

DOI: https://doi.org/10.34069/AI/2024.78.06.6

How to Cite:

Kozin, A., Kozin, S., & Kondratiuk, T. (2024). International cooperation in public control of local governments: lessons for Ukraine. *Amazonia Investiga*, 13(78), 72-80. https://doi.org/10.34069/AI/2024.78.06.6

International cooperation in public control of local governments: lessons for Ukraine

Міжнародне співробітництво в органах місцевого самоврядування: уроки для України

Received: April 8, 2024 Accepted: June 24, 2024

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Abstract

The purpose of this article is to examine the legal framework and general theoretical aspects of the formation and implementation of state policy regarding public control over local selfgovernment bodies, comparing regulations in Ukraine and European Union member states. The employs dialectical, synthesis, and theoretical analysis methods to investigate public control in Ukraine, and systemic-structural, formal-logical, and comparative-legal methods to compare public control practices in Ukraine and other countries. The research highlights that international experience is crucial for improving the functioning of local self-government bodies in Ukraine, and public control over their activities is a factor stimulating the improvement of the implementation of their powers. The need for all countries to coordinate and improve the legal framework for effective cooperation at the municipal level is emphasized. The study notes that under martial law in Ukraine, methods of public control over the functioning of local selfgovernment bodies are limited. Based on the analysis of the aforementioned works, forms of international cooperation in the field of public control over the exercise of local power have been determined.

Анотація

Метою статті є дослідження правового регулювання та загальнотеоретичних особливостей формування та реалізації державної політики у сфері здійснення громадського контролю за функціонуванням самоврядування, органів місцевого співвідношення відповідного регулювання в Україні і країнах-членах Європейського Союзу. Методологія. У ході дослідження особливостей здійснення громадського контролю у визначеній сфері в Україні було використано методи діалектичний, синтезу та теоретичного аналізу; під час співвідношення громадського контролю в Україні зарубіжних країнах було використано методи системно-структурний, формально-логічний та порівняльно-правовий метод. Результати досліджень. Акцентовано увагу на тому, що міжнародний досвід є необхідною умовою удосконалення функціонування органів місцевого самоврядування в Україні, а удосконалення чинником стимулювання реалізації власних повноважень визначеними органами ϵ громадський контроль за $\ddot{i}x$ діяльністю. Наголошується на необхідності координації та всіх країн світу вдосконалення правової бази ефективної

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Keywords: public control, policy in the field of local self-government, international municipal cooperation, forms of public control, international agreements in the field of local self-government.

співпраці на муніципальних рівнях. Практичне значення. Зазначається, що в умовах воєнного стану в Україні обмежено способи громадського контролю за функціонуванням органів місцевого самоврядування. На основі аналізу наведених праць визначено форми міжнародного співробітництва у сфері громадського контролю за здійсненням місцевої влади.

Ключові слова: громадський контроль, політика у сфері здійснення місцевого самоврядування, міжнародне муніципальне співробітництво, форми громадського контролю, міжнародні договори у сфері місцевого самоврядування.

Introduction

Recently, the functioning of local self-government bodies has been out of the public's attention due to the state of war, which Ukraine is in. In addition, the attention of the international community, which until recently was focused on reforming local self-government in Ukraine, is now focused on the war as well. Local self-government bodies are not focused on improving the life of administrative-territorial units and are in the mode of carrying out current work, and public projects that were developed to improve the functioning of cities and improve interaction between the public and municipal authorities are in a state of suspension. There is a trend of retrogression of previously introduced reforms in the field of local self-government in Ukraine. Therefore, taking into account the above, it is necessary to determine whether there are common challenges in regulating the interaction of the public and local authorities in the member states of the European Union and to offer Ukraine to borrow effective experience.

International cooperation is a necessary condition for the development of both the sphere of functioning of local self-government bodies and other spheres in the country. At the international level, a number of international agreements have been developed and adopted, which aim to ensure the effective work of local self-government bodies, and, in addition, to ensure international cooperation in the field of local self-government. In view of the above, we need to investigate this issue in connection with the specifics of our research.

One of the main tasks to be solved by science in the specified direction is the actualization of general theoretical features of public control over the exercise of local self-government bodies' own powers, increasing the effectiveness of such control by introducing the latest scientific research and advanced foreign experience into the activities of local self-government bodies. Therefore, it is necessary to focus attention on the general theoretical aspect of this problem. This is explained by the fact that public participation in power functions, in particular, public control, as a rule, is based on the data of scientific generalization, which can be the basis for understanding the essence and features of public control, means, forms and methods of its implementation.

The purpose of this article is to study the legal regulation of international cooperation during the implementation of public control over the functioning of local self-government bodies in Ukraine; identification of common and distinctive features of such public control in the member states of the European Union; study of international agreements in this area. With the help of this analysis, we aim to identify the challenges and opportunities that international cooperation opens up in this area, as well as to offer recommendations for strengthening it and increasing its effectiveness. It is expected that the results of this study will be useful to researchers, legal professionals, workers and local government officials.

This article is consist as follows: introduction, methodology, literature review, results and discussion, conclusion, references.

Methodology

The methodological basis of the study consists of scientific special and general methods and approaches that provided an objective analysis of the subject of this study. The following methods were used to determine the subject of the research, its purpose and tasks.

The characteristics of public control in Ukraine and foreign countries were analyzed using the dialectical method. After that, it became possible to identify common and general features of the implementation of public control in Ukraine and foreign countries. Using this method, the shortcomings of the implementation of public control over local self-government bodies in Ukraine during the period of the legal regime of martial law were identified and recommendations were formed.

Methods of synthesis and analysis were used for comparison and classification. With the help of these methods, it became possible to investigate scientific views on the problem of public control in Ukraine and foreign countries. Using these methods, effective forms of eliminating the identified problem were determined through the analysis of general reasons that influenced the formation of the problem.

By the method of system-structural analysis, the powers of local self-government bodies are determined, in particular, in terms of interaction with the public during the exercise of municipal power; analyzed which of these powers require revision or other legislative regulation.

Applying the comparative-logical method, the research compares the implementation of public control over the activities of local self-government bodies in Ukraine and foreign countries, and also suggests applying effective foreign experience in Ukraine. Therefore, it should be concluded that during the study of common features of public control over the functioning of local self-government bodies in Ukraine and foreign countries, general scientific and special scientific methods were used, which ensure the reliability of the results and conclusions, namely: the dialectical method, methods of synthesis and analysis, system-structural method and comparative-logical method.

Literature Review

The issue of the development and establishment of public control over the functioning of local self-government bodies is an actual and important factor in improving the functioning of local authorities in communities. The community elects the government and must control its work as the main tool for ensuring the interests of citizens. Usually, little attention is paid to public control in the context of its implementation during the functioning of local self-government bodies, but we are convinced of the need to study this issue.

The question of the formation and development of control over the activities of local self-government bodies has been studied by scientists in many scientific works, but the issue of public control over the functioning of local self-government bodies is one that is constantly developing in the process of decentralization of power, and therefore requires constant research.

To be in a community, or a community, means to have something in common with other people, this interpretation was defined by the Canadian researcher J. Bopp & M. Bopp (2006). She looked at the community through the lens of social relations, where certain norms of behavior, values, traditions and ways of managing the economy were usually developed in a certain group of people. That is, a group of people living in the same territory and having common features of self-government can be called a community.

Ukrainian researcher O. Moroz (2008, p. 4) offers the following list of signs of a "territorial community": common territory of existence (which may include living, working, owning real estate); common territory of existence in solving life issues; psychological self-identification of each member with the community; joint communal property; payment of communal taxes.

Scientists claim (Vasiuk et al., 2020, p. 511) that communities more territorially distant from the center of the community need more and more attention in terms of ensuring rights and legitimate interests in the field of local self-government; in particular, Ukrainian villages also need proper organization of municipal power, provision of municipal services and information about ways and opportunities to control the functioning of local self-government bodies. Besides, effective foreign experience should be used in terms



of organizing the activities of local self-government bodies, including international standards of control over their operation (Ladychenko et al., 2021).

In addition, foreign scientists emphasize the need to improve the work of local self-government bodies through the use of electronic governance and bringing the community closer to the municipal government (Scholl, 2013).

Hohol & Melnychuk (2022) examined the problems of improving the territorial organization of power as a complex and systematic step towards effective administrative and territorial organization of the state, the formation of full-fledged local government and its primary subject – the community.

We emphasize that the local self-government body is the closest institution to the community, because it implements policy at the local level and needs to adjust the functioning of the community (Lazarova et al., 2022).

Ahafonova & Irkha (2022) analyzed the political and legal conditions of realization of cooperation between communities: inner (between territorial communities) as well as international (between regions and cities abroad). In the context of European integration of Ukraine, the angle of attention of the regions is focused on the issues of attracting foreign investments, donor assistance, grants from EU institutions and joint projects with foreign partners. The authors proved that the factor of russian military aggression has led to the reorientation of the direction of international cooperation of communities from cultural, educational, informational and environmental to humanitarian and infrastructural, which are completely subordinated to the needs of wartime.

The study of the institution of local self-government has a long history and is closely related to the study of democracy at the local level. Because local self-government is the basis of the exercise of people's power on the ground. The local community is the source of local democracy and power in general. In Ukraine, in accordance with Article 140 of the Constitution of Ukraine, local self-government is carried out by the territorial community in accordance with the procedure established by law, both directly and through local self-government bodies: village, settlement, city councils and their executive bodies, that is, through a certain structural and organizational mechanism called system of local self-government (Law of Ukraine No. 254k/96-VR, 1996).

Scientists emphasize (Ladychenko & Gulac, et al., 2021) the effectiveness of foreign experience in coordinating the functioning of municipal authorities by the community.

The most thorough essence of the studied concept of territorial community is laid out in the works of O. Batanov (2008, p. 54), where it is indicated that when constructing its theoretical model, it should be borne in mind that a territorial community is a complex "cumulative" form of social organization, a collection of people (local residents) associated on a public basis within a certain territory and united by various features of a systemic nature (in particular, demographic and territorial (land) ties, legal and political ties, property (economic) and professional ties, linguistic and religious (social and cultural) connection, etc.). This association, which does not exclude a person's right to individuality, separate housing and leisure, consolidates the efforts of many to achieve the result desired by all. In other words, private goals are realized in a public legal form.

Results and Discussion

In accordance with Part 1 of Art. 140 of the Constitution of Ukraine, which defines local self-government, the following types of territorial communities can be distinguished: a territorial community of a village or a voluntary association of residents of several villages into a village community; territorial community of the village; - the territorial community of the city (Law of Ukraine No. 254k/96-VR, 1996).

Territorial communities of neighboring villages can unite into one territorial community, form single bodies of local self-government and elect a single village head. Voluntary unification of territorial communities is carried out by the decision of a local referendum of the respective territorial communities of villages. Such a decision is consent to the formation of joint bodies of local self-government, the formation of a joint budget, and the unification of communal property. Exit from the composition of the village community is

carried out by the decision of the referendum of the relevant territorial community. It is important that territorial communities have their property rights.

Thus, Article 142 of the Constitution of Ukraine (Law of Ukraine No. 254k/96-VR, 1996) enshrines that the material and financial basis of local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources that are owned by territorial communities of villages, towns, cities, districts in cities, and as well as objects of other common property under the management of district and regional councils.

The territorial community as a subject of regulation of the socio-economic development of the territory is endowed with functions that generally coincide with the scope of the functions of the local self-government system: rule-making function (creating charters of territorial communities, adopting normative acts regulating the activities of the community); planning, programming of the development of the administrative territorial unit of the basic level (strategies for the development of territorial communities, programs of socio-economic and cultural development); resource potential management (land, forest, water resources); development of local infrastructure; maintenance and construction of roads, water, gas supply and drainage and improvement of the territory; management of communal property belonging to the territorial community; budgetary and financial function (approving budgets and monitoring their implementation, determining local taxes and fees provided for by law); management of a network of social institutions (establishment, reorganization, liquidation); investment function (attraction of investments - state, private, international in the development of the territory); information function.

Historically, in Ukraine, the community was the main territorial unit, which performed a number of important functions, having its own governing bodies. In accordance with the decisions of community meetings, land was distributed, taxes were imposed on community members, and taxes were paid to the state

Thus, the community, as the main element of local self-government after the completion of the decentralization reform, received a wide range of powers. A rather important factor was the fact that all sectors of Ukrainian society worked together on the reform. The following worked on the reform: the Office of the President of Ukraine, the Committee of the Verkhovna Rada of Ukraine on State Building, Regional Policy and Local Self-Government, the Ministry of Development of Communities and Territories of Ukraine, the Association of Village, Settlement Councils and United Communities, the Ukrainian Association of District and Oblast Councils, the Association of united territorial communities, the Association of Cities of Ukraine, regional state administrations, district councils, district state administrations, representatives of the "U-LEAD with Europe" program.

After the completion of the reform, territorial communities became the main link of the decentralized administrative-territorial system. Within the boundaries of the territorial community, which has been granted autonomy, the citizens of the country have a real opportunity to build their lives independently, without expecting anyone's help. As defined in the European Charter on Local Self-Government (Council of Europe, 2013) through the community, citizens learn to manage and carry out real management, manage financial affairs. It is in the community that most of the social and economic rights of citizens in a democratic society are realized.

The European successful practice of public control, in particular, of the functioning of local self-government bodies, is evidenced by the presence of a number of international documents that are used by municipal authorities and state authorities during the formation of relations between the state and the public.

The Organization for Security and Co-operation in Europe (2015) noted that effective and sustainable mechanisms for building dialogue, consultation and cooperation between civil society and authorities at all levels are important factors that enable all individuals and social groups to take participation in the democratic decision-making process. In addition, the it was emphasized that in some countries such a model works quite successfully, and the other ones should eliminate any efforts to control public initiatives.

At the same time, the Recommendations of the Committee of Ministers of the Council of Europe to the participating countries on the legal status of public organizations in Europe CM/Rec (2007)14 (Council of Europe, 2007) define the standards of participation of public associations in state and municipal government, in particular, it is established that the contribution of public associations to the affairs of



society is carried out as through mediation between various segments of society and state authorities, to promoting changes to legislative and state policy, and through monitoring compliance with existing obligations in accordance with national and international law to provide means of achieving, promoting and protecting common interests with others. Public associations should be able to freely engage in research, education and educational activities regarding public discussions, regardless of whether their position is in line with the policy of local self-government bodies or, on the contrary, requires changes.

We propose to define the Code of Good Practice of Public Participation in the Decision-Making Process (Conference of INGOs of the Council of Europe, 2009) as the most relevant to the issue of public control over the functioning of local self-government bodies, because the defined Code enshrines public participation both in unofficial institutions, such as public organizations, associations, public initiatives, and participation in the general processes of development of public policy, which necessarily involves control. The Code suggests using the following principles of public participation in the implementation of local government, control over such activities: participation by collecting and transmitting the views of various members of the public association and interested citizens through the public association in order to influence the process of political decision-making; trust as an honest interaction between political forces and society; responsibility and transparency both on the part of the public association and on the part of state bodies at all stages of activity; independence of the public association, as it is important to recognize public associations as free and independent structures with their own goals, decisions and measures.

Article 25 of the International Covenant on Civil and Political Rights (United Nations, 1966) provides that everyone has the right and the opportunity, without any exceptions or unreasonable restrictions, to participate in the conduct of state and municipal affairs directly or through freely chosen representatives. In addition, the scope of participation includes, in particular, public associations, as well as other interested persons and parties, who should be able to make their own contribution to the development of policy principles and laws that affect or may affect them.

The Human Rights Council resolution 53/13 on civil society space (Human Rights Council, 2023) determines that special attention should be paid, among other measures, to the real and effective participation of citizens in decision-making processes. The resolution also warns countries about the need to recognize the important role of public associations in the observance of human rights, democratic norms and the rule of law, and calls on them to ensure their participation in public discussions of relevant issues.

International legislation in the field of public control and public participation in the functioning of local self-government bodies consists of:

- 1) Recommendations CM/Rec (2001)19 on the participation of citizens in local public life (Council of Europe, 2002) were the first tool in this area. Contains recommendations for the governments of the participating countries to implement policies that would promote public participation in local public life, and to enable local authorities to apply various participation tools within the framework of the national regulatory and legal framework.
- 2) Recommendation CM/Rec (2009)2 (Committee of Ministers of the Council of Europe, 2009) to the participating countries on the evaluation, auditing and monitoring, as well as the policy on participation at the local and regional levels enshrines a tool for self-assessment of citizen participation at the local level.
- 3) The right to participate in the affairs of local authorities was introduced by the Additional Protocol to the European Charter of Local Self-Government (Council of Europe, 2009). The Protocol defines the right to participate in the activities of local authorities, determines the means of its practical implementation, and defines the authorities and territories to which the Protocol applies. Article 1 provides for the introduction of legally binding guarantees regarding the right to participate in local self-government and states that participating countries must provide every citizen in their jurisdiction with the right to participate in the activities of local authorities.

Public participation in the democratic decision-making process is highlighted in two documents of the Council of Europe:

1) Recommendations of the Committee of Ministers on the legal status of non-governmental organisations in Europe (Council of Europe, 2007) note the important contribution that public associations make to the development and implementation of democracy and the provision of human

rights, in particular by increasing public awareness, participation in the life of civil society, and ensuring transparency and accountability state administration bodies.

The Recommendations also determine that state and semi-state mechanisms at all levels should ensure effective and non-discriminatory public participation in dialogues and consultations regarding development goals and decisions in the field of public policy. Such participation should ensure the possibility of free expression of various opinions of representatives of civil society regarding its functioning. Such participation and cooperation should be facilitated by ensuring appropriate disclosure of official information or providing access to it; it is necessary to consult with the public during the development of primary and secondary legislation that will affect their status, funding or areas of activity.

2) The Code of Good Practice for Public Participation in the Decision-Making Process (Conference of INGOs of the Council of Europe, 2009) defines general principles, recommendations, tools and mechanisms for the active participation of NGOs in the decision-making process based on the actual experience of NGOs throughout Europe. Although not legally binding, this IMO Code on Participation provides detailed guidance on how to develop a participatory approach to decision-making at all levels. In order to facilitate the implementation of the provisions of the Code, the Committee of Ministers approved the Declaration, by which state authorities are invited to pay due attention to the provisions of the Code when taking steps to encourage the participation of NGOs in the decision-making process.

It is worth noting that judicial control is somewhat intertwined with public control over the functioning of local self-government bodies. The relevant interweaving, in particular, consists in the fact that the relevant judicial control can be implemented only in the case of filing a relevant claim with the local self-government body, and not at the initiative of the court. Therefore, it is considered that a citizen who filed such a lawsuit in court is exercising control from the community, and judicial control is only a form of public control over the functioning of local self-government bodies, etc.

Forms and types of public control are enshrined, in particular, in the Law of Ukraine "On the Voluntary Association of Territorial Communities" (Law of Ukraine No. 157-VIII, 2015) with the aim of preventing violations in the sphere of the exercise of powers by local self-government bodies using means of public influence.

The community should have all the opportunities to control and influence the functioning of the local self-government body through peaceful gatherings, public hearings, participation of community representatives in discussions, formation of public councils at state bodies, etc. in order to protect the interests of the community; the realization of this right must be ensured to the community. Public control is an effective way of ensuring the realization of community interests during the functioning of local self-government bodies. Taking this into account, state policy in the specified sphere should be formed.

There is no systematization of legislation in the field of control over the activities of local self-government bodies, as the corresponding control norms are scattered among legislative acts that determine the legal status and powers of each of these bodies separately.

The effectiveness of the functioning of the local self-government body as a whole is achieved through control. All three branches of government in Ukraine provide for control over individual powers of the local self-government body, in particular through parliamentary control, state control and judicial control, but only public control remains an imperfectly defined regulatory mechanism.

Conclusions

Summarizing, we note that control over the activities of local self-government bodies in Ukraine is a necessary condition for maintaining a high level of application of the principle of decentralization of power. Today, the Charter on Local Self-Government is the basis of the legal regulation of this activity. Based on the analysis of the cited works, the methods and forms of the relevant control are determined. It is noted that international experience is a necessary condition for improving the functioning of local self-government bodies in Ukraine, and public control over their activities is a factor stimulating the improvement of the implementation of their own powers by certain bodies. It is concluded that the coordination and improvement of the legal framework of effective cooperation at the municipal levels is an important aspect of the proper functioning of local self-government bodies. In the conditions of martial law



in Ukraine, it is proposed to restore limited methods of public control over the functioning of local self-government bodies, and forms of international cooperation in the field of public control over the implementation of local government are proposed.

Important directions for further research remain the study of issues of international experience in improving the functioning of local self-government bodies in Ukraine in terms of ensuring public control; improvement of implementation of own powers by certain bodies through the systematization of legislation in this area; and ensuring coordination and improvement of the legal framework for effective cooperation at the municipal levels of the countries.

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