

UDC 341

DOI <https://doi.org/10.32849/2663-5313/2023.9.20>**Oleksandr Rosliakov,***Postgraduate student at Scientific Institute of Public Law**2a, H. Kirpa street, Kyiv, Ukraine, postal code 03055,**rosliakovoleksandr@ukr.net***ORCID ID:** 0000-0002-9692-7977

## EUROPEAN REQUIREMENTS IN THE SYSTEM OF REGULATORY AND LEGAL FRAMEWORK FOR STATE SUPERVISION OF ACTIVITIES OF LOCAL SELF-GOVERNMENT BODIES AND OFFICIALS

**Abstract. Purpose.** The purpose of the article is to consider the issue of defining within the system of such framework the European requirements established for the proper exercise of state supervision of the activities of local self-government bodies and officials. **Results.** The article considers the issues of defining within the system of regulatory and legal framework the European requirements established for the proper exercise of state supervision of the activities of local self-government bodies and officials. It is specified that the regulatory framework can be generally defined as a set of legal provisions enshrined in the Constitution, laws and bylaws which establish the regulatory fundamentals of a certain area of public relations, set out the principles, procedure of functioning and competence of the relevant entities, and also guarantee the observance of law and order. International requirements within their framework are a special element, as formalisation is not enough to assert that the national system of state supervision meets generally accepted European standards. **Conclusions.** It is established that the European Charter of Local Self-Government stipulates that state supervision should be legally regulated, implemented in compliance with the principle of proportionality and aimed primarily at ensuring legality. In addition, other European acts (Recommendations of the Council of Europe, the White Paper on European Governance, etc.) emphasise the need for public supervision, accountability and efficiency of local authorities. Although most of the international requirements are already enshrined in domestic legislation, that is, they are part of the system of regulatory frameworks for state supervision of the activities of local self-government bodies and officials, further work on optimising the content of the regulatory body of domestic legislation is relevant, appropriate and even necessary. In particular, the issues of legislative conflicts and clarification of supervision mechanisms, including in the aspect of strengthening the legal role of the institution of public participation, should find their regulatory solution.

**Key words:** state supervision, international requirements, local democracy, local self-government, regulatory framework, organisation and functioning, management of local affairs.

### 1. Introduction

The fact that state supervision of the activities of local self-government bodies and officials has its regulatory framework, beginning, basis, foundation, and the like is indisputable. Scholars use the categories of 'foundations,' 'basis' and 'principles' (traditionally, as synonyms) to refer to them (Boniak, 2015). However, a semantic analysis of these words shows that the content of these categories should be distinguished (Boniak, 2015), although there is still no single generally accepted definition (Halahan, Pysmennyi, 2013).

M. Shaternikov argues that the word foundations in the modern Ukrainian language is interpreted through the philosophical encyclopaedic meaning mainly as a sufficient or necessary condition for something (Shaternikov,

2015). In addition, D. Koshykov argues that the concept of 'legal framework' is understood by scholars in several aspects: 1) as a system of legal regulations governing a certain sphere of social relations or functioning of their actors; 2) as provisions of law establishing certain rules of activity of participants in social relations contained in legal regulations; 3) as guiding fundamentals (principles) of relevant activities of individual bodies enshrined in the provisions of relevant laws and regulations (Koshykov, 2020).

Therefore, the regulatory framework can be generally defined as a set of legal provisions enshrined in the Constitution, laws and bylaws which establish the regulatory fundamentals of a certain area of public relations, set out the principles, procedure of functioning

and competence of the relevant entities, and also guarantee the observance of law and order.

Since the content and structure of the regulatory framework directly affect the effectiveness of regulating the relevant area, we believe it is important to consider the issues of defining within the system of regulatory and legal framework the European requirements established for the proper exercise of state supervision of the activities of local self-government bodies and officials.

The level of development of this issue by domestic scholars is sufficiently high, as evidenced by the existence of numerous scientific studies on the issues of regulatory framework for supervision of the activities of local self-government bodies in Ukraine. However, despite the significant scientific achievements, a number of unresolved issues remain, including the effectiveness of existing regulations in the current security environment and updated public demands caused by the European integration vectors of development.

## **2. European provisions on administrative supervision of the activities of local self-government bodies**

It should be noted that, in general, the conceptual framework for the construction and functioning of the local self-government system is defined and set out in international acts to which Ukraine has acceded. These are the World Declaration of Local Self-Government and the European Charter of Local Self-Government. The World Declaration of Local Self-Government was developed by the World Association of Local Governments. This Association is called the International Union of Local Authorities. The World Declaration of Local Self-Government was adopted at the 27th International Congress of the International Union of Local Authorities on 23-26 September 1985 (Zvizdai, 2015), and the European Charter of Local Self-Government on 15 October 1985. In other words, these two documents were developed and adopted almost simultaneously, and therefore it is clear that to a large extent their main provisions coincide.

Thus, the European Charter of Local Self-Government in Article 8 "Administrative supervision of local authorities' activities" states that:

"1. 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.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be

exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. 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" (European Charter of Local Self-Government, 1985).

The analysis of this European provision leads to the following interim conclusions:

– First, administrative supervision of local self-government bodies' activities should be exercised exclusively within the limits provided for by the Constitution and laws, which guarantees predictability and legitimacy of its implementation;

– Second, administrative supervision of local self-government bodies' activities has its own specific purpose – its main goal is to ensure compliance with the law and constitutional principles in the activities of local self-government bodies. Moreover, in some cases, it may include an assessment of the expediency of performing delegated tasks, which emphasises its multifunctional nature;

– Third, it is extremely important to adhere to the fundamental principles of its implementation, among which the principle of proportionality is the leading one, since the control measures should be in proportion to the protection of the public interest, which helps to balance the autonomy of local self-government with the need for state intervention (this means preventing excessive pressure on local authorities by controlling bodies);

– Forth, from the above provision, the need to comply with the principle of limited interference can be distinguished as an independent requirement. Administrative supervision itself should not violate the independence of local self-government bodies, but only guarantee their activities within the legal framework;

– Fifth, the legal environment for the implementation of these activities should comply with international obligations, in particular the principles enshrined in the European Charter of Local Self-Government, and take into account the best practices applicable in the EU.

In addition to the above-mentioned European Charter of Local Self-Government, the EU has adopted the following legal acts: Recommendation No. R(97)7 of the Committee of Ministers of the Council of Europe on local public services and the rights of users of their services; White Paper on European Governance; Recommendation No. 61 (1999) of the Congress of Local and Regional Authorities of the Council of Europe.

In accordance with Recommendation No. R(97)7 of the Committee of Ministers of the Council of Europe on local public services and the rights of users of their services, in order to find more efficient management methods, a requirement for better control over public expenditure is established (Recommendation no. R (97) 7 of the Committee of Ministers to member states on local public services and the rights of their users. Council of Europe, 1997). Furthermore, the document states that all important social and administrative services should be subject to a periodic evaluation of user satisfaction, followed by public discussion of the findings of this evaluation (Monitoring the activities of local self-government bodies (foreign experience), 2017). This underlines the importance of citizen engagement in evaluating the performance of local authorities.

### **3. European standards for improving administrative supervision of local self-government bodies**

The European Governance A White Paper (European Commission, 2001) identifies the main areas for improving the work of European institutions, in particular by involving the public in monitoring their work. In their activities, European institutions at the state and local levels rely on principles of good governance, such as openness, participation, accountability, effectiveness and coherence (Monitoring the activities of local self-government bodies (foreign experience), 2017). This proves that the European approach to state control is aimed not only at verifying legality, but also at promoting good governance through the involvement of civil society.

The experience of independent oversight is described in Recommendation 61 (1999)1 on the role of local and regional mediators/ombudsmen in defending citizens' rights (1999) of the Congress of Local and Regional Authorities of the Council of Europe. Given the growing complexity of administrative systems and the workload of administrative courts, Congress supported the creation of an ombudsman's office and the introduction of local and regional ombudsmen (Monitoring the activities of local self-government bodies (foreign experience), 2017). Again, this is in line with the pan-European trend of strengthening mechanisms for protecting the rights of citizens in their relations with local authorities.

Therefore, the European approach to state supervision of local self-government is a comprehensive one, based on the principles of efficiency, transparency, accountability and public participation. Its full implementation in Ukraine can help improve the mechanisms of state control, strengthen legal protection of citizens

and improve the quality of services provided by local governments.

It should be noted that when comparing the provisions of the Law of Ukraine "On Local Self-Government in Ukraine" with the provisions of the European Charter of Local Self-Government, the latter regulates the mechanisms of state supervision more thoroughly. While national legislation focuses mainly on issues of legality, the European Charter of Local Self-Government also provides for the possibility of monitoring the expediency of exercising delegated powers.

Moreover, the European Charter of Local Self-Government is formally part of Ukrainian legislation and should be directly applied in real life. In fact, the situation here is not so optimistic for a number of reasons: first, the definitions of local self-government in the Constitution of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine" and the Charter differ to some extent. Second, having ratified the Charter, the Ukrainian parliament did not determine whether or not it should be extended to local self-government bodies such as rayon and oblast radas. This failure to define leads to constant discussions about the inconsistency of our realities with the Charter, since rayon and oblast radas do not have their own executive bodies, as provided for in Article 3(2) of the Charter. In Europe, such issues do not arise, as the oblast and rayon levels are part of the regional self-government system, which is not covered by the Charter. In Ukraine, however, both rayon and oblast radas are referred to as "local self-government bodies." Accordingly, the basic principles of the Charter should be taken into account at both the national and local levels when drafting new laws or making decisions by local governments (Zvizdai, 2015).

Therefore, the study concludes with the statement that the regulatory framework for exercising state control over the activities of local self-government bodies in Ukraine requires further improvement in accordance with European standards.

### **4. Conclusion.**

The European Charter of Local Self-Government stipulates that state supervision should be legally regulated, implemented in compliance with the principle of proportionality and aimed primarily at ensuring legality. In addition, other European acts (Recommendations of the Council of Europe, the White Paper on European Governance, etc.) emphasise the need for public supervision, accountability and efficiency of local authorities.

Although most of the international requirements are already enshrined in domestic legislation, that is, they are part of the system

of regulatory frameworks for state supervision of the activities of local self-government bodies and officials, further work on optimising the content of the regulatory body of domestic legislation is relevant, appropriate and even necessary. In particular, the issues of legislative conflicts and clarification of supervision mechanisms, including in the aspect of strengthening the legal role of the institution of public participation, should find their regulatory solution.

#### References:

Boniak, V.O. (2015). "Konstytutsiino-pravovi zasady", "konstytutsiino-pravovi osnovy" ta "konstytutsiino-pravovi pryntsypy": spivvidnoshennia poniat ["Constitutional and legal foundations", "constitutional and legal foundations" and "constitutional and legal principles": the relationship of concepts]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*, 2015, № 2, pp. 64-76 (in Ukrainian).

European Charter of Local Self-Government date 15.10.1985. Retrieved from <https://rm.coe.int/168007a105> (in English).

European Governance a White Paper. European Commission, 2001. Retrieved from [https://ec.europa.eu/commission/presscorner/detail/en/doc\\_01\\_10](https://ec.europa.eu/commission/presscorner/detail/en/doc_01_10) (in English).

Halahan, O.I., Pysmennyi, D.P. (2013). Poniattia ta systema zasad (pryntsypiv) kryminalnoho provadzhennia [The concept and system of foundations (principles) of criminal proceedings]. *Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav*, 2013, № 4, pp. 167-172 (in Ukrainian).

Kontrol za diialnistiu orhaniv mistsevoho samovriaduvannia (inozemnyi dosvid) [Monitoring the activities of local self-government bodies (foreign experience)]. (2017). rada.gov.ua. Retrieved from <https://infocenter.rada.gov.ua/uploads/documents/29223.pdf> (in Ukrainian).

Koshykov, D. (2020). Sutnist pravovykh zasad realizatsii derzhavnoi polityky u sferi zabezpechennia ekonomichnoi bezpeky derzhavy [The essence of the legal principles of implementing state policy in the field of ensuring the economic security of the state]. *Visnyk Penitentsiarnoi asotsiatsii Ukrainy*, 2020, № 2, pp. 164-175 (in Ukrainian).

Recommendation 61 (1999)1 on the role of local and regional mediators/ombudsmen in defending citizens rights. Congress of local and regional authorities of Europe, 1999. Retrieved from <https://rm.coe.int/the-role-of-local-and-regional-mediators-ombudsmen-in-defending-citize/1680719b20> (in English).

Recommendation no. R (97) 7 of the Committee of Ministers to member states on local public services and the rights of their users. Council of Europe, 1997. Retrieved from <https://rm.coe.int/cmrec-97-7-on-local-public-services-and-rights-of-their-users/1680a43b65> (in English).

Shaternikov, M.I. (2015). Teoretychni pidkhody do vyznachennia poniattia «pravovi zasady diialnosti hospodarskykh sudiv» [Theoretical approaches to the definition of the concept of "legal foundations of the activities of commercial courts"]. *Yevropeiski perspektyvy*, 2015, № 6, pp. 108-112 (in Ukrainian).

Zvizdai, O.V. (2015). Normatyvno-pravovi zasady rozvytku mistsevoho samovriaduvannia v Ukraini [Normative and legal principles of the development of local self-government in Ukraine]. *Aktualni problemy derzhavnoho upravlinnia*, 2015, № 1, pp. 242-249 (in Ukrainian).

#### Олександр Росляков

здобувач Науково-дослідного інституту публічного права  
вул. Г. Кіпчу, 2А, Київ, Україна, 03035  
[rosliakovoleksandr@ukr.net](mailto:rosliakovoleksandr@ukr.net)

ORCID ID: 0000-0002-9692-7977

## ЄВРОПЕЙСЬКІ ВИМОГИ В СИСТЕМІ НОРМАТИВНО-ПРАВОВИХ ЗАСАД ЗДІЙСНЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ ЗА ДІЯЛЬНІСТЮ ОРГАНІВ І ПОСАДОВИХ ОСІБ МІСЦЕВОГО САМОВРЯДУВАННЯ

**Abstract. Purpose.** Мета статті полягає у здійсненні розгляду проблематики визначення в межах системи таких засад європейських вимог, що встановлюються для належного здійснення державного контролю за діяльністю органів і посадових осіб місцевого самоврядування. **Results.** Стаття присвячена розгляду проблематики визначення в межах системи нормативно-правових засад європейських вимог, що встановлюються для належного здійснення державного контролю за діяльністю органів і посадових осіб місцевого самоврядування. Уточнено, що нормативно-правові засади загалом можна визначити як сукупність правових норм, закріплених у Конституції, законах та підзаконних актах, які встановлюють основи правового регулювання певної сфери суспільних відносин, закріплюють принципи, порядок функціонування та компетенцію відповідних суб'єктів, а також гарантії дотримання законності й правопорядку. Міжнародні вимоги у їхніх межах є особливим елементом, адже формального закріплення замало, щоб стверджувати про відповідність національної системи державного контролю загальноприйнятим європейським стандартам. **Conclusions.** З'ясовано, що Європейська хартія місцевого самоврядування встановлює, що державний контроль має бути законодавчо врегульованим, здійснюватися з дотриманням принципу пропорційності та спрямовуватися передусім на

забезпечення законності. Крім того, інші європейські акти (Рекомендації Ради Європи, «Біла книга європейського врядування» тощо) підкреслюють необхідність громадського контролю, підзвітності та ефективності діяльності місцевої влади. І попри те, що більшість міжнародних вимог так чи інакше вже має нормативне закріплення в актах вітчизняного законодавства, тобто є частиною системи нормативно-правових засад здійснення державного контролю за діяльністю органів і посадових осіб місцевого самоврядування, подальша робота над оптимізацією змісту нормативного масиву вітчизняного законодавства є актуальною, доречною та навіть необхідною. Зокрема мають знайти своє нормативне вирішення питання наявності законодавчих колізій, уточнення механізмів контролю, зокрема і в аспекті посилення правової ролі інституту громадської участі.

**Ключові слова:** державний контроль, міжнародні вимоги, місцева демократія, місцеве самоврядування, нормативно-правові засади, організація та функціонування, управління місцевими справами.