

The Role of State Control in the Implementation of Legislation on Local Self-Government

Vitalii Serohin¹, Svitlana Serohina², Ilona Harashchuk³,
Oleksii Lialiuk⁴ & Igor Kopotun⁵

Abstract

This study aims to identify and solve problems related to the implementation of legislation on local self-government through state control mechanisms. The current national legislation of Ukraine has several shortcomings in this area. The system of administrative courts is designed to resolve these issues. Control functions of the state about local self-government bodies can be subject to abuse of power, as evidenced by the lack of the expected efficiency. Moreover, the state currently exercises administrative, financial, parliamentary, and judicial control. It is proposed to single out public control as a separate form to eliminate the existing shortcomings of the practical application of the control functions of the state about local self-government. The lack of unity in the practice of applying the current rules of law on state control in this area shows that the problems related to the protection of local self-government bodies from state intervention have not been resolved. Local self-government bodies have only judicial means of protecting their independence from the state. This creates problems in ensuring balanced territorial development. Therefore, further research should focus on studying the possibilities of performing the control function in the field of local self-government not only by the state but also by the beneficiaries and civil society institutions.

Keywords: state control, territorial community, territorial development, law enforcement practice, judicial control.

¹ The author is a Doctor of Legal Sciences, Professor, Department of Constitutional and Municipal Law, School of Law, V. N. Karazin Kharkiv National University, Ukraine. He can be reached at v.seryogin@karazin.ua

² The author is a Doctor of Legal Sciences, Professor, Head of the Department of State Building, Yaroslav Mudryi National Law University, Ukraine. She can be reached at s.serogina@nlu.edu.ua

³ The author is a Candidate of Legal Sciences, Senior Research Officer, Senior Lecturer, Department of State Building, Yaroslav Mudryi National Law University, Ukraine. She can be reached at i.harashchuk@nlu.edu.ua

⁴ The author is a Candidate of Legal Sciences, Associate Professor, Department of State Building, Yaroslav Mudryi National Law University, Ukraine. He can be reached at o.lialyuk@nlu.edu.ua

⁵ The author is a Doctor of Legal Sciences, Professor, Chief Researcher, Research Laboratory for the Prevention of Criminal Offenses, Faculty No. 3, Donetsk State University of Internal Affairs, Ukraine. He can be reached at lh.kopt@gmail.com

Introduction

Local self-government is the right of the territorial community to participate in the management of territorial local development. The community, as a totality of citizens and the actual population of the state, is a source of power and a bearer of sovereignty, which can be interpreted at the local level as a source of power for the management of territorial development. The democratic system and the concept of sustainable development provide for a high level of inclusive participation of the community in resolving local issues. This is partly reflected in the institution of delegation of powers by the state to the local level, as well as in the mechanism of deconcentration of responsibility for managing the development of territories. A situation arises in which local self-government simultaneously turns out to be both a right of the community and an additional tool for ensuring the sustainability of territorial development and state-building processes (Serohina et al., 2019).

The state guarantees local self-government at the constitutional level and provides an appropriate system of organizational, legal, institutional, and even financial support for it. The state determines the range of powers of local self-government bodies at its discretion through the legislative body based on the principle of the inadmissibility of restrictions on human rights, as well as considering the peculiarities of the administrative-territorial system and ethno-national differentiation. All this affects the level and quality of implementation of local self-government in different parts of the state. This is why the primary task of the state is to ensure the balanced development of local self-government within the scope of the powers and functions it is endowed with and to consider the tasks that the state sets before it in terms of delegated powers (Munger, 2021). This calls for the introduction of effective state control in ensuring the implementation of legislation on local self-government. Such control should simultaneously perform two multi-directional functions:

- ensure the supervision of the legality of the exercise of the local government's own and delegated powers.
- ensure the supervision of compliance with the principles of non-interference in the affairs of local self-government bodies by state authorities.

The relevance of these issues at the national level in every democratic state without exception is the subject of lively theoretical and practical discussions. One should take into account that local democracy is an underestimated potential of state development in general, as the management potential of local self-government can perform the tasks of territorial development more effectively than central state authorities. In this context, the control of the

state should be covered by the issues of preventing the excess of powers by the local self-government bodies in the exercise of this right.

So, the research aims to determine the role of state control over the implementation of legislation on local self-government and to expand its functional capabilities. The aim involves the fulfillment of the following research objectives:

- determine the essence and significance of state control in the field of compliance with the legislation on local self-government.
- identify the peculiarities of organizational and legal provision of state control in the field of compliance with the legislation on local self-government.
- outline promising directions for improving the efficiency and effectiveness of state control in the area under research.

It should be emphasized that state control should not be considered as one of the elements or means of state influence or even intervention in the activity of local self-government bodies. Control should be considered as one of the most effective management tools aimed at finding potential for the development of local self-government.

Literature Review

Modern researchers produce a rather effective discourse on the issue of expanding the control functions of the state in the field of local self-government or, on the contrary, giving local self-government bodies greater autonomy.

For example, Perlman (2016) points out that in most countries of the Anglo-Saxon legal family, the right to local self-government is objectively existing. But on the part of the state, the local government is not appropriately enshrined in the legislation. The status of local authorities is not discussed in the founding documents, is not mentioned in the constitutions, and does not have a strong legal status. Therefore, state control over compliance with legislation on local self-government is a convenient “legal fiction” that has been enshrined in the management tradition and incorporated into the system of government operations through a mechanism known as municipal government (Bowman, 2017; Demir et al., 2019).

Developing this thesis, Afroz (2020) notes that local self-government becomes a tool for structuring effective mechanisms of state-building by using the decentralization tool only. Decentralized government offers incentives to establish a harmonious relationship between the state and society. Local self-government provides equal central and regional incentives and functions according to the “self-government - joint management” principle. In other words, it is possible to

exercise state control over the local self-government only if there is a legal relationship between the state and local self-government bodies in the form of delegated powers (Eburn, 2017; Vivian et al., 2017).

Using the example of the former African colonies of Great Britain and current members of the Commonwealth, Marumahoko (2020) demonstrates that state control over compliance with legislation on local self-government is primarily a means of preserving the territorial integrity of the state. Granting broad powers at the local level carries risks of separatism, especially in a nationally heterogeneous society with ethnic and cultural diversity. This problem is also relevant for Ukraine, where in 2004 a congress of opposition political forces with pronounced separatist slogans was held in the city of Sieverodonetsk.

Langehennig et al. (2019) claim that state control under the legislation on local self-government depends significantly on the prevailing management paradigm in the state. If liberal democracy directs the development of local self-government and grants broad powers and freedom of activity to local self-government bodies, conservative democracy or even right-wing populism significantly limits the territorial community's self-governance capabilities. Munger (2021) notes the trends of populist political forces regarding strengthening the role of the state in terms of controlling the activities of local self-government bodies. His thesis that populist sentiments are increasingly spreading in some democratic countries is reduced to the following:

- first, an increasing number of people are demanding the strengthening of the central role of national governments against the background of the global financial crisis of 2008-2010, and the COVID-19 pandemic of 2019-2021.
- second, the local government is unable to implement the entire set of security measures for the population because of the limited resources.

In this regard, Bardhan (2019) indicates the shortcomings of the decentralization of state administration and the spread of the role of local self-government bodies in matters of territorial development. In the context of the transfer of powers to local institutions and communities, the disadvantages of decentralization are often revealed in the mechanism of state control over it. The right to control should be held by those entities that have the necessary information and incentives while bearing responsibility for the political and economic consequences of their decisions. This may mean that state control in the field of local self-government should rest with the national government (Mukhija & Ling, 2022; Murtazashvili, 2019; Fitzgerald & Wolak, 2016).

On the contrary, Medina-Guce (2020) advocates reducing the state's participation in the technical and administrative control over the activities of local

self-government bodies. Such control, if any, should be based on the principles of relational sociology, which rejects essentialist and substantialist views and considers social phenomena—local government and management — as procedural, co-constitutive, and interdependent relations. Therefore, state control is as an element of the dynamics of influence between state institutions and local self-government bodies, which form meaning from spatio-temporal considerations and co-constitute power through the degree of trust and satisfaction of the population's needs. The progressiveness of such an approach determines its potential effectiveness. According to its principles, the state uses the degree of satisfaction of the needs of the local population as criteria for evaluating the activities of local self-government bodies (Serohina et al., 2019; Bytyak et al., 2019).

Studying the experience of Ukraine in the implementation of state control over legality in the field of local self-government, Novak (2016) makes two important conclusions. The first relates to the fact that the legal acts that regulate the procedure of control and administrative supervision of local self-government bodies are characterized by extensiveness, imperfection, and insufficient efficiency, which leads to duplication of functions of control authorities. The second conclusion concerns the lack of hierarchical certainty of bodies that exercise such control (Tereshchuk, 2015).

On this matter, Velychko (2016) notes that, based on the experience of the EU member states, the control over the activities of local self-government bodies by the state should refer to the control over the full exercise of the territorial community's right to local self-government, and not to the actions of local self-government bodies. It is quite logical that if they violate the local self-government legislation, appropriate legal consequences will follow. Such consequences will occur both extrajudicially (administrative and other measures of personal influence) and judicially (cancellation of unlawful decisions of the local self-government bodies) (Kashishin, 2017; Klymenko, 2015).

At the same time, the issue of the complete legislative enshrinement of the methods of exercising state control over the implementation of the legislation on local self-government remains unresolved. Exercising such control, the state shall comply with the principle of legality, the steadfastness of local self-government, and the principle of decentralization of state administration.

Methods and Materials

The research methodology employed academic tools to identify the key aspects of state control over the implementation of legislation on local self-

government. The following logical scheme was proposed to guide the methodological research on this issue (Figure 1).

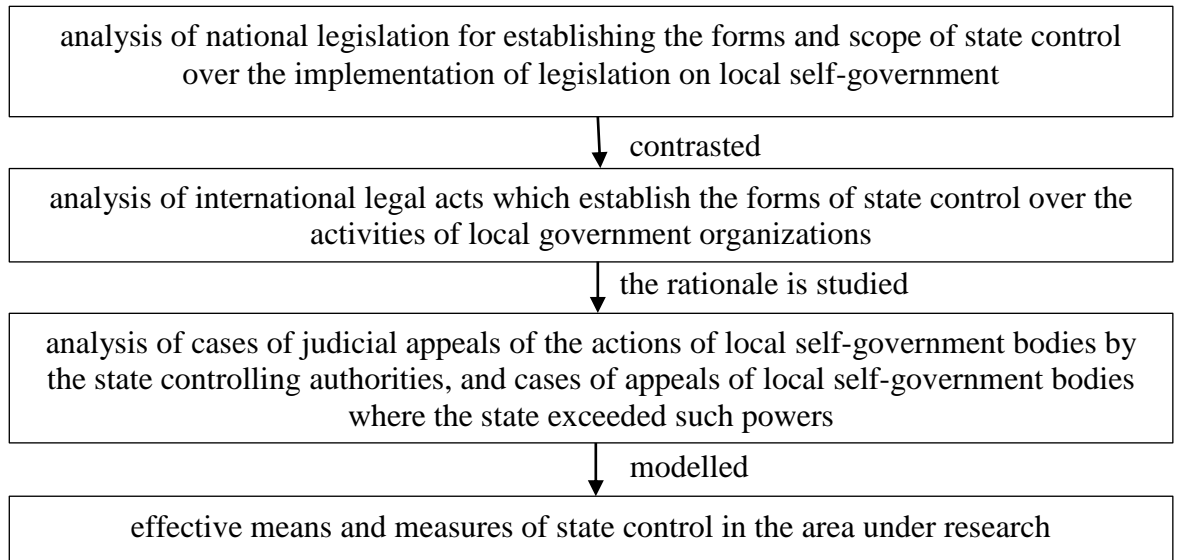


Figure 1. Research methodology algorithm

The study of state control over the implementation of legislation on local self-government is always nationally oriented and utilitarian. The effectiveness of state control can be increased by developing measures that would consider the specifics of legislation and practices of local self-government bodies in a particular state. General trends are important for this study, especially when considering the provisions of international legal acts regulating the local self-government procedures.

The provisions of the European Charter of Local Self-Government (hereinafter - the Charter) were analysed to establish the scope and forms of state control over compliance with the legality of local self-government.

In the second stage, the national legislation of Ukraine on the implementation of the provisions of the Charter and the legal certainty of state control in the studied area was analysed. The Laws “On Local Self-Government in Ukraine”, “On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity”, “On Public Procurement”, “On State Control Auditing Service in Ukraine”; the Resolutions of the Cabinet of Ministers of Ukraine “On Approval of the Regulations on the State Audit Service of Ukraine”; “The List of State Supervision (Control) bodies, which are not covered by the Law of Ukraine “On Temporary Features of the of State Supervision (Oversight) in the Area of

Commercial Activity”, etc. were subjected to a critical analysis using the method of legal hermeneutics and doctrinal approach.

The features of organizational support for the exercise of state control in the studied area were analysed. The essence and methods of consideration by the legislator are revealed in the light of the theoretical studies discussed above. The concept of such control, as seen by the legislator, is based primarily on national interests. This was followed by a study of cases tried by the courts of Ukraine of administrative jurisdiction with the help of systemic and structural analysis. It was established that there are significantly more cases of judicial appeals by the local self-government bodies in situations where the state has exceeded its powers (almost three times) compared to appeals by state control authorities of cases of violation of the legislation by local self-government bodies. Morphological and synthetic analysis was used to summarize case law. However, it is not possible to establish the main trends because of the extreme dispersion in the application of legal provisions by courts in relation to typical situations.

Results

State control is an element of the public administration system, which operates according to the same principles as any management system. In other words, it is a supervision of the subjects of power according to the same principles on which the system of management and regulation of the development of local self-government is built. Control over compliance with legality in this area cannot cross the boundaries of determinants established by state policy. State control should be exercised only through instruments that correspond to the principles of inclusive state policy of territorial development.

The concept of state control refers primarily to monitoring the legality of management decisions and actions of local self-government bodies and their officials. It is important to ensure consistency of methods and forms of state control, taking into account the peculiarities of local self-government. The category of control refers to a certain type of activity and subjects participating in it. In the legal literature, control is considered primarily as a form of power and a function of management. The prevention of violation of the integrity and balance of the system, ensuring the stay of the control object within the permissible limits can be noted at its important tasks. Such control stimulates all interested parties to comply with the legislation, taking into account the needs and goals of state policy in the relevant field.

By its very nature, state control is an important management function that is interdependent with others. It is a tool for ensuring the performance of management functions. Therefore, control in the field of management has both

independent importance and is an element of other management functions. In some sense, control can be considered an independent function of state (public) management, which interacts with other functions and affects them accordingly. This thesis has a pragmatic approach, as control is exercised to correct the situation and prevent violations of the requirements of legislation and social relations in specific areas of state regulation.

The European Charter of Local Self-Government requires that the administrative supervision of local self-government bodies be proportionate to the interests it aims to protect. This means that the degree of intervention of the supervisory authority must correspond to the importance of the interests that this intervention is intended to protect. The issue of legality of the actions of controlling bodies requires, first, a theoretical solution, and then appropriate legal regulation.

According to the Ukrainian legislation on local self-government, state control over the activities of local self-government bodies and officials is allowed only within the limits of the powers defined by the Constitution and laws of Ukraine. This control should not lead to the interference of state bodies or officials in the exercise of their powers by local self-government bodies. The Constitution and laws of Ukraine also provide that restrictions on the rights of local self-government can be established only in wartime or state of emergency.

The study of the legal regime of state control over the legality of the exercise of the right to local self-government in Ukraine revealed the following features:

- the control function of the state in this area implies the authority for the direct influence of the subject of control (state authorities) on the object of control (relations in the field of local self-government). This means that the state authorities have the functional capacity to intervene in the activities of local self-government bodies directly or indirectly when performing control functions.
- control is exercised over the delegated powers of the state, which are transferred to the local government within the scope of the tasks performed by the latter.
- it is exercised in terms of the full implementation of powers and the targeted use of resources transferred by the state to ensure the fulfillment of delegated powers by local self-government bodies.

It is necessary to remember that the state, as a special regulator of social relations, always performs another extremely important function independently of the sphere of social life — compliance with the principle of legality. This principle is objectively existing and has no emphasis on any sphere of social relations. The

observance of the principle of legality is embodied in the law enforcement activities of the state, as an independent type of power management relations, where the state is endowed not only with control functions but also has a legal instrument for state coercion.

Therefore, it is necessary to clearly distinguish between the system of state control bodies for compliance with legality in the field of local self-government and the system of law enforcement bodies of the state (Figure 2).

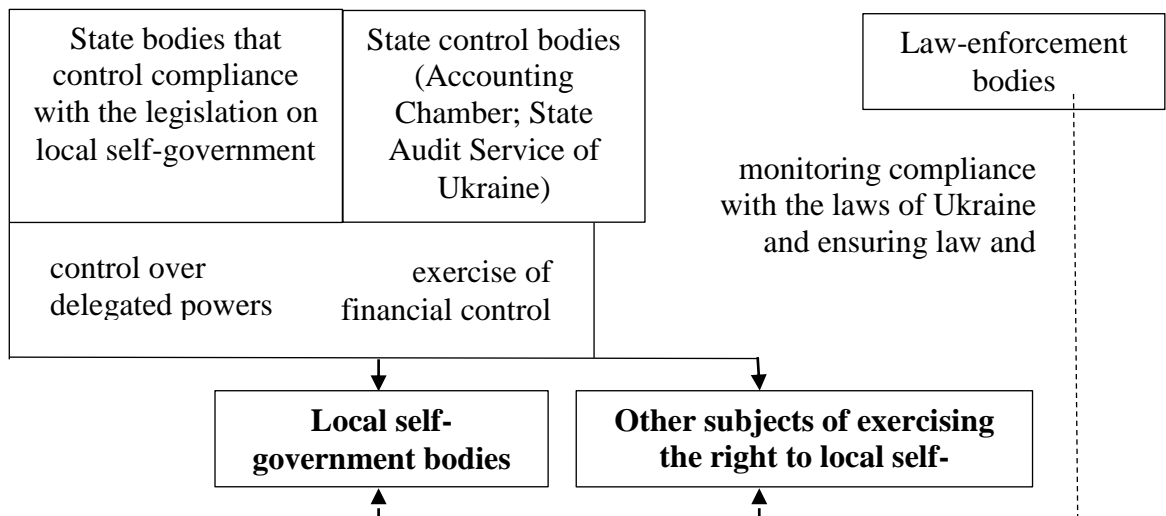


Figure 2. Organizational system of state control in the field of local self-government

The two subsystems of state bodies do not mean that the state exceeds the principle of independence of local self-government. The law enforcement agencies exercise their control and supervision of all bodies without exception, including state institutions, and participants in social relations. State control bodies represented by the Accounting Chamber and the State Audit Service of Ukraine exercise control over the distribution and use of financial and material resources of the state and over the budget process. Their activity also extends to a set of government institutions, and not only to the system of local self-government bodies.

As for the state bodies that directly control legality in the field of local self-government, the Ukrainian legislation does not contain either their list or a clear range of control powers. We distinguish the following types of control:

- administrative — exercised by state bodies over the fulfillment of the delegated powers by local self-government bodies.

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- budget and financial control — exercised within the resources allocated for the performance of individual functions by the local self-government bodies (outside the budget process).
 - judicial control – exercised when appealing to the court against actions or decisions, as well as the inaction of subjects of authority during the local governance.
 - parliamentary control – exercised by the Verkhovna Rada of Ukraine as a legislative body in terms of implementation of the legally established principles of local self-government.

Judicial control will be considered separately. The analysis of administrative proceedings established that from 2006 (the year the Code of Administrative Proceedings came into force) to 2021 (the last pre-war year), the courts considered more than 1 million lawsuits regarding violations of legislation on local self-government. We consciously take 2021 as the final limit, as during martial law, the state gets the opportunity to legally reduce or limit the powers of local self-government bodies, which is justified by national security needs.

Most cases (64%) are complaints against the actions or inaction of state authorities when they interfere in the activities of local self-government bodies or otherwise limit the right to local self-government. However, only 54% of already considered complaints were satisfied. Out of the total number of lawsuits, 22% were filed in the interests of the state on exceeding the powers of local self-government bodies and their officials. An even smaller number of lawsuits (16%) concerns the resolution of organizational and institutional issues, such as the administrative-territorial system and disputes between communities and neighbouring local self-government bodies. However, it is important to note the lack of consensus among courts on key issues:

- legal consequences and the method of prosecution in case of violation of the scope of delegated powers by the local self-government bodies.
- legal consequences in the case of local self-government bodies going beyond their competence when solving issues of territorial development.
- the method of compensation for the state intervention in the realization of the right to local self-government by the territorial community.

All these shortcomings have a significantly negative effect on the effectiveness of judicial control. Administrative control ranks first in terms of utilitarianism. It is exercised constantly for monitoring and supervisory purposes and is more effective. During the exercise of control by state authorities over the performance of delegated powers by local self-government bodies, they have the constant opportunity to correct the activities of local self-government bodies. State

control primarily performs a corrective function, which significantly increases the effectiveness of state policy implementation at the community level. The effectiveness of the implementation of state policy and ensuring comprehensive development of the territorial community should be the main criteria in the activities of local self-government bodies. State control should constantly focus on increasing efficiency and expanding development opportunities.

Discussion

The debate on state control over the observance of legality in local self-government currently focuses on two main aspects. The first aspect concerns the definition of limits and permissible forms of state control, and the second one - the legal consequences of its implementation.

Anderson et al. (2019) concludes that during the delegation of powers to the local self-government bodies, the state needs constant improvement of control mechanisms for the full exercise of such powers. At the same time, the researchers see the purpose as not observing the law but preventing deviations from the delegated will of the state.

Fowler (2018) notes that state control is an element of models of intergovernmental management of territorial development. The mechanisms of interaction of the local self-government bodies with each other and with state authorities are formed within these models. The legality of the functioning of such mechanisms of interrelationships is the subject of state control.

In the study *Overcoming Local Concerns about Density and Development* (Mukhija & Ling, 2022), the researchers use the example of territorial zoning to demonstrate a method of state control over the activities of local communities and local self-government bodies. This method is characterized by the standardization at the national level of certain management procedures, which must be performed in the same way both at the state government level and at the local government and municipal government levels. Such standardization is somewhat different from the legal enshrinement of the powers and forms of activity of the local self-government bodies. It refers to the process itself, from the development and adoption of a management decision, as a product of the activity of local self-government bodies, to its implementation (Holtmann & Rademacher, 2016; Phillips, 2017).

According to Kahn (2023), this harms the completeness and effectiveness of the local self-government. But this trend is central and most progressive in matters of the development of the relationship between state power and the legitimacy of local self-government bodies.

As for the experience of Ukraine, state control over local self-government is characterized by generic features of state control in general, i.e. universality, systematicity, impartiality, reality, effectiveness, and transparency. However, the manifestation of these determinants is possible only in the case of the introduction of parliamentary control (Mishyna, 2020; 2021).

To understand the results of this study, attention should be paid to the work of Karabin (2021), who explores state institutions that control the legality of the activities of local self-government bodies. The researchers concluded that this control function should be limited to the powers of the sectoral structural units of local state administrations and should not be concentrated on one subject of power.

State control and supervision over the observance of legality in the activities of local self-government bodies and officials include control over the exercise of state powers transferred to local self-government bodies; financial control, control of inter-budget relations; prosecutor's supervision; state registration of charters of territorial communities; other types of state control, including control by various state departments and services (Serohina et al., 2021). The analysis of the functions of the state in the field of local self-government gives grounds for a conclusion about the decisive role of the state in establishing and regulating local self-government, determining its types, forms, and levels, in the support and development of territorial communities (Baranovska, 2015).

Conclusions

The observance of legality in the field of local self-government must be subject to state control. This is a complex system that involves various areas of state authority. When exercising state control, state authorities must follow a certain formalized procedure, and use only those methods provided for by law. State control is exercised in the following forms: administrative (controlling entities are state bodies that have delegated their powers to local self-government bodies); financial (control is exercised over the distribution and the purpose of using the financial resources of the state); parliamentary; judicial. As the results of this study show, judicial control is an effective means of ensuring proper control over the activities of local self-government bodies and other entities. It helps prevent them from exceeding their authority and protects them from state interference. Judicial control is the most productive and effective method in Ukraine. The analysis of judicial practice shows the lack of uniformity in law enforcement and understanding of legislation. Therefore, further research should be aimed at systematizing the law enforcement practice of state control over the activities of local self-government bodies. The second direction is the

determination of the prospects for the introduction of unified approaches to the implementation of models of state, municipal, and public control over the observance of legality in the field of local self-government.

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