondary and high school) are transferred by government delegates to the regional unit responsible for education.

Regarding the department of agriculture, fisheries, and food, as well as health and consumption, the government delegate monitors the implementation of inspection reports and imposes administrative penalties for violations of the law. The government

delegate has a number of powers regarding the personnel of the delegation. Finally, he/she makes decisions in the first instance on requests regarding administrative acts and acts issued by the lower delegation bodies. In addition to general administration, the government delegate is also the head of the police and security forces of the State, which fall within the competence of the Minister of the Interior [49].

The powers regarding administrative sanctions, which previously belonged to the civil governor of the province, were transferred to the government delegate. At the provincial level, the sub-delegate is the head of the State security forces and commands and coordinates the provincial civil protection forces. Nevertheless, in several regions, there is a regional office/unit police force that replaces the national police and the Civil Guard (Guardia Civil = a military corps similar to the Italian Carabinieri and French Gendarmerie) in most of their functions. The most important is the regional police of the Basque Country (8000 members), which is responsible for public order, public security, traffic, games and entertainment, anti-terrorist police activities, and judicial police. This police force is under the jurisdiction of the Department of Security of the regional office/unit of the government. In such a case, the national police and the Civil Guard must cooperate with the regional police, but subject to sufficient trust. There is also a regional police force in Catalonia. Conversely, the police forces of the regions of Navarre and the Canary Islands do not replace the national police; they have additional functions. Other regional police units are integrated into the national police [116, p. 101].

The Polish Experience of Reforming State Supervision over Local Self-Government.

In Poland, its accession to the European Charter of Local Self-Government in 1994 had a significant impact on the formation of its territorial self-government. In particular, Polish territorial self-government adopted such principles of activity as the uniformity of decisions, a three-tier structure, relatively broad decentralization, the guarantee of independence and protection of self-government rights, the organization of supervision over compliance with legislation, etc. The influence of EU law was also substantial. The process of harmonizing Polish law with EU law began in the 1990s,

which also affected territorial self-government [51, pp. 17-18].

In the summer of 1998, the Polish Sejm adopted a number of laws, in particular, "On Poviats Self-Government" and "On Voivodeship Self-Government," which entered into force on January 1, 1999. On July 28, the Law "On the Introduction of a Three-Tier Territorial Division of the State" [20] and "On Government Administration in the Voivodeship" [21] were adopted. Thus, a three-tier territorial division of the state into gminas, poviats, and voivodeships was formed. The number of voivodeships was reduced from 49 to 16. The newly created municipal voivodeships were headed by a marshal and the voivodeship administration, as well as voivodeship sejmiks. However, at the voivodeship level, a representation of the central government was retained—the voivode with his administration. This created a municipal-governmental hybrid body that duplicated its functions and was extremely expensive to maintain. In this way, although not in full, the organizational structure of the country was unified, but its transformation from a departmental-territorial to a territorial one was ensured. This brought Poland closer to European standards of the state's territorial structure and the structure of local self-government bodies, which were based on the principles of building a civil society, subsidiarity, efficiency, transparency, openness, accountability, and flexibility. These Laws also enshrined and finally formed the legal basis for the activities of local self-government bodies.

Article 171 of the Polish Constitution provides for supervision over the activities of territorial self-government in terms of its legality, but, as K. Dąbrowski and M. Jurzyk note, "taking into account the constitutional and statutory powers of supervision and control (including those of the Supreme Audit Office) one can speak of supervision and control from the point of view of legality, efficiency, reasonableness, and diligence" [7, p. 253]. The controlling bodies are the Chairman of the Council of Ministers, and for financial matters—the voivodeship and poviat audit (accounting) chambers (control of financial administration, public procurement, fulfillment of tax obligations, execution of tasks, adoption and execution of the budget, accounting for grants and subsidies, evaluation, etc.). The Sejm also has supervisory powers, from the perspective of the Constitution, which, at the request of the prime minister, can dissolve a local self-

government body if it has significantly violated the Constitution or the law (Art. 171, para. 3).

As noted in sources, supervision over local self-government in Poland can be divided into external and internal. External control is carried out by structures such as the Supreme Audit Office, the regional accounting chamber, the tax administration, the Ministry of Finance or the general inspector of tax control, the State Labor Inspectorate, the Agency for Restructuring and Modernization of Agriculture, which controls the use of European Union funds for agricultural development, the European Court of Auditors, or the European Anti-Fraud Office. Each of these bodies has a clear procedure by which they exercise supervision and control [65, p. 20].

Internal control of local self-government bodies is carried out in three areas: managerial control, internal audit, and institutional control of administrative bodies.

As a representative of the government, the voivode is responsible for implementing government policy in the voivodeship, performing tasks provided by law with the help of the first and second vice-voivodes, heads of general voivodeship services, inspections and guards, the director-general of the voivodeship administration, and department directors. Vice-voivodes are appointed and dismissed by the Chairman of the Council of Ministers upon the proposal of the voivode. The heads of local executive bodies are appointed and dismissed from their posts upon the proposal or with the consent of the voivode. A collegium operates under the voivode, which includes vice-voivodes, the director-general of the voivodeship administration, the voivodeship commandants of police and fire protection, and other persons. The voivode can invite heads of general services, inspections and guards, and department directors to participate in the work of the collegium. As a representative of the central government, the voivode is responsible for compliance with the law and the protection of the unitary character of the state, supervises the work of local self-government bodies, and can analyze their actions when they contradict the law [76, p. 50].

Supervision over the activities of local self-government bodies in the sphere of finance is carried out by regional accounting chambers [11, p. 220]. In Poland, local councils are obliged to submit their budgets to the regional accounting chamber, whose

functions include supervising the activities of local self-government bodies and certifying the legality of the local budget [22].

Recentralization and Strengthening of State Supervision over Local Self-Government – Results of Public Administration Reform in Hungary.

In Hungary, after decades of centralized communist rule, significant achievements were made by parties during the 1990s in forming a decentralized system of local self-government.

Overall, a contradictory picture of the organization of local-level power in Hungary can be observed. It is evident that local self-government bodies were granted considerable autonomy in their activities, but their functioning largely depended on financial assistance from the state.

In 2010, after a change in the ruling party, significant changes occurred in the system of local self-government. The main changes were undoubtedly the adoption of the Basic Law of 2012 and the new Law "On Local Self-Government" of 2011. In 2011, the government, like all its predecessors, launched a new program for the rationalization of public administration.

One of the stages of reforming local self-government, including the sphere of state supervision, was the restoration of district-level administrative bodies in the autumn of 2010. This was an important phase in the organization of local self-government bodies, as for a short period before 2010 (when the socialist government removed these bodies and transferred their competence to the regional level), there was no legal control over local self-government bodies. Before the reform, district bodies exclusively supervised the decisions of local self-government bodies for their compliance with legislation, but from 2011, control by state controllers was introduced, which became more powerful tools in the hands of the district authorities; for example, they can impose fines on local self-government bodies in case of violations.

Furthermore, from January 2011, the district administrative bodies became government bodies. Until then, at the middle (regional) level, there were several state bodies (e.g., for taxation, sanitary supervision, etc.) whose task was to represent the central government. Now, most of these bodies have merged into government bodies.

The heads of these bodies became state (government) delegates, responsible to the government. As part of this move, the government stated that the direction towards strengthening centralized management at the middle level was a political decision. It is noticeable that the government built and strengthened a parallel management structure that exists outside the elected county self-government, which was pushed into the background.

Subsequently, the reform concerned the middle level, which was introduced in January 2012; in particular, there was the takeover by the central government of the powers to manage the property (along with the debts) of the county self-government. The Hungarian state took over the credit debt of local self-government bodies in the amount of 600 billion forints, which had accumulated between 1956 and 2013 [1].

In Hungary, legal supervision of local authorities is carried out by government offices (Part 3 of Art. 32 of the Constitution) [74].

Art. 32 defines the mechanism for controlling the legality of local self-government activities quite clearly. It is stated that regulations of local self-government concerning the regulation of local public relations not regulated by law, as well as on the basis of powers granted by law, cannot contradict legislation. To ensure this, the local self-government, after adopting a regulation and its promulgation, immediately sends it to the Budapest and county government office. If these state bodies establish that the regulation of the local self-government fully or partially contradicts legislation, they have the right to apply to a court for its review. In addition, government offices can initiate proceedings to have a court establish the fact of non-fulfillment by a local self-government body of a legislative duty provided by law. If the local self-government body does not fulfill this duty within the time limits prescribed by the court's decision establishing this fact, upon the initiative of the said state bodies, it will be ordered that the local self-government regulation necessary to eliminate the omission be issued on behalf of the local self-government by the head of the metropolitan and county government office.

The state organizational structure defined by the Basic Law of Hungary has restructured the relationship between self-government and state administration. The role

of government offices has been strengthened, and the previous control over the legality of local self-government acts has been replaced by supervision with the possibility of significant intervention. The economic independence of local self-government bodies has come under strong restrictions from the state, and financial autonomy has weakened. The main focus is on the need for local self-government to perform mandatory delegated tasks. The new Basic Law of Hungary does not contain provisions on the decentralization of power and orients self-government towards close interaction with state administration.

The Hungarian state controls the compliance of local self-government bodies' activities with legislative requirements. However, supervisory bodies cannot independently annul a municipal normative act that they consider illegal; for this, they need to appeal to a court (Parts 4-5 of Art. 32). Today, any court can hear such cases, whereas in the previous Constitution, this was the prerogative of the Constitutional Court.

In general, local self-government in Hungary remains heavily dependent on government grants. Representatives of the Congress of Local and Regional Authorities of Europe have repeatedly voiced theses about the recentralization of spheres of competence and the weak level of protection of the principle of local self-government at the constitutional level in Hungary [118, p. 354]. Local authorities do not have effective judicial protection in terms of their ability to apply to a court to guarantee their rights under the Charter.

The Practice of State Supervision over Local Self-Government in the Republic of Lithuania.

Today, Lithuania consists of 10 counties (Lith. Apskritis), which are divided into 60 municipalities (Lith. Savivaldybė). On July 1, 2010, the county administrations (Administrations of the Government Representative) were abolished. Currently, the counties act as territorial and statistical units. The functions of the counties were distributed between the municipalities and central authorities [19].

However, according to Art. 123 of the Constitution of the Republic of Lithuania [57], administration in higher-level administrative units is organized by the Government

in the manner prescribed by law. Supervision over the observance by self-government bodies of the Constitution and laws, and over the execution of Government decisions, is carried out by representatives appointed by the Government. The powers of the Government representative and the procedure for their exercise are established by law. In cases and in the manner prescribed by law, the Seimas may temporarily introduce direct rule on the territory of self-governments.

Furthermore, the legal basis for the functioning of the corresponding Government representative is the special Law No. VIII-730 "On Administrative Supervision of Municipalities," according to Art. 2 of which Government representatives exercise administrative supervision over municipalities, i.e., they control whether municipalities act in accordance with the Constitution and laws, and whether municipalities execute government decisions. The Government appoints one representative per county.

The corresponding Government representative is a civil servant who is appointed to the post for a term of four years and is dismissed from the post in accordance with the procedure established by the Law on Public Service. They are accountable to the Government and the Prime Minister.

The Government representative must meet the following conditions: a university education or its equivalent, work experience in the field of public administration of at least 5 years, or a higher legal or public administration education and work experience in the field of public administration of at least 3 years; another condition is political impartiality (Art. 3).

When supervising the compliance of municipalities with the Constitution and laws or the execution by municipalities of government decisions, the Government representative must:

- 1) Check whether the legal acts of local self-government bodies comply with laws, Government resolutions, and other legal acts related to the implementation of laws and adopted by central state authorities;
- 2) Propose the annulment or amendment of illegal legal acts of local self-government bodies in the manner prescribed by para. 1 of Art. 5 of this Law;

3) Appeal to a court if the local self-government bodies do not agree to annul or amend the disputed legal act, or refuse to comply with a law or a Government decision.

In addition, the Government representative exercises preliminary supervision over draft acts developed by local self-government bodies.

If it is established that a legal act adopted by a local self-government body does not comply with laws or government decisions, the Government representative must:

1) Submit a reasoned request and propose that the relevant local self-government body consider the possibility of amending or annulling the relevant act. The collegial body of the local self-government must consider the government representative's request at the next meeting (but no later than within one month); other local self-government bodies must consider such a proposal within a week of receiving the proposal. The Government representative must be informed of the decision made within ten days after such a decision is made.

2) Appeal to a court within ten days of receiving notice of the refusal to satisfy the request (in the case that the local self-government body refuses to amend or annul the legal act that is the subject of the dispute) [48].

If it is established that a local self-government body is not complying with laws or Government decisions, the Government representative must:

1) Submit a written request to the relevant municipal body for the immediate execution of the law or Government decision.

2) If the municipal body refuses to satisfy the request, the Government representative appeals to a court within ten days of receiving such a notice.

When conducting preliminary control over draft legal acts of local self-government bodies, the Government representative may:

1) Check draft legal acts that are being considered in collegial bodies of local self-government.

2) Be present at meetings of collegial municipal self-government bodies and, if necessary, inform municipal councilors about the non-compliance of the relevant drafts with laws.

If it is established that a local self-government body has adopted a legal act that violates the public interest, the Government representative may:

- 1) No later than two working days after the adoption of a legal act that may violate the public interest, suspend the execution of such an act;
- 2) Within two working days, submit a reasoned request to the local self-government body regarding the amendment or annulment of the relevant legal act;
- 3) Within five working days after receiving notice of the refusal to satisfy the request, appeal to a court.

Thus, to summarize, it should be noted that the consequence of the reform of municipal power in European countries during the late 20th and the first decade of the 21st century was the introduction of administrative supervision over local self-government. This process consists of verifying the legality of the decisions of local self-government bodies. In particular, the supervisory body/institution/subject is not endowed with the power to independently annul the decisions of local self-government bodies. At the same time, it can raise the issue of declaring such decisions/acts illegal through judicial procedure (as a rule, in courts of administrative jurisdiction). In this case, local self-government bodies are provided with a constitutional-legal guarantee of protecting their rights in court. Moreover, the respondents can be not only local government bodies but also higher state authorities.

One of the peculiarities of the vast majority of European continental countries is the presence of at least one central (or regional, depending on the state structure) body that participates in the supervision of local self-government bodies, although the scope and degree of supervisory competencies are quite different.

Historically, in Europe, the institution that carried out state control/supervision over municipalities was the prefecture, headed by a prefect. Over time, due to political regionalization, prefects lost most of their powers regarding general administration (but in Spain, they had fewer powers of this kind than in Italy). However, they retained their supervisory powers and basic security powers. It is noteworthy that the institution of the prefect was preserved in both countries, despite being perceived as an institution of centralization, as it could balance the political autonomy of the regions with a power

that represented national interests. In both countries, as in France, the development of democracy was accompanied by the professionalization of prefects.

Due to the transfer of most state functions to regional governments, the scope of powers of Italian prefects and Spanish government delegates in general management matters has significantly decreased compared to French prefects, and they are now focused on security issues. Nevertheless, their functions in the sphere of general administrative matters are not insignificant, and Italian prefects have retained more powers than their Spanish colleagues.

It is worth noting that the national draft law Reg. No. 4298 proposes a model quite similar to the French and Italian ones, where prefects will be able to suspend the effect of decisions of local self-government bodies if the latter show signs of being illegal, and to appeal to a court for their annulment.

**PRINCIPLES OF LEGAL REGULATION OF ADMINISTRATIVE
SUPERVISION OVER THE ACTIVITIES OF LOCAL SELF-GOVERNMENT
BODIES: A COMPARATIVE LEGAL PERSPECTIVE**

The functioning of the institution of local self-government is recognized by modern European doctrine as one of the conditions for the development of democracy. At the same time, this institution by itself is not capable of ensuring a democratic order, as local self-government requires coordination and interaction with state authorities. It is the latter that create the legal framework, carry out the distribution of powers, and establish instruments of control over local self-government for the purpose of its effective functioning.

Administrative supervision over the activities of local self-government bodies is an important component of the process of interaction between the two subsystems of public power—state power and local self-government. This institution is designed to ensure compliance with the law by municipal authorities, but alongside this, to establish clear limits on the interference of state power in the activities of bodies and officials of local self-government, as a guarantee of the latter's autonomy. For this purpose, the principles of administrative supervision receive normative-legal enshrinement, including at the international and constitutional levels.

The issue of administrative control is reflected in the European Charter of Local Self-Government—the main normative document for Council of Europe member states that enshrines standards in the sphere of local democracy and local self-government. Article 8 of the Charter is dedicated to issues of administrative supervision, in particular, the legal regulation of supervision, its purpose, and the necessity of adhering to the principle of proportionality. However, the practice of implementing the relevant

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provisions, as highlighted by monitoring missions of the Congress of Local and Regional Authorities of the Council of Europe, demonstrates the existence of problems with the implementation of Article 8 of the Charter not only in Ukraine but also in European countries that have a longer experience in the development of the institution of local self-government.

The theoretical foundations of control and supervision activities in the sphere of local self-government primarily concern the determination of the relationship between the concepts of "control" and "supervision." Despite the fact that these concepts are often used synonymously both at the legislative level and in scholarly research, we deem it appropriate to distinguish between them. Thus, under this approach, "control" is defined as a set of actions for observing the functioning of a controlled subject in order to obtain objective and reliable information about the state of affairs; applying measures to prevent offenses (in particular, with the possibility of intervening in the activity of the controlled subject); providing assistance in restoring legality; establishing the causes and conditions of violations of the law; and bringing the guilty parties to legal responsibility. "Supervision," on the other hand, is interpreted as the analysis of the state of compliance with legality and discipline, which is carried out in the forms prescribed by law by an authorized subject, without direct interference in the activity of the supervised subject [113, p. 7].

Scholars also link the relationship between the concepts of "control" and "supervision" with the control function. According to this approach, the function of control not only ensures legality but also presupposes the achievement of the model embedded in the legal norm, as well as an analysis of the actual state of task execution and the results obtained [41, p. 38]. We believe that such an approach fully corresponds to the understanding of administrative supervision and control in foreign scholarship. Indeed, this institution in most European democracies has evolved from administrative tutelage to administrative supervision, although in some scholarly sources and legislative acts the concept of "control" is used as a synonym for "supervision."

The evolution from administrative tutelage to supervision is conditioned by the process of decentralization, which in foreign countries involved not only the

redistribution of powers and financial resources between state executive authorities and local self-government bodies but also a reduction in the control powers of the state, limiting them exclusively to matters of legality. These requirements were formalized in the European Charter of Local Self-Government.

The European Charter of Local Self-Government is one of the most significant acts for the development of local democracy, a testament to decades of forming common principles of governance at the local level for European states. Its aim was recognized as achieving greater unity among the members of the Council of Europe to preserve and realize the ideals and principles which are their common heritage [8]. Scholars note that the significance of the charter lies not so much in regulating the right of bodies to local self-government, but in the fact that its standards enshrine jointly developed approaches by states and internationally-legal principles for the establishment, formation, and functioning of the institution of local self-government [32, p. 135]. It is also of significant importance for the so-called "young democracies," as it is a convenient tool that allows for strengthening the legitimacy of new, democratic regimes, while simultaneously alleviating social tension caused by the transition of the economy to new principles [9]. The developers of this document sought to make it simultaneously specific and binding enough to avoid excessive declarativeness, but also flexible enough to allow for the involvement of a larger number of countries in implementing common standards of local self-government. The key idea was to take into account the peculiarities of constitutional regulation and administrative traditions not by weakening the requirements of the Charter, but by granting governments a certain freedom of choice of those provisions that countries would consider binding for themselves [9]. In view of this, the norms of the Charter constitute the principles of legal regulation for both the institution of administrative supervision over the activities of local self-government bodies and other issues related to the functioning of municipal institutions, while remaining both a binding document and providing freedom for the development of national legal regulation.

Article 8 of the European Charter of Local Self-Government is dedicated to enshrining the principles of administrative supervision over the activities of local self-government bodies [8]. Among them are:

1. The possibility of exercising administrative supervision exclusively in cases and in the manner provided for by the constitution and law;
2. The purpose of supervision must be to ensure compliance with legality and constitutional principles;
3. Control over the expediency (appropriateness) of decisions of local self-government bodies is possible in the case of delegation of powers;
4. Interference in the activities of local self-government bodies must be proportional to the interest being protected.

That is, the Charter defines the rejection of administrative tutelage as a measure that is disproportionate for protecting state interests and that limits the autonomy of local self-government. At the same time, the strengthening of control and supervision measures is permissible when it comes to delegated powers. Article 8 of the Charter also establishes not only the limits of supervision but also defines the principles of its legal regulation—the norms of the Charter itself, the norms of the national constitutions of the 46 countries that have ratified the relevant provisions of the Charter, as well as the norms of laws. The sub-legislative level of normative-legal regulation is not involved in regulating administrative supervision, which is an important aspect of ensuring the autonomy of local self-government. After all, the norms of sub-legislative acts are more "flexible" and can potentially be unstable, and therefore create a threat of violating the "balance" between the state and local self-government.

In the context of this research subject, it is worth paying attention to the willingness of European states not only to ratify Article 8 of the Charter but also to implement it into politico-legal practice. An analysis of data from the special monitoring website of the Congress of Local and Regional Authorities of the Council of Europe on compliance with the provisions of the Charter [4] provides grounds for several conclusions. Firstly, out of the 46 countries that have ratified the European Charter of Local Self-Government, no country has completely refused to ratify the

corresponding article; 8 countries have not ratified Part 2 (Austria, Greece, Netherlands, Serbia, Switzerland), Part 3 (Monaco, Turkey), or both parts (Montenegro), and Belgium has ratified Part 2 of Article 8 with reservations.

At the same time, the formal ratification of Article 8 of the Charter does not yet testify to the absence of practical problems with its implementation. A summary of the analyses of the monitoring mission of the Congress of Local and Regional Authorities of the Council of Europe regarding compliance with the provisions of Article 8 of the Charter in individual European states is presented in Table 1.

Table 1. Implementation of Art. 8 of the European Charter of Local Self-Government

Country	Part 1 of Art. 8 of the Charter	Part 2 of Art. 8 of the Charter	Part 3 of Art. 8 of the Charter
Belgium	Ratified and implemented	Ratified with reservations. In Belgium, supervision is possible not only for legality but also for the expediency of decisions of local self-government bodies	Ratified and predominantly implemented, however, there are remarks regarding Flanders
France	Ratified and implemented	Ratified and implemented	Ratified and implemented
Lithuania	Ratified and implemented	Ratified and implemented	Ratified and implemented
Poland	Ratified and implemented	Ratified and implemented	Ratified, however, in practice, a trend of abuse of power by controlling bodies has been noted
Ukraine	Ratified and implemented	Ratified and implemented	Ratified and implemented

Thus, among the problems, in certain countries, a discrepancy between legislation and the practice of its implementation was noted. For example, in Poland, a trend of abuse of power by supervisory bodies and non-compliance with the principle of proportionality was noted. In this regard, the monitoring mission of the Congress of Local and Regional Authorities in 2019 concluded that there was a "relatively alarming trend" of recentralization in Poland [15].

Regarding Belgium, the Congress of Local and Regional Authorities noted, firstly, the existence of administrative tutelage, which was deemed permissible from the perspective of the reservations made by the country upon ratification of the Charter. Secondly, the Council of Europe was concerned about the system of approval of elected mayors by the Flemish government. According to the Congress of Local and Regional Authorities, such approval is evidence of disproportionate supervision over local authorities and violates the preamble and Part 3 of Art. 8 of the Charter [2]. That is, it appears that not only direct control and supervision measures but also the mechanism for appointing to municipal posts can be evidence of a violation of the principle of proportionality and not correspond to the principles of local self-government defined by the Charter.

The principles of legal regulation of administrative supervision in the studied countries, of course, also include their Constitutions. In particular, in Belgium, the principles of administrative supervision are enshrined in Art. 162 of the Constitution of 1831 [17]. According to this article, the intervention of a supervisory body or the federal legislative power is guaranteed only to prevent the violation of the law or public interests. Each region exercises supervision over the communes in its territory; control is also possible from the state or one of the three language communities (Flemish, French, and German-speaking communities), but exclusively within their powers [18].

In the Constitution of the French Republic, the principles of administrative supervision over the activities of local self-government bodies are defined in Art. 72, according to which the state representative is responsible for national interests, administrative supervision, and compliance with laws [5]. Researchers also note that the idea of administrative control over local self-government bodies is organically linked to the principle of the indivisibility (French: *indivisible*) of the Republic, established in Art. 1 of the Constitution of France. After all, the indivisibility of the Republic (French: *L'indivisibilité de la République*), among other things, means that local self-government bodies must comply with the laws and by-laws adopted by the parliament and the executive power [16].

It is worth noting that during the Fifth Republic in France, control over local self-government bodies gradually evolved from administrative tutelage to administrative supervision. Before the adoption of laws on decentralization, control over the activities of local authorities was seen as tutelage (French: *de tutelle*), which, according to researchers, illustrated the secondary importance of local authorities in France (by analogy with guardianship over incapacitated persons) [16].

In Lithuania, the principles of administrative supervision are established by Article 123 of the Constitution of the Republic of Lithuania [6]. According to these constitutional provisions, in higher-level administrative-territorial units, governance is to be organized by the Government in the manner prescribed by law. Government representatives monitor compliance with the Constitution and laws, as well as the execution of Government decisions.

To detail this constitutional provision, a special Law "On Administrative Supervision of Municipalities" [12] was adopted in Lithuania, which establishes the legal status of Government representatives at the local level, their powers and the procedure for their implementation, the procedure for substituting representatives, the procedure for them to provide information to the Government, and a number of other issues. Despite the positive assessment of the existence of a special law on the implementation of administrative supervision, we must note that the municipal system in Lithuania is characterized by foreign researchers as centralized. Scholars note that although the Constitution of the Republic of Lithuania does not answer the question of whether the country is centralized or decentralized, there are grounds to consider it centralized. This is related not only to administrative supervision but also to the inability of local budgets to receive tax revenues directly and the absence of regional traditions [23, p. 51].

In Ukraine, the issue of administrative supervision is addressed in Part 4 of Art. 143 of the Constitution of Ukraine, which establishes the possibility of exercising control over the execution of delegated powers: "Local self-government bodies, on matters of exercising the powers of executive authorities, are accountable to the relevant executive authorities" [58]. Analyzing this provision, it is worth emphasizing two

points. Firstly, the possibility of exercising control and supervision measures over the implementation of delegated powers logically follows from the nature of the latter—they are state powers by their nature. Secondly, the wording of the provision in Part 4 of Art. 143 hypothetically allows for the use of not only supervision but also control of efficiency in the implementation of delegated powers, which necessitates the development of clear legislative mechanisms for the implementation of control and supervision measures by the state.

The issue of administrative supervision is also addressed in Part 2 of Art. 144 of the Constitution of Ukraine, according to which decisions of local self-government bodies are suspended on the grounds of their non-compliance with the Constitution or laws of Ukraine in the manner prescribed by law, with a simultaneous appeal to the court. The Constitutional Court of Ukraine interpreted this constitutional provision in 2009 and determined that according to Ukrainian legislation, the prosecutor's office is charged with supervising the observance of human and civil rights and freedoms and the observance of laws on these matters by local self-government bodies. Upon detecting violations of the law, a prosecutor, within their competence, has the right to protest acts of executive bodies of local councils and to submit proposals or protests against decisions of local councils depending on the nature of the violations. Such a protest suspends the effect of the normative act, and the prosecutor is given the right to apply to a court to have the act declared illegal [111]. At the same time, after a significant reform of the prosecutor's office in Ukraine at the constitutional and legislative levels, the institution of protests was abolished. Thus, without sufficient legislative regulation, the constitutional norm on the state's response to violations of legality by local self-government bodies became inoperative.

The necessity of the institution of administrative supervision is also determined in relevant Laws of Ukraine, in particular, in Part 10 of Art. 59 of the Law of Ukraine "On Local Self-Government in Ukraine," according to which "acts of bodies and officials of local self-government are declared illegal by a court on the grounds of their non-compliance with the Constitution or laws of Ukraine" [96], and in Part 3 of Art. 8 of the Law of Ukraine "On the Capital of Ukraine – the Hero-City of Kyiv," which establishes

that "decisions of local self-government bodies are suspended on the grounds of their non-compliance with the Constitution or laws of Ukraine in the manner prescribed by law, with a simultaneous appeal to the court" [108]. At the same time, in the absence of special legislation on administrative supervision, the only effective control mechanism is judicial review of the legality of acts of bodies and officials.

Based on the research conducted, the following conclusions can be drawn. The principles of legal regulation for the mechanisms of administrative supervision over the activities of local self-government bodies in most European countries are constituted by constitutional norms and the norms of the European Charter of Local Self-Government. The norms of the latter, despite being recognized by 46 signatory countries, are not always properly implemented into politico-legal practice. Ukraine is no exception; despite formal compliance with the provisions of Art. 8 of the Charter, in practice, it has not built an effective and balanced system of administrative supervision over the activities of local self-government bodies. The norms of the Constitution of Ukraine properly establish the principles of such supervision by the state but do not have adequate legislative continuation. For the proper implementation of constitutional norms, two possible paths are envisaged for Ukraine. The first is to use the existing local state administrations to carry out supervisory activities, which involves reviewing their functions and competence, and changing not only sectoral legislation but also constitutional norms. The second is to introduce a new institution of prefects, whose main function will be control, which also involves changes in constitutional-legal regulation. It is obvious that in the conditions of martial law, both options, despite their wide discussion, cannot be realized. However, defining a clear plan for further legislative, and most importantly, constitutional changes is an important task for building an effective institution of local self-government in the future.

Maryna Petryshyna⁵

LEGAL SUPPORT FOR THE MECHANISM OF STATE SUPERVISION OVER THE LEGALITY OF ACTS OF LOCAL SELF-GOVERNMENT IN UKRAINE

The development of a model of state control and supervision in the sphere of local self-government is directly linked to the formation of the conceptual foundations for such a model. This includes a unified vision, doctrine, and the principles that underpin it. The concept of the relevant draft law, which can play a decisive role in this process, is of great importance. At the same time, this presupposes the harmonization of existing normative-legal acts and other documents with the concept, which ensures the legal regulation of the issue.

It may seem that in the conditions of martial law, the development of a scientifically substantiated concept of state control and supervision in the sphere of local self-government is inexpedient. However, the relevance of forming an independent model of state control and supervision in the sphere of local self-government is underscored by the adoption of the Law of Ukraine "On Law-Making Activity" of August 24, 2023, No. 3354-IX [102]. This Law is aimed at streamlining law-making activity in Ukraine, strengthening cooperation between participants in the law-making process during the preparation of normative-legal acts and the control over their execution. It also ensures the participation of civil society in legislative activity and enhances the quality of Ukrainian legislation. For the first time, the legislator has approached the regulation of law-making activity in a comprehensive and systemic manner.

Norm-creative activity encompasses the planning, development of a draft normative-legal act (its concept), and the adoption (issuance) of the normative-legal act, the purpose of which is the legal regulation and/or protection of public relations. The principles of norm-creation define the tactics of the norm-creative process and the

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strategy for its development, as well as the level of legal consciousness and legal culture of society. They are quite diverse: some of them are essentially general legal principles, while others are organizational. In their totality, they should provide the subjects of norm-creation with a general understanding of the essence, forms, limits, and scope of their norm-creative competence (powers).

Norm-creative activity is carried out in accordance with the following principles:

1) The principle of the supremacy of the Constitution of Ukraine – norm-creative activity is carried out exclusively in accordance with the provisions of the Constitution of Ukraine;

2) The principle of observance of international standards in the sphere of human rights – norm-creative activity is carried out, in particular, taking into account the provisions of the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and the practice of the European Court of Human Rights;

3) The principle of democracy – norm-creative activity should be carried out based on the principles of the democratic order in Ukraine, with adherence to defined procedures and interaction between representatives of different branches of government in accordance with the powers granted to them by the Constitution and laws of Ukraine;

4) The principle of openness and transparency – norm-creative activity should be carried out with due public awareness of its purpose and results, providing all participants in the law-making activity with the opportunity to submit their proposals regarding the subject and content of legal regulation at the relevant stages;

5) The principle of legal certainty – the norms of law set out in normative-legal acts must be clear and sufficiently understandable, not admit of different interpretations, be supported by mechanisms for their implementation, and also provide subjects of legal relations with the ability to foresee the legal consequences of the implementation of legal norms;

6) The principle of proportionality – restrictions provided for in normative-legal acts for subjects of legal relations must be necessary and sufficient to achieve the legitimate aim of the legal regulation;

7) The principle of expediency and substantiation – norm-creative activity should be carried out only if there is an objective necessity for legal regulation and/or protection of the relevant public relations, and if such necessity can be substantiated;

8) The principle of systemicity and complexity – norm-creative activity must guarantee the coherence of legal norms among themselves and the conformity of normative-legal acts of lower legal force with acts of higher legal force, the priority of legal norms of special legislation over the legal norms of general legislation, and ensure the timely adoption (issuance) of sub-legislative normative-legal acts for the implementation of the norms of Ukrainian laws;

9) The principle of scientific substantiation – the results of norm-creative activity should take into account scientific achievements in the sphere in which legal regulation is being carried out, including through the involvement of representatives of scientific institutions and recognized specialists in the relevant fields of science in the norm-creative activity;

10) The principle of dynamism and stability, which means creating a stable normative-legal act while simultaneously allowing for the introduction of amendments and additions to it. This principle directs norm-creative activity towards creating a stable normative system that can develop and change in parallel with changes in society.

11) The principle of expediency consists in timely responding to changes occurring in society, in the ability to quickly create the necessary legal norm without creating a gap.

12) The principle of planning and forecasting allows for the avoidance of chaos in the implementation of norm-creative activity. Subjects of norm-creation use long-term and current planning to determine the main directions and ensure the transparency of norm-creative activity.

13) The principle of applying the techniques and means of legislative drafting is of great importance for improving the quality and effectiveness of norm-creation as a whole. Its content is determined by the system of means, rules, and techniques for carrying out norm-creative activity by competent bodies.

14) The principle of professionalism, which is directly related to the quality of norm-creation. Highly qualified specialists from relevant fields of science and scientific institutions who have the necessary knowledge and skills must participate in norm-creation.

15) The principle of resource availability – norm-creative activity must be provided with the appropriate financial-economic, material-technical, administrative-organizational, human, temporal, and other necessary resources.

Norm-creative activity in Ukraine is regulated by the Constitution of Ukraine, laws of Ukraine, and sub-legislative normative-legal acts. In the sphere of local self-government, this primarily concerns the law that defines the status of this form of public power – the Law of Ukraine "On Local Self-Government in Ukraine." In addition, certain issues of norm-creation are regulated by the norms of other laws of Ukraine: "On the Capital of Ukraine – the Hero-City of Kyiv," "On Bodies of Public Self- Organization," "On Service in Local Self-Government Bodies," "On Access to Public Information," "On Citizens' Appeals," "On the Principles of State Language Policy," "On Prevention of Corruption," "On Ensuring Equal Rights and Opportunities for Women and Men," "On the Principles of Preventing and Combating Discrimination in Ukraine," and others. Being sub-legislative in nature, local self-government bodies, when carrying out municipal norm-creation, must also be guided by the acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and in the Autonomous Republic of Crimea - also by the normative-legal acts of the Verkhovna Rada and the Council of Ministers of the Autonomous Republic of Crimea, adopted within their competence.

The resolution of matters of local significance is carried out by territorial communities, their bodies, and officials in the forms and manner determined by the Constitution and laws of Ukraine.

Art. 59 of the Law of Ukraine "On Local Self-Government in Ukraine" refers to "acts of bodies and officials of local self-government." But it does not take into account decisions made directly by the territorial community. Therefore, acts of subjects of local

self-government is a concept broader than the subject of Art. 59 of the Law, which is designated as a municipal-legal act.

A municipal-legal act is an official written document adopted by a territorial community directly, or by a body and/or official of local self-government within their powers on matters assigned by the Constitution of Ukraine and laws of Ukraine to the competence of local self-government. Such acts play an important role in the mechanism of legal regulation of public relations, acting as the main legal means for the exercise of power by local self-government in the corresponding territory and the implementation of their functions and competence. Thanks to the legal acts of local self-government, the comprehensive socio-economic and cultural development of territories is ensured, and the process of production, distribution, and protection of material goods and the provision of services is organized. Local self-government bodies issue acts that organize the process of executing delegated powers of executive authorities and bring the authoritative prescriptions of state bodies and plans for the economic and social development of Ukraine to the attention of the population, enterprises, organizations, and institutions.

Municipal-legal acts are characterized by a number of properties, including: they represent a documentarily formalized decision, an external expression of the will of the subjects of local self-government; they have a target orientation – they reflect local interests in a concentrated form; they ensure the independent resolution of issues of the organization of local self-government of the territorial community, local development, and the execution of delegated powers; they regulate public relations by means of legal norms and prescriptions; they have a sub-legislative character; they are generally binding for execution on the territory of the jurisdiction of the subject of local self-government, which corresponds to the requirement of Part 1 of Art. 144 of the Constitution of Ukraine; their execution is ensured by the force of state coercion; their types, adoption procedure, and entry into force are determined by the charters of territorial communities and the rules of procedure of local self-government bodies in accordance with the Constitution and laws of Ukraine.

The system of municipal-legal acts is defined by legislation. It includes: the charter of the territorial community, decisions of local referendums, decisions of local councils, decisions of the executive committee of a village, settlement, city, or raion-in- city council, orders of village, settlement, or city mayors, orders and directives of heads of departments, administrations, and other executive bodies of the local council, decisions of general meetings of citizens, and decisions of bodies of public self- organization.

The diversity of types and sectors of municipal-legal acts, coupled with the constitutional-legal guarantee of the legal autonomy of local self-government, prompts the legislative regulation of such an important type of activity of state bodies and officials as control and supervision over norm-creative activity. However, legal regulation in this sphere is still characterized by the absence of a single legislative definition of the concepts and the mechanism for its implementation.

And the main problem lies not only in legislative gaps but also in the absence of unified constitutional-legal approaches to building a domestic model of local self-government based on recognized international principles and standards, as well as the need to complete the decentralization reform. The conceptualization and legal regulation of control and supervision in the sphere of local self-government directly depend on the foundations and principles laid at the basis of the institution of local self- government.

Thus, the clarity of the constitutional-legal regulation of the state's activity in the sphere of local self-government is closely linked to the corresponding systems of local self-government. The main systems of local self-government include the Anglo-Saxon, Romano-Germanic (continental), Iberian, Scandinavian, and Soviet (post-Soviet). The differences between these systems are due to different approaches to the principles of subsidiarity, decentralization, and deconcentration, as well as the peculiarities of legal regulation and the practical implementation of these principles.

In particular, France, which belongs to the continental system, was once distinguished by a rigid system of "supervision" over local self-government. However, since the late 1980s, the role and powers of prefects (representatives of state interests)

have undergone significant changes. Prefects are responsible for three main areas: managing the prefecture and subordinate services (police, gendarmerie, etc.), supervising the activities of local government ministries, and promoting the local economy, including maintaining contacts with business representatives and local elected officials.

In countries with the Anglo-Saxon system of local self-government, such as the United Kingdom, there are no representatives of the central government who would "control" elected bodies. Instead, supervision is carried out indirectly—through central bodies or courts. In recent years, a significant expansion of the powers of both self-government bodies and regional governments has been observed here, which indicates the state's interest in building capable local self-government.

The Scandinavian system supports local self-government even more. In Sweden, for example, local self-government has two elected levels—regions and communes. The interaction between these levels does not involve the subordination of the lower level to the higher one. In addition, municipalities are responsible for a wide range of social services and implement a number of administrative functions of the state, particularly in the areas of healthcare and care for the elderly.

The Iberian system, conversely, is characterized by a significant level of centralization. In such a system, local self-government is exercised by elected bodies (municipalities, juntas) and executive bodies that are simultaneously representatives of the central government in the corresponding territory. An example is Brazil, where the Constitution recognizes the existence of municipalities and enshrines the distribution of powers between different levels of government. Although the country was under military rule for a long time, this did not prevent it from moving towards democratization, which involves decentralization. Despite progress, there is inequality between municipalities in their functioning conditions in Brazil. Among the main problems are a significant dependence on state funding and an uneven distribution of funds between territories. At the same time, successes in the municipalization of public services and other reforms suggest possible progress towards real autonomy of local self-government.

Radically different from the previously mentioned is the so-called "Soviet system of local administration," which is largely preserved in China, Vietnam, and Cuba. For example, the Constitution of Cuba of 1976 (Chapter 9 "Local Organs of People's Power") in Article 102 enshrines that local assemblies of people's power have the highest authority to exercise state functions in the respective territorial units. Within their powers, they exercise state administration.

Local self-government in Cuba is an interesting example of external influence on the life of the country. Belonging to the oceanic region and the historical traditions of the state contributed to the formation of a model based on the Iberian system. However, close international cooperation with the USSR and the influence of its policy led to the transformation of the existing system into one more similar to the Soviet one. In essence, this is local administration, not local self-government. It is worth noting that on July 22, 2018, the National Assembly of Cuba approved a draft of a new Basic Law, which entered into force on April 10, 2019, and is intended to significantly democratize all spheres of state and public life.

These peculiarities of the main systems of local self-government are, in one way or another, reflected in the constitutional-legal regulation of the organization and functioning of local self-government in foreign countries. Most EU countries have either adapted or transformed their own models of local self-government based on the continental, Anglo-Saxon, Iberian, or Scandinavian systems. The conceptualization and legislative regulation of issues of state control in the sphere of local self-government can become a driving force for deepening democratization and the development of local self-government or, conversely, deprive it of its independence.

The legislation of Ukraine, while ensuring the independence of local self-government in resolving matters of local significance, simultaneously allows for a certain subordination of the executive bodies of local self-government to the corresponding executive bodies, including the possibility of exercising control. This follows from Part 4 of Article 143 of the Constitution of Ukraine, which states that local self-government bodies are accountable to executive authorities within the scope of their execution of delegated powers.

The Law of Ukraine "On Local Self-Government in Ukraine" regulates these issues in several articles. For example, Article 20 "State Control over the Activities of Bodies and Officials of Local Self-Government" establishes that such control may be exercised only on the basis, within the limits, and in the manner determined by the Constitution and laws of Ukraine, and should not lead to interference in the implementation of the own powers of local self-government.

Article 35 of the Law of Ukraine "On Local State Administrations" defines several principles on which relations between local state administrations and local self-government bodies should be based, including control and supervision. Among these principles are:

1. The principle of cooperation.
2. Provision of assistance by representatives of the executive power to local self-government bodies.
3. Legislative limitation of control and supervision.
4. Consideration of proposals from local self-government bodies and their officials.
5. Prior notification for important decisions.
6. Prohibition of interference in the activities of local self-government.

The foundations and principles of an optimal model of state control are enshrined in the European Charter of Local Self-Government. According to Article 8, paragraph 1, any administrative supervision and control over local self-government bodies must be carried out in accordance with procedures and within the limits provided for by the constitution or by law. According to paragraph 2 of Article 8 of the European Charter of Local Self-Government, any administrative supervision and control over the activities of local self-government bodies shall, as a general rule, aim only at ensuring compliance with the law and with constitutional principles. However, higher-level authorities may exercise administrative control over the expediency of the performance of tasks assigned to local self-government bodies. This provision establishes a standard that combines supervision of legality with control of expediency.

At the same time, in Ukraine, the absence of clear procedures, the excessive scope of delegated powers, and their duplication with own powers allow for the exercise of control over the activities of local self-government bodies contrary to this requirement. In addition, current normative-legal acts do not contain definitions of such terminological concepts as supervision and control in the sphere of local self-government, as well as clear mechanisms. This underscores the need to adopt a separate legislative act in this sphere.

Administrative supervision and control in the sphere of local self-government should be carried out in such a way as to ensure the proportionality of the controlling body's measures to the importance of the interests it seeks to protect. The concept of proportionality of control is absent in Ukrainian legislation. Instead, the principle of proportionality manifests itself differently, depending on the object of supervision and control and whether the powers of local self-government bodies are subject to supervision and control. According to this principle, the body exercising supervision and control must act in such a way as to minimally affect local autonomy while achieving the desired result.

In addition to the provisions of the European Charter of Local Self-Government, the Committee of Ministers of the Council of Europe on September 18, 1998, adopted Recommendation No. R (98) 12 "on supervision of local authorities' activities." The appendix to the Recommendation contains basic principles that define the scope of administrative control, among which are: Ensuring that local self-government bodies exercise their powers, unless otherwise provided by law. Promoting a clear distinction of "own powers" through their delegation, which will reduce the need for control. Clearly defining in legislative acts the types of activities subject to control. Limiting mandatory administrative control to actions of a certain importance based on official status. Reducing a priori administrative control (where government approval is necessary for the validity or continuation of local authorities' decisions).

The appendix also defines control procedures. Regarding these procedures, it is recommended:

1. To ensure, where possible, that there is only one first-instance control body; if the intervention of specialized supervisory bodies is required (depending on the object of the check), to clearly define the respective areas of competence to avoid uncertainty as to which body should exercise control.

2. To establish in normative acts a time limit guaranteed to the control body for carrying out a priori control, and to ensure that the absence of a decision within the specified period is considered a positive response.

At the same time, the state usually independently determines the level, scope, and methods of establishing mechanisms for administrative control and supervision in the sphere of local self-government. In this context, not only legal traditions are taken into account, but also other factors and conditions for implementing a particular model of control, in particular: the stability of democratic institutions, the administrative- territorial structure of the state, the systemic-structural organization of local self- government, as well as the political situation in the country, etc.

However, both the process of reforms and the results of such comprehensive measures do not always correspond to the declared goals. For example, in Latvia, control over the activities of local self-government bodies by the state is carried out by several bodies and institutions. According to the Law "On Local Authorities," one such body is the Ministry of Environmental Protection and Regional Development, which exercises limited supervision over the activities of autonomous local self-government bodies. At the same time, certain acts adopted by local self-government bodies cannot be annulled or suspended by the Ministry (which is quite logical, as such decisions usually concern specific individuals who have the opportunity to appeal to a court).

Before adopting a local act of a normative character, the local self-government body sends it to the Ministry for an opinion. The draft is analyzed from a legal point of view (regarding competence, compliance with the Constitution and legislation, etc.) within 30 days. If, after the expiration of the specified period, the Ministry does not provide a negative opinion, the decision is considered adopted and is published in the official publication.

In addition, the state reserves the right to remove the head of a municipal council from office in cases of regular non-fulfillment of their duties or "inappropriate" behavior, as well as the right to dissolve local councils upon the proposal of the Ministry by adopting a relevant act. Although these powers are aimed at ensuring legality in the activities of local self-government bodies, their implementation may be perceived as an encroachment on the autonomy and independence of local self-government. It is worth noting that similar measures are applied in many other EU countries (e.g., Serbia, Greece, etc.).

Compared to Latvia, the system of local self-government in Hungary is a rather ambiguous example. Recent reforms of the institution of local self-government in Hungary have returned the country to the early 1990s. This is manifested in the strengthening of the centralization of power, control over local self-government, and the redistribution of powers in favor of the state (including property management, financing, etc.). Since 2010, significant changes have occurred in Hungary not only at the national level but also in the system of local self-government. The changes have affected both the systemic-structural organization of local self-government and the electoral system for local elections, the limits and scope of local self-government powers, and control measures over the activities of local self-government bodies have been strengthened.

On the one hand, the new Constitution of Hungary regulates issues of local self-government in more detail than the previous one. On the other hand, the reform has significantly shifted the focus towards centralization. Since January 2011, local self-government bodies at the district level have effectively become government agencies (as noted by the monitoring mission in its 2021 recommendations). Thus, the state has created and strengthened a parallel management system that existed outside the elected district level of self-government (according to the mission's experts, the regional level of self-government is practically absent in Hungary). Although the district self-government bodies remained the only elected bodies at the intermediate level, their status was effectively completely changed.

At the same time, Article 32 of the Basic Law establishes rules for controlling the acts of local self-government, which must not contradict any other law. Local self-government bodies, immediately after publishing their decisions, send them to the government office of the capital or the county. If the government office of the capital or county considers that such a decision or any of its provisions violates the law, it may initiate a judicial review of the decision of the local self-government. The government office may also apply to the court in case of non-fulfillment by a local self-government body of its legally established duty to make a decision. If the local self-government body does not fulfill its duty to make a decision by the date set by the court, the court may issue an order obliging the body to remedy the violation.

Interestingly, despite the general negative assessment of the reform and the identified shortcomings and inconsistencies of the current legislation of Hungary with the provisions of the European Charter of Local Self-Government, the monitoring mission of the Congress of Local and Regional Authorities of the Council of Europe positively assessed the aforementioned provisions of the Basic Law.

In Ukraine, as in other European democratic countries, guided by the content of paragraph 2 of Article 8 of the European Charter of Local Self-Government, one can distinguish state administrative supervision and control in two spheres:

1. In the sphere of the exercise by local self-government bodies of their own powers.
2. In the sphere of the exercise of delegated powers by local self-government bodies.

In the sphere of local self-government, municipal, state (including judicial), and normative control are in effect.

Municipal control is implemented in accordance with the Law of Ukraine "On Local Self-Government in Ukraine" and municipal-legal acts in the following way.

Firstly, the law provides for the possibility of a veto of a decision of a village, settlement, or city council by the village, settlement, or city mayor. Within five days from the moment of the adoption of a council decision, it may be suspended and submitted for reconsideration with a justification of the remarks. In such a case, the

council is obliged to reconsider the relevant decision within a two-week period. If the council rejects the mayor's remarks and confirms its previous decision by the votes of two-thirds of the deputies from the total composition, the decision enters into force.

Secondly, acts of the local mayor can be challenged in court.

Thirdly, decisions of the executive committee of a local council on matters assigned to its own competence may be suspended by the local mayor and submitted by them for consideration by the relevant council, which has the right to annul them (Parts 7, 9 of Art. 59 of the Law of Ukraine "On Local Self-Government in Ukraine").

Fourthly, acts of the heads of administrations, departments, and other executive bodies may be amended or annulled by the executive committee of the local council (para. 3 of Part 2 of Art. 52 of the Law of Ukraine "On Local Self-Government in Ukraine").

Fifthly, a decision of a body of public self-organization that does not comply with current legislation or is adopted on matters not assigned to its powers is suspended by the relevant village, settlement, city, or raion-in-city (if created) council with a simultaneous appeal to the court for the annulment of such a decision (Part 3 of Art. 20 of the Law of Ukraine "On Bodies of Public Self-Organization").

The mechanism of state administrative control in the sphere of the exercise of delegated powers by local self-government bodies is determined by the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Control over the Exercise of Delegated Powers by Local Self-Government Bodies" of March 9, 1999, No. 339. According to paragraph 2 of the Procedure, control over the exercise of delegated powers by local self-government bodies is assigned to the relevant local state administrations and the Council of Ministers of the Autonomous Republic of Crimea, and in cases provided by law—to ministries and other central executive authorities and their territorial units.

State control over the legality of acts of local self-government bodies issued on matters of executing delegated powers involves the following mechanism. Copies of acts of local self-government bodies adopted on matters of exercising delegated powers of executive authorities are sent within 10 days of their adoption to the body exercising

control. In case of finding a discrepancy of an act of a local self-government body adopted on matters of exercising delegated powers with the legislation, the body exercising control sends a notice of the act's non-compliance to the local self- government body within three months.

In addition, acts of bodies and officials of local self-government are declared illegal by a court on the grounds of their non-compliance with the Constitution or laws of Ukraine (Part 10 of Art. 59 of the Law of Ukraine "On Local Self-Government in Ukraine") at the initiative of interested persons.

However, as stated in the Decision of the Constitutional Court of Ukraine of 16.04.2009 No. 7-rp/2009 (case on the annulment of acts of local self-government bodies), this does not deprive a local self-government body of the right, on its own initiative or the initiative of other interested persons, to amend or annul a legal act it has adopted (including on the grounds of non-compliance with the Constitution or laws of Ukraine).

But local self-government bodies cannot annul their previous decisions or make changes to them if, according to the prescriptions of these decisions, legal relations have arisen related to the realization of certain subjective rights and legally protected interests, and the subjects of these legal relations object to their change or termination. This is a "guarantee of the stability of public relations." Non-normative legal acts of a local self-government body are acts of one-time application; they exhaust their effect by the fact of their execution, so they cannot be annulled or amended by the local self- government body after their execution.

As of today, we must state that the search for an optimal state-legal model of control in the sphere of local self-government is a complex and lengthy process, directly related to the formation of a national model of local self-government. In view of this, numerous factors and conditions that influence the choice and implementation or formation (reformation) of a domestic model of local self-government also affect the development of the state-legal model of control in this sphere.

Currently, Ukraine is resisting a large-scale armed aggression by the Russian Federation, which inevitably affects all aspects of state-legal and socio-economic life.

Thus, Part 1 of Art. 4 of the Law of Ukraine "On the Legal Regime of Martial Law" provides that on territories where martial law has been introduced, in order to ensure the effect of the Constitution and laws of Ukraine, to ensure, together with the military command, the introduction and implementation of measures of the legal regime of martial law, defense, civil protection, public security and order, protection of critical infrastructure, protection of the rights, freedoms, and legitimate interests of citizens, temporary state bodies—military administrations—may be formed. Thus, by the Decree of the President of Ukraine of 24.02.2022 No. 68/2022, military administrations were created in populated areas in territories of active combat operations. The main purpose of creating these bodies is to counter the occupiers (defense, protection of the civilian population, critical infrastructure, etc.) within the territories of territorial communities where village, settlement, or city councils and/or their executive bodies, and/or village, settlement, or city mayors do not exercise the powers assigned to them by the Constitution and laws of Ukraine, as well as in other cases provided by law.

Military administrations simultaneously perform military and local state executive authority functions. Such a provision leads to a dual subordination of such bodies:

- 1) The direction, coordination, and control over the activities of military administrations on matters of ensuring defense, public security and order, protection of critical infrastructure, and implementation of measures of the legal regime of martial law are carried out by the General Staff of the Armed Forces of Ukraine and oblast military administrations (regarding raion state administrations);

- 2) And on other matters—by the Cabinet of Ministers of Ukraine and oblast state administrations (regarding raion state administrations).

The law also provides for the activity of military administrations in executing the powers of local self-government bodies. At the same time, the Law does not provide for the automatic termination of the activities of local self-government bodies under martial law. Thus, Part 2 of Art. 9 of the Law of Ukraine "On the Legal Regime of Martial Law" enshrines the provision according to which local self-government bodies exercise the powers granted to them by the Constitution, this, and other laws of Ukraine.

The provisions of Part 4 of Art. 4 establish the possibility of forming military administrations in a raion or oblast in case of failure to convene a session of the respective raion or oblast council within the terms established by the Law of Ukraine "On Local Self-Government in Ukraine," or the termination of their powers in accordance with the law, or for exercising leadership in the sphere of ensuring defense, public security, and order.

In turn, Part 6 of Art. 9 of the same Law provides that in the event of facts of violation by the village, settlement, or city mayor of the relevant territorial community during the implementation of the powers provided for in Parts 4 and 5 of this article, of the Constitution or laws of Ukraine, the head of the oblast military administration, in agreement with the General Staff of the Armed Forces of Ukraine, raises before the President of Ukraine the issue of forming a military administration of the populated area(s).

Consequently, within a single oblast, the existence and/or coexistence and functioning of the following subjects is possible: local self-government bodies, military-civilian administrations, and military administrations (however, not all three at the same time).

In addition, the Law of Ukraine "On the Legal Regime of Martial Law" provides for the possibility of introducing restrictions and/or peculiarities of the organization and activity (exercise of certain powers) of local self-government bodies. In particular, para. 5 of Art. 6 of the Law provides that the relevant Decree of the President of Ukraine specifies the tasks of local self-government bodies regarding the introduction and implementation of measures of the legal regime of martial law.

Article 8 of the Law, on the other hand, provides for a number of measures of the legal regime of martial law (25 points) that can be introduced by the military command together with military administrations (if they are formed) independently or with the involvement, in particular, of local self-government bodies:

- 1) To establish (strengthen) the protection of critical infrastructure objects and objects that ensure the life support of the population, and to introduce a special regime of their work;

2) To introduce labor duty for able-bodied persons not involved in work in the defense sphere and protection of critical infrastructure and not reserved for enterprises, institutions, and organizations for the period of martial law for the purpose of performing work of a defensive nature, etc.;

3) To use the capacities and labor resources of enterprises, institutions, and organizations for defense needs, to change their work regime, and to make other changes;

4) To forcibly alienate property in private or communal ownership, to seize the property of state enterprises and state economic associations for the needs of the state in these conditions in the manner prescribed by law and to issue relevant documents of the established form for this;

5) To introduce, in the manner determined by the Cabinet of Ministers of Ukraine, a curfew, and to establish a special blackout regime;

6) To establish, in the manner determined by the Cabinet of Ministers of Ukraine, a special regime of entry and exit, to restrict the freedom of movement of citizens, foreigners, and stateless persons, as well as the movement of vehicles;

7) To check, in the manner determined by the Cabinet of Ministers of Ukraine, the documents of persons, to conduct inspections of things, vehicles, luggage, and cargo, service premises, and housing of citizens, with the exception of the restrictions established by the Constitution of Ukraine;

8) To prohibit peaceful assemblies, rallies, marches, and demonstrations;

9) To raise, in the manner determined by the Constitution and laws of Ukraine, the issue of banning the activities of political parties and public associations if they are aimed at the liquidation of Ukraine's independence, changing the constitutional order by violent means, violating the sovereignty and territorial integrity of the state, undermining its security, illegally seizing state power, propagating war and violence, inciting inter-ethnic, racial, or religious hatred, encroaching on the stability of critical infrastructure, human rights and freedoms, or the health of the population;

10) To establish, in the manner determined by the Cabinet of Ministers of Ukraine, a ban or restriction on the choice of place of stay or residence of persons in the territory where martial law is in effect, and other measures.

Parts 4 and 5 of Article 9 of the Law provide for the possibility of a village, settlement, or city mayor, during the period of martial law, to make decisions both independently and with mandatory notification of the head of the relevant oblast military administration within 24 hours, exclusively under the conditions that no combat operations are taking place in such a territory and no decision has been made to form a military administration of the populated area (on specific issues defined by this Law).

It is worth noting that contracts concluded by a village, settlement, or city mayor during martial law do not require the approval of the relevant council (with the exception of contracts whose term of validity exceeds one year from the date of termination or cancellation of martial law). The decisions of a village, settlement, or city mayor enter into force from the moment of their adoption (unless a later date is provided for in the decision itself).

At the same time, in the event of facts of violations in the actions of a village, settlement, or city mayor during the implementation of the above-mentioned powers, as well as violations of the Constitution or laws of Ukraine, the possibility of forming a military administration of the populated area is provided for (the head of the oblast military administration, in agreement with the General Staff of the Armed Forces of Ukraine, raises this issue before the President of Ukraine).

In addition, the provisions of Part 10 of Article 9 of the Law appear quite justified from the point of view of the conditions of martial law, namely: "During the period of martial law, the requirements of paragraph 3 of Part 1 (regarding the promulgation of draft acts) and Part 4 of Article 15 of the Law of Ukraine 'On Access to Public Information', the Law of Ukraine 'On the Principles of State Regulatory Policy in the Sphere of Economic Activity', and the Law of Ukraine 'On State Aid to Business Entities' do not apply to the acts of local self-government bodies, military-civilian administrations, and military administrations, as well as their officials."

The provisions of Article 10 of the Law seem important from the point of view of the possibility of establishing peculiarities of the organization and activity of local self-government bodies during the period of martial law. In particular, Part 2 of Art. 10 of the Law provides that the Verkhovna Rada of Ukraine, upon the proposal of the President of Ukraine, may decide that during the period of martial law and for 30 days after its termination or cancellation, the head of a military administration will exercise the powers of the village, settlement, or city mayor, the village, settlement, or city council, and its executive committee (this will include, among other things, approving the structure of the executive committee, as well as subordinating the apparatus of the relevant council, its executive committee, and other executive bodies, communal enterprises, institutions, and organizations to the head of the military administration). Part 3 of Article 10 of this Law, in turn, provides for the possibility of forming a raion or oblast military administration and, accordingly, terminating the powers of the oblast or raion council (with the possibility of renewing the work of the local self-government bodies), with the subordination of the apparatus of the relevant councils to the head of the military administration.

Article 15 of the Law of Ukraine "On the Legal Regime of Martial Law" establishes a list of powers for military administrations of populated areas, as well as a list of powers for oblast and raion military administrations. This concerns not only powers directly aimed at ensuring the legal regime of martial law but also the execution of the powers of the relevant local council, village, settlement, or city mayor, and executive bodies of the council (by military administrations of populated areas and their heads), and the powers of raion and oblast councils (by raion and oblast military administrations and their heads). In addition, it is also envisaged that military administrations of populated areas will exercise the delegated powers of executive authorities granted to local self-government bodies by the laws of Ukraine.

Peculiarities of the effect of normative-legal acts, in particular those of local self-government bodies, under martial law are also provided for. Thus, Art. 13 of the Law establishes that decisions of local self-government bodies that concern the rights and

freedoms of man and citizen, which are restricted in connection with the introduction of martial law, are temporarily not applied.

Control over the activities of local self-government bodies during the period of martial law is exercised by the National Security and Defense Council of Ukraine (Art. 27).

Despite the introduction of martial law, local self-government continues its work today. Local self-government bodies at all levels cooperate with the military command and military administrations. They coordinate the exercise of certain powers among themselves.

Despite the complexity of the situation, we consider it necessary to continue work in the direction of further transforming the existing model of relations between local self-government and the state. In this context, the work carried out jointly by higher state bodies, local self-government bodies, representatives of the scientific community, civil society, and international experts on updating the current legislation in this sphere deserves attention.

Thus, the draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Local State Administrations' and some other legislative acts of Ukraine regarding the reform of the territorial organization of executive power in Ukraine" (No. 4298), taking into account the proposed amendments and additions, should provide for a clearer and more comprehensive regulation of the status of local state administrations as local bodies of state executive power.

As stated in the explanatory note to this draft law, "the purpose of its adoption is to create the legal prerequisites and foundations for the functioning of local state administrations of a prefectural type before the introduction of relevant amendments to the Constitution of Ukraine (regarding the decentralization of power) and to bring the legislation on local state administrations into compliance with the modern challenges facing officials of oblast and raion state administrations in the exercise of their constitutional powers within the respective raions and oblasts. The draft law is also aimed at implementing the constitutional provisions regarding the functioning of the mechanism for ensuring legality in the activities of bodies and officials of local self-

government in order to balance the system of checks and balances and to ensure compliance with the Constitution of Ukraine and the laws of Ukraine by all public authorities in the state."

The draft law significantly updates the legal status of local state administrations, provides for amendments to several other laws, and includes transitional provisions for a phased implementation process. However, some of its provisions do not comply with the requirements of the Constitution of Ukraine and are not consistent with other laws of Ukraine. In particular, it still does not distinguish between the concepts of "control" and "supervision," does not provide a clear idea of the relationship between controlled and controlling bodies, and does not define the measures for ensuring legality that a controlling body may apply. The draft contains formulations that could lead to erroneous conclusions, in particular, about the subordination of local self-government bodies to local state administrations. Therefore, in our opinion, draft No. 4298 requires revision not only of its technical-legal aspects but also of its conceptual and systemic- legal aspects.

However, despite objective and, to some extent, subjective obstacles, this draft law is to a large extent scientifically substantiated and is part of the concept of a state- legal model of supervision in the sphere of local self-government. At the very least, it is an attempt to form such a concept (unlike the current version of the relevant law and the initial version of the draft law itself).

Drawing certain conclusions, we note that the search for an optimal state-legal model of control in the sphere of local self-government and municipal norm-creation is a complex and lengthy process, directly related to the formation of a national model of local self-government. The practice of exercising administrative control and administrative supervision is widespread in many foreign countries, including EU member states. As a rule, this concerns: a) the necessity of approval and/or coordination of such an act by the relevant body (in case of not receiving such approval, an act adopted by a municipality is invalid / can be appealed in court); b) in essence, the subordination of local self-government bodies to state authorities (direct control by central authorities is inherent). At the same time, newer states (e.g., Lithuania, Estonia,

Croatia, Slovakia, etc.) have at one time introduced or are now introducing the institution of the prefect (which may have a different name and occupy a different position, for example, being an executive body of local self-government, but is analogous in its functional purpose). It is these persons who are charged with the duty of ensuring the entry into force of the acts of the representative body of local self-government. In addition, their right to (sus)pend the effect of acts adopted by the relevant representative bodies and officials of local self-government is provided for (and other measures, including those of municipal liability).

Taking into account global trends in state-legal development, as well as trends of municipalization and remunicipalization, it is especially important for our state to establish a link between all parts of the public power system, not only for post-war recovery but also for the purpose of further developing and improving local self-government, as well as reaching a qualitatively new level of relations between the state, local self-government, and society.

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THE LEGAL REGULATION OF STATE CONTROL OVER THE PERFORMANCE OF DELEGATED POWERS BY LOCAL SELF- GOVERNMENT AUTHORITIES IN UKRAINE

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One of the pressing tasks in building a modern, European, competitive Ukrainian state and ensuring its recovery and sustainable development is the reform of the territorial organization of power. The delegation of powers is recognized as an important institution of such organization and a method of decentralization. However, achieving the goals and objectives of delegating certain powers of executive authorities to municipal bodies is possible only with an effective system of control over the exercise of such powers. Therefore, control should be seen as a necessary element of the mechanism for delegating powers, and the improvement of its legal regulation as one of the directions for the Europeanization of the national model of local self-government.

As stated in the Lima Declaration of Guidelines on Auditing Precepts, adopted by the IX Congress of the International Organization of Supreme Audit Institutions in Lima (Republic of Peru) in 1977, control is an integral part of a regulatory system whose purpose is to uncover deviations from accepted standards and violations of the principles of legality, efficiency, and economy in the expenditure of material resources at the earliest possible stage, in order to be able to take corrective measures, and in certain cases, to bring the guilty parties to justice, obtain compensation for damages caused, or take measures to prevent or reduce such violations in the future [64].

Control over the exercise of delegated powers by local self-government bodies is an important function of public administration. Its task is to prevent actions beyond the set parameters, to ensure the proper execution of such powers in line with legality and expediency, to prevent possible deviations, and in case they occur, to eliminate the negative consequences. These tasks are realized through certain functions.

The stabilizing function is manifested in ensuring the stability of public-power administration at all levels of the territorial organization of power, the coordinated and effective activity of municipal bodies in implementing national decisions, and its legality, which simultaneously contributes to the proper life support of territorial communities and the guarantee and protection of human and civil rights and freedoms. Indeed, as O. H. Danylian points out, control is the foundation of stability in society [42, pp. 221–222].

Control, by its nature, is associated with obtaining and analyzing certain information that is necessary and sufficient to identify the actual state of affairs in various sectoral spheres of the implementation of delegated powers, the nature and content of the relevant socio-economic, environmental, and other public relations at the local level, and the state of execution of decisions adopted by state bodies and the state tasks set. In this context, the significance of control as a universal means of obtaining information through a feedback channel becomes particularly important, without which the process of social management would lose its objectivity, purposefulness, and justification. Control allows for the receipt of operational information that reflects the state of affairs at the controlled objects and the correspondence of their activities with the established program, and to identify shortcomings in the content of the decisions being made, the organization of their execution, and the methods and means of their implementation. In this way, the state receives information about the effectiveness and efficiency of the policy it is implementing and the corresponding grounds for correcting politico-legal decisions. This reveals the informational function of control.

By performing a protective function, control over the exercise of delegated powers by municipal bodies serves the purpose of protecting national interests, preventing their possible violations, eliminating deviations from the order established by the state for ensuring such interests, and ceasing identified violations of the order of administrative activity.

Being one of the elements of the mechanism for delegating powers, control involves a purposeful and effective influence on local self-government bodies in cases where facts of non-performance or improper performance by local self-government bodies of powers delegated by the state have been identified, and this reflects the regulatory function of such control.

From the perspective of European standards, the fact that the European Charter of Local Self-Government operates with the concept of supervision, not control, draws attention. Researchers, attempting to distinguish between control and supervisory activities, point out that the main and defining feature that separates these concepts is the pronounced supra-departmental nature of supervision and non-interference in the

operational-economic activity of the supervised object, which is not characteristic of control [117, p. 5]. However, we support the view that supervision is one of the forms of exercising control activity, which in its main features and functional orientation coincides with the characteristics of control. It has a narrower scope of application, so in current legislation, there is a tendency to replace the term "supervision" with the term "control," and not vice versa. Control has the status of a generic concept that encompasses supervision as a special type of control in some branches of law [53, p. 10]. The use of the concept of supervision to characterize control activity in the sphere of the exercise of delegated powers by municipal bodies allows for emphasizing the non-interference of the state in the sphere of the guaranteed autonomy of local self-government.

The limits of control are determined by the general principles established by the Constitution of Ukraine and the laws of Ukraine. Thus, Part 1 of Art. 71 of the Law of Ukraine "On Local Self-Government in Ukraine" states that territorial communities, bodies, and officials of local self-government independently realize the powers granted to them [96]. The provisions of Part 2 of the same article can be considered key in this context, according to which executive authorities and their officials do not have the right to interfere in the lawful activity of bodies and officials of local self-government, nor to resolve issues assigned by the Constitution of Ukraine, this, and other laws to the powers of bodies and officials of local self-government, except in cases of executing powers delegated to them by councils, and in other cases provided by law..

A norm similar in content is also contained in Part 4 of Art. 35 of the Law of Ukraine "On Local State Administrations," which establishes a legislative prohibition on interfering in the exercise by local self-government bodies of their own powers [97]. Based on such a formulation of the norms, it can be concluded that the legislator does not consider the exercise of control by executive authorities over the state of execution of powers delegated to local self-government bodies as interference in the activities of local self-government. As V. Shariy notes, the autonomy of local self-government is always relative, as it is characterized by the existence of certain limitations. One of them is imposed on local autonomy by higher levels of administration. The main aspects that

influence it are: the forms and methods of control over the activities of local self-government bodies by state authorities; the sphere of competence, the main functions of local self-government bodies, as well as the forms and methods of their implementation [119, p. 160].

Thus, the only case where the law permits the interference of executive authorities in the activities of local self-government is to ensure control over the exercise of delegated powers by local self-government bodies. In all other cases, the actions of the state regarding interference in the sphere of competence of bodies and officials of local self-government will be qualified as unlawful. In the latter case, the bodies and officials have the right to challenge the illegal actions or inaction of the state, in the person of the bodies and officials of executive power, in court. At the same time, as provided in the European Charter of Local Self-Government (Art. 8), administrative control over local self-government bodies should be exercised in such a way that the degree of interference of the controlling body is proportional to the importance of the interests that this interference is intended to protect [8]. Authorized executive authorities should only assess the quality and efficiency of the exercise of delegated powers by local self-government bodies and cannot interfere in the operational activities of local self-government bodies when executing delegated powers.

Control over the execution of delegated powers by local self-government bodies has a legislative basis in our state. Thus, the execution of delegated powers is accompanied by mandatory control over their execution by executive authorities: local self-government bodies, on matters of exercising the powers of executive authorities, are accountable to the relevant executive authorities (Part 4 of Art. 143 of the Constitution of Ukraine, Part 2 of Art. 76 of the Law of Ukraine "On Local Self-Government in Ukraine") [58]. The village, settlement, or city mayor, who heads the executive committee of the city council, is accountable to the relevant executive authorities on matters of the exercise by the executive bodies of the city council of the delegated powers of executive authorities (Part 6 of Art. 42 of the Law of Ukraine "On Local Self-Government in Ukraine").

According to Section VII of the Concept of Administrative Reform in Ukraine, "accountability" means a certain state (regime) of organizational relations between authorities, whereby one body has the right to check the activities of another, including the right to annul or suspend its acts, and the latter is obliged to provide the necessary opportunities for such checks and to report on its activities [94]. Accountability gives executive authorities the right to determine the general policy for the exercise of powers, their methodology, provides the right to instruct and inspect, to educate the personnel of the executive bodies of local councils, to give instructions on the expediency of certain measures, and to assess their implementation.

The specified provisions of Part 4 of Art. 143 of the Basic Law of Ukraine define the circle of potential subjects of local self-government that are accountable to executive authorities when exercising delegated powers, but do not specify them. Consequently, it is not clear whether they are the executive bodies of local self-government or the relevant council, which has the ability to make decisions regarding the peculiarities of the implementation of delegated powers in the corresponding territory. Considering that the responsibility should be borne by the local self-government bodies that directly exercise the delegated powers, as well as the provisions of Part 2 of Art. 11 of the Law of Ukraine "On Local Self-Government in Ukraine," which state that the accountable bodies are the executive bodies of local councils, it would be expedient to provide at the constitutional level for the accountability of specifically the executive bodies of local self-government. In particular, it is proposed to provide for the following version of Part 4 of Art. 143 of the Constitution: "The executive bodies of a village, settlement, or city council, the executive committee of a raion, oblast, or raion-in-city council, on matters of exercising the delegated powers of executive authorities, are accountable to the executive authorities that delegated such powers."

For the implementation of Art. 143 of the Constitution of Ukraine and Art. 76 of the Law of Ukraine "On Local Self-Government in Ukraine," the Cabinet of Ministers of Ukraine approved the Procedure for Control over the Exercise by Local Self-Government Bodies of the Delegated Powers of Executive Authorities (hereinafter – Resolution No. 339) [93]. For the effective organization of control, central executive

authorities also approve methodological recommendations regarding the participation of their territorial bodies in the implementation of the specified resolution. On behalf of the state, in accordance with Art. 35 of the Law of Ukraine "On Local State Administrations" and Resolution No. 339, control over the execution of delegated powers is exercised by local state administrations and the territorial bodies of ministries and other central executive authorities. In addition, control over the execution of these powers by the executive bodies of the council, in accordance with the Law of Ukraine "On Local Self-Government in Ukraine," is exercised by the representative body—the local council, which has the right to hear reports from the local mayor on the work of the executive bodies..

Currently, two types of state control can be distinguished depending on the mechanism of its implementation. The first involves legislative regulation, where the interference of state authorities in the details of local self-government is minimized. This is the so-called "remote control," where relevant laws are adopted and local self-government bodies can act at their own discretion as long as they remain within the legal framework. The only form of central intervention under such conditions consists of quasi-judicial interpretation (for example, through courts and auditors). The second consists of administrative regulation and provides for such an order of interaction between the center and the localities that is based on the creation of rules and instructions. The state, in the person of the central executive authorities, regulates in detail a certain way of activity of local self-government bodies. During the exercise of such control, the degree of legality of the activities of local self-government bodies is determined by the individual decisions of the state officials themselves. In addition, under administrative regulation, a legally binding prior approval of the relevant actions is often necessary, whereas under legislative regulation, there is only a judicial assessment of an action already committed. Administrative control is not "remote." An example of the administrative exercise of control by the state administration bodies of Ukraine over the activities of the executive bodies of local self-government is precisely the delegated powers of the executive authorities, for which the executive committees of the councils are accountable to the local state administrations [119, p. 160].

At the same time, in the organizational aspect, the control exercised by local state administrations over the execution of delegated powers is dispersed among different structural units of the administrations, and therefore, is irrational from the point of view of the balance of public administration, which negatively affects the systematic nature of such control. We believe that a separate structural unit for control and supervision activities should be formed within the structure of local state administrations.

It should be noted that state control over the implementation of delegated powers by local self-government is assigned not only to local state administrations. This function is also carried out by central executive authorities and/or their territorial units. According to para. 5 of Resolution No. 339, ministries and other central executive authorities and their territorial bodies exercise control in accordance with their powers and in the manner prescribed by law.

Within the framework of the implementation of the policy of decentralization of public power, it is proposed to amend the Constitution of Ukraine (draft law "On Amendments to the Constitution of Ukraine (regarding the decentralization of power)"), which provide for the liquidation of local state administrations and the introduction of the institution of prefects for the purpose of exercising control, supervisory, and coordination functions. The effect of acts of local self-government, on the grounds of their non-compliance with the Constitution or laws of Ukraine, if the relevant amendments are adopted, is to be suspended by the prefect with a simultaneous appeal to the court. And the court, not the prefect, will make the final decision.

In general, the modernization of the systemic-structural organization of power at the territorial level should become an important step on the path to democratizing the mechanism for exercising public power. But the reform of public-power administration, especially the liquidation of certain power structures, requires a gradual, balanced, and responsible approach, so that the implemented measures do not lead to the loss of administrative links and to a deterioration in the quality of the performance of functional duties by the newly created institutions.

State control over delegated powers takes the form of subject-matter control, which concerns not only the legality but also the expediency of resolving certain tasks,

meaning that control is effectively transformed into a means of management and regulation. Due to their proximity to the population, it is the local authorities that should decide on the expediency of certain measures. Therefore, state control should extend to the final result. It is through such mechanisms that the state has the opportunity for indirect, informal influence on the activities of local self-government. This is manifested in both positive and negative consequences. The former includes the possibility of involving local self-government bodies in the process of promoting national interests at the local level in this way. But on the other hand, the influence of the state may not always be useful for territorial communities, and sometimes may directly contradict their interests, and therefore there will be cases of abuse by the state through the aforementioned mechanism.

The Law of Ukraine "On Local Self-Government in Ukraine" emphasizes that state control over the activities of bodies and officials of local self-government 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. Therefore, authorized executive authorities should only assess the quality and efficiency of the exercise of delegated powers by local self-government bodies and cannot interfere in the operational activities of local self-government bodies even when executing delegated powers. This provision is an important guarantee of the qualitative implementation of powers by local self-government bodies.

State control over the exercise of delegated powers by local self-government bodies can take place in various spheres of public relations where the delegation of state powers occurs. In our opinion, the most relevant from the point of view of ensuring national interests is control over the exercise of delegated powers in the budget and financial sphere. After all, as practice shows, it is in this sphere that violations of legislation most often occur during the implementation of delegated powers. Art. 69 of the Law "On Local Self-Government in Ukraine" states that the state exercises control over the lawful, expedient, economical, and effective expenditure of funds and their proper accounting. That is, the universal method of influence of state bodies on local

self-government bodies when executing delegated powers is financial control. At the same time, control and supervision activities in the sphere of land relations require reform—it is necessary to improve the legal foundations of self-governing control over the targeted use and protection of land, to grant local self-government bodies the right to independently establish the procedure for organizing and exercising control over the use and protection of land, which will ensure not only the local peculiarities of exercising such control but also an operational response to identified violations in this sphere.

The main forms of exercising control are reflected in the aforementioned Resolution No. 339 of Ukraine; they include: 1) exercising control by analyzing the acts of local self-government bodies; 2) the provision by local self-government bodies of information on the execution of the delegated powers of executive authorities; 3) conducting inspections of the activities of the executive bodies of city councils. The existence of different forms of control over the exercise of delegated powers by local self-government bodies testifies to the variability of the instrumental interaction of the state with territorial communities on the principles determined by the Constitution and laws of Ukraine.

Alongside the forms, it is proposed to also distinguish the stages of administrative procedures for exercising control over the execution by local self-government bodies of the delegated powers of executive power: 1) the stage of preparing for the inspection; 2) the stage of the direct inspection; 3) the stage of preparing the inspection materials; 4) the stage of summarizing the inspection results. Currently, in Ukraine, for the purpose of determining the mechanism for exercising control powers when local self-government bodies execute the delegated powers of executive authorities, the practice of heads of local state administrations issuing orders regarding the procedure, periodicity, and terms of inspections is quite common.

To conduct inspections of the activities of the executive bodies of local councils, local state administrations form inspection commissions, determine the list of issues to be studied, as well as the duration of the inspection, and submit them for approval to the head of the administration. If necessary, by decision of the head of the body exercising control, unplanned inspections may be conducted. Thus, the legislation provides for two

types of inspections of the execution of delegated powers by local self-government bodies: planned and unplanned. In addition, by decision of the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv, and Sevastopol city state administrations, comprehensive inspections of the exercise by the executive bodies of village, settlement, and city councils of the delegated powers of executive authorities may be conducted, with the participation of the territorial bodies of ministries and other central executive authorities. The results of the inspection are documented in an act signed by the persons who conducted the inspection. It must contain an analysis, conclusions, and proposals on all the issues checked. If necessary, the inspection materials are transferred to the relevant law enforcement bodies and higher executive authorities.

The executive bodies of village, settlement, and city councils must, once every six months, by the tenth day of the month following the reporting period, send information on the execution of the delegated powers of executive authorities to the bodies exercising control. Copies of acts of local self-government bodies adopted on matters of exercising the delegated powers of executive authorities are sent within ten days of their adoption to the body exercising control. In case of finding a discrepancy of an act with the legislation, the controlling body, within three months, sends a notice of the act's non-compliance to the local self-government bodies. At the request of the body exercising control, the executive bodies of village, settlement, and city councils must provide information on the execution of specific delegated powers.

In light of the initiated reforms of local self-government in Ukraine, it is necessary to clearly define the basic principles of organizing control by the executive power over the execution of delegated powers by local self-government bodies, taking into account European standards. The problem of the legislative definition of the principles and forms of control over the exercise of delegated powers by local self-government bodies, as well as the responsibility of local self-government and their officials for non-performance or improper performance of delegated powers, needs to be resolved.

The issue of the legal regulation of the control activities of local state administrations over the implementation of delegated powers by local self-government bodies is quite complex, as the controlling and controlled subjects are in different power subsystems—state and self-governing—which complicates the very mechanism of legal regulation of their control activities. In this regard, the question arises of developing a legal mechanism for effective control over the legality of the execution of delegated powers. For this purpose, one of the possible ways is to amend the Laws of Ukraine "On Local State Administrations" and "On Local Self-Government in Ukraine," which currently regulate these issues only in general terms. But for the further development of the institution of delegating state powers to local self-government bodies, it is important that the objects of control activity and the functional duties of the persons exercising control are in the sphere of regulation not of a number of different normative-legal acts, but in the sphere of a single law on delegated powers, which should enshrine the legal foundations of state control in the sphere of executive power [52, p. 427].

However, constitutional changes must precede the adoption of the specified law. At the end of 2015, the Verkhovna Rada of Ukraine approved in the first reading the draft Law on Amendments to the Constitution of Ukraine (regarding the decentralization of power) [90]. A systematic analysis of this document showed that the provisions of specifically Art. 143 of the current version of the Constitution of Ukraine may undergo the greatest changes. In particular, the advantages of the specified draft law include the clarity and unambiguity in defining the subjects to which the delegated powers of executive authorities are assigned. They are the executive bodies of the local self-government of the community, and the executive committees of the raion and oblast councils. Such an approach, in our opinion, is acceptable and justified, as the executive bodies of local self-government have a similar functional purpose and legal nature to the executive authorities that delegate their own powers. In addition, the draft law, unlike the current version of the Constitution of Ukraine, used the term "delegated powers" instead of "granted powers." If the specified amendments to the Constitution are finally adopted, the need for scientific and other discussions regarding the

relationship between these concepts and the need to bring them into compliance will disappear.

Another advantage of the draft law, in our opinion, can be considered the norm contained in Part 5 of Art. 143. According to it, the possibility of revoking delegated powers on the grounds and in the manner prescribed by law is envisaged. The current version of the Constitution of Ukraine does not regulate this issue in any way, and therefore, amending the Basic Law will allow for the elimination of this constitutional-legal gap.

An important step by the legislator was the attempt to specify the constitutional mechanism for suspending the effect of acts of local self-government on the grounds of their non-compliance with the Basic Law or other laws of Ukraine. Obviously, this also applies to acts of local self-government bodies that are adopted within the framework of exercising delegated powers. If the draft law is adopted, the newly introduced official—the prefect—will have a constitutionally defined right to suspend the effect of acts that contradict the current legislation, with a simultaneous appeal to the court.

Also, the Law on Amendments to the Constitution of Ukraine proposed to add a number of completely new provisions to the current Constitution of Ukraine. For example, a detailed specification of the mechanism for checking the constitutionality of acts of local self-government, which is uncharacteristic of the Basic Law, is carried out. According to Parts 3-6 of Art. 144 of the draft law, "...in case of the adoption by the head of a community, a community council, a raion or oblast council of an act that does not comply with the Constitution of Ukraine, creates a threat of violation of state sovereignty, territorial integrity, or a threat to national security, the President of Ukraine suspends the effect of the corresponding act with a simultaneous appeal to the Constitutional Court of Ukraine, temporarily suspends the powers of the head of the community, the composition of the community council, the raion or oblast council, and appoints a temporary state commissioner. The temporary state commissioner directs and organizes the activities of the corresponding executive bodies of the local self-government of the community, the executive committee of the raion or oblast council. The Constitutional Court of Ukraine considers such an appeal of the President of

Ukraine without delay. In case the Constitutional Court of Ukraine recognizes the act of the head of the community, the community council, the raion or oblast council as compliant with the Constitution of Ukraine, the President of Ukraine annuls the act... In case the Constitutional Court of Ukraine recognizes the act of the head of the community, the community council, the raion or oblast council as non-compliant with the Constitution of Ukraine, the Verkhovna Rada of Ukraine, upon the proposal of the President of Ukraine, terminates the powers of the head of the community, the community council, the raion or oblast council ahead of schedule and calls for early elections in the manner prescribed by law."

Thus, the proposed amendments provide for quite powerful control by the state over the activities of local self-government bodies and a prohibition of any attempts by territorial collectives and local self-government bodies, particularly within the framework of exercising delegated powers, to encroach on the supremacy of the Constitution of Ukraine, state sovereignty, territorial integrity, or the national security of the state. In fact, it is proposed to apply the most severe sanction for the relevant violations to the bodies and officials of local self-government—the early termination of their powers, both their own and delegated. In this way, the legislator is trying to form an adequate constitutional-legal mechanism for protecting the constitutional legal order in case of the adoption by individual local self-government bodies of illegal decisions aimed at violating the foundations of the constitutional order of Ukraine.

However, certain provisions of the specified draft law not only do not eliminate some of the shortcomings in the legal regulation of the exercise of delegated powers that exist in the current version of the Constitution of Ukraine but may also create additional problems and lead to new legal conflicts in the relations between territorial communities, local self-government bodies, and the state. Thus, in our opinion, the removal from the text of the Basic Law of the norm on the need to finance the exercise of delegated powers by assigning certain national taxes to the local budget in the manner prescribed by law will have a negative impact on the activities of local self-government bodies regarding the execution of delegated powers. The provision of para. 2 of Part 1 of Art. 142 of the draft law, which defines the material and financial basis of

local self-government as "...a part of national taxes and other revenues of local budgets," cannot fully compensate for the removal from the text of the current version of the Constitution of Ukraine of the aforementioned norm. Therefore, the reform of local self-government should be accompanied by financial modeling, which provides for the need to transfer a part of national taxes to local self-government bodies.

The detailing of the legal mechanism for delegating certain powers of executive authorities to local self-government bodies in general, and state control over their execution in particular, should take place within the framework of the adoption of a separate, comprehensive normative-legal act—the Law of Ukraine "On Delegated Powers." The absence of such a law today complicates the procedure for both delegating and revoking delegated powers. It is possible to adopt an expanded version of such a law, which provides for a comprehensive resolution in one legal act of all issues related to the exercise of delegated powers at different levels of public power, as well as a narrowed version, which considers only the delegation of powers of executive authorities and local self-government bodies.

In our opinion, the law should reflect fundamental, conceptual provisions that will contribute to the organization of fruitful cooperation between territorial communities and the state through the institution of delegated powers, starting from establishing a list of such powers, their content, and scope, and ending with defining the grounds and procedure for bringing subjects of local self-government to legal liability for non-performance or improper performance of delegated powers. However, the adoption of such a law should take place within the framework of the constitutional reform of local self-government on the principles of decentralization of public power and subsidiarity. In this regard, the norms from the current Law of Ukraine "On Local Self-Government in Ukraine" regarding any issues of delegating the powers of executive authorities to local self-government bodies can be removed. Instead, it is necessary to provide for referential (blanket) norms to the Law of Ukraine "On Delegated Powers." The provisions of such a law should become an organic part of the system.

The Law of Ukraine "On Delegated Powers" should pay special attention to the legal regulation of the mechanism for implementing delegated powers. The legislator must clearly define procedural issues. In our opinion, in this case, preference should be given to the institution of the administrative contract. The law should provide for the possibility, in the event of the emergence of relevant prerequisites and the existence of established grounds, to conclude such an agreement between the executive authority that has expressed the intention to delegate its powers and the local self-government body that has agreed to take on these powers for implementation. State authorities should refrain from making decisions on endowing local self-government bodies with delegated powers in the case where the objections of the relevant bodies indicate an objective impossibility for them to perform the specified powers. At the same time, local self-government bodies do not have the right, by adopting a legally authoritative decision, to refuse to be endowed with delegated powers unilaterally without indicating the objective reasons for such a refusal. This will allow for the avoidance of existing questions about the possibility and expediency of delegating powers, as now all local self-government bodies in Ukraine are delegated the same list of powers of executive authorities in the same volume by law. Therefore, the issue of delegating powers should be resolved in each individual case on the basis of a relevant agreement and mutual consent. Such an approach will contribute to the formation of a desire in the territorial community and the state to improve the lives of citizens, to make the relations of delegating powers more understandable and defined on the one hand, and will also contribute to minimizing the risks of their abuse or non-performance (improper performance) on the other.

For the effective functioning of the institution of delegated powers, the provisions of the future Law of Ukraine "On Delegated Powers" must clearly outline the issues of organizing state control over the exercise of delegated powers. Firstly, the law must enshrine an imperative norm regarding the accountability of bodies and officials of local self-government on matters of exercising their delegated powers to the relevant executive authorities; its forms and periodicity must be detailed. Secondly, the

responsibility of the subjects who receive delegated powers to their nominal bearers, i.e., the executive authorities that have delegated their own powers, must be established.

The problem of the liability of bodies and officials of local self-government for non-performance, refusal to perform, or improper performance of delegated powers is the most complex, ambiguous, and least developed in the science of municipal law. The liability of local self-government bodies to the state may arise, first and foremost, as a consequence of their violation of the Constitution or laws of Ukraine when performing powers, as well as in the case of misuse of budget funds. In the scientific literature, opinions have also been expressed that in case of damage to the rights and legitimate interests of individuals and legal entities in the course of the execution by local self-government bodies of delegated powers, the duty of compensation should be placed directly on the state [31, p. 226].

The completeness and effectiveness of the exercise by bodies and officials of local self-government of delegated powers, in our opinion, depends on two factors—the availability of sufficient funding from the state and the legislatively established liability for non-performance or improper performance of such powers. The absence of a legislatively established mechanism for bringing bodies and officials to liability negates the institution of delegated powers, as it lays the foundation for the unscrupulous performance by local self-government bodies of delegated powers and effectively transforms the duty of these bodies into a corresponding right.

In Ukraine, the type and limits of the liability of local self-government bodies for non-performance of delegated powers are not currently defined. At the legislative level, as mentioned above, only the principle of the accountability of local self-government bodies when performing delegated powers is provided for. In case of finding a discrepancy of an act of a local self-government body, adopted on matters of exercising the delegated powers of executive authorities, with the legislation of Ukraine, the local self-government body is only notified of the act's non-compliance; the mechanism for suspending the effect of such acts and other procedural issues are absent. But at the legislative level, the list of subjects who have the right to suspend the decisions of local self-government bodies and can appeal to a court to annul an act is not defined.

According to the Decision of the Constitutional Court of Ukraine of 16.04.2009 No. 7-rp/2009 (case on the annulment of acts of local self-government bodies), which clarifies the content of Part 2 of Art. 144 of the Constitution of Ukraine and Art. 10 of Art. 59 of the Law, it appears that decisions of local self-government bodies and their officials, on the grounds of non-compliance with the Constitution or laws of Ukraine, are declared illegal at the initiative of interested persons by a court of general jurisdiction, i.e., in a judicial procedure. However, as the Constitutional Court of Ukraine believes, this does not deprive a local self-government body of the right, on its own initiative or the initiative of other interested persons, to amend or annul a legal act it has adopted (including on the grounds of non-compliance with the Constitution or laws of Ukraine) [111]. In our opinion, it is necessary to make appropriate additions to the legislation of Ukraine and to empower the heads of local state administrations with the authority to suspend illegal acts of local self-government bodies that are adopted on matters of executing the delegated powers of executive authorities.

Also, no liability measures are established in case of non-submission by local self-government bodies to the relevant control bodies of information on the execution of specific delegated powers; if, as a result of an inspection, certain violations or abuses of delegated powers by local self-government bodies are revealed, the materials are transferred to the relevant law enforcement bodies and higher executive authorities. That is, what is carried out is not so much state control as monitoring of the situation. The role of executive authorities is effectively reduced to observation: they can only point out shortcomings, propose their elimination, or initiate the process of bringing bodies and officials of local self-government to liability by other subjects endowed with the relevant powers by the Constitution and laws of Ukraine.

One of the forms of liability of bodies and officials of local self-government is the invalidation of their decisions by a court [66, p. 294]. The mechanism for bringing the guilty bodies and officials of local self-government to liability is the relevant appeals of executive authorities to the Verkhovna Rada of Ukraine, if it concerns the collective liability of a body, or to law enforcement bodies in case of personal legal liability of officials of local self-government. The highest form of bringing to constitutional-legal

liability can be, for example, the calling by the Verkhovna Rada of Ukraine of early elections of a village, settlement, city, raion-in-city, raion, or oblast council. However, such liability will still have an indirect character, as it is not the body that directly revealed the violation that brings them to liability, but other authorized state institutions at its request. Such a procedure slows down the process of bringing the guilty subject to liability or the possibility of applying response measures to the violator at all.

Domestic legislation is familiar with the model of liability of bodies of another form of public power—the liability of local state administrations to raion and oblast councils for non-performance of powers delegated to them. Thus, according to the Constitution of Ukraine, a raion and oblast council can express no confidence in the head of the relevant local state administration, on the basis of which the President of Ukraine makes a corresponding decision. Therefore, in the Law of Ukraine "On Local Self-Government in Ukraine," it is expedient to enshrine the possibility for executive authorities to raise before the authorized local self-government bodies (local councils) a motivated issue regarding the liability of the executive bodies of local self-government for non-performance or improper performance by them of the delegated powers of executive authorities.

Taking into account European practice, bodies and officials of local self-government should bear liability when performing delegated powers only to the extent that they were provided by state authorities with the necessary material and financial resources. In particular, this can be established in bilateral acts between executive authorities and local self-government bodies.

Ensuring the real liability of local self-government bodies for the implementation of the delegated powers assigned to them is possible only in the case of the solidary liability of state bodies for the improper material-financial provision of delegated powers. The experience of Germany can be taken as an example, where the following rule is currently in force: when setting tasks for communities, the state is responsible for their financing. In case of insufficient financing or its absence, communities have the right to appeal to the land constitutional courts. Thus, the delegation of certain state

powers to local self-government bodies should not be interpreted as an absolute release of state authorities from liability, as the powers continue to retain their state nature..

Agreeing with the opinions of various scholars, we consider it expedient and necessary to legislatively enshrine:

- The liability of the executive bodies of local self-government for non-performance or improper performance of the powers of executive authorities delegated to them;
- Liability for refusal without valid, substantiated reasons to perform delegated powers;
- The liability of the bodies that delegated powers and their officials for not providing, or providing insufficient, material-financial, personnel, informational, and other resources that should be legislatively provided for the proper execution of delegated powers;
- The material liability of the bodies that delegated powers and their officials in case their decisions, actions, or inaction led to the impossibility of further execution of delegated powers or resulted in material losses.

The adoption of a separate law on delegated powers, which has already been emphasized, is an important direction for solving the problems related to enshrining the legal liability of local self-government bodies for non-performance or improper performance of delegated powers and the solidary liability of the state bodies that carried out the delegation.

At the same time, the sanctions for non-performance or improper performance of delegated powers should be a warning, suspension of the effect of an act of a local self-government body adopted within the exercise of delegated powers, and the early termination of the powers of the local council whose executive body committed the offense. At the same time, the initiators of such a termination can be both the state, in the person of the relevant executive authorities through the mechanism of early elections of local self-government bodies, and the territorial community through the mechanism of a local referendum within the framework of exercising control over its governing bodies.

As a separate sanction, the revocation of delegated powers at the initiative of the relevant executive authority at any time, but in the presence of factual and legal grounds for non-performance or their abuse, can be recognized. It is also necessary to provide for a corresponding mechanism for applying the specified sanction, which should consist of several stages: initiation of the procedure, assessment of the factual and legal grounds, discussion, coordination, and consideration of the draft decision, adoption of the decision and its entry into force, and the legal consequences of the revocation of delegated powers.

Ensuring the real liability of local self-government bodies for the implementation of the powers delegated to them can be achieved if the following conditions are met:

- The enshrinement at the legislative level of the principle of the liability of bodies and officials of local self-government to the state for non-performance or improper performance of delegated powers and the disclosure of its content by supplementing the system of principles of local self-government defined in Art. 4 of the current Law of Ukraine "On Local Self-Government in Ukraine";

- Adherence by the Ukrainian legislator to the principles of the European Charter of Local Self-Government and their implementation into the norms of national legislation. According to them, the solidary liability of the self-government body and the state institution whose powers the local self-government body received for execution through the mechanism of delegation should arise for the implementation of the powers transferred by the state;

- The establishment of real, not declarative, liability of local self-government for the implementation of the powers granted. This can only happen when the same liability is imposed on the state with respect to local self-government bodies. In such a case, state authorities are obliged to intervene in the activities of local self-government bodies if their unsatisfactory work could create a threat to the well-being of the territorial community.

In the near future, the tasks of the Ukrainian state are aimed at reforming the system of local government not so much in the direction of distributing powers as in the direction of a fundamental change in the model of its organization at the local and

regional levels, and strengthening the responsibility of local self-government bodies and their officials for decision-making. The success of the reform depends to a large extent on the transparency and clarity for all parties of the implemented changes, and the competence and professionalism of the performers. Within the framework of implementing the reform, particularly regarding the powers delegated to local self-government bodies, it is necessary to organize training programs to explain the changes to politicians at all levels and deputies of local councils, as well as training and exchange of experience with foreign colleagues to ensure the proper execution of powers.

Iryna Bodrova⁷

STATE CONTROL OF LOCAL SELF-GOVERNMENT ON UKRAINE'S PATH TO EUROPEAN INTEGRATION UNDER MARTIAL LAW

The new challenges and threats to the state sovereignty, territorial integrity, and national security of the country that have arisen before Ukraine bring to the forefront of state-legal policy tasks related to the consolidation and strengthening of the centralized system of public administration, and the enhancement of its institutional and functional capacity. This is not least due to the organizational peculiarities of the functioning of public authorities under martial law, which are precisely aimed at strengthening such centralization. The Law of Ukraine "On the Legal Regime of Martial Law" [101] directly provides for the creation, by decision of the President of Ukraine, of temporary state bodies—military administrations—in the territories where martial law has been introduced. These bodies operate within the territories of populated areas and regions where local self-government bodies are not exercising the powers vested in them.

In addition to this, a trend towards centralization is clearly observed even within those municipal management systems that have continued to operate under martial law. This refers, in particular, to the unprecedented expansion of the sole-person powers of local heads at the expense of limiting the collegial powers of representative bodies of local self-government—local councils. A corresponding shift in focus has also occurred in the control and supervision mechanism of local self-government: while public control has been limited, additional powers have been granted to state bodies, significantly expanding state control over the activities of local self-government bodies. In the event of facts of violation by a village, settlement, or city mayor of the Constitution or laws of Ukraine during the implementation of powers aimed at carrying out measures of the legal regime of martial law, upon the proposal of the head of the oblast military

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administration, agreed with the General Staff of the Armed Forces of Ukraine, the President of Ukraine may decide to form a military administration of the corresponding populated area, which effectively entails the cessation of the functioning of local self-government bodies in that territory.

A number of decisions in the sphere of control and supervision activities were adopted under martial law by executive authorities. These decisions were primarily aimed at regulating the relevant relations in the exercise of municipal administration and the disposal of municipal resources. After all, martial law has become an unprecedented challenge for local self-government bodies—a need arose, on the one hand, to ensure the managerial flexibility and adaptability of these bodies, which should allow for the prompt and effective resolution of humanitarian issues, ensuring the life support of territorial communities and the restoration of infrastructure, and on the other hand, to maximally consolidate available public resources, the volume of which has significantly increased due to international assistance and the redistribution of state funds, and to ensure strict control over their targeted and effective use. This task was complicated by the existing fragmented system of state bodies authorized to carry out control measures in the sphere of municipal administration (central executive authorities, their territorial bodies, local state administrations / military administrations, special state bodies (NSDC, Accounting Chamber), etc.) and the absence of unified legal regulation of the control and supervision activities carried out by these bodies.

Before the introduction of martial law in Ukraine, the basic principles of control in the sphere of economic activity were primarily regulated by the Law of Ukraine of April 5, 2007, No. 877-V "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" [99]. This Law was aimed at protecting business entities, which included local self-government bodies when managing objects of communal property, from excessive and unjustified interference by the state, and it defined clear rules for conducting inspections—their periodicity, grounds, including an exhaustive list of grounds for conducting unscheduled inspections, procedure, etc. Part 4 of Article 4 of this Law directly states that a state supervision (control) body may act only when the law expressly authorizes it to exercise control in a certain sphere and defines its powers.

This principle—"only that which is expressly provided by law is permitted"—became fundamental for limiting arbitrariness on the part of controlling subjects. But the system of legal regulation of control and supervision activities in Ukraine is not unified—there are specialized types of control that are traditionally regulated by separate legislative acts and to which the effect of the specified Law does not extend. This is directly indicated by Article 2 of the Law. It was this feature that became decisive in the formation of the legal policy of state control and supervision under martial law.

On March 13, 2022, the Cabinet of Ministers of Ukraine adopted Resolution No. 303 "On the Termination of Measures of State Supervision (Control) and State Market Supervision under Martial Law" [82]. This document became the main instrument for implementing the policy of the so-called "control and supervision moratorium" to reduce administrative pressure on business entities as they adapted, relocated, and consolidated efforts to support the economy. In its initial version, the Resolution introduced an almost complete refusal to conduct inspections, suspending both planned and unscheduled measures of state control and supervision. However, over time, it became obvious that this carried serious risks, especially in sensitive areas of the economy, and therefore amendments began to be made to the Resolution, as a result of which the scope of the moratorium was significantly narrowed and applied only to certain spheres of economic activity, while for others, control and supervision measures were restored.

It should be emphasized that the effect of Resolution No. 303 did not extend to those types of control to which the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" also did not apply. Taking into account Article 2 of this Law, these are: currency supervision; tax control; customs control; control over compliance with budget legislation; state supervision in the financial services markets; state control over compliance with legislation on the protection of economic competition; state supervision in the spheres of energy and communal services; state market supervision and control of non-food products; control in the sphere of road transport (raid inspections); and state supervision over compliance with nuclear safety requirements. This meant that although the policy of the "control

and supervision moratorium" was actively presented in the public space, it had a very limited effect in the sphere of local self-government, not affecting the movement of local finances.

Inspections of the financial activities of local self-government bodies in terms of tax control and control over compliance with budget legislation remained active and legitimate. In particular, this concerned control over the observance of legality by local self-government bodies within the budget and financial process (during the formation and execution of local budgets, the receipt and use of inter-budgetary transfers, loans, etc.), and the performance of the functions of tax agents (when withholding personal income tax, military levy, etc.) by the State Tax Service, the State Audit Service, and the Accounting Chamber. Despite the "moratorium," these state control and supervision bodies retained their powers almost in full. Moreover, the activities of these bodies are regulated not by the general Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity," but by special legislation.

Thus, tax control over the activities of local self-government bodies is carried out on the basis of the Tax Code of Ukraine [80]. It can concern several aspects: the performance of the functions of a tax agent, in controlling which the tax authorities have the right to check the correctness of the calculation and timeliness of payment of mandatory payments, and the payment of other taxes, for example, VAT, land tax, property tax, etc. The Code clearly regulates the procedure for conducting planned inspections. According to paragraph 77.1, the schedule-plan for such inspections for the following year must be published on the official website of the State Tax Service of Ukraine by December 25 of the current year. The schedule-plan for 2023 was published on December 23, 2022, which was a formal confirmation of the restoration of full-fledged tax control.

State financial control over local self-government bodies under martial law is also carried out by the bodies of the State Audit Service of Ukraine. It should be noted that the policy of the "control and supervision moratorium" initially extended to the work of these bodies as well: paragraph 2 of the Cabinet of Ministers Resolution No. 252 temporarily suspended the inspections of the SASU regarding the execution of local

budgets [45]. But by the Cabinet of Ministers Resolution No. 1239 of November 4, 2022, this restriction was lifted [91], which became the basis for a return to full financial control over the funds of local communities. As of today, control measures are carried out provided that the control objects are actually functioning and it is possible to ensure the preservation of the life and health of the service's employees. This means that inspections are not physically conducted in the temporarily occupied territories or in zones of active combat operations. The provision of documents during measures of state financial control, cross-checks, information gathering and documentation of the state financial control process, and the implementation of materials based on its results are carried out in paper and/or electronic form [44].

The control and financial activities of the State Audit Service of Ukraine and its territorial bodies are regulated by special legislation of Ukraine—the Law of Ukraine "On the Basic Principles of State Financial Control in Ukraine" [100]. It is concentrated on monitoring compliance with legislation in public procurement procedures in accordance with Article 8 of the Law of Ukraine "On Public Procurement" [104]. With most procurements under martial law being conducted under a simplified procedure, this area of control becomes particularly important for preventing abuses by public entities. In addition, the SASU is charged with conducting audits of financial and economic activities and state financial audits regarding the execution of local budgets, and the legality and efficiency of the use of communal property and resources [81].

The control measures carried out by the SASU are of a planned nature. The Instruction on planning the activities of state financial control bodies, approved by the Order of the State Audit Service of December 26, 2019, No. 366 (as amended), provides for the conduct of state financial control measures on a quarterly basis based on plans that must include the following information: the subject of audits and revisions; the grounds for their conduct; the responsible units; the deadlines for conduct; and a list of persons who will be informed of the results [50]. By the SASU Order of December 16, 2022, No. 299, the corresponding plan for the first quarter of 2023 was approved [79], which was evidence of the continuous nature of this body's control activities.

During martial law, the Accounting Chamber did not stop its control and supervision activities either; in accordance with the Law of Ukraine "On the Accounting Chamber," it is the supreme state collegial body of financial control (audit), accountable to the Verkhovna Rada of Ukraine [106]. The financial activities of local self-government bodies are one of the objects of control by this body. Article 15 of the Law stipulated (until 19.12.2024) that the Accounting Chamber has the right to carry out state financial audit measures regarding: the completeness of revenues to local budgets from the taxes and fees assigned to them; the legality of the use by local budgets of transfers received (dotations, subventions) from the state budget; and the legality and efficiency of the expenditures made from local budgets. By the Law of Ukraine "On Amendments to the Law of Ukraine 'On the Accounting Chamber' and some other legislative acts of Ukraine" No. 4042-IX, adopted by the Verkhovna Rada of Ukraine on October 30, 2024 (entered into force on 19.12.2024), the Accounting Chamber was granted expanded powers to conduct audits of local budget funds and communal enterprises, extra-budgetary funds, funds received from international partners, as well as the consolidated financial statements of public sector entities and budgets [88].

The Accounting Chamber conducts control measures on the basis of annual work plans. Thus, the plan for 2023 was approved by the Decision of the Accounting Chamber of December 29, 2022, No. 29-1, and provided, in particular, for conducting several audits of the efficiency of the use of certain subventions by local self-government bodies [78].

Thus, the "control and supervision moratorium" policy introduced in Ukraine under martial law had a minor impact on local self-government, as it primarily extended to control in the sphere of economic activity and did not stop control measures in the tax and budget-financial spheres. The main state subjects of such control not only did not narrow but, on the contrary, expanded their powers and the subject of their control and supervision activities, having adjusted the procedure for conducting control measures to take into account the realities of wartime.

Alongside this, the state, understanding the increased public danger of crimes committed during martial law, has resorted to legal measures to strengthen criminal

liability. Paragraph 11 of Part 1 of Article 67 of the Criminal Code of Ukraine now directly stipulates that the commission of a crime using the conditions of martial law or a state of emergency is an aggravating circumstance [61]. This norm plays an important preventive role, sending a clear signal to officials that any abuses in conditions of war will be punished as harshly as possible. The legal logic of such an approach is that crimes related to the theft of public funds, property, or humanitarian aid during a war cause double harm—they not only lead to material losses but also undermine the state's defense capability, demoralize society, and discredit the authorities in the eyes of citizens and international partners.

Undoubtedly, the peculiarities of the organization and implementation of public administration outlined above, including control and supervision activities, are due to circumstances of an extraordinary nature and the need to ensure the flexibility and adaptability of the functioning of authorities in the conditions of a full-scale war. While not denying the importance of measures under the special legal regime of martial law, we must emphasize: the proper functioning of local self-government bodies alongside military administrations requires the development of a substantiated and balanced legal model that should not violate the established guarantees of local self-government, but should consolidate all available municipal, state, and public resources to achieve a common goal. This is all the more important as Ukraine, even now, in the difficult conditions of repelling armed aggression, continues its purposeful and persistent movement towards membership in the European Union.

However, we must note that the problem of improving the state-legal model of control over local self-government retains its relevance even under ordinary conditions throughout the entire modern period of state-building. After all, since 2016, the prosecutor's office has been deprived of the function of general oversight, and central and local executive authorities have not acquired effective control and supervision powers. This has exacerbated the problem of the institutional and legal provision of state supervision over the observance by local self-government bodies of the Constitution and laws of Ukraine in the course of their norm-creative, law-enforcement, and other current activities. The implementation of the constitutional reform regarding

the amendments to Section VII "The Prosecutor's Office" and its incompleteness with respect to the decentralization of power, which envisaged the introduction of the institution of prefects and the introduction of additional organizational-legal institutions of a control and supervisory nature, have led to the absence of an effective system of state supervision over the legality of municipal activities. In this regard, the task for legal science has become to determine the state and prospects of the legal provision of state supervision over the observance by local self-government bodies of the Constitution and laws of Ukraine in the context of the implementation of European standards.

Characterizing the existing legal basis for state supervision and control in the sphere of local self-government, we must state that it is of an insufficient and limited nature. According to Art. 144 of the Constitution of Ukraine [58], local self-government bodies, within the powers defined by law, adopt decisions that are mandatory for execution in the corresponding territory. At the same time, on the grounds of non-compliance with the Constitution or laws of Ukraine, such decisions are suspended in the manner prescribed by law with a simultaneous appeal to the court. However, the corresponding law has not yet been adopted by the parliament. A norm analogous to the constitutional one is also contained in Part 10 of Art. 59 of the Law of Ukraine "On Local Self-Government in Ukraine" [96], which provides that acts of bodies and officials of local self-government are declared illegal by a court on the grounds of their non-compliance with the Constitution or laws of Ukraine. Thus, the only state-coercive mechanism for terminating the effect of decisions of local self-government bodies that do not comply with the Constitution of Ukraine and the laws of Ukraine is their declaration as illegal by a court, which in turn entails their loss of validity.

Domestic legislation does not clearly outline the circle of power structures that have the right to suspend the decisions of local self-government bodies on the grounds of their illegality with a simultaneous appeal to the court. At the same time, any interested subjects have the right to apply to a court regarding the non-compliance of decisions of local self-government bodies with current legislation, as well as bodies that check the state of observance of the Constitution of Ukraine and the laws of Ukraine,

and other legislative acts by local self-government bodies and their officials. Such bodies, in particular, may be local state administrations, since according to Art. 28 of the Law of Ukraine "On Local State Administrations" [97], they have the right to check the state of observance of the Constitution and laws of Ukraine, and other legislative acts by local self-government bodies and their officials on matters assigned to the competence of local state administrations, as well as the territorial bodies of central executive authorities within the powers granted to them. However, neither the specified Law nor other acts of the current Ukrainian legislation in general provide for a mechanism of administrative supervision over the activities of local self-government bodies within the implementation of their own powers.

Detailed regulation of the principles of state supervision over the functioning of local self-government is contained in the European Charter of Local Self-Government [8], which reflects the practice of European states in resolving this issue. In particular, the European Charter of Local Self-Government establishes the following principles:

Firstly, any administrative supervision of local authorities may only be exercised in accordance with such procedures and in such cases as are provided for by the constitution or by statute;

Secondly, any administrative supervision of the activities of local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles (however, higher-level authorities may exercise administrative supervision in respect of the expediency of tasks the execution of which is delegated to local authorities);

Thirdly, administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

As we can see, the European Charter of Local Self-Government contains a requirement to regulate the procedure of administrative supervision over the activities of local self-government bodies at the level of the constitution or law of the respective state, which is a guarantee of the independence of local self-government. In Ukraine, however, these issues are not legislatively enshrined.

Alongside the provisions of the European Charter, Recommendation No. R(98)12 "On Supervision of Local Authorities' Activities," adopted by the Committee of Ministers of the Council of Europe on September 18, 1998 [110], should also be taken into account, which is primarily aimed at implementing the principles set out in Art. 8 of the Charter. The appendix to this document contains guiding principles that should determine the scope and procedures of administrative supervision, namely: 1) ensuring the exercise by local authorities of their powers, unless the law provides otherwise; 2) promoting the definition of "own powers" through their delegation, which will lead to a reduction in the expediency of supervision; 3) clearly listing in the statutory provisions the types of activities subject to supervision; 4) limiting mandatory administrative supervision over actions of a certain importance in accordance with official status; 5) reducing the overall volume of administrative control; 6) ensuring the existence of only one first-instance supervisory body; if the intervention of specialized supervisory bodies is required (depending on the content of the activity subject to verification), clearly defining the areas of competence of such bodies to avoid uncertainty as to which body should exercise supervision; 7) establishing in the statutory documents a time limit for the supervisory body to carry out the relevant supervision.

However, we must state the non-compliance of the existing organizational-legal mechanism of state supervision and control over the activities of local self-government bodies with the named European standards and guiding principles [33, p. 65], as well as the absence of its systematic nature and proper legal basis.

A systematic renewal of the mechanism of state supervision and control over the legality of the activities of local self-government bodies on new conceptual and institutional foundations was planned to be carried out during the constitutional reform of the decentralization of power. For example, the draft Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding the decentralization of power)" (Reg. No. 2217a) [90] proposed to introduce the institution of prefects for the supervision of the observance of the Constitution and laws of Ukraine by local self-government bodies: he suspends the effect of acts of local self-government on the

grounds of their non-compliance with the Constitution or laws of Ukraine with a simultaneous appeal to the court.

In addition, it was proposed to introduce an additional, but very important from the point of view of ensuring the territorial integrity of the state, mechanism of state response to the facts of the adoption by the head of a community, a community council, a raion or oblast council of a decision that does not comply with the Constitution of Ukraine, creates a threat of violation of state sovereignty, territorial integrity, or a threat to national security. The President of Ukraine was to suspend the effect of the relevant decision with a simultaneous appeal to the Constitutional Court of Ukraine, as well as to temporarily suspend the powers of the head of the community, the composition of the community council, the raion or oblast council, and to appoint a temporary state commissioner. In case the Constitutional Court of Ukraine recognized the decision of the head of the community, the community council, the raion or oblast council as compliant with the Constitution of Ukraine, the Verkhovna Rada of Ukraine, upon the proposal of the President of Ukraine, was to terminate the powers of the head of the community, the community council, the raion or oblast council ahead of schedule and call for early elections in the manner prescribed by law.

The proposed model of state supervision in the sphere of local self-government balanced the interests of local self-government bodies, which are guaranteed legal autonomy in decision-making, and the interests of the state, which would receive an effective tool for preserving the unitary state, ensuring the territorial integrity and independence of Ukraine, its sovereignty, and protecting the rights and freedoms of citizens. At the same time, it was proposed to use the French model of the institution of prefects in Ukraine, which is "relatively soft," as prefects can only suspend the effect of acts of local self-government, not annul them, as in other European countries (for example, in Poland).

Despite the postponement of constitutional changes regarding the decentralization of power, the key aspects of the relevant reform do not leave the agenda of expert and public discourse. Moreover, the initial principles of state control in the sphere of local self-government were attempted to be defined in the draft Law of Ukraine "On Prefects"

[103], which received a critical assessment from the expert community. Subsequently, draft laws of Ukraine "On Amendments to some legislative acts of Ukraine regarding the exercise of state control over the compliance of decisions of local self-government bodies with the Constitution and laws of Ukraine" [85] and "On Amendments to some legislative acts of Ukraine regarding the suspension of acts of local self-government bodies" [86] were developed, which became the subject of lively discussion in the expert community, as a result of which none of them received a positive assessment and support. This sets the task of working out those agreed positions and provisions that should lay the foundations for the development of a legislative model for the organization and implementation of state supervision and control of local self-government. Regarding such provisions, we would like to express some considerations.

Firstly, in accordance with Part 4 of Art. 143 and Part 2 of Art. 144 of the Constitution of Ukraine, the procedures for supervision over the observance by local self-government bodies of the Constitution and laws of Ukraine when exercising their own (self-governing) powers and control over the execution by these bodies of delegated (state) powers must be clearly distinguished. Own competence is the sphere of independent governance of local self-government within the framework of the Constitution and laws of Ukraine. Therefore, state control is limited to observing the observance of the legal framework of its implementation, having the character of state supervision. State control over delegated powers takes the form of subject-matter control, which concerns not only the legality but also the expediency of solving certain tasks. Delegated powers are that sphere of competence in which the principle of non-interference of state authorities and their officials in the exercise by municipal bodies of the powers granted to them, guaranteed by Art. 20 of the Law of Ukraine "On Local Self-Government in Ukraine," does not apply. Being one of the means of public administration, control over the execution of delegated powers involves not only observing the state of their execution but also correcting the violations committed [72, p. 139].

At the same time, we consider it inexpedient to concentrate in the supervisory body the control and supervisory powers over the activities of local self-government

bodies in the spheres of both their own and delegated competence. After all, this will lead to the formation of a system of total control over local self-government bodies and their effective inclusion in the executive vertical. We believe that such a body should exercise supervision over the observance by local self-government bodies of the Constitution and laws of Ukraine in the process of their norm-creative activity, and the functions of specialized (sectoral) control over the execution of delegated powers should be assigned to the central executive authorities.

Secondly, state supervision should be extended to municipal acts of an exclusively normative character, adopted by both the representative and executive bodies of territorial communities, as well as by raion and oblast councils. Regarding individual acts, the general procedure of judicial appeal by interested subjects of the legality of such acts should be applied. After all, such acts do not have a suspensive procedure for entry into force (they enter into force from the moment of their adoption) and are exhausted by the fact of their execution (they cease to be in effect at the moment of realization). By virtue of this, the application to them of the constitutional mechanism of suspension and appeal is complicated, and mostly impossible, since the application of such procedures to non-acting acts is impossible. This is also confirmed by the legal position of the Constitutional Court of Ukraine, set out in the reasoning part of its Decision No. 7-rp/2009 of 16.04.2009 (case on the annulment of acts of local self- government bodies) [111].

Thirdly, supervision should be of a permanent, not selective, and subsequent, not preliminary, character. A normative act adopted by a local self-government body should be sent to the supervisory body in the shortest possible time, but regardless of this, it should enter into force in the general manner established by the Law of Ukraine "On Local Self-Government in Ukraine." The supervisory body, in case of establishing the non-compliance of an act adopted by a local self-government body with the Constitution and laws of Ukraine, must, within a specified period, notify the local self- government body that issued this act of the identified facts of the illegality of its decisions and provide a reasonable time to eliminate the violations committed. If the act is not brought into compliance with the legislation within the established time, the effect

of the municipal-legal act is subject to suspension with a simultaneous appeal to the court. Such a procedure would comply with Art. 144 of the Constitution of Ukraine.

Taking into account the public significance of the draft of a particular municipal-legal act, the supervisory body may provide a preliminary conclusion regarding the compliance of the published draft of such an act with the Constitution and laws, which will be of a recommendatory nature for local self-government bodies. Establishing the mandatory nature of a preliminary conclusion of the supervisory body would contradict the guarantees of the legal autonomy of local self-government, the requirements of the European Charter of Local Self-Government, and the municipal practice of European states in which the institution of administrative tutelage is not currently applied.

Fourthly, the mechanism of state supervision should not introduce hierarchical relations between local self-government bodies and the subject of supervision, provide for the formation of a body of general control over the activities of local self-government bodies, or include checks and assessments of the quality standards of public services, which would belong to the sphere of subject-matter (sectoral) control. The powers of the supervisory body should correspond to its functional purpose, contribute to ensuring the observance by local self-government bodies of legality, the fight against corruption, and the achievement of other general socially significant goals.

Fifthly, it is important to resolve the issue of the affiliation of the supervisory body to one or another subsystem of state authorities. We believe that it should not be subordinate to local state administrations and directly to the Government, as this will lead to the formation of a mechanism of state supervision over local self-government bodies by executive authorities. We believe that the institutionally justified approach is to assign the supervisory body to the subsystem of presidential power. After all, it is the President of Ukraine who is the guarantor of the observance of the Constitution of Ukraine, human and civil rights and freedoms (Art. 102 of the Constitution of Ukraine). The executive authorities, on the other hand, should exercise sectoral control over the implementation by local self-government bodies of delegated powers.

In addition, taking into account the formation of united territorial communities and the reform of the powers and role of raion governing bodies, we consider it

expedient to form supervisory bodies at the regional level, but to ensure the legislative possibility of creating their territorial representations at lower levels of the territorial organization of power if necessary.

Sixthly, the subject of supervision should be formed as an authoritative, professional, and effective state institution. The procedure for appointing the head of the supervisory body should be determined after agreeing on the issue of the subordination of this body. We propose to establish that the head is appointed by the President of Ukraine upon the proposal of the Cabinet of Ministers of Ukraine from among the persons who are determined to be the winners of a competitive selection to the composition of this body.

The quantitative composition of the supervisory body should depend on the number of local self-government bodies in the corresponding territory, the specifics of their activities, and the peculiarities of the territory. The selection of personnel should be carried out on the basis of an open competitive selection according to objective, understandable criteria (education, practical experience, profession, qualification, etc.) and clear, transparent procedures. This body should be maximally protected from political influence and pressure and be politically neutral.

Seventhly, the law should regulate the feedback mechanism between the subject of supervision and local self-government bodies and their associations. We believe that, as an important element of the interaction between state power and local self-government, the main forms and methods of this should be enshrined at the legislative level. Among them are the creation of a consultative council under the supervisory body, the generalization and dissemination of materials summarizing the practice of supervisory activities, educational events, etc.

In the context of the conducted research, one cannot ignore the question of the legal basis for state control over the execution by local self-government bodies of certain powers of executive authorities. As of today, such control, in violation of the requirements of the Constitution of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine," is not regulated by law. Only the Law of Ukraine "On the Cabinet of Ministers of Ukraine" [95] establishes that in the spheres of legal policy,

legality, and ensuring human and civil rights and freedoms, the Cabinet of Ministers of Ukraine exercises control over the observance of legislation by local self-government bodies on matters of their execution of the delegated powers of executive authorities (Art. 20) and, in accordance with the Constitution and laws of Ukraine, ensures the exercise of control over the execution by local self-government bodies of the powers of executive authorities granted to them (Part 5 of Art. 39). At the same time, the control activity is not regulated by law, but is carried out on the basis of a sub-legislative act. The Procedure for control over the exercise by local self-government bodies of the delegated powers of executive authorities was approved by the Resolution of the Cabinet of Ministers of Ukraine of March 9, 1999, No. 339 (as amended) [93].

Obviously, as of today, there is an urgent need to regulate the relations of the organization and implementation of state control over the exercise by local self-government bodies of certain powers of executive authorities at the level of a special law. It should regulate the principles, requirements, subjects, forms, and procedure for carrying out control activities, as well as the rights and obligations of the controlling and controlled bodies, the system of response measures to identified violations of the execution of delegated powers, the guarantees for local self-government bodies when control measures are applied to them, and the forms, procedure, and grounds for the liability of local self-government bodies for non-performance or improper performance of delegated powers.

Thus, summarizing the research on the problems of the legal regulation of state supervision over the observance by local self-government bodies of the Constitution and laws in Ukraine, we must state the absence of a proper legislative base, an effective mechanism for such supervision, and the non-implementation of European standards in this sphere. The solution to these problems is related to the improvement of the constitutional-legal policy in the sphere of local self-government: the renewal of the constitutional basis for the organization and implementation of local self-government in general and state supervision over the observance of legality in the activities of municipal bodies in particular; the adoption of laws on state supervision over the observance by local self-government bodies of the Constitution and laws of Ukraine, as

well as on state control over the exercise by local self-government bodies of certain powers of executive authorities.

CONCLUSIONS

The conducted research allows for the following conclusions to be drawn:

1. All existing approaches in legal science to the understanding of control are not mutually exclusive but are complementary. A comprehensive approach presupposes the recognition of the dialectical interconnection between all its aspects, upon which each of these approaches focuses. In a modern pluralistic society, state control should be regarded as the leading type of public control, functioning alongside non-state control (municipal, public, and international) within a single control mechanism.

2. The terms "control in the state" and "state control" are proximate but not identical, as control in the state is a broader concept. Control in the state includes state control, non-state control, and the control of international organizations. State and non-state control are independent types of control that exist in a dialectical interconnection, which ensures the unity and integrity of the control mechanism. Thus, state and non-state control complement each other; their specificity lies in the fact that control activity is carried out by authorized subjects united by a common goal—to promote the effective functioning of the state and the formation and establishment of a civil society. At the present stage, state control ceases to be a purely managerial concept and represents a complex, integrated socio-legal institution based on the dualism of civil society and the state, designed to ensure compliance with social regulators and the implementation of the principles and tasks of a rule-of-law state.

3. Control over the activities of local self-government bodies constitutes a purposeful influence by competent subjects, in defined forms and methods, on the

manner in which activities are carried out by the bodies and officials of local self-government, with the aim of ensuring they are kept within the limits defined by legislation. The application of a comprehensive approach to the regulation of issues of state-legal control over local self-government is associated with a number of factors. Firstly, local self-government is a necessary instrument for ensuring democratic governance and interaction between the government and the community, and therefore it cannot remain without control from the state. Secondly, the European Parliament has adopted a resolution on intensifying the process of Ukraine's accession to the EU, which calls on the Ukrainian government to continue decentralization and implement reforms, integrating them into the general context of Ukraine's recovery and reconstruction, thereby bringing the issue of administrative control over local self-government to the forefront for resolution. Thirdly, state control over local self-government plays an important role in ensuring the territorial integrity of the state as a component of national security and acquires special significance for the organization of public administration in de-occupied territories.

4. As of today, the most important step in forming the legal policy of state control over local self-government is the conceptualization of the national legal model. However, the state's legal policy regarding the state-legal model of control over local self-government has not been updated since the adoption of the Concept for the reform of local self-government and territorial organization of power and the formation on its basis of draft amendments to the Constitution of Ukraine. A significant obstacle to the proper organization of state control in Ukraine is the insufficient normative-legal provision for the formation of a holistic system of control. We believe that the approaches to defining the model of state-legal supervision should be reviewed conceptually already at the present stage and be reflected in a Concept for the reform of state control and supervision in the system of local self-government in Ukraine. To ensure an effective system of control over local self-government, it is necessary to specify the list of state authorities authorized to exercise control in this sphere, their subject-matter jurisdiction, forms of control, the nature of response acts, and the corresponding control procedures.

5. The issue of reforming and introducing state administrative supervision over the legality of acts of local self-government bodies is part of the Ukraine Plan within the framework of the Ukraine Facility and is enshrined among the tasks of the updated State Strategy for Regional Development until 2027. As a future member of the European Union, Ukraine must establish a lawful and effective system of administrative supervision. Such supervision is considered an important component of the process of interaction between the two subsystems of public power—state power and local self-government. It is designed to ensure compliance with the law by municipal authorities, but alongside this, to establish clear limits on the interference of state power in the activities of bodies and officials of local self-government, as a guarantee of the latter's autonomy. For this purpose, the principles of administrative supervision receive normative-legal enshrinement, including at the international and constitutional levels. An analysis of monitoring data from the Congress of Local and Regional Authorities of the Council of Europe on compliance with the provisions of the European Charter of Local Self-Government provides grounds to conclude that, firstly, out of the 46 countries that have ratified the European Charter of Local Self-Government, no country has completely refused to ratify the corresponding article; 8 countries have not ratified Part 2 (Austria, Greece, Netherlands, Serbia, Switzerland), Part 3 (Monaco, Turkey), or both parts (Montenegro), and Belgium has ratified Part 2 of Article 8 with reservations; and secondly, the formal ratification of Article 8 of the Charter does not yet testify to the absence of practical problems with its implementation.

6. The introduction of administrative supervision over local self-government in European countries was a consequence of the reform of municipal power during the late 20th and early 21st centuries. Such supervision consists of verifying the legality of decisions of local self-government bodies, whereby the supervisory body/institution/subject is not endowed with the power to independently annul the decisions of local self-government bodies, but at the same time can raise the issue of declaring such decisions illegal through judicial procedure (as a rule, in courts of administrative jurisdiction). In this case, local self-government bodies are provided with a constitutional-legal guarantee of protecting their rights in court. Moreover, the

respondents can be not only local government bodies but also higher state authorities. One of the peculiarities of the vast majority of European continental countries is the presence of at least one central (or regional, depending on the state structure) body that participates in the supervision of local self-government bodies, although the scope and degree of supervisory competencies are quite different. Historically, in Europe, the institution that carried out state control/supervision over municipalities was the prefecture, headed by a prefect. Over time, due to political regionalization, prefects lost most of their powers regarding general administration (but in Spain, they had fewer powers of this kind than in Italy), but they retained their supervisory powers and basic powers for ensuring legality and national security.

7. The search for an optimal state-legal model of control in the sphere of local self-government is a complex and lengthy process, directly related to the formation of a national model of local self-government. In developing the organizational-legal mechanism of state supervision and for the purpose of implementing European standards in this sphere, it is proposed:

- 1) To clearly distinguish the procedures for exercising supervision over the observance by local self-government bodies of the Constitution and laws of Ukraine when implementing their own (self-governing) powers, and the procedures for exercising control over the execution by these bodies of delegated (state) powers;
- 2) To extend state supervision to municipal-legal acts of a normative character;
- 3) To carry out state supervision on a permanent basis and based on the results of the norm-creative activity of local self-government bodies (ex post);
- 4) To prevent the formation of hierarchical relations between the supervisory body and local self-government bodies;
- 5) To assign the supervisory body to the subsystem of presidential power;
- 6) To form the subject of supervision as an authoritative, professional, and effective state institution, with personnel selection carried out on the basis of open competition according to objective, understandable criteria and clear, transparent procedures;

7) To legislatively regulate the feedback mechanism between the subject of supervision and local self-government bodies and their associations.

8. As of today, there is an urgent need to regulate at the level of a special law the relations concerning the organization and implementation of state control over the exercise by local self-government bodies of certain powers of executive authorities. It should regulate the principles, requirements, subjects, forms, and procedure for carrying out control activities, as well as the rights and obligations of the controlling and controlled bodies, the system of response measures to identified violations in the execution of delegated powers, guarantees for local self-government bodies when control measures are applied to them, and the forms, procedure, and grounds for the liability of local self-government bodies for non-performance or improper performance of delegated powers.

9. The new challenges and threats to the state sovereignty, territorial integrity, and national security of the country that have arisen before Ukraine have brought to the forefront of state-legal policy tasks related to the consolidation and strengthening of the centralized system of public administration and the enhancement of its institutional and functional capacity. A trend towards centralization is clearly observed—this refers to the unprecedented expansion of the sole-person powers of local heads at the expense of limiting the collegial powers of representative bodies of local self-government—local councils. A corresponding shift in focus has also occurred in the control and supervision mechanism: while public control has been limited, additional powers have been granted to state bodies, significantly expanding state control over the activities of local self-government bodies. The "control and supervision moratorium" policy introduced in Ukraine under martial law had a minor impact on local self-government, as it primarily extended to control in the sphere of economic activity and did not stop control measures in the tax and budget-financial spheres. The main state subjects of such control not only did not narrow but, on the contrary, expanded their powers and the subject of their control and supervision activities, having adjusted the procedure for conducting control measures to take into account the realities of wartime. Alongside this, the state, understanding the increased public danger of crimes committed during martial law, has

resorted to legal measures to strengthen criminal liability.

10. The peculiarities of the organization and implementation of public administration, including control and supervision activities, under martial law are due to circumstances of an extraordinary nature and the need to ensure the flexibility and adaptability of the functioning of authorities. While not denying the importance of measures under the special legal regime of martial law, we must emphasize: the proper functioning of local self-government bodies alongside military administrations requires the development of a substantiated and balanced legal model that should not violate the established guarantees of local self-government, but should consolidate all available municipal, state, and public resources to achieve a common goal. This is all the more important as Ukraine, even now, in the difficult conditions of repelling armed aggression, continues its purposeful and persistent movement towards membership in the European Union.

RESEARCH-BACKED PRACTICAL RECOMMENDATIONS FOR THE SYSTEMIC RENEWAL OF THE LEGAL MODEL OF STATE CONTROL AND SUPERVISION IN THE SYSTEM OF LOCAL SELF-GOVERNMENT IN UKRAINE

1. To introduce the institute of the prefect, who shall represent the executive power at the raion and regional levels. To enshrine that the prefect is appointed to and dismissed from office by the President of Ukraine upon the proposal of the Cabinet of Ministers of Ukraine. To define the position of prefect as a civil service post, extending to it the relevant requirements of political neutrality and ensuring the prevention of corruption. This fully corresponds to the European practice of the functioning of analogous control and supervision bodies at the local level.

2. To delineate the functions of prefects and the territorial bodies of central executive authorities, preventing their functional overlap. While the former should have a control, supervisory, and coordinating focus, the latter should carry out state administration in specific sectoral or functional spheres within the corresponding territory. Prefects should play the role of a coordinating center for the territorial bodies of central executive authorities in the respective territory.

3. We propose using the term "supervision" rather than "administrative supervision," and limiting its subject matter to the compliance of acts of local self-government bodies with the Constitution and laws of Ukraine. Entrusting the prefect with the power to supervise the observance of the Constitution and laws of Ukraine by local self-government bodies would effectively mean a return to the Soviet system of general oversight and the establishment of total supervision over local self-government, which contradicts Part 3 of Art. 8 of the European Charter of Local Self-Government.

4. We must define at the constitutional level the functional roles of local self-government bodies and prefects in the territorial organization of power at the corresponding level, preventing the duplication and competition of competences. In view of the formation of a complete organizational system of local self-government at the level of raions and oblasts, executive functions in local self-government are to be

fully transferred to the executive bodies of oblast and raion councils. Prefects are to be granted state control and supervisory powers.

5. To ensure the proportionality of the prefect's authoritative measures to the importance of the protected interests, by granting them the power to suspend the effect of acts of local self-government bodies on the grounds of their non-compliance with the Constitution or laws of Ukraine, with a simultaneous appeal to the appropriate court. In this regard, attention should be drawn to the position of the Venice Commission (para. 37 of the preliminary opinion No. 803/2015 of 24.06.2015 on the proposed constitutional amendments regarding the territorial structure and local self-government in Ukraine): the term "suspension" instead of "termination" should be used in the relevant constitutional norm. Furthermore, the Venice Commission notes that this norm should provide for the prefect's obligation to refer the case to a "competent" court. We propose to enshrine at the constitutional level the requirement that the procedure for suspending the effect of acts of local self-government bodies must be determined at the legislative level.

6. We propose to define at the constitutional level an exhaustive list of grounds for direct state intervention in the activities of local self-government. As such, we propose to enshrine cases where an act of local self-government is adopted that does not comply with the Constitution of Ukraine and creates a threat of violation of state sovereignty, territorial integrity, or a threat to national security. This proposal was supported by the Venice Commission (para. 11 of the preliminary opinion No. 803/2015 of 24.06.2015 on the proposed constitutional amendments regarding the territorial structure and local self-government in Ukraine).

7. To grant the power to suspend the effect of a local self-government act, with a simultaneous appeal to the Constitutional Court of Ukraine, to the President of Ukraine. He should also have the power to temporarily suspend the powers of the head of a community and the council, and to appoint a temporary state commissioner. The Venice Commission considers that "it is fully justified that the President of Ukraine as the guarantor of the Constitution... should have the power to intervene - more quickly and effectively than the Verkhovna Rada - when local self-government bodies go beyond

their constitutional powers and threaten the sovereignty, territorial integrity and security of the state" (para. 11 of the preliminary opinion No. 803/2015 of 24.06.2015 on the proposed constitutional amendments regarding the territorial structure and local self-government in Ukraine).

8. We believe that this should concern all acts of local self-government as defined in Part 1 of Art. 144, since not only an act of the head of a community, a community council, a raion, or oblast council can contradict the Constitution of Ukraine and create a threat of violation of state sovereignty, territorial integrity, or a threat to national security, but also a decision of a local referendum or another act of a territorial community, cases of which have occurred in municipal practice.

9. A clear procedure and deadlines for the implementation of control and supervision procedures must be enshrined at the constitutional level, which will serve as an important constitutional guarantee against unjustified state intervention and abuse of this mechanism. We propose to establish clear deadlines for the consideration by the Constitutional Court of Ukraine of the relevant submission from the President of Ukraine and, based on the results of the latter's decision, a requirement either for the immediate restoration of the powers of the relevant local self-government bodies or for the calling of relevant local elections by the Verkhovna Rada of Ukraine. In the opinion of the Venice Commission, a short time limit should be set for the Constitutional Court of Ukraine to resolve the relevant issue (para. 11 of the preliminary opinion No. 803/2015 of 24.06.2015 on the proposed constitutional amendments regarding the territorial structure and local self-government in Ukraine). In the event that the Constitutional Court of Ukraine recognizes an act of local self-government as compliant with the Constitution of Ukraine, the local self-government bodies must immediately have their powers restored, and the temporary state commissioner must immediately cease their functions. In the event that the Constitutional Court of Ukraine recognizes an act of local self-government as non-compliant with the Constitution of Ukraine, the Verkhovna Rada of Ukraine must immediately call for local elections. All of this should be explicitly provided for in the Constitution (para. 11 of the preliminary opinion No.

803/2015 of 24.06.2015 on the proposed constitutional amendments regarding the territorial structure and local self-government in Ukraine).

10. To legislatively establish the liability of the executive bodies of local self-government for non-performance or improper performance of the powers of executive authorities delegated to them; and for refusal without valid, substantiated reasons to perform delegated powers. To establish the liability of the bodies that delegated powers, and their officials, for failing to provide, or providing insufficient, material-financial, personnel, informational, and other resources that should be legislatively provided for the proper execution of delegated powers. To provide for the material liability of the bodies that delegated powers, and their officials, in the event that their decisions, actions, or inaction led to the impossibility of further execution of the delegated powers or resulted in material losses.

11. To provide for the following as sanctions for non-performance or improper performance by local self-government bodies of delegated powers: a warning, the suspension of the effect of an act of the local self-government body adopted within the exercise of delegated powers, and the early termination of powers. The initiators of such termination may be both the state, in the person of the relevant executive authorities, and the territorial community through the mechanism of a local referendum within the framework of exercising control over its governing bodies.

12. To regulate the mechanism for the revocation of delegated powers at the initiative of the relevant executive authority at any time, but in the presence of factual and legal grounds for non-performance or improper performance. To provide for a revocation procedure that shall consist of several stages: initiation of the procedure, assessment of factual and legal grounds, discussion, coordination and consideration of the draft decision, adoption of the decision and its entry into force, and the legally significant consequences of the revocation of the delegated power (financial, property, infrastructural, etc.).

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