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COMPLIANCE OF THE REGULATION OF SUPERVISION OVER LOCAL GOVERNMENT IN THE POLISH CONSTITUTION AND IN LEGAL ACTS

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Summary

The aim of the article will be to analyze the regulation of supervision over local government in the Polish Constitution and in the legal system regulating the supervision of local government. The implementation of this objective will allow to demonstrate to what extent supervision has constitutional authority and whether the constitutional regulation is complied with in legislation. Therefore, this study will omit those issues related to supervision that do not directly arise from the Constitution. In particular, this applies to the supervisory procedure. The content of this study includes an analysis of the concept of supervision itself, supervisory criteria and supervisory authorities.

The basic research method will be the dogmatic method focusing on the interpretation of constitutional norms and the presentation of the positions and views of representatives of science. The research method used will also include an analysis of selected and representative court case law and the presentation of practical examples of supervision and their assessment by administrative courts.

The Polish Constitution uses the concept of supervision without defining it. It is interpreted in the same way in Polish doctrine as well as in judicial jurisprudence, emphasizing its most important element, i.e. the authoritative and unilateral interference in the activities of local government bodies by the supervisory authority. This is how it differs from control, which does not include this form of influence.

The Polish Constitution defines the criterion of supervision for supervision too narrowly, as well as incompletely defines supervisory bodies. It ignores the criterion of proportionality, which limits the right to authoritative intervention in the activities of local government to cases of a material violation of the law. In addition, the legislator assigns criteria of a purposeful or efficiency nature to supervisory authorities. Many government administration bodies, such as the Minister of Foreign Affairs or the Voivodeship Superintendent of Schools, exercise supervisory powers over local governments, even though they are not supervisory bodies within the meaning of the Constitution.

The incompatibility of the laws with the Constitution in terms of the criterion of supervision and the number of bodies with supervisory competences does not have a significant impact on the independence of local government. This is due to the occasional application of supervisory criteria other than legality and the generally uniform position of administrative courts, which always reduce the assessment of supervisory activities to the criterion of legality. The practice of administrative courts allows for the elimination of these differences. There is no mention of the need for an urgent change to the Polish Constitution.

Key words: supervision; control; legality; proportionality; supervisory authorities.

1. Introduction

Supervision over local government is one of the basic determinants not only of its functioning, but above all of its independence, which directly affects the definition of local government (Wiktorowska, 2002, p. 193-194; Żelasko-Makowska, 2024, p. 6). The perception of local government depends on how supervision will be regulated, and in fact the assessment of whether a given structure can be defined as self-government at all within the meaning of, for example, Article 3 of the EChLSG (European Charter of Local Self-Government, 1985). The broadly defined scope of

supervision, along with many criteria for its exercise, will lead to both the dependence of local government on the government administration and its depreciation. Moreover, when performing public tasks, a local government dependent on government administration will not be able to properly meet the expectations of residents, which will lead to the perception of local government as part of government administration, and not as a form of real influence of residents on the public tasks performed.

Therefore, the concept of supervision and the principles of its regulation in constitutional provisions has a fundamental role in defining it. This is not only theoretical, but above all practical, as the activities of the local government are not autonomous and are subject to continuous assessment by supervisory authorities and administrative courts.

The above justifies the definition of research problems. The question to which this publication will seek answers is to indicate what is the understanding of the concept of supervision in the Polish Constitution (Constitution of the Republic of Poland, 1997). Another research problem will be to assess whether the definition of the supervision criterion in the Polish Constitution is exhaustive, or whether there are other criteria and what is the regulation of the legal system in it. An important research problem will be to assess whether the Polish Constitution fully defines supervisory bodies or only half-heartedly. The last research problem will be the assessment of the compliance of this regulation with the Polish legal order regulating the functioning of local government.

The basic research method will be a dogmatic research method consisting in the analysis of the applicable law, court rulings and the views of representatives of the doctrine. An additional method of research will be an empirical method involving the presentation of practical examples of the application of law in the field of supervision over local government.

2. Analysis of the latest research and publications

The issue of supervision over local government in the Constitution of the Republic of Poland has been the subject of studies, most often combined with a comprehensive definition of supervision over local government. The authors, when analysing individual supervisory institutions, do not focus on the Constitution itself, but pay the most attention to statutory solutions. Among the authors dealing with this issue are P. Chmielnicki, B. Dolnicki, M. Karpiuk, H. Izdebski, W. Kisiel, Z. Kmieciak, J. Korczak, Z. Leoński, A. Matan, I. Niżnik-Dobosz, M. Stahl, M. Szewczyk, J.P. Tarno, K. Ziemski and others. Practically every study on local government includes an analysis of its supervision to a greater or lesser extent. The subject matter covered by this study is usually not an independent subject of research.

3. The logic of the presentation of the research material

The order of the detailed issues presented below is logical and resultant. In the first place, the issue of defining the concept of supervision in the Polish Constitution will be presented. Next, the constitutional criterion of supervision and other criteria of supervision existing in the Polish legal system, but not explicitly mentioned in the Constitution of the Republic of Poland, will be indicated. The next part of the publication will include an analysis of constitutional and non-constitutional supervisory bodies. The last substantive fragment includes conclusions.

4. The concept of supervision in the Polish Constitution

Supervision over the activities of local government is regulated by Article 171 of the Polish Constitution. The Polish Constitution does not define the concept of supervision itself (Skoczylas, Piątek, Bach-Golecka, Bosek, Capik, Chybalski, et. al., 2016, p. 953). This lack is of significant practical importance. Both in the doctrine of Polish law and in the legal system, in addition to supervision, there is also the concept of control. These terms are not synonymous (Niżnik-Dobosz, 2016, p. 55; Ziemski, Matan, Jagielski, Góralczyk, Szyrski, Kulig, et. al., 2023, p. 28-32). Supervision is defined as an authoritative and unilateral interference in the activities of local government (Izdebski, 2020, p. 63-64; Gromek, 2022, p. 449). On the other hand, the audit consists in examining the compliance of the existing factual situation with the postulated state and is aimed at determining the extent and causes of the discrepancy and providing the audited entity with the results of this discrepancy along with the obligation to remove them (Niżnik-Dobosz, 2016, p. 86). The basic difference between supervision and control is, as a rule, the inability of the controlling entity to take governing actions in the face of identified deficiencies in the activities of the controlled entity (Żelasko-Makowska, 2024, p. 1-3). Such a meaning of these terms has also been approved by judicial jurisprudence (Resolution of the Constitutional Tribunal, 1994, W1/94; [Resolution of the composition of 7 judges of the Supreme Administrative Court of Poland (hereinafter SAC), 2014, II GPS 3/13).

The Polish legislator sometimes tries to expand the scope of supervision over the activities of local government without using the term “supervision” itself. An example is the regulation of public tasks in the field of education. These tasks are the own tasks of the municipal and county self-government. They are carried out by the educational administration functioning primarily in public schools and kindergartens. In practice, due to the permanent underfunding of these tasks from the state budget and the visible decrease in the number of pupils, especially in rural communes,

local government bodies adopt resolutions on the liquidation of some redundant schools or generating disproportionate expenditures for their maintenance. In such cases, education is provided in another school in a given municipality, and children are sometimes transported by school buses. The condition for the liquidation of a public school is to obtain a positive opinion of the government body of the education administration, which is the voivodeship superintendent of schools as a part of central administration. Without such a positive opinion, the resolution initiating the process of liquidation of a school cannot produce legal effects (Article 89(3) of the Law on School Education, 2016; Patyra, 2019, p. 94). Despite the lack of definition of this power as supervisory, the head of education does in fact have such a competence.

5. Legality as a supervisory criterion

According to Article 171(1) of the Polish Constitution, the only constitutional criterion for supervision is legality (Banaszak, 2012, p. 861). Legality is understood as compliance with generally applicable law, and thus supervisory authorities may intervene in the activities of local government in an authoritative manner only when the law is violated (Masternak-Kubiak, Balicki, Bartoszewicz, Complak, Haczkowska, Ławniczak, 2014, p. 417; Dolnicki, 2024, p. 426; Filipek, 2001, p. 218). Legality should be understood as the non-contradiction of a given act with the entire legal order, adopted on the basis of a specific legal norm and resulting from a proper interpretation and understanding of that norm (Zimmermann, 2022, p. 330). Sometimes such an understanding of legality is treated as "compliance with the law" (Filipek, 2001, p. 218).

It is sometimes argued that legality means both compliance "with the letter of the law" and compliance with the "spirit of the law" (Wiktorowska, 2002, p. 209-210; Zimmermann, 2022, p. 329), however, legality as a criterion for supervision cannot mean any other basis for action than the assessment of legality. The only thing that means is that in each case, when assessing the legality of a given provision, a derivative method of interpretation should be used, assuming primarily the decoding of the legal norm and the application of all legal provisions, or of a functional interpretation emphasizing the purpose and function to be achieved by a given provision (the so-called compliance with the spirit of the law). directives of interpretation in order to achieve its proper meaning (Zieliński, 2012, p. 84-85; Zirk-Sadowski, Leszczyński, Wojciechowski, 2012, p. 164-165).

The Polish constitutional legislator did not take advantage of the possibility provided by Article 8(2) of the EChLSG allowing for an additional criterion of expediency in supervising the performance of tasks entrusted to local government. In the hierarchical system of legal acts in the Polish legal system, the EChLSG is a subordinate act to the Polish Constitution, and thus no act of supervision may refer to the criterion of expediency (Chmielnicki, 2006, pp. 59–62).

Polish local government is three-level and each level of local government has been regulated by its own law. Each of these acts contains a regulation of supervision and it is essentially congruent. While the Constitution indicates legality as a criterion for supervision, each of the acts regulating individual levels of self-government uses the criterion of legality (Article 85 on Commune Self-Government, 1990 – hereinafter LCG; Article 77 On District Self-Government, 1998 - hereinafter LDG; Article 79 On Voivodeship Self-Government, 1998 – hereinafter LVG). Despite the lack of full agreement in Polish science, these concepts: legality and compliance with the law should be treated as synonyms (Dolnicki, 2015, p. 62-63; Lemańska, 2017, p. 29). Thus, legality and compliance with the law is not only compliance with a clear legal norm, but also with the values observed by the law. This compliance applies not only to generally applicable law, but also to local law applicable in the territory of a given local government unit and the law that binds the bodies and administration of a given local government unit. The concept of legality (legality) must be understood broadly.

6. Proportionality criterion

Despite the fact that the Polish Constitution defines legality as the only criterion for supervision over Polish local government, the legislator does not comply with this limitation. Apart from this criterion, the laws regulating individual levels of local government additionally use proportionality, despite the lack of a clear indication of them. It is already clear from the wording of Article 8(3) of the EChLSG that "supervison over local government 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". This is an explicit principle of proportionality, which must be applied in the supervisory mode. According to Article 91(4) of the LCG, in the event of a violation of the law in the form of an insignificant infringement, the supervisory authority does not take an authoritative action aimed at eliminating the affected person with such a defect of the act, but is limited to indicating that the resolution or order of the municipal authority was issued in violation of the law (Lemańska, 2017, p. 30). Identical solutions are contained in Article 79(4) of the LDG and Article 82(5) of the LVG. The effect of such an indication is that the act containing this insignificant violation of the law is in force without the possibility of correcting it in the supervisory procedure (Judgement SAC in Warsaw, 2023, III FSK 1381/22; Kmieciak & Stahl, 2001, p. 102; Ziemski, Matan, Jagielski, Góralczyk, Szyrski, Kulig, et. al., 2023, p. 89-90).

This should result in the assumption that legality is only a criterion for supervisory activities if it takes the form of a material breach of the law. In the case of an insignificant breach, we can talk about control activities, not supervisory ones. Nevertheless, such a direction of interpretation does not dominate in Polish science. It is assumed that every action of a supervisory authority regulated in supervisory proceedings constitutes a supervisory act (Skrzydło-Niżnik, 2007, p. 575-578; Dolnicki, 2024, p. 431-450; Ura, 2024, p. 300). In the case law, this issue is not uniformly perceived. Administrative courts assume that any form of action of a supervisory authority constitutes an act of supervision (Resolution of the composition of 7 judges SAC in Warsaw (1999), OPS 5/99; Decision of SAC in Warsaw (2008), II OSK 839/08). However, if the supervisory authority finds an insignificant violation of the law, the local government unit cannot effectively file a complaint with the administrative court (Decision of SAC in Wroclaw (2002), II SA/Wr 2151/00; Judgment of SAC in Warsaw (2019 r.), II OSK 917/19). This leads to a difficult to accept thesis according to which an insignificant violation of the law constitutes a form of supervisory action over the local government, but the local government cannot appeal such an action to the administrative court. In principle, any form of supervisory interference must be secured by the possibility of appealing it to an administrative court. This is required by the constitutional principle of autonomy, and even if the law restricts or even prohibits the filing of complaints against supervisory acts (for example, Article 6c of the "Decommunization Act", 2016), the judicial jurisprudence has overwhelmingly found such a solution to be inconsistent with the Polish Constitution and allowed for the filing of complaints against such acts (Judgment of SAC in Warsaw (2018) II OSK 2643/18; Judgment of SAC in Warsaw (2021) III OSK 2110/21). This is also how it is perceived in the doctrine of Polish law (Patyra S., 2019, p. 94 and 97).

The application of the principle of proportionality is consistent with Article 8(3) of the EChLSG, and while Polish science recognizes its existence in the field of supervision, it is most often indicated that it is not a criterion of proportionality, but the principle of proportionality (Izdebski H., 2020a, p. 316). If we observe the concept of supervision as a form of authoritative and unilateral influence on a given act of a local government body, then the division into material and insignificant defects is a manifestation of the application of proportionality, resulting in the limitation of supervisory competences only to material defects (Chlipała, 2014, p. 26–280; Izdebski, 2020a, p. 316-317; Kmieciak, 1994, p. 16). If it is found that a given act contains insignificant defects (and thus nevertheless violates the law), the supervisory authority does not intervene imperiously, but undertakes control actions (Lemańska, 2017, p. 30). Thus, the criterion of proportionality is ancillary and is directly linked to the criterion of legality. The proportionality criterion does not exist in its own right, but must always be taken into account by the supervisory authorities.

This is not the only regulation that allows for demonstrating the application of this criterion. Pursuant to Article 171(3) of the Constitution of the Republic of Poland, the Sejm (The Lower House of Parliament), at the request of the Prime Minister, may dissolve a body constituting a local government if such body grossly violates the Constitution or laws. The concept of a "gross" violation of the Constitution or the law presupposes an assessment of the degree of such violation. At the same time, it seems that this is a breach to a greater extent than "material". Thus, in the way of the gradation of violations of the law, it is undoubtedly the most glaring violation.

Importantly, the Constitution allows the supervisory powers of the parliament only in the case of a gross violation of the law in the field of the Constitution or laws. On the other hand, according to the provisions of the acts regulating individual levels of government, the Sejm has the right to dissolve bodies constituting local government units already in the event of repeated violations of the Constitution or laws by the commune council/county council and regional (Radajewski, 2016, p. 29). Undoubtedly, the repeated violation of laws or the Constitution is not synonymous with a gross violation of these legal acts. Bearing in mind the hierarchy of legal acts, the constitutional norm should be given priority in the dissolution of the decision-making body by the Chamber of Parliament. Thus, it is not sufficient for a repeated violation of laws or the Constitution by an authority, but it is necessary to demonstrate that such a violation was of a gross nature (Kmieciak & Stahl, 2001, p. 98). Sometimes the criterion resulting from Article 171(3) of the Polish Constitution is treated as an expedient criterion (Korczak, 2019, p. 230). However, this view seems to be too far-reaching.

7. The criterion of purposefulness?

It is no coincidence that this criterion has been given a question mark. In Polish doctrine of law, there is no doubt that the criterion of expediency after 2001 is not and cannot be the basis for exercising supervision over local government. This criterion consists in taking such actions that are consciously aimed at achieving a specific goal or result (Miodek, 2002, p. 6). Nevertheless, the legislator uses this criterion, without calling it "expediency". It is "the lack of prognosis for rapid improvement and prolonged ineffectiveness in the performance of public tasks" by the body or bodies of a given local government unit. This is an identically defined criterion for bodies at all levels of local government. This criterion is of a purposeful nature (Kisiel, 2003, p. 276; Chmielnicki, 2006, p. 261; Kasiński, 2016, p. 530-531) and is sometimes referred

to as an efficiency criterion (Majewski & Majewska, 2016, p. 120; Zimmermann, 2022, p. 331). What should be understood as "lack of hope for a quick improvement" and at the same time "prolonged ineffectiveness in the performance of public tasks" has not been defined (Lemańska, 2017, p. 34). This criterion is most often also associated with a violation of the law (Masternak-Kubiak, Balicki, Bartoszewicz, Complak, Haczkowska, Ławniczak, 2014, p. 419-420), but it can also occur independently of this violation. In practice, the state of failure to improve quickly and the prolonged state of ineffectiveness most often results either from the catastrophic indebtedness of a given local government unit (Judgment of SAC in Warsaw (2013), II OSK 135/13; Judgment of SAC in Warsaw (2016), II OSK 2347/16), or from obstruction of the bodies of the local government unit preventing cooperation between them (e.g. resignation from the performance of activities by the chairman and vice-chairman of the commune council and failure to elect other persons in their place – judgment of SAC in Warsaw (2009) II OSK 1786/09). The view that this criterion is not in accordance with Article 171(1) of the Polish Constitution (Majewski & Majewska, 2016, p. 120; Chmielnicki, 2006, p. 261-262; Patyra, 2019, p. 93). Nevertheless, it is necessary because there is no other way to interfere in the functioning of local governments, if they do not violate the law, but e.g. recklessly indebted a local government unit.

8. Supervisory authorities

In accordance with Article 171(2) and (3) of the Constitution of the Republic of Poland, the supervisory bodies over the activities of local government units are the Prime Minister and voivodes, and in the field of financial matters, regional audit chambers. In addition, the body exercising supervisory powers is the Sejm (the lower house of parliament). In Polish doctrine of law, it is assumed that this catalogue contains an exhaustive enumeration (Banaszak, 2012, p. 862; Skoczylas, Piątek, Bach-Golecka, Bosek, Capik, Chybalski, et. al., 2016, p. 965). Apart from the above-mentioned bodies, none of the others are bodies of supervision over local self-government (Chmielnicki, 2006, p. 50-51; Gromek, 2022, p. 453-458; as well as the Constitutional Tribunal in its judgment, 2015, Kp 2/13). Such a list of supervisory authorities is also contained in Article 86 of the LCG, Article 76(1) of the LDG and Article 78(1) of the LVG. The supervisory competences of each of the above-mentioned bodies are described in the Acts. The competences of the Prime Minister and regional audit chambers are strictly defined in the acts, while the remaining scope of supervision is exercised by the voivode (Masternak-Kubiak, Balicki, Bartoszewicz, Complak, Haczkowska, Ławniczak, 2014, p. 418). However, even in the case of a voivode, there is no room for a presumption of supervisory competence. Any action of the supervisory authority must be based on a legal basis resulting from the Act.

If we consider that the essence of supervision over local government is the exercise of governmental powers, otherwise interfering with the validity of acts of local government bodies, then the catalogue of bodies with such powers is significantly larger (e.g. Kmieciak & Stahl, 2001, pp. 95-96; Dolnicki, 2015, p. 63-64; Leoński, 2001, p. 163-167). Such supervisory competences are held, for example, by the voivodeship superintendent of schools, whose positive opinion is a condition for the entry into force of a resolution on the intention to liquidate a public school (Article 89(3) of the Education Law). Such an opinion (positive or negative) is issued by the Superintendent of Schools by way of a decision appealable to the Minister of Education, and then to the administrative court.

Another example is provided by the Act regulating the rules for the accession of local government units to international associations (On the rules of accession of local government units to international associations of local and regional communities, 2000, hereinafter – RJIA). Under Article 4(2) of the RJIA, a resolution of a body constituting local government units to join an international association enters into force after obtaining the consent of the minister of foreign affairs issued by means of an administrative decision. This resolution is invalid in the event of a final refusal by the minister to grant consent or failure to present it to him for expression (Article 4 of the RJIZ).

The examples given indicate that bodies other than those listed in the Constitution of the Republic of Poland also have supervisory powers. Denying them such status may lead to situations in which these powers will be classified not as supervision, but as competences similar to those of supervisors, which may raise the question of the criterion for their application. In the case of the RJIA, the supervisory criteria are defined as follows: a) compliance with the tasks and competences of the bodies of a given local government unit, b) compliance with Polish internal law, c) compliance with the foreign policy of the state and its international obligations, d) in the case of a self-governing voivodeship, additionally compliance with the resolution of the regional assembly of that voivodeship on the priorities of foreign cooperation of the voivodeship (Article 2(1) and (2) of the RJIA). Most of the indicated criteria are in fact the criterion of legality (compliance with internal law, tasks and competences), but the criterion of compliance with the foreign policy of the state is not such a criterion. In accordance with Article 146, paragraphs 1 and 2 of the Constitution of the Republic of Poland, the Council of Ministers is responsible for Polish's foreign policy (decision of the Constitutional Tribunal (2009), Kpt 2/08). Local self-government neither has its own tasks in the field of conducting the foreign policy of the state, nor can it gain independence in this respect in a unitary

state. Therefore, the criterion of compliance with the foreign policy of the state is not consistent with Article 171(1) of the Constitution of the Republic of Poland (Lemańska, 2017, p. 37). This criterion allows for the preservation of the constitutional right of the Council of Ministers to conduct the foreign policy of the state (Article 146(1) and (2) of the Polish Constitution of the Republic of Poland) and is consistent with the principle of state unitarity expressed in Article 3 of the Polish Constitution.

In practice, greater doubts arise about the supervisory activities of the voivodeship superintendent of school. In accordance with the above-mentioned Article 89(3) of the Law on School Education, this superintendent of school issues a positive opinion on the adopted resolution on the intention to liquidate a public school (public kindergarten). No provision explicitly specifies what criteria this body is to follow when issuing a negative opinion. The legislator, seemingly wanting to weaken the activities of the head of education, defined his competence as the right to issue opinions. The opinion is not binding and generally contains only the position of the issuing authority, which may not be taken into account by the authority issuing the act. Such is the significance of opinions issued in the course of proceedings on a given case, while in the case of issuing an opinion on a resolution on the intention to liquidate a public school, the opinion is issued after the resolution has been adopted. It is therefore of a consequential and binding nature, because the legislator directly made the validity of such a resolution dependent on the expression of a positive opinion. Sometimes, when refusing to issue a positive opinion, the superintendent of school pointed to the conduct of the state's education policy, the welfare of pupils or the protection of the interests of the local community as criteria justifying the refusal to express a positive position (Judgment of SAC in Warsaw (2020) I OSK 3360/19; Judgment of SAC in Warsaw (2021) III OSK 2935/21). In such a case, Polish science also admits the possibility of refusing to issue a positive opinion on the basis of non-compliance with the state's educational policy (Pilich, 2022, pp. 606-607). This is a flawed view, because it would lead to basing the government's interference in the performance of tasks by the local government on the basis of criteria other than legality. Administrative courts have held that since the head of education has been endowed with the competence to decide authoritatively and unilaterally on the validity of a given resolution of a body constituting local government units and has not introduced any separate regulation in this regard, the criterion of legality should be applied (Judgment of SAC in Warsaw (2024) III OSK 542/23; Judgment of SAC in Warsaw (2023) III OSK 2689/21).

Importantly, there is no doubt that the bodies cooperating at the stage of adopting legal acts by local government bodies in terms of agreeing or giving opinions should also base their position only on the criterion of legality (Dolnicki, 2024, p. 434-435). Such action of these bodies is within the limits of the exercise of supervisory competences, if the validity of the adopted resolution depends on their position (Matan, Ziemski, Jagielski, Góralczyk, Szyrski, Kulig, et. al., 2923, p. 50–84).

9. Conclusion

The Polish Constitution separately regulates only the supervision of local government. Supervision has not been defined in the Constitution, but in principle there is no greater doubt that this term should be understood as the right to authoritative and unilateral interference in the activities of local government bodies. Any scope of powers resulting in the annulment or repeal of an already adopted resolution, or conditioning its entry into force, should be understood as the exercise of supervision.

In this respect, the constitutional regulation limiting the catalogue of supervisory authorities is incomplete, as the acts extend supervisory competences to other authorities. A distinction can be made between supervisory authorities in the normative sense (i.e. those listed in Article 171(2) of the Polish Constitution) and supervisory authorities in the functional sense, i.e. those to which the provisions of law grant such powers (Dolnicki, 2024, p. 430-431). In this respect, it is not possible to speak of the compliance of the provisions of the Polish Constitution with the laws.

However, granting supervisory powers to other bodies is not treated as an unacceptable interference with the autonomy of the local government. In practice, interference with autonomy is related not so much to the catalogue of bodies exercising supervisory competences, but to the supervisory criteria. Apart from the exceptions resulting from the unitary nature of the state, in which foreign policy tasks cannot be delegated to the local government to be carried out independently, no criteria other than legality and proportionality of supervision should be allowed, in particular in the scope of the local government's own tasks. These criteria allow for the most objective assessment of whether the activities of the local government are in accordance with the law and at the same time serve to meet the needs and goals of the local government community. Sometimes the concept of "legality" is treated very broadly as encompassing any interference in the functioning of local government based on any legal provision, which leads to the dangerous naming of other criteria as legality (Patyra, 2023, p. 10).

Practice has shown that sometimes the expediency criterion defined as "lack of hope for a quick improvement and prolonged ineffectiveness in the performance of public tasks" fulfils its role as an additional way to remove very significant shortcomings in the functioning of a local government unit, which

could not otherwise be removed (Lemańska, 2017, p. 32). The prudent application of this criterion, subject to the control of the administrative court, is not perceived as a too far-reaching interference with the autonomy of the local government. The possibility of dismissing a body constituting a local government unit in the event of a gross violation of the law should be assessed differently. The inability to review an act of parliament by the courts is aptly treated as violating the autonomy of local government (Rulka, 2017, p. 45).

The adoption of other criteria (such as compliance with state policy) leads not only to the dependence of local government on government administration, but above all resulted in the omission of the needs of residents as the main factor determining the manner of performing public tasks (Patyra, 2019, p. 98). Unfortunately, sometimes the Polish legislator takes actions aimed at expanding the criteria of supervision, which cannot be assessed positively both in terms of compliance with the Polish Constitution and should be perceived as too far-reaching interference in its independence, and thus in the essence of local government. Thus, it should also be stated that the regulation of the criterion of supervision over local government in the Polish Constitution is not exhaustive, and the acts complement the catalogue of other criteria.

Bibliography:

1. **Banaszak, B.** (2012). *Konstytucja Rzeczypospolitej Polskiej. Komentarz 2*., Warszawa: C.H Beck, s. 1152.

2. **Chlipała, M.** (2014). *Zasada proporcjonalności nadzoru nad działalnością samorządu terytorialnego*, *Samorząd Terytorialny*, nr 3, s. 25–33.

3. **Chmielnicki, P.** (2006). *Akty nadzoru nad działalnością samorządu terytorialnego w Polce*, Warszawa: LexisNexis, s. 322.

4. **Dolnicki, B.** (2015). *Ewolucja nadzoru nad samorządem terytorialnym*, *Samorząd Terytorialny*, nr 3, s. 60–74.

5. **Dolnicki, B.** (2024). *Samorząd terytorialny, 9 wyd.*, Warszawa: Wolters Kluwert, s. 503.

6. European Charter of Local Self-Government (1985). Karta z dnia 15 października 1985 r. URL: https://rm.coe.int/168007a088

7. **Filipek, J.** (2001). *Prawo administracyjne. Instytucje ogólne. Część II*, Kraków: Zakamycze, s. 293.

8. **Gromek, Z.** (2022). *Zasada samodzielności samorządu terytorialnego w Konstytucji RP*, Warszawa: Scholar, s. 561.

9. **Izdebski, H.** (2020). *Samorząd terytorialny. Pionowy podział władzy*, Warszawa: Wolters Kluwert, s. 337.

10. **Izdebski, H.** (2020a). *Komentarz do Konstytucji RP. Art. 15,16,* 163–172, Warszawa: Difin, s. 348.

11. **Kasiński, M.** (2016). *Nadzór nad działalnością jednostek samorządu terytorialnego. Przemiany koncepcji prawnej i politycznej w latach 1990-2015*, [w:] *Prawne problemy samorządu terytorialnego z perspektywy 25-lecia jego funkcjonowania*, red. B. Jaworska-Dębska, R. Budzisz, Warszawa: C.H. Beck, s. 5242539.

12. **Kisiel, W.** (2003). *Ustrój samorządu terytorialnego w Polsce*, Warszawa: LexisNexis, s. 318.

13. **Kmieciak, Z. & Stahl, M.** (2001). *Akty nadzoru nad działalnością samorządu terytorialnego*, *Samorząd Terytorialny*, nr 1-2, s. 92–122.

14. **Kmieciak, Z.** (1994). *Ustawowe założenia systemu nadzoru nad działalnością komunalną*, *Samorząd Terytorialny*, nr 6, s. 13–20.

15. Konstytucja Rzeczypospolitej Polskiej (1997): Ustawa z dnia 2 kwietnia 1997 r., URL: https://www.sejm.gov.pl/prawo/konst/angielski/kon1.com

16. **Korczak, J.** (2019). *W sprawie rewizji modelu nadzoru ogólnego nad działalnością komunalną*, [w:] *Decentralizacja i centralizacja administracji publicznej. Współczesny wymiar w teorii i praktyce*, red. B. Jaworska-Dębska, E. Olejniczak-Szałowska, R. Budzisz, Warszawa-Łódź: Wolters Kluwert, s. 224–244.

17. **Lemańska, J.** (2017). *Kryterium czy kryteria nadzoru nad działalnością samorządu terytorialnego?*, *Samorząd Terytorialny*, nr 5, s. 27–41.

18. **Leoński Z.** (2001). *Samorząd terytorialny w RP, 3 wyd.*, Warszawa: C.H. Beck, s. 192.

19. **Majewski, K. & Majewska, P.** (2016). *Legalność jako kryterium nadzoru nad samorządem terytorialnym – ius czy lex?*, *Roczniki Administracji i Prawa,* nr XVI (1), s. 115–125.

20. **Masternak-Kubiak, M., Balicki, R., Bartoszewicz, M., Complak, K., Haczkowska, M. & Ławniczak A.** (2014). *Komentarz. Konstytucja Rzeczypospolitej Polskiej*, *II wyd.* red. Haczkowska M., Warszawa: LexisNexis, s. 416–422.

21. **Matan, A., Ziemski, K., Jagielski, J., Góralczyk, W. jr., Szyrski, M., Kulig, A. i inni.** (2023). *System Prawa Samorządu Terytorialnego. Samodzielność samorządu terytorialnego – granice i perspektywy*, red. Lipowicz I., Warszawa: Wolters Kluwer, s. 50–84.

22. **Miodek, J.** (2002). *Ekspertyza na temat interpretacja pojęć: kryterium legalności, gospodarności, celowości i rzetelności, zawartych w art. 203 Konstytucji RP i w art. 5 ustawy o Najwyższej Izbie Kontroli*, Warszawa, URL: https://www.nik.gov.pl/plik/id,1755.pdf, s. 5-6.

23. **Niżnik-Dobosz, I**. (2015). *Stosunki kontroli w administracji publicznej demokratycznego państwa prawnego*, Warszawa: Difin, s. 289.

24. **Patyra, S.** (2019). *Granice nadzoru nad samorządem gminnym. Stan normatywny a praktyka*, [w:] *Prawo samorządu terytorialnego. Doświadczenia, wyzwania i perspektywy*, red. Bisztyga A., Chodorowska A., Feja-Paszkiewicz A., Zielona Góra: Oficyna Wydawnicza Uniwersytetu Zielonogórskiego, s. 87–99.

25. **Patyra, S.** (2023), *Granice nadzoru administracji rządowej nad samorządem terytorialnym – uwagi de lege lata i postulaty de lege ferenda*, URL: https://www.batory.org.pl/wp-content/uploads/2023/11/Nadzor.wojewodow.nad_.samorzadami-jakich.zmian_.potrzebujemy.pdf, s. 8–11.

26. **Pilich, M. & Olszewski, A.** (2022). *Prawo oświatowe. Komentarz,* red. Pilich M., III wyd., Warszawa: Wolters Kluwert, p. 590–616.

27. Postanowienie NSA w Warszawie (2008), II OSK 839/08, URL: http://orzeczenia.nsa.gov.pl/doc/2E7DB703E9.

28. Postanowienie NSA we Wrocławiu (2002), II SA/Wr 2151/00, URL: http://orzeczenia.nsa.gov.pl/doc/F6BD7754A2.

29. Postanowienie Trybunału Konstytucyjnego (2009), Kpt 2/08, URL: https://otkzu.trybunal.gov.pl/2009/5A/78.

30. Prawo oświatowe (2016). Ustawa z dnia 14 grudnia 2016 r. URL: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20250001043/U/D20251043Lj.pdf.

31. **Radajewski, P.** (2016). *Rozwiązanie organu stanowiącego jednostki samorządu terytorialnego przez Sejm*, *Samorząd Terytorialny*, nr 6, s. 25–33.

32. **Rulka, M.** (2017). *Odwołanie organów gminy a sposób ich wyboru*, *Kontrola Państwowa*, nr 3, s. 37-51.

33. **Skoczylas, A.**, **Piątek, W.**, **Bach-Golecka, D.**, **Bosek, L.**, **Capik, A.B.**, **Chybalski, P. i inni** (2016). *Konstytucja RP. Tom II. Komentarz. Art. 87-243*, red. Safjan M., Bosek L. Warszawa: C.H.Beck, s. 1776.

34. **Skrzydło-Niżnik, I.** 2007). *Model ustroju samorządu terytorialnego w Polsce na tle zagadnień ustrojowego prawa administracyjnego*, Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, s. 717.

35. Tzw. „ustawa dekomunizacyjna" – O zakazie propagowania komunizmu lub innego ustroju totalitarnego przez nazwy jednostek organizacyjnych, jednostek pomocniczych gminy, budowli, obiektów i urządzeń użyteczności publicznej oraz pomniki (2016): Ustawa z dnia 1 kwietnia 2016 r. URL: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000744/U/D20160744Lj.pdf.

36. Uchwała składu 7-sędziów NSA w Warszawie (1999), OPS 5/99, URL: http://orzeczenia.nsa.gov.pl/doc/FE59A55C3D.

37. Uchwała składu 7-sędziów NSA w Warszawie (2014), II GPS 3/13, URL: https://orzeczenia.nsa.gov.pl/doc/7F687F3D1B.

38. Uchwała Trybunału Konstytucyjnego (1994), W 1/94, URL: https://sip.lex.pl/#/jurisprudence/520119032

39. **Ura, E.** (2024). *Prawo administracyjne*, 5 wyd., Warszawa: Wolters Kluwert, s. 360.

40. Ustawa o samorządzie gminnym (1990): Ustawa z dnia 8 marca 1990 r., URL: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20240001465/U/D20241465Lj.pdf.

41. Ustawa o samorządzie powiatowym (1998): Ustawa z dnia 5 czerwca 1998 r. URL: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20240000107/U/D20240107Lj.pdf.

42. Ustawa o samorządzie województwa (1998): Ustawa z dnia 5 czerwca 1998 r. URL: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20250000581/O/D20250581.pdf.

43. Ustawa o zasadach przystępowania jednostek samorządu terytorialnego do międzynarodowych zrzeszeń społeczności lokalnych i regionalnych (2000). Ustawa z dnia 15 września 2000 r. URL: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20000911009/U/D20001009Lj.pdf.

44. **Wiktorowska, A.** (2002). *Prawne determinanty samodzielności gminy. Zagadnienia administracyjnoprawne*, Warszawa: Liber, s. 278.

45. Wyrok NSA w Warszawie (2009 r.) II OSK 1786/09 URL: http://orzeczenia.nsa.gov.pl/doc/7B8C2E002E.

46. Wyrok NSA w Warszawie (2013), II OSK 135/13, URL: http://orzeczenia.nsa.gov.pl/doc/8F28677A4C

47. Wyrok NSA w Warszawie (2016), II OSK 2347/16 URL: http://orzeczenia.nsa.gov.pl/doc/9297B0A489

48. Wyrok NSA w Warszawie (2018) II OSK 2643/18, URL: http://orzeczenia.nsa.gov.pl/doc/CE2135D97B

49. Wyrok NSA w Warszawie (2019 r.), II OSK 917/19; URL: http://orzeczenia.nsa.gov.pl/doc/1E47DBAEF8

50. Wyrok NSA w Warszawie (2020) I OSK 3360/19, URL: http://orzeczenia.nsa.gov.pl/doc/E4E57C74A5

51. Wyrok NSA w Warszawie (2021) III OSK 2110/21, URL: http://orzeczenia.nsa.gov.pl/doc/1AD25AC986

52. Wyrok NSA w Warszawie (2021) III OSK 2935/21; URL: http://orzeczenia.nsa.gov.pl/doc/D6574F4488

53. Wyrok NSA w Warszawie (2023) III OSK 2689/21, URL: http://orzeczenia.nsa.gov.pl/doc/445F5290DA

54. Wyrok NSA w Warszawie (2023), III FSK 1381/22; URL: http://orzeczenia.nsa.gov.pl/doc/D3F3D2798C

55. Wyrok NSA w Warszawie (2024) III OSK 542/23, URL: http://orzeczenia.nsa.gov.pl/doc/5978F932D5

56. Wyrok Trybunału Konstytucyjnego (2015), Kp 2/13, URL: http://otkzu.trybunal.gov.pl/2015/5A/65

57. **Zieliński, M.** (2012). *Wykładnia prawa. Zasady, reguły, wskazówki*, wyd. 6, Warszawa: LexisNexis, s. 360.

58. **Ziemski, K., Matan, A., Jagielski, J., Góralczyk, W. jr., Szyrski, M., Kulig, A. i inni.** (2023). *System Prawa Samorządu Terytorialnego.*

Samodzielność samorządu terytorialnego – granice i perspektywy, red. Lipowicz I., Warszawa: Wolters Kluwer, s. 19–49, s. 85–103.

59. **Zimmermann, J.** (2022). *Prawo administracyjne*, wyd. 10, Warszawa: Wolters Kluwert, s. 618.

60. **Zirk-Sadowski, M., Leszczyński, L., Wojciechowski, B.** (2012). *System Prawa Administracyjnego. Wykładnia w prawie administracyjnym. Tom 4*, red. Hauser R., Niewiadomski Z., Wróbel A., Warszawa: C.H. Beck, s. 125–177.

61. **Żelasko-Makowska E.** (2024). *Postępowanie nadzorcze w sprawie stwierdzenia nieważności aktu samorządowego*, Warszawa: C.H. Beck, s. 263.

References:

1. **Banaszak, B.** (2012). *Konstytucja Rzeczypospolitej Polskiej. Komentarz, 2. wyd.* [*The Constitution of the Republic of Poland. Commentary, 2nd ed.*], Warsaw: C.H Beck [in Polish]

2. **Chlipała, M.** (2014). Zasada proporcjonalności nadzoru nad działalnością samorządu terytorialnego [*The principle of proportionality of supervision over the activities of local government*], *Territorial Self-Government,* No. 3, 25–33 [in Polish].

3. **Chmielnicki, P.** (2006). *Akty nadzoru nad działalnością samorządu terytorialnego w Polce* [*Acts of supervision over the activities of local government in Poland*], Warsaw: LexisNexis. [in Polish]

4. Constitution of the Republic of Poland (1997): Act of 2 April 1997. Available from: https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [in English]

5. **Dolnicki, B.** (2015). *Ewolucja nadzoru nad samorządem terytorialnym* [*The evolution of local government supervision*], *Territorial Self-Government, No.* 3, 60–74 [in Polish].

6. **Dolnicki, B.** (2024). *Samorząd terytorialny, 9 wyd.* [*Local Government, 9th ed.*], Warsaw: WoltersKluwert [in Polish].

7. European Charter of Local Self-Government (1985). Charter of 15 October 1985. Available from: https://rm.coe.int/168007a088 [in English]

8. **Filipek, J.** (2001). *Prawo administracyjne. Instytucje ogólne. Część II* [*Administrative law. General institutions. Part II*], Cracow: Zakamycze [in Polish].

9. **Gromek, Z.** (2022). *Zasada samodzielności samorządu terytorialnego w Konstytucji RP* [*The principle of local government independence in the Constitution of the Republic of Poland*], Warsaw: Scholar [in Polish].

10. **Izdebski, H.** (2020). *Samorząd terytorialny. Pionowy podział władzy* [*Local government. Vertical separation of powers*] Warsaw: Wolters Kluwert [in Polish].

11. **Izdebski, H.** (2020a). *Komentarz do Konstytucji RP. Art. 15,16, 163-172* [*Commentary on the Constitution of the Republic of Poland. Art. 15,16, 163-172*], Warsaw: Difin [in Polish].

12. **Kasiński, M.** (2016). *Nadzór nad działalnością jednostek samorządu terytorialnego. Przemiany koncepcji prawnej i politycznej w latach 1990-2015, [w:] Prawne problemy samorządu terytorialnego z perspektywy 25-lecia jego funkcjonowania, red. B. Jaworska-Dębska, R. Budzisz* [*Supervision over the activities of local government units. Transformations of the legal and political concept in the years 1990-2015, [in:] Legal problems of local government from the perspective of the 25th anniversary of its functioning, eds. B. Jaworska-Dębska, R. Budzisz*] Warsaw: C.H. Beck, 524–539 [in Polish].

13. **Kisiel, W.** (2003). *Ustrój samorządu terytorialnego w Polsce* [*The system of local government in Poland*], Warsaw: LexisNexis [in Polish].

14. **Kmieciak, Z. & Stahl, M.** (2001). *Akty nadzoru nad działalnością samorządu terytorialnego* [*Acts of supervision over the activities of local government*], *Territorial Self-Government,* No. 1-2, 92–122 [in Polish].

15. **Kmieciak, Z.** (1994). *Ustawowe założenia systemu nadzoru nad działalnością komunalną* [*Statutory assumptions of the system of supervision over municipal activities*], *Territorial Self-Government,* No. 6, 13–20 [in Polish].

16. **Korczak, J.** (2019). *W sprawie rewizji modelu nadzoru ogólnego nad działalnością komunalną, [w:] Decentralizacja i centralizacja administracji publicznej. Współczesny wymiar w teorii i praktyce, red. B. Jaworska-Dębska, E. Olejniczak-Szałowska, R. Budzisz* [*On the revision of the general supervision model over municipal activities, [in:] Decentralization and centralization of public administration. Contemporary Dimension in Theory and Practice, eds. B. Jaworska-Dębska, E. Olejniczak-Szałowska, R. Budzisz*], Warsaw-Lodz: Wolters Kluwert, 224–244 [in Polish].

17. **Lemańska, J.** (2017). *Kryterium czy kryteria nadzoru nad działalnością samorządu terytorialnego?* [*Criterion or criteria for supervision over the activities of local government?*] *Territorial Self-Government,* No. 5, 27–41 [in Polish].

18. **Leoński, Z.** (2001). *Samorząd terytorialny w RP, 3 wyd.* [*Local Government in the Republic of Poland, 3rd ed.*], Warsaw: C.H. Beck [in Polish].

19. **Majewski, K. & Majewska, P.** (2016). *Legalność jako kryterium nadzoru nad samorządem terytorialnym – ius czy lex?* [*Legality as a criterion for supervision over local government – jus or lex?*] *Annals of Administration and Law,* No. XVI (1), 115–125 [in Polish].

20. **Masternak-Kubiak, M., Balicki, R., Bartoszewicz, M., Complak, K., Haczkowska, M. & Ławniczak, A.** (2014). *Komentarz. Konstytucja Rzeczypospolitej Polskiej, II wyd. red. Haczkowska M.* [*Comment. The Constitution of the Republic of Poland, II ed. ed. Haczkowska M.*], Warsaw: LexisNexis, 416–422 [in Polish].

21. **Matan, A., Ziemski, K., Jagielski, J., Góralczyk, W. jr., Szyrski, M., Kulig, A., et. al.** (2023). *System Prawa Samorządu Terytorialnego. Samodzielność samorządu terytorialnego – granice i perspektywy, red. Lipowicz I.* [*System of local government law. Independence of local government – borders and perspectives, ed. Lipowicz I.*], Warsaw: Wolters Kluwer, 50–84 [in Polish].

22. **Miodek, J.** (2002). *Ekspertyza na temat interpretacja pojęć: kryterium legalności, gospodarności, celowości i rzetelności, zawartych w art. 203 Konstytucji RP i w art. 5 ustawy o Najwyższej Izbie Kontroli* [*Expert opinion on the interpretation of the terms: the criterion of legality, economy, purposefulness and reliability, contained in Article 203 of the Constitution of the Republic of Poland and in Article 5 of the Act on the Supreme Audit Office*], Warsaw. Available from: http://www.nik.gov.pl/plik/id,1755.pdf, 5-6 [in Polish].

23. **Niżnik-Dobosz, I**. (2015). *Stosunki kontroli w administracji publicznej demokratycznego państwa prawnego* [*Relations of control in the public administration of a democratic state governed by the rule of law*] Warsaw: Diffin [in Polish].

24. **Patyra, S.** (2019). *Granice nadzoru nad samorządem gminnym. Stan normatywny a praktyka, p. 87-99 [w:] Prawo samorządu terytorialnego. Doświadczenia, wyzwania i perspektywy, red. Bisztyga A., Chodorowska A., Feja-Paszkiewicz A.* [*Limits of supervision over municipal self-government. Normative Status and Practice, p. 87-99 [in:] Prawo samorządu terialnego. Experiences, Challenges and Perspectives, edited by Bisztyga A., Chodorowska A., Feja-Paszkiewicz A.*], Zielona Góra: University of Zielona Góra Publishing House [in Polish]

25. **Patyra, S.** (2023), *Granice nadzoru administracji rządowej nad samorządem terytorialnym – uwagi de lege lata i postulaty de lege ferenda* [*Limits of government administration supervision over local government – de lege lata remarks and de lege ferenda postulates*]. Available from: http://www.batory.org.pl/wp-content/uploads/2023/11/Nadzor.wojewodow.nad_.samorzadami-jakich.zmian_.potrzebujemy.pdf, 8-11 [in Polish].

26. **Pilich, M.** & **Olszewski, A.** (2022). *Prawo oświatowe. Komentarz, red. Pilich M., III wyd.* [*Education Law. Commentary, ed. Pilich M., III ed.*], Warsaw: Wolters Kluwert [in Polish].

27. Postanowienie NSA w Warszawie (2008), II OSK 839/08 [Court decision SAC in Warsaw (2008), II OSK 839/08]. Available from: https://orzeczenia.nsa.gov.pl/doc/2E7DB703E9 [in Polish]

28. Postanowienie NSA we Wrocławiu (2002), II SA/Wr 2151/00 [Court decision SAC in Wroclaw (2002), II SA/Wr 2151/00. Available from: http://orzeczenia.nsa.gov.pl/doc/F6BD7754A2 [in Polish]

29. Postanowienie Trybunału Konstytucyjnego (2009), Kpt 2/08 [Court decision of the Constitutional Tribunal (2009), Kpt 2/08]. Available from: https://otkzu.trybunal.gov.pl/2009/5A/78 [in Polish]

30. Prawo oświatowe (2016). Ustawa z dnia 14 grudnia 2016 r. [School Education Law (2016). Act of 14 December 2016. Available from: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20250001043/U/D20251043Lj.pdf [in Polish]

31. **Radajewski, P.** (2016). *Rozwiązanie organu stanowiącego jednostki samorządu terytorialnego przez Sejm* [*Dissolution of the body constituting local government units by the Sejm*] *Territorial Self-Government,* No. 6, 25–33 [in Polish].

32. **Rulka, M.** (2017). *Odwołanie organów gminy a sposób ich wyboru* [*Dismissal of commune bodies and the method of their election*], *State control*, No. 3, 37–51 [in Polish].

33. **Skoczylas, A.**, **Piątek, W.**, **Bach-Golecka, D.**, **Bosek, L.**, **Capik, A.B.**, **Chybalski, P. at al.** (2016). *Konstytucja RP. Tom II. Komentarz. Art. 87-243, red. Safjan M., Bosek L.* [*The Constitution of the Republic of Poland. Volume II. Commentary. Art. 87-243, ed. Safjan M., Bosek L.*] Warsaw: C.H. Beck [in Polish].

34. **Skrzydło-Niżnik, I.** 2007). *Model ustroju samorządu terytorialnego w Polsce na tle zagadnień ustrojowego prawa administracyjnego* [*The Model of the Local Government System in Poland against the Background of Systemic Administrative Law*], Cracow: Jagiellonian University Press [in Polish].

35. Tzw. „ustawa dekomunizacyjna" – O zakazie propagowania komunizmu lub innego ustroju totalitarnego przez nazwy jednostek organizacyjnych, jednostek pomocniczych gminy, budowli, obiektów i urządzeń użyteczności publicznej oraz pomniki (2016): Ustawa z dnia 1 kwietnia 2016 r. [The so-called "decommunization act" – On the prohibition of propagating communism or other totalitarian regime by the names of organizational units, auxiliary units of the commune, buildings, facilities and facilities of public utility and monuments (2016): Act of 1 April 2016]. Available from: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000744/U/D20160744Lj.pdf [in Polish]

36. Uchwała składu 7-sędziów NSA w Warszawie (1999), OPS 5/99 [Resolution of the composition of 7 judges SAC in Warsaw (1999), OPS 5/99]. Available from: http://orzeczenia.nsa.gov.pl/doc/FE59A55C3D [in Polish]

37. Uchwała składu 7-sędziów NSA w Warszawie (2014), II GPS 3/13 [Resolution of the composition of 7 judges SAC in Warsaw (2014) II GPS 3/13]. Available from: https://orzeczenia.nsa.gov.pl/doc/7F687F3D1B [in Polish]

38. Uchwała Trybunału Konstytucyjnego (1994), W 1/94 [Resolution of the Constitutional Tribunal (1994), W 1/94]. Available from: http://otkzu.trybunal.gov.pl/otk.xhtml?rok=1994&pozycja=47 [in Polish]

39. Ura, E. (2024). *Prawo administracyjne, 5 wyd.* [*Administrative Law, 5th ed.*], Warsaw: Wolters Kluwert [in Polish].

40. Ustawa o samorządzie gminnym (1990): Ustawa z dnia 8 marca 1990 r. [On Municipal Self-Government (1990): Act of 8 March 1990]. Available from: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20240001465/U/D20241465Lj.pdf [in Polish]

41. Ustawa o samorządzie powiatowym (1998): Ustawa z dnia 5 czerwca 1998 r. [On District Self-Government (1998): Act of 5 June 1998]. Available from: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20240000107/U/D20240107Lj.pdf [in Polish]

42. Ustawa o samorządzie województwa (1998): Ustawa z dnia 5 czerwca 1998 r. [On Voivodeship Self-Government (1998): Act of 5 June 1998]. Available from: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20250000581/O/D20250581.pdf [in Polish]

43. Ustawa o zasadach przystępowania jednostek samorządu terytorialnego do międzynarodowych zrzeszeń społeczności lokalnych i regionalnych (2000). Ustawa z dnia 15 września 2000 r. [On the Principles of Joining Local Government Units to International Associations of Local and Regional Communities (2000). The Act of 15 September 2000]. Available from: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20000911009/U/D20001009Lj.pdf [in Polish]

44. **Wiktorowska, A.** (2002). *Prawne determinanty samodzielności gminy. Zagadnienia administracyjnoprawne* [*Legal determinants of commune independence. Administrative and legal issues*] Warsaw: Liber [in Polish].

45. Wyrok NSA w Warszawie (2009 r.) II OSK, 1786/09 [Judgement SAC in Warsaw (2009 r.) II OSK, 1786/09]. Available from: http://orzeczenia.nsa.gov.pl/doc/7B8C2E002E [in Polish]

46. Wyrok NSA w Warszawie (2013), II OSK 135/13 [Judgement SAC in Warsaw (2013), II OSK 135/13]. Available from: http://orzeczenia.nsa.gov.pl/doc/8F28677A4C [in Polish]

47. Wyrok NSA w Warszawie (2016), II OSK 2347/16 [Judgement SAC in Warsaw (2016), II OSK 2347/16]. Available from: http://orzeczenia.nsa.gov.pl/doc/9297B0A489 [in Polish]

48. Wyrok NSA w Warszawie (2018), II OSK 2643/18 [Judgement SAC in Warsaw (2018), II OSK 2643/18]. Available from: http://orzeczenia.nsa.gov.pl/doc/CE2135D97B [in Polish]

49. Wyrok NSA w Warszawie (2019 r.), II OSK 917/19 [Judgement SAC in Warsaw (2019 r.), II Wyrok NSA w Warszawie (2020), I OSK 3360/19 [Judgement SAC in Warsaw (2020) I OSK 3360/19]. Available from: http://orzeczenia.nsa.gov.pl/doc/E4E57C74A5 [in Polish]

50. Wyrok NSA w Warszawie (2019) II OSK OSK 917/19]; URL: http://orzeczenia.nsa.gov.pl/doc/1E47DBAEF8 [in Polish]

51. Wyrok NSA w Warszawie (2021) III OSK 2110/21 [Judgement SAC in Warsaw (2021) III OSK 2110/21]. Available from: https://orzeczenia.nsa.gov.pl/doc/1AD25AC986 [in Polish]

52. Wyrok NSA w Warszawie (2021) III OSK 2935/21 [Judgement SAC in Warsaw (2021) III OSK 2935/21]. Available from: http://orzeczenia.nsa.gov.pl/doc/D6574F4488 [in Polish]

53. Wyrok NSA w Warszawie (2023) III OSK 2689/21 [Judgement SAC in Warsaw (2023) III OSK 2689/21]. Available from: http://orzeczenia.nsa.gov.pl/doc/445F5290DA [in Polish]

54. Wyrok NSA w Warszawie (2023), III FSK 1381/22 [Judgement SAC in Warsaw (2023), III FSK 1381/22]. Available from: https://orzeczenia.nsa.gov.pl/doc/D3F3D2798C [in Polish]

55. Wyrok NSA w Warszawie (2024) III OSK 542/23 [Judgement SAC in Warsaw (2024) III OSK 542/23]. Available from: http://orzeczenia.nsa.gov.pl/doc/5978F932D5 [in Polish]

56. Wyrok Trybunału Konstytucyjnego (2015), Kp 2/13 [Judgement of the Constitutional Tribunal (2015), Kp 2/13]. Available from: http://otkzu.trybunal.gov.pl/2015/5A/65 [in Polish]

57. **Zieliński, M.** (2012). *Wykładnia prawa. Zasady, reguły, wskazówki, wyd. 6* [*Interpretation of the law. Rules, Rules, Guidelines, ed. 6*], Warsaw: LexisNexis [in Polish].

58. **Ziemski, K., Matan, A., Jagielski, J., Góralczyk, W. jr., Szyrski, M., Kulig, A., et. al.** (2023). System Prawa Samorządu Terytorialnego. Samodzielność samorządu terytorialnego – granice i perspektywy, red. Lipowicz I. [System of local government law. Independence of local government – borders and perspectives, ed. Lipowicz I.], Warsaw: Wolters Kluwer, 19-49, 85–103 [in Polish].

59. **Zimmermann, J.** (2022). *Prawo administracyjne, wyd. 10* [*Administrative law, ed. 10*], Warsaw: Wolters Kluwert [in Polish].

60. **Zirk-Sadowski, M., Leszczyński, L., Wojciechowski, B.** (2012). *System Prawa Administracyjnego. Wykładnia w prawie administracyjnym. Tom 4, red. Hauser R., Niewiadomski Z., Wróbel A.* [*The system of administrative law. Interpretation in administrative law. Volume 4, ed. Hauser R., Niewiadomski Z., Wróbel A.*], Warsaw: C.H. Beck, 125–177 [in Polish].

61. **Żelasko-Makowska, E.** (2024). Postępowanie nadzorcze w sprawie stwierdzenia nieważności aktu samorządowego [*Supervisory proceedings on the annulment of a local government act*], Warsaw: C.H. Beck [in Polish].

ВІДПОВІДНІСТЬ ПОЛОЖЕНЬ ПРО НАГЛЯД ЗА МІСЦЕВИМ САМОВРЯДУВАННЯМ КОНСТИТУЦІЇ ПОЛЬЩІ ТА ПРАВОВИМ АКТАМ

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Анотація

Метою статті є аналіз регулювання процедури нагляду за місцевим самоврядуванням у польській Конституції та в правовій системі, що регулює нагляд за місцевим самоврядуванням. Реалізація цієї мети надає можливість продемонструвати, наскільки нагляд має конституційну владу та чи дотримується конституційна норма в законодавстві. Тому в цьому дослідженні не досліджуються питання, що пов'язані з наглядом, які безпосередньо не випливають з Конституції. Зокрема, це стосується процедури нагляду. Зміст даного дослідження включає аналіз самого поняття нагляду, критеріїв нагляду та контролюючих органів.

Основним методом дослідження є догматичний метод, орієнтований на тлумачення конституційних норм і виклад позицій і поглядів представників науки. Використаний метод дослідження також включає аналіз судової практики обраних та представницьких судів та презентацію практичних прикладів нагляду та їх оцінки адміністративними судами.

У Конституції Польщі поняття нагляду використовується без його визначення. Так само його трактують і в польській доктрині, і в судовій юриспруденції, наголошуючи на найважливішому його елементі – владному та односторонньому втручанні контролюючого органу в діяльність органів місцевого самоврядування. Цим він відрізняється від контролю, який не включає в себе цю форму впливу.

Конституція Польщі занадто вузько визначає критерій нагляду за наглядом, а також неповно визначає наглядові органи. При цьому ігнорується критерій пропорційності, який обмежує право на владне втручання в діяльність органів місцевого самоврядування випадками істотного порушення закону. Крім того, законодавець закріплює за контролюючими органами критерії цілеспрямованого або результативного характеру. Багато органів державного управління, такі як міністр закордонних справ або воєводський інспектор шкіл, здійснюють наглядові повноваження над місцевими органами влади, хоча вони не є наглядовими органами в розумінні Конституції.

Несумісність законів з Конституцією з точки зору критерію нагляду та кількості органів з наглядовою компетенцією не має суттєвого впливу на незалежність місцевого самоврядування. Це пов'язано з епізодичним застосуванням наглядових критеріїв, відмінних від законності, та загалом єдиною позицією адміністративних судів, які завжди зводять оцінку наглядової діяльності до критерію законності. Практика адміністративних судів дозволяє усунути ці розбіжності. Про необхідність термінової зміни до польської Конституції у дослідженні не йдеться.

Ключові слова: нагляд; контроль; законність; пропорційність; контролюючі органи.