



ISSUES OF JUDICIAL CONTROL OVER THE LEGALITY OF DOCUMENTS OF LOCAL GOVERNMENT BODIES IN FOREIGN COUNTRIES

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ANNOTATION

Local self-government bodies operate on the territory of the state, in accordance with its legislation – therefore, state control over their functioning is natural.

The article analyzes the institute of judicial control over the activities of local self-government bodies in the leading countries of the world on the basis of the legislation of foreign countries and scientific literature. It is concluded that various variants of judicial control are used in foreign countries.

KEYWORDS: *body, justice, self-government, court, control, supervision, jurisdiction, municipal control, foreign experience, Supervisory activity.*

INTRODUCTION

The exercise of State control depends on the municipal system that exists in the country. For example, if a state uses the Romano-German system of local self-government, almost all administrative-territorial units have local government bodies of general competence that represent state power – they are entrusted with the main functions of monitoring the activities of local self-government bodies. If we are talking about countries with the Anglo-American model of local self-government, it is important to remember that local government bodies of general competence are not created in administrative-territorial units there. Thus, state control over the activities of local self-government bodies takes on a more centralized character-it is carried out mainly by the central bodies of state executive power.

Depending on the nature and content of the state control over the activities of local self-government bodies is divided into administrative, judicial and financial. In some States, there are other, additional types of controls. Thus, in the Scandinavian countries, the institution of the Ombudsman has been created specifically for the implementation of State control over the activities of local self-government bodies.

Any administrative control over local self-government bodies may be exercised only in the manner and in the cases provided for by the Constitution or the law.

Any administrative control over the activities of local self-government bodies, as a rule, is aimed

only at ensuring compliance with the rule of law and constitutional principles. However, administrative control may also include the control of expediency, carried out by higher authorities, in relation to the tasks assigned to local self-government bodies.

Administrative control over the activities of local self-government bodies should be carried out in accordance with the proportionality between the degree of intervention of the supervisory authority and the significance of the interests that it intends to protect"

All tribunals and courts should be independent of the executive and legislative authorities, as well as of the parties to the judicial process. This means that neither the judiciary, nor the judges that make up it, can depend on other branches of Government or on the parties to a lawsuit. The courts must also be truly independent, as well as free from any form of influence or pressure from other branches of government or anyone else. The independence of the judiciary must be guaranteed by the Constitution, laws and policies of the country and must be exercised in practice by the executive branch, its organs and representatives, as well as by the legislative branch. The judiciary must have jurisdiction over all matters of a judicial nature and the exclusive right to determine whether a matter submitted to it falls within the scope of its competence defined by law. No inappropriate or improper interference in the judicial process should be allowed. The decisions of the courts may not be subject to review (except for a supervisory procedure), commutation of the sentence or pardon,



except in cases where this is carried out by the competent authorities in accordance with the law.

REVIEWS

Administrative control includes three main areas of its implementation:

a) Constant monitoring by state authorities and their officials of the activities of local self-government bodies;

b) The possibility of the dissolution of local representative bodies or the removal of elected officials of local self-government;

c) Approval of acts of local self-government bodies on certain issues by state authorities, constant monitoring of municipal acts by state bodies with the possibility of cancellation or suspension of acts that contradict the current legislation.

The measures provided for in paragraph "b" are often accompanied by the implementation of not only administrative, but also judicial control – the court decides on the legal fate of normative legal acts of local self-government bodies.

The judiciary must have jurisdiction over all matters of a judicial nature and the exclusive right to determine whether a matter submitted to it falls within the scope of its competence defined by law. No inappropriate or improper interference in the judicial process should be allowed. The decisions of the courts may not be subject to review (except for a supervisory procedure), commutation of the sentence or pardon, except in cases where this is carried out by the competent authorities in accordance with the law. The judiciary should be independent in terms of the internal structure of the judicial administration, including the distribution of cases among judges within the court to which they belong. The term "judicial independence" has two dimensions: institutional independence and personal independence. Appointments made by the executive branch of government or the election of judges by popular vote undermine the independence of the judiciary. The criteria for appointing persons to judicial positions should be their suitability for the position, based on professionalism, ability, legal knowledge and appropriate training in the field of law. The relevance of the chosen article lies in the fact that the judiciary, as one of the three branches of government, is one of the driving forces of the modern state.

The role of judicial control over the activities of local governments is traditionally higher in the countries of the common law family. In the United States and the United Kingdom, for example, it includes the interpretation of legislation on local self-government (most often questions of the limits of competence), the decision on the application of sanctions to municipal authorities.

Judicial control over the activities of local self-government bodies is typical both for Uzbekistan

and for other countries of the world and is an integral part of state control.

This type of control is carried out by the judicial authorities, in accordance with general constitutional acts, laws on local self-government and legislation on courts.

The right to introduce control over the activities of local self government bodies is established of the European Charter of Local Self Government according to which:

Given that the essential difference between control and supervisory activities is the ability of supervisory authorities to interfere in the operational activities of controlled entities, and for supervisory authorities direct intervention in the activities is impossible, the European Charter of Local Self-Government refers to the control and supervision by the state of local self-government bodies, the procedure for the implementation of which should be regulated by national legislation.

According to the European Charter of Local Self-Government, local self-government bodies should have the right to judicial protection to ensure the free exercise of their powers and compliance with the principles of local self-government enshrined in the Constitution or domestic legislation. Recourse to judicial remedies can be understood as the access of a local authority to a properly constituted court or equivalent, independent and lawful body with the right to make decisions and make recommendations on this decision and on the compliance with the law of any act, omission or other administrative act.

Taking into account that judicial protection of the rights of local self-government, among other things, implies ensuring the legality of the activities of local self-government bodies, we can say that the Charter indirectly establishes judicial control over local self-government bodies and officials.

DISCUSSION

At the same time, the provisions of the European Charter on Local Self-Government regulating State control in the field of local self-government are primarily aimed at ensuring the independence of local self-government, excluding the possibility of direct interference in its activities. Indeed, the protection of the rights of citizens to exercise local self-government and to participate in it requires the independence of the latter. At the same time, ensuring the continuity and unity of public administration, including information management (which is ensured by control), is necessary from the point of view of protecting the rights, freedoms and legitimate interests of citizens. According to A.I.Cherkasov, who, in turn, agrees with his colleague T. Byrne from the UK, "many functions performed by local authorities are essentially national in nature, and therefore it is necessary to maintain at least some minimum standards for their



implementation.[1]" The German scientist F. L. Knemeier believes that the purpose of state supervision is to ensure the legality of the actions of local governments and " to guarantee the interests of the state as a whole in connection with the special local interests of the communes"[2].

In accordance with the norm of the European Charter of Local Self-Government, the constitutions, constitutional acts and ordinary laws of European States contain provisions on State control over the activities of local self-government bodies. Moreover, as the analysis showed, not all European constitutions have norms on state control over local self-government. In the texts of the constitutions, the guarantees of local self-government, the basis of relations with state authorities, the procedure for organizing local self-government are mandatory, and the possibility of control and supervision of local self-government by the state is indicated. More detailed provisions on State control can be found in national acts of lesser legal force-laws.

For example, according to the provisions of the German Constitution, " ... in the lands, districts and communities, the people must have representation created by universal, direct, free, equal and secret elections. (...) Communities should be given the right to regulate, within the framework of the law, under their own responsibility, all the affairs of the local community. Community unions also enjoy the right of self-government within the limits of their powers and in accordance with the law[3]".

The tasks of local self-government are regulated by federal and land laws. The State delegates some of its functions to the self-government bodies. The Federation and the Lander are thus not the only subjects of State administration. Communities and districts perform the functions assigned to them either as institutions of self-government, or on behalf of the state and by order of a state body within the framework of the functions delegated to them[4].

As you can see, the text of the German Constitution does not say that state control is established over local self-government bodies. This does not mean that there is no such control - it is carried out in accordance with the constitutions and laws of the lands on their territory.

Jurgen Harbich, Doctor of Law, notes:"In order to guarantee the subordination of municipalities to the norms of law, state supervision of municipalities has been established in the Federal Republic of Germany. The federal States independently regulate the details of such supervision in their local government laws. The municipal law of Germany is not a problem of the state center, but is the sphere of competence of the federal states. However, the main directions of municipal supervision in Germany are nevertheless quite unambiguous and unified.

The Federal Constitutional Court, in its decision of January 23, 1957 (FCC 6, 104 and further 118), defined municipal supervision as a counterweight to local self-government. Thus, State supervision is the "natural opposite" of the right to self-determination of local communities. From the point of view of the rule of law, it would be unacceptable if the communes took illegal actions and the State did not have the opportunity to intervene. State supervision is a necessity of the rule of law"[5].

Despite the unification of the methods of control over the activities of local self-government bodies in federal states, there are still certain features arising from regional legislation. The practice of controlling local self-government bodies, including judicial ones, is somewhat different in unitary States.

According to article 72 of section XII "On territorial Collectives" of the French Constitution, "The territorial collectives of the Republic are communes, departments, and overseas territories. All other territorial collectives are created by law.

These collectives are freely managed by elected bodies, subject to the conditions provided for by law.

Government representatives in departments and territories are responsible for ensuring national interests, for administrative control and compliance with laws"[6].

According to Law No. 82-213 of 2 March 1982, " Communes, departments and regions are freely governed by elected councils. The laws determine the distribution of competencies between communes, departments, regions and the state, as well as the distribution of public funds, which follows from the new rules of the local tax system and the transfer of state loans to territorial communities.; the organization of the regions, the statutory guarantees provided to the staff of the territorial communities, the method of election and the charter of the elected representatives, as well as the forms of cooperation between the communes, departments and regions and the development of citizens' participation in local life."

To date, French legislation fully regulates all issues related to the organization and activities of local self-government at all levels of administrative and territorial structure. All these laws are combined in the Administrative Code, which is actually the " constitution " of local self-government in France[7].

According to the laws adopted in the 1980s, " the regions became full-fledged local administrative-territorial entities, governed by councils elected at elections. Executive power in the departments and regions was transferred from the appointed representative of the state to the elected chairman of the consultative assembly (assembly). Permanent administrative control over the acts of the assemblies was replaced by subsequent judicial control over the



legality of the acts adopted. However, important acts adopted by local assemblies become binding only if they have been published and handed over to a representative of the State, who has the right to challenge them in an administrative court within two months." [8]

In Germany and France, there was a model of local self-government, which in the literature was called Romano-Germanic. It is characterized by strict administrative control over the activities of local self-government bodies by the State, which in terms of judicial control is implemented through administrative courts and administrative tribunals (quasi-judicial bodies).

Systems of judicial control over the activities of public authorities in the scientific literature are called "systems of jurisdictional control". "Specific systems of jurisdictional control in modern states provide different solutions to the question of the nature of the judicial bodies that should perform the task of judicial control of administrative acts. The classification of these systems can be made on various grounds. Depending on which bodies exercise jurisdiction in cases arising from administrative-legal relations-general courts or special administrative courts, we can conditionally distinguish two extremely general systems of jurisdictional control:

The system of unified jurisdiction of the general courts, characterized by the following main features: a) control over the acts of administrative bodies is carried out by the general courts; b) there is no coherent system of administrative courts headed by the highest administrative court (Great Britain, USA, Australia, New Zealand, Denmark, Norway, etc.);

A system of multiple jurisdictions, the distinctive features of which are: a) the existence of a system of administrative courts of General and special jurisdiction; b) the smallest category of administrative disputes are also within its scope of competence of the General courts (France, Germany, Italy, Sweden, Greece, Turkey, etc.)"[9].

Accordingly, a system of multiple jurisdiction of the characteristic times for the countries of the Romano-Germanic of local government.

The Anglo-Saxon model is characterized by the control of local self-government bodies by the general courts.

The Anglo-Saxon model assumes a variety of ways of organizing local government, which is most clearly manifested in the United Kingdom, which historically has several levels of local government: from county councils to parish councils and rural island councils.

At each of these levels, there is a judicial body whose competence includes resolving issues of compliance of decisions and actions of local self-government bodies with the law. "In the UK, a

significant addition to administrative supervision is judicial control over the compliance of decisions of municipal authorities with acts of central authorities. It is usually carried out by various judicial instances, for example, in England - justices of the peace, county courts, the High Court, the House of Lords, and municipal acts can be challenged in court not only on the initiative of private individuals, but also by public authorities"[10].

An interesting fact is that "the UK legislation establishes the legal status of a municipality as a corporation, ensures the autonomy of local authorities, and establishes the legal basis for the activities of government departments to monitor the work of local self-government bodies. Municipalities may only perform actions that are expressly prescribed by law. Otherwise, the acts of the local authorities may be declared invalid by the court"[11].

In the United States, there is a variation of the Anglo-Saxon model of local government, which is characterized by a variety of forms of local government in different states. The state control over local self-government bodies is also diverse, a variety of which is judicial control.

The courts have a significant influence on the practice of organizing and implementing local self-government in the countries of the Anglo-Saxon legal family. "Judicial precedent in municipal cases in the United States, Great Britain, Canada, and some other countries is interpreted as one of the main sources of municipal law"[12].

It can be argued that the judicial authorities in foreign countries exercise subsequent external control over the actions of government bodies, including local self-government bodies. Judicial response to illegal actions of local self-government bodies is expressed in a certain sanction, which is the final assessment of the decision (action) of a particular local self-government body or official.

In addition, the analysis showed that in foreign countries, as in the Russian Federation, judicial control is one of the types of state control over local self-government bodies, due to the subordinate nature of local self-government in relation to the state, as well as the right of the state to control the performance of local self-government bodies of their own powers and powers transferred to local self-government bodies by the state on a temporary basis.

The specifics of the methods and models of organizing judicial control over the activities of local self-government bodies depend on the state's membership in the Romano-Germanic or Anglo-Saxon legal family and, as a result, its membership in the corresponding model of local self-government organization.

Judicial control over local self-government bodies in foreign countries, as well as in the Russian Federation, is one of the functions of the judiciary



related to the administration of justice, and in essence this control is subsequent and external.

RESULT AND ANALYSIS

The reform of the judicial and legal system was carried out consistently and in stages, in close connection with fundamental changes in the sphere of state and public construction. A new milestone in the development and further development of an independent and effective judicial system was the publication of Presidential Decree No. UP-4966 of 21 February 2017 "On measures to radically improve the structure and increase the efficiency of the judicial system of the Republic of Uzbekistan".

In accordance with the structural changes in the judicial system, the Supreme Economic Court of the Republic of Uzbekistan was merged with the Supreme Court of the Republic of Uzbekistan, which became a single supreme judicial authority in the field of civil, criminal, administrative and economic proceedings.

Administrative courts have been established, which are authorized to consider disputes arising from public legal relations and administrative offenses. Economic courts were renamed economic courts with the creation of inter-district economic courts. At the same time, 71 inter-district (district, city) economic courts have been created, which consider disputes between business entities in the first instance, and the existing economic courts of the regions, the city of Tashkent and the Republic of Karakalpakstan have been transformed into courts of second instance.

The Military Collegium of the Supreme Court has been liquidated, and the judicial collegium for administrative cases of the Supreme Court of the Republic of Uzbekistan has been established. At the same time, the reforms were carried out taking into account the generally recognized norms of international law, as well as the rich historical experience of national statehood, customs and traditions of our people. Justice and transparency of judicial proceedings are currently factors that affect the overall picture of the independence of our country as a whole, which in turn is the driving factor for the recognition of our state by the international community. The Basic Law of the Republic of Uzbekistan declares that the judicial power in the Republic of Uzbekistan operates independently of the legislative and executive authorities, political parties, and other public associations. According to the Law of the Republic of Uzbekistan

"On the courts" justice in the Republic of Uzbekistan is carried out only by the court. The Court is called upon to exercise judicial protection of the rights and freedoms of citizens proclaimed by the Constitution and other laws of the Republic of Uzbekistan, international acts on human rights, the rights and legally protected interests of enterprises,

institutions and organizations. The Court's activities are aimed at ensuring the rule of law, social justice, civil peace and harmony. The independence of the judiciary is guaranteed by the Constitution of the Republic of Uzbekistan: "The judiciary in the Republic of Uzbekistan operates independently of the legislative and executive authorities, political parties, and other public associations. Judges should be independent and subject only to the law. Any interference in the activities of judges in the administration of justice in accordance with the Constitution is unacceptable and entails liability under the law. The inviolability of judges is guaranteed by law.[13]"

Citizens of the Republic of Uzbekistan, foreign citizens and stateless persons have the right to judicial protection from any illegal actions (decisions) of State and other bodies, officials, as well as from attacks on life and health, honor and dignity, personal freedom and property, and other rights and freedoms. President of Uzbekistan Shavkat Mirziyoyev, speaking at a video conference on the state of affairs in the judicial system, proposed to introduce a number of innovations to improve the work of the sphere. In particular, the head of state said that in order to further improve the system of training and advanced training of judges, it is necessary to organize a specialized educational institution in the country - the Academy of Justice. At the meeting, another interesting proposal was put forward - to organize a series of broadcasts on television and in the press, publishing articles on a regular basis under the headings "Judicial Club" and "Under the protection of the court", telling about the life of judges who have earned the respect of the people, as well as promoting good practices in the administration of justice. Also, the President of Uzbekistan Sh. Mirziyoyev put forward a proposal to introduce in the republic the procedure for judges to conduct an open dialogue with the population on the ground at least once a month. Also, in his opinion, it is time to establish the practice of each judge reporting on their activities in the local soviets of people's Deputies. President Sh. M. Mirziyoyev emphasizes: "Now the people themselves will first of all give an assessment of the judges' activities." [14] Now, an innovation among these areas of reform and the expansion of the practice of conducting field court sessions in mahallas, enterprises and organizations aimed at the prevention of offenses has been introduced. Modern technologies play a significant role in this, with the widespread introduction of information and communication technologies into the activities of courts, including electronic shorthand and videoconferencing, and the formation of an interdepartmental system for electronic information exchange to ensure the unconditional execution of court decisions. The liberalization of criminal penalties, which marked the



beginning of an important stage of judicial and legal reforms, had great social and socio-political significance. In this context, it should be noted that the introduction of the institution of reconciliation also served as an important step in the further liberalization and humanization of the criminal punishment system. Reflecting the humanistic nature of our legislation, it serves to shape the law-abiding behavior of citizens based on respect, voluntary and informed compliance with the laws. In order to further enhance the role of the court in ensuring the observance of the constitutional human rights to freedom and personal integrity, the institution of the right to issue a court order for detention has been introduced into the judicial and legal system of the country. The transfer to the courts of the right to issue a pre-trial detention sanction has created an effective mechanism for judicial control over the legality of the use of pre-trial detention at the pre-trial stage of the criminal process. In addition, this measure has strengthened the responsibility of investigators and prosecutors, as well as the role of the judiciary in the reliable protection of human rights and freedoms. This institution, which has become widespread in democratic countries of the world, has been successfully operating in Uzbekistan since January 1, 2008.

The close connection of justice and independence with the concept of legality and equality was noted by Aristotle, he wrote: the concept of justice means at the same time both legal and equal, and injustice — illegal and unequal (treatment of people). In order to build a democratic State based on the rule of law and a civil society in our country, the most important task is to ensure the rule of law and justice.

In the Strategy of Action on the five priority areas of development of the Republic of Uzbekistan in 2017-2021, the priority areas of reforming the judicial and legal system are identified as improving citizens' access to justice, ensuring the true independence of the judiciary, and strengthening guarantees of reliable protection of human rights and freedoms.

Fundamental changes related to the reform of the judicial and legal sphere have been introduced in 7 articles of the Constitution of the Republic of Uzbekistan. A new body of the judicial community — the Supreme Judicial Council of the Republic of Uzbekistan — has been formed to radically improve the system of selecting candidates and appointing judges, and to form a highly qualified judicial corps. The resident set a goal — to strengthen the people's trust in the judicial system by protecting the rights and freedoms of citizens, to turn the court into a true "Abode of Justice". The most important task is the formation of a judicial body capable of making comprehensively thought-out fair decisions. In order to prevent crime among young people, to increase

attention to their moral and spiritual education, to warn them against the negative impact of various extraneous trends, the post of deputy heads of district (city) departments (departments) of internal Affairs on youth issues — heads of departments (departments) of crime prevention was introduced in the internal affairs bodies. Another of the main priorities of the reform of the internal affairs system is the radical improvement of the institution of crime prevention, as the main direction of the fight against crime.

In order to ensure early prevention and prevention of offenses, wide involvement of self-government bodies of citizens, civil society institutions and the population in preventive measures, a Republican interdepartmental commission for the prevention of Crime and Offenses was established, specific criteria for evaluating the effectiveness of crime prevention activities and a mechanism for encouraging and stimulating prevention inspectors who have achieved high results in their activities were introduced.

By the Decree of the President of the Republic of Uzbekistan No. UP-5343 of February 15, 2018 "On additional measures to improve the efficiency of the Prosecutor's Office in ensuring the implementation of adopted normative legal acts", the General Prosecutor's Office established departments for supervision of the implementation of legislation in the fuel and Energy complex; for supervision of the implementation of legislation in the customs and tax spheres; for supervision of the implementation of legislation in the field of transport, construction and other sectors of the economy; supervision of the implementation of legislation in the field of health, education and other social spheres; legal protection of entrepreneurship and investment; supervision of the implementation of decisions of the President of the Republic of Uzbekistan; ensuring the powers of the prosecutor in administrative proceedings; methodological support of the investigation.

CONCLUSION

An additional guarantee of ensuring the rights and legitimate interests of entrepreneurs was the creation of the institution of the Commissioner under the President of the Republic of Uzbekistan for the protection of the rights and legitimate interests of business entities.

Judges who are part of the society they serve cannot effectively administer justice without public trust. They should become familiar with the public's expectations of the judicial system and complaints about its functioning. A permanent mechanism for such feedback, established by the Council of Judges or other independent body, will facilitate this. The Republic of Uzbekistan thus reaffirmed its commitment to its international obligations in the field of human rights and the obligation to comply with the international treaties to which it has acceded.



Awareness of civil society institutions about their rights to participate in solving issues of state and local importance, mastering the skills of implementing various forms of public control over the implementation of laws and other normative legal acts is an essential element of the culture of human rights of both society as a whole and each individual.

One of the important conditions for strengthening the guarantees for the protection of human rights and freedoms in the country is to increase the level of knowledge of employees of the State apparatus and, above all, lawyers on human rights and freedoms. To this end, special attention is paid to ensuring the rights of citizens to education, creating equal conditions and opportunities for admission to higher education for all persons.

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