

**EXPLORING THE IDEAL LEGAL MODEL OF STATE SUPERVISION FOR  
LOCAL SELF-GOVERNMENT AND MUNICIPAL RULEMAKING FOR UKRAINE:  
INSIGHTS FROM THE EU**

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**Abstract.** This scholarly investigation conducts a comparative legal analysis to identify the optimal model for state supervision of local self-government and municipal rulemaking in Ukraine, with a focus on European Union (EU) practices. The study's dual objectives are to enhance theoretical understanding of local self-governance aligned with international legal norms, and to contribute to the jurisprudential development of local governance in Ukraine, particularly in the context of European integration. Employing a methodical approach, the research juxtaposes international standards with current literature to identify effective state supervision models. This involves analyzing legal and policy frameworks at both national and EU levels, alongside case studies from diverse governance systems, to evaluate their suitability for the Ukrainian context. The findings underscore the importance of a coherent, well-defined supervision model in improving the efficacy of local governance mechanisms in Ukraine. The study emphasizes the need for a legal framework that resonates with international standards, yet is tailored to Ukraine's unique legal and political landscape. In conclusion, the research advocates for Ukraine's adoption of an optimal state supervision model, incorporating best practices from the EU and considering domestic realities. Such a model is essential not only for advancing local governance but also for ensuring national resilience and stability amid ongoing reforms and external challenges, including economic and geopolitical pressures.

**Keywords:** local self-government, state supervision, municipal rulemaking, European Union, Ukraine.

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## Introduction

The quest to delineate a robust framework for local self-governance invites scholarly inquiry into the nature and essence of this multifaceted political and legal phenomenon. Academic dialogues often encompass the intricacies of the regulatory landscape of this quest and the multifarious nature of stakeholder participation in its enactment. Central to these discourses is the development of an optimal legal model of supervision that is pertinent to local self-governance and municipal rulemaking within the Ukrainian context. To date, these dimensions have not been sufficiently explored or grounded in a rigorous scientific methodology. A notable gap in the regulatory and legal framework is the lack of a precise definition of “control” in the realm of local governance. This deficiency extends to its delineation from cognate concepts such as supervision and patronage, and the absence of a clearly defined legal mechanism for its enforcement. Thus, it becomes crucial to scrutinize the issue of scientifically substantiating and regulating municipal liability, an emergent institution, with rigorous precision.

In recent years, Ukraine’s state structures and legal underpinnings have undergone considerable transformations, catalyzed by a confluence of factors with both domestic and international origins. Among these are the repercussions of a global economic recession, the territorial and sovereign implications resulting from the annexation of Crimea, and the pervasive disruptions caused by the COVID-19 pandemic, culminating in the onset of intensified military engagements.

The annexation of Crimea by the Russian Federation in 2014 has had profound and lasting effects on Ukraine’s political landscape, particularly impeding the comprehensive implementation of decentralization reforms. While legislative frameworks for decentralization have been established, the practical execution of these reforms remained unattainable in the annexed region, thus leaving a gap between the *de jure* intent of policy and the *de facto* reality on the ground.

The advent of the COVID-19 pandemic further complicated the situation by necessitating the postponement of critical public consultations and discussions which are essential for the democratic process and for achieving consensus on the proposed systems of governance. The pandemic’s disruption of the regular cadence of stakeholder engagement has resulted in significant delays in the progression of these reforms.

Moreover, the recent escalation of armed conflict has severely constrained the continued pursuit of the decentralization agenda. The exigencies of national security have necessitated a temporary regression to more centralized approaches to governance, particularly at the regional level (the transformation of local state administrations into local military administrations), as a means to ensure a coordinated and effective response to the threats posed by the conflict. Consequently, the reform efforts aimed at decentralization have been suspended, and in some aspects, reversed, as the nation prioritizes the immediate imperative of safeguarding territorial integrity and the welfare of its citizenry.

Collectively, these events have critically influenced the developmental trajectory of the nation. In parallel, the European Union (EU) Member States have demonstrated a heightened interest in this domain, with each state adopting divergent models of supervision at the legislative and practical junctures to ensure the congruence of local self-government and municipal rulemaking with the established legal frameworks.

The local self-government reform initiated in Ukraine in 2014, under the aegis of the “Concept for the Reform of Local Self-Government and Territorial Power Organization” (2014), aimed at recalibrating the distribution of powers between local governments and government bodies. Its accompanying Action Plan (2014) signaled a transition of the local state administrations from entities of general competency to focused control and supervisory bodies within the executive branch. This reformation vested them with the mandate to coordinate the functions of regional bodies of central executive authority within their jurisdictions. However, subsequent (even pre-war) legislative revisions have been inadequate, rendering the transformation of the state legal model of supervision in the domain of local self-governance and municipal rulemaking incomplete. There persists a pronounced need for a clearly

articulated legal and regulatory framework – one that espouses a unified concept of the national model of local self-government, integrating international standards and best practices to serve the country's interests.

This study adopts a comparative legal analysis approach to delineate the optimal legal framework for state oversight of local self-government and municipal rulemaking in Ukraine, drawing upon insights from the European Union. It encompasses a comprehensive literature review to establish fundamental principles and an in-depth analysis of case studies from diverse governance systems, evaluating their applicability to the Ukrainian context. The methodology further entails a meticulous examination of legal frameworks and policies, with a focus on national legislation and reform initiatives, particularly within the Ukrainian context. An assessment of current practices and reforms evaluates their efficacy and alignment with international standards. Ultimately, the study conducts an empirical examination of various state supervision models, determining their suitability for the Ukrainian scenario.

Recent studies and publications in Ukraine have yet to fully address the formation of the domestic state and legal model of supervision (control) over local self-government and municipal rulemaking. Nonetheless, several scholars have highlighted various aspects of the issue. These include R. R. Dutchak, P. M. Liubchenko, O. I. Nalyvaiko, M. O. Pukhtynskyi, O. D. Skopych, O. A. Smolyar, and D. V. Sukhinin, among others. Although their works may need to be more comprehensive in scope, they offer valuable insights into the matter and serve as a basis for further research and analysis.

Recent domestic scholarly research in this field has yielded key results. These include: 1) an enhanced understanding of modern local self-government, which takes into account international legal standards (Petryshyn et al., 2015; Yakovyuk & Sheplyakova, 2018; Petryshyna, 2016); 2) theoretical and legal advancements in the formation and development of the domestic model of local self-government (Liubchenko, 2015; Petryshyna, 2019); and 3) the development of provisions emphasizing the necessity and importance of shaping municipal legal policy in the context of decentralization and European integration (Serohina et al., 2021).

However, further research is required in order to thoroughly examine and refine the transformation of the model of inter-agency relations in the context of municipal reform. This will help establish an efficient local self-government system in Ukraine after the abolition of martial law. One area that requires particular attention is balancing public authorities' control and supervisory functions to prevent unlawful activities under martial law. This must be done while also preserving the ability of local governments to exercise their functions and powers in providing for the vital needs of territorial communities at the corresponding level.

Given the context above, this paper **aims** to examine the experiences of other countries, primarily EU Member States, in forming state models of control over local self-government and municipal rulemaking. The **objective** is to identify potential opportunities to use specific developments and aspects of practical implementation in current Ukrainian legislation.

## **1. Overview of Supervision in Local Self-Government**

Foreign studies on supervision (control) in local self-government and municipal rulemaking have highlighted several key findings. Firstly, these studies recognize the critical need for the comprehensive and unambiguous constitutional and legal regulation of these issues (Bachtler et al., 2021). Secondly, they note significant changes in the theory of public administration, including a shift towards augmenting the role of local self-government and diminishing state influence over it (Gurdon-Nagy, 2019). Thirdly, these studies highlight the possibility of developing capable local self-government closely tied to a legally established supervisory (control) model in local self-government and municipal rulemaking (Pál, 2018). Fourthly, they underscore the necessity of examining both positive and negative foreign experiences with municipal reforms, particularly in transforming the state-legal supervisory (control) model in local self-government and municipal rulemaking (Federal Office, 2020; Kiurienė,

2015). Finally, these studies identify the fundamental principles on which an optimal control model in local self-government and municipal rulemaking should be based (Sadowski & Mojski, 2020).

The restructuring and empowerment of local governments represent a critical issue that has attracted increasing scholarly scrutiny, particularly in light of the swift pace of technological innovation and prevailing global crises. The concepts of subsidiarity and decentralization are internationally acknowledged as fundamental tenets for bolstering the operational capacity of local governance structures. These doctrines are of significant pertinence to Ukraine as the nation seeks to chart a course through contemporary challenges, including the exigencies of the Fourth Industrial Revolution and the imperative of comprehensive digitalization. Such circumstances mandate a thorough modernization of Ukraine's legislative framework governing local self-government.

The current global economic downturn, compounded by the ramifications of the COVID-19 pandemic, has exerted unparalleled strain on local administrative bodies across the globe, prompting a reassessment of the distribution of authority at the municipal and regional echelons. For Ukraine, this translates into a recalibration of the oversight mechanisms within local governance, aiming to fortify public scrutiny – a pivotal element in our investigative focus on state supervision models.

## **2. Global Perspectives and Theoretical Developments**

The constitutional and legal constructs that delineate state involvement in local self-government and municipal rulemaking within EU countries are intricately linked to the typologies of their respective local self-government systems. These systems have been shaped and continue to evolve under the influence of a diverse array of factors, including historical context, geographical positioning, socio-economic development, and political dynamics. It is commonly recognized that the predominant local self-government frameworks can be categorized into the Anglo-Saxon, Romano-Germanic (Continental), Iberian, Scandinavian, and Soviet (or post-Soviet) systems. The differentiation among these systems emerges from their unique interpretations and applications of principles such as subsidiarity, decentralization, and deconcentration, as well as the distinct legal and regulatory underpinnings that guide the practical realization of these principles.

In France, which has a continental system, local self-government was once characterized by unique “patronage” from the central government. However, significant changes have occurred in the status and powers of the state's prefect, who represents the state, since the late 1980s. According to French politicians, the country's form of government, which is complex and requires a strong and permanent institution like the prefect to ensure the effective functioning of the authorities at the local level, necessitates the prefect's continued role. The prefect, as an official who is adaptable to local conditions and able to meet real needs, has three primary areas of activity. The first area involves the affairs of the prefecture and associated services, such as the police and gendarmerie. The second area is focused on overseeing the activities of local ministerial authorities. The third is the most diplomatic aspect of the prefect's work, which relates to the local economy and business relations; it entails establishing contacts with local elected officials and other partners or associations in industry, agriculture, and craft production. Thus, the historical tendency towards constant conflict between the state and the individual in France has resulted in a balance between public power at the central and local levels and occasional attempts to diminish or question the necessity and expediency of the prefect's position.

The situation regarding exercising supervision (control) over local self-government and municipal lawmaking is distinct in countries with an Anglo-Saxon system. For example, the United Kingdom (not considering the loss of its EU Member State status) is characterized by the absence of central government officials who “patronize” representative bodies elected by the population. Instead, control over the activities of local self-government, referred to as “local government,” is indirectly administered through central bodies or the courts. Moreover, recent reforms have revealed a significant expansion not only of the powers of the constituent authorities of the state through the devolution of the powers of the British Parliament, but also of self-governance powers, which implies the state's interest in the development of capable local government.

Compared to the systems mentioned above, the Scandinavian system is even more supportive of local government. For instance, the local government in Sweden consists of two elected levels: counties (*regioner*) and municipalities (*kommuner*). The relationship between these levels does not involve the subordination of the lower level to the higher, thereby precluding the exercise of corresponding powers of control. Swedish municipalities and county councils enjoy significant autonomy in managing their affairs. Moreover, local governments are responsible for providing various social services and exercising various public administration powers. The legislation allows significant administrative powers to be transferred to local governments, particularly in elderly care and healthcare. Additionally, this has resulted in the legislative consolidation of the possibility of transferring these and other powers to local governments and other entities, such as private companies or individuals.

On the other hand, the Iberian system is characterized by a significant degree of centralization. In this system of local self-government, elected representative bodies such as councils, juntas, and municipalities, as well as individual executive bodies like prefects, alcaldes, and regidores, elected by the population or the council, perform local government functions at all territorial levels. These officials become *ex officio* chairpersons of the respective councils and are approved by the central government as its representatives in the respective administrative-territorial units, thereby concentrating a significant amount of power in their hands.

A notable example of a country with an Iberian system of local self-government is Brazil, where the Constitution recognizes the existence of municipalities and local self-government and provides for the specifics of the division of powers between different levels of government. Despite over 20 years of military rule, Brazil's path to democratization and decentralization remained unhindered. However, not all municipalities in Brazil have effective and capable local self-government, despite the constitutional and legal provisions for the widespread use of direct democratic institutions. Despite ensuring constitutional and legal equality, inequality in the initial conditions for functioning and development among municipalities played a role in this outcome. The municipalization of public services, agrarian reform, and reforms in other areas of state and legal life have provided impetus toward the genuine autonomy of local self-government. However, several factors have complicated the construction of a model of state legal control in the field of local self-government and municipal rulemaking, including a significant share of state funding and the unequal distribution of funds between municipalities, among other issues.

The Soviet (or post-Soviet) system of local governance, which is still maintained in the People's Republic of China, the Democratic People's Republic of Korea, Vietnam, and Cuba (in certain aspects), is fundamentally distinct from the aforementioned systems. For instance, the 1976 Cuban Constitution, in Chapter XII, "Local Organs of People's Power," states in Article 103 that local people's power assemblies "are endowed with the highest authority to discharge the State functions within their respective demarcated areas; and, to this end, they exercise the government within the bounds of their authority and conforming to the law." Cuba's local self-government is also an intriguing example of foreign intervention in the country's life. Cuba's historical state traditions and the fact that it belongs to the oceanic region led to the development of a model based on the Iberian system. However, due to close international cooperation with the USSR and the influence of its policies on the country's development, the present system is more similar to the Soviet system, which essentially involves local management rather than local self-government.

Despite these challenges, some efforts have strengthened local self-government in Cuba in recent years. The 2019 Constitution recognized the need for greater decentralization and established new mechanisms for citizens' participation in local government decision-making. In addition, there have been some experiments with participatory budgeting and other forms of citizen engagement at the local level. However, it remains to be seen whether these efforts will significantly improve the performance of local self-government in Cuba. The country's political and economic situation, as well as its ongoing political tensions with the United States, will likely continue to shape the performance of local government bodies in the coming years.

The distinctive characteristics and idiosyncrasies of the principal local self-government systems manifest at the constitutional and legal levels across various nations, particularly within the EU. In this regard, most EU Member States have either instituted or reformed their local self-government frameworks in alignment with established models such as the continental, Anglo-Saxon, Iberian, or Scandinavian systems. The Soviet (or post-Soviet) system, which was pervasive among states under the USSR's influence after World War II, has also experienced substantial transformations subsequent to the declarations of independence of the states it once covered.

In the context of Ukraine, the nation's trajectory in reforming local self-government is deeply intertwined with its pursuit of European integration and its aspiration to align with EU standards – a process often referred to as Europeanization. This alignment is not only seen as a pathway to potential EU membership, but also as a strategic choice reflecting Ukraine's commitment to adopting European democratic norms, administrative practices, and governance standards. The evolution of Ukraine's local self-government is therefore being progressively shaped by this Europeanization trend, as it seeks to shed the remnants of the Soviet model and forge a system that resonates with its European aspirations.

Ukraine's endeavors to integrate with the EU have entailed the comprehensive reassessment and restructuring of its local governance, aiming to enhance administrative efficiency, promote local autonomy, and ensure responsiveness to the needs of its communities. The constitutional and legal reforms undertaken in this sphere reflect a clear orientation towards the principles underpinning the continental system, which emphasizes subsidiarity and the devolution of powers to local entities. As Ukraine continues on its path towards deeper European integration, the reformation of its local self-government system remains a cornerstone of its transformation, underscoring the nation's dedication to the standards of governance that are emblematic of the European community.

### **3. Global Trends in Municipalization and Ukraine's Unique Path to Decentralization**

Global impetus towards municipalization emerged prominently in the late 1980s, a movement largely precipitated by the establishment and acknowledgment of nascent states, sweeping privatization efforts, and a critical reassessment of state oversight. Ukraine epitomizes such a state, having embarked on a complex journey towards democratization, an overhaul of the governmental apparatus, and the endorsement of a self-reliant municipal system of governance embodied in the institution of local self-government.

A paramount driver of municipalization across the globe is the proactive engagement of territorial communities and their representatives, bolstered by expansive support from the broader public sector and private enterprise. This evolution is incremental, as administrative cadres may at times view local governance more as a mechanism for consolidating regional influence in concert with local elites rather than as a means to elevate living standards and service quality and harness local capacities for national economic enhancement.

In nations such as the United States, Canada, and Germany, local authorities are instrumental in articulating and actualizing community aspirations, sculpting the living standards of community members, and fueling overall economic growth. Local edicts, investments in infrastructure, strategic development initiatives, and the provisioning of communal and social services are pivotal to fulfilling these objectives.

Nonetheless, the current trend has pivoted towards remunicipalization, a paradigm that extends beyond endowing local entities with significant autonomy and the prospect of financial and other forms of state support. Remunicipalization also grapples with the inability of local governance to foster competition within the service market, a deficiency that can engender broader socio-economic challenges and impede the development of specific territories and, potentially, the state at large. Thus, the municipalization movement that burgeoned at the close of the previous century has evolved into a renewed emphasis on

remunicipalization in the current epoch, necessitating a profound reconsideration of the role and scope of local self-governance.

The genesis of the municipalization process in Ukraine can be traced back to the dawn of the 1990s, concomitant with the nation's emergence as an independent state. The momentum of this process was significantly amplified by the enactment of the "Concept for the Reform of Local Self-Government and Territorial Power Organization" (2014), which was an ambitious endeavor to devolve power and enhance the autonomy of local governing entities. While this policy trajectory reflects a broader international tendency towards localized governance, the Ukrainian experience has been distinctly shaped by its own historical context and the exigencies posed by its geopolitical landscape.

The legislative backbone of Ukraine's local governance is encapsulated in the Law "On Local Self-Government in Ukraine" (1997), which is designed to be in concert with EU standards yet is tailored to confront and adapt to Ukraine's specific challenges. These challenges have been intensified by the military engagements initiated by Russia, resulting in the establishment of military administrations (during martial law) that present formidable obstacles to the decentralization agenda. In comparison with other post-communist nations such as Estonia, Lithuania, and Croatia, Ukraine's pursuit of municipalization is aligned with the shared objective of advancing decentralization. Nevertheless, Ukraine's strategy is further complicated by its ongoing geopolitical strife, necessitating a more intricate approach to the realization of local self-governance.

#### **4. Municipalization and Decentralization: Comparative Perspectives and Challenges in Legal and Policy Reform**

The processes of legal systems' interpenetration, globalization, and municipalization have led to the realization of the need for comprehensive reform of the territorial organization of power and local self-government. These reforms aim to bring about decentralization and involve several main areas, such as territorial reform, institutional reorganization, and procedural reorganization. Territorial reform consists of reorganizing the territorial structure, usually by consolidating administrative-territorial units, whether voluntary, compulsory or mixed. Institutional reorganization entails the transfer of powers and relevant resources. Procedural reorganization involves reforming the administrative service delivery system and introducing e-government at different levels and in other subsystems of public authorities. These reforms have been carried out comprehensively and meaningfully in various countries, including Poland, Latvia, Lithuania, the Czech Republic, Slovakia, Estonia, Italy, Portugal, Denmark, and Finland. EU Member States have considerable autonomy in deciding on the level, scope, and methods of administrative control in the domain of local self-government and municipal rule-making. Legal traditions, the stability of democratic institutions, administrative and territorial structures, the organization of local self-government, and the political situation are among the factors considered when implementing a specific control model.

Nevertheless, comprehensive reform measures have only sometimes achieved their intended goals. For instance, in Latvia, the state exercises oversight over the activities of local governments through several institutions, including the Ministry of Environmental Protection and Regional Development, which has limited authority over the autonomous local self-government bodies. Although local governments are granted significant autonomy, individual acts they adopt cannot be suspended or revoked by the Ministry. This is a reasonable approach, as such decisions may impact the interests of specific entities with the right to challenge them in court.

Under the regulatory procedures, the local government body must submit any proposed local regulatory act to the relevant Ministry for an opinion before adoption. The Ministry analyzes the draft for legal competence and compliance with both the Constitution and applicable legislation, within a specified timeframe that typically constitutes 30 days. Failure of the Ministry to provide a negative opinion within the stipulated period results in the decision being considered adopted and published in the official journal. Conversely, the resolution may be published only after the necessary amendments, based on the recommendations of the Ministry, have been made. The Minister may suspend the resolution through a

reasoned order if the local council declines to effect the proposed amendments. Consequently, the local council chairman is required to convene an extraordinary council meeting to discuss the situation and inform the minister. Suppose the council still needs to revoke or amend the act to comply with the minister's recommendations. In that case, the council must then apply to the Constitutional Court to cancel the minister's order. Despite being aimed at ensuring the legality of local self-government activities, such measures may be construed as impinging on the autonomy and independence of local self-government. It is notable, however, that comparable measures are employed in other EU and potential member countries, including Greece and Serbia. Additionally, the state is empowered to remove the chairman of the municipality council from office in the case of the consistent non-fulfillment of duties or behavioral inconsistencies, as well as to dissolve local councils upon adopting a relevant act at the behest of the Ministry.

When comparing Hungary's local government system to Latvia, it becomes clear that the former is far more complex and contentious. In recent years, local government reforms have led to a marked increase in the centralization of power and control over local self-government. Redistributing power towards the state has included managing local government property and financing. Changes in the local government system have included alterations to the electoral system of local elections and the boundaries and scope of local government powers, along with strengthening control over the activities of local self-government bodies. While the new Hungarian Constitution does cover local self-government issues more comprehensively than its predecessor, the reform process has been tilted towards centralization.

Since January 2011, local county governments have essentially become governmental bodies, which has created a parallel governance structure outside the elected county level of self-government. The status of county self-government bodies has been significantly altered. However, Art. 32 of the Basic Law provides for supervising local self-government acts to ensure that they comply with other laws. Local governments must send local government decisions to the capital or county government office immediately after they are promulgated. If a decision or its provisions violate any law, the metropolitan or county government office may initiate a judicial review of the local government decision. Failure to comply with the statutory obligation to make a decision may result in a lawsuit being brought against a local government by the metropolitan or county government office.

It is noteworthy that, despite generally negative assessments of the reform and the identification of inadequacies and inconsistencies with the European Charter of Local Self-Government, the monitoring mission of the Congress of Local and Regional Authorities of the Council of Europe viewed the provisions of the Basic Law positively.

In parallel with the centralization trends observed in Hungary's local government reforms, Ukraine presents a contrasting narrative – one that oscillates between centralization and decentralization in response to its internal and external challenges. The Ukrainian government has been undertaking significant reforms aimed at decentralizing power and enhancing local self-governance, in line with its European integration aspirations.

However, Ukraine's journey toward decentralization has encountered impediments, not least due to the ongoing conflict and geopolitical instability, which at times have necessitated a pivot back towards centralization, particularly in matters concerning national security and territorial integrity. The Ukrainian context underscores the delicate balance between empowering local self-governance and maintaining state cohesion in times of crisis. In this light, the Ukrainian reforms also encompass the conceptual grounds to ensure that local decisions adhere to national laws, potentially mirroring the Hungarian approach of subjecting local self-government acts to judicial review, but with no tangible legal and practical framework to put into force.



## **5. Balancing Autonomy and State Supervision in Wartime Ukraine: Progress and Challenges in Local Governance Reform**

As Ukraine continues its journey towards robust local self-governance, it becomes imperative to closely examine the existing model of state supervision over local authorities. The impetus for reform is clear: to align local governance with the democratic principles espoused by the EU and encapsulated within the “Concept for the Reform of Local Self-Government and Territorial Power Organization.” The current Ukrainian model, while having made significant strides, still requires nuanced refinements to fully embody the balance between autonomy and accountability – a balance that underpins the European Charter of Local Self-Government.

The principles and foundations of an optimal supervision (control) model for local self-government and municipal rulemaking are enshrined in the European Charter of Local Self-Government. The Charter obliges Member States to comply with basic rules guaranteeing the political, administrative and financial independence of local authorities. In it, the provision that self-government institutions are the subsidiary basis for the organization of every democratic order is established (Urmonas & Novikovas, 2011). Article 8 of the Charter, for instance, calls for administrative supervision to ensure compliance with the law and constitutional principles. In the Ukrainian context, this supervision must be delicately balanced to prevent the historical overreach of central authority into local affairs, which has been a point of contention and reform.

The Anglo-Saxon understanding of supervision differs markedly from the European conception, with the latter often encompassing a blend of governance and management that can potentially lead to state over-interference. In Ukraine’s pursuit of aligning with European standards, it is essential to adopt a nuanced interpretation that fosters local self-reliance while ensuring legal conformity. The challenge lies in translating the Charter’s principles into practical mechanisms that respect the fine line between necessary oversight and undue control.

Under Article 8, paragraph 2 of the Charter, higher authorities may exercise administrative supervision over the timeliness of tasks assigned to local governments while maintaining a balance between supervision over legality and control over expediency. Supervision over municipal authorities’ powers is strictly based on legality. In contrast, supervision over legality and expediency is permissible for delegated powers if it adheres to legal certainty and does not oppose legality.

In addition to the European Charter of Local Self-Government, Recommendation No. R (98) 12 on Supervision of Local Authorities was adopted by the Committee of Ministers of the Council of Europe on September 18, 1998, to further implement the principles enshrined in Article 8 of the Charter. This recommendation considers other fundamental principles of local self-government, such as legal, organizational, material, and financial independence. The Annex to the Recommendation provides guidelines that outline the scope of administrative supervision, including: ensuring that local authorities exercise their powers following the law, promoting the definition of “own powers” through delegation, clearly listing the types of activities subject to supervision in statutory provisions, limiting mandatory administrative supervision to actions of particular importance in accordance with their official position, and reducing *a priori* administrative control. These guidelines aim to reduce the expediency of supervision, promote local autonomy, and enhance the accountability of local governments to their constituents.

It is crucial to investigate, identify, and adopt established practices from other nations. Take, for instance, the Republic of Lithuania, where an effective local self-government supervision system is operational. External supervision is conducted by institutions accountable to the government, such as the government’s representatives in the counties. Under the Law on Administrative Supervision of Municipalities of the Republic of Lithuania (1998), these representatives possess extensive competencies in overseeing local governments. For example, government representatives scrutinize whether the legal acts of municipal administrative entities are consistent with laws, government

resolutions, and other legal acts enacted by central state administration bodies in relation to law implementation.

The internal supervision of local self-government is executed by residents through the election of municipal council members. The principle of accountability to the municipal community mandates that council members and the mayor remain answerable to the community for their conduct (Law on Local Self-Government, 1994). However, it is critical to note that municipal decisions are not subject to annulment by executive or legislative representatives, but rather by the judiciary through court decisions. Furthermore, the annex to this law outlines directives for the supervision procedure, recommending: (1) the establishment of a single supervisory body of first instance wherever feasible, and in cases where specialized supervisory bodies are necessitated by the nature of the activities being inspected, the clear delineation of their respective competencies to eliminate ambiguity over which body is to exercise supervision; and (2) the imposition of a statutory timeframe for the supervisory authority to conduct preliminary supervision, with the stipulation that a failure to issue a response within the prescribed period be construed as an affirmative response.

Practical examples from Ukraine's recent history can illuminate the interplay between the Charter's principles and local governance realities. One notable instance is the decentralization reform initiated in 2014, which aimed to empower local governments with greater fiscal autonomy and political authority. This reform, which aligns with the Charter's principles, has seen successes and challenges. For example, the amalgamation of communities has allowed for more substantial local self-governance in some regions, as evidenced by increased local budget revenues and enhanced administrative capabilities. However, these improvements have not been uniform, with some localities experiencing difficulties in managing newly granted powers, indicating a need for a more tailored approach to supervision that accounts for regional disparities.

Further examination of Ukraine's adaptation to the Charter's standards reveals a complex picture. Instances where local authorities have successfully managed to assert their independence and fulfill their responsibilities underscore the potential of effective state supervision. Conversely, cases where local entities have struggled due to either inadequate support or excessive state control demonstrate the critical need for a supervision model that is both flexible and robust. This delicate balance was particularly pronounced during the implementation of martial law, as articulated by the Law of Ukraine "On the Legal Regime of Martial Law" (2015). An illustrative example of this was observed in the city of Chernihiv, where the President's invocation of martial law led to the establishment of a military state administration. This executive action effectively relegated the elected mayor to a secondary role, thereby manifesting the profound impact of national security measures on local self-governance.

The "Concept for the Reform of Local Self-Government and Territorial Power Organization" provides a visionary blueprint for Ukraine's governance reforms. This Concept echoes the Charter by advocating for the principles of subsidiarity and a clear delineation of powers between state and local authorities. By examining the aforementioned case studies through the lens of the Concept, it is evident that the successes of local governance reforms are inextricably linked to adherence to these principles. Conversely, areas where the model falls short of the Concept's guidelines offer invaluable insights into the necessary directions for future reform.

A critical evaluation of Ukraine's current supervision model reveals a landscape marked by significant evolution and ongoing challenges, further complicated by the dire implications of full-scale war. While the decentralization reforms have charted a course towards greater autonomy for local governments, the disparities in local capacity and resources underscore the necessity of differentiated supervision strategies. Moreover, the exigencies of war have necessitated swift adaptations in governance structures, often requiring a centralized approach to ensure cohesive national defense and security. The pivotal task, then, is to develop a supervision model that is not rigidly uniform, but is instead a versatile framework capable of accommodating the varied needs and contexts of Ukrainian localities, all while maintaining the flexibility to respond to the immediate and long-term impacts of the conflict. This model must uphold

local governance within the context of national unity and resilience, ensuring that local authorities remain empowered agents of stability and reconstruction in a time of unprecedented national challenge. The onset of full-scale war in Ukraine and its attendant consequences have the potential to significantly broaden the scope of challenges in identifying an appropriate model of state supervision over local self-government. This expansion extends beyond the purview of administrative oversight to encompass pivotal issues of national security, regional recovery, and the mitigation of future risks, especially for regions in proximity to the aggressor state. Consequently, there arises an imperative to integrate considerations of territorial defense, socio-economic resilience, and strategic foresight into the supervision framework. The war necessitates that any supervisory model must be cognizant of the heightened vulnerabilities and unique exigencies of border areas, ensuring that governance mechanisms are robust enough to cope with immediate threats while also being sufficiently adaptable to facilitate post-conflict reconstruction and long-term regional stability. This complex interplay of factors demands a comprehensive approach that not only addresses the functional aspects of local self-governance, but also fortifies the region against potential security threats and fosters an environment conducive to recovery and sustainable development.

## Conclusions

The study of models of state supervision over local self-government activities and rulemaking has revealed their deep interconnection with wider reform efforts aimed at strengthening local administrative bodies. The findings indicate that national governance models and their supervisory components are shaped by diverse factors that require careful consideration.

Administrative oversight across the EU varies, reflecting the distinct legal and societal contexts of Member States. Some countries, having undergone state reforms, have established systems to ensure local compliance, highlighting the diverse approaches to administrative oversight.

This analysis offers valuable perspectives for Ukraine's governance reforms amidst technological and societal changes. The current conflict adds a layer of complexity, suggesting the need for supervision models that address both administrative efficiency and broader national security concerns. Effective state supervision must align with both local conditions and national governance frameworks, incorporating international norms while recognizing Ukraine's unique challenges posed by conflict.

This research extends to policy implications, urging lawmakers to consider these insights in crafting regulations that support decentralization and address the multifaceted demands of security and regional stability. While laying the groundwork for understanding the role of state supervision in governance, this study also points to its limitations and the need for future empirical testing, especially under the current conditions of conflict.

In summary, an optimal supervision model for Ukraine should be adaptive, align with international standards, and be tailored to national circumstances, including the impact of war. Collaboration among academics, policymakers, and practitioners is essential in order to develop supervision models that are both theoretically robust and practical, with future research needed to evaluate their long-term effects in Ukraine's quest for stability and European integration.

## References:

- Action Plan for the Implementation of the Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine (2014). Decree of the Cabinet of Ministers of Ukraine dated June 18, 2014, No. 591. <https://zakon.rada.gov.ua/laws/show/591-2014-%D1%80#Text>
- Bachtler, J., Bereni, L., & Hardy, S. (2021). *The Future of Local Self-Government: European Trends in Autonomy, Innovations and Central-Local Relations*. Palgrave Macmillan Cham.
- Concept for the Reform of Local Self-Government and Territorial Power Organization (2014). Decree of the Cabinet of Ministers of Ukraine dated April 1, 2014, No. 333. <https://zakon.rada.gov.ua/laws/show/333-2014-%D1%80#Text>

- Gurdon-Nagy, K. (2019). Paradigmatic Changes, or are Local Self-Governments Before or After Changes in Hungary? Transformation of the Regulation of Local Self-Governments. *Hungarian Journal of Legal Studies*, 60(4): 366–367. <https://doi.org/10.1556/2052.2019.00021>
- Federal Office for Building and Regional Planning (BBR). (2020). *Local Governments' Capacity to Act: A European Comparison. Autonomy, Responsibilities and Reforms*. Bonn: BBR. <https://www.bbsr.bund.de/BBSR/DE/veroeffentlichungen/sonderveroeffentlichungen/2020/handlungsfaeahigkeit-dl-en.pdf?blob=publicationFile&v=2>
- Kiurienė, V. (2015). Administrative supervision of local self-government in the Baltic states: A comparative review. *Journal of Education Culture and Society*, 6(2), 394–410. <https://doi.org/10.15503/jecs20152.394.410>
- Law on Administrative Supervision of Municipalities of the Republic of Lithuania (*Official Gazette*, 1998, No. 51-2832; 2004, No. 98-3626; TAR, 2018-09-24, No. 2018-14923). <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.56962/asr>
- Law on Local Self-Government of the Republic of Lithuania (*Official Gazette*, 1994, No. 55-1049; 2000, No. 91-2832; 2008, No. 113-4290; TAR, 15-07-2022, No. 2022-15614). <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5884/asr>
- Law of Ukraine “On Local Self-Government in Ukraine” (1997). *Bulletin of the Verkhovna Rada of Ukraine (VVR)*, 1997, No. 24, p. 170. <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>
- Law of Ukraine “On the Legal Regime of Martial Law” (2015). *Bulletin of the Verkhovna Rada (VVR)*, 2015, No. 28, p. 250. <https://zakon.rada.gov.ua/laws/show/389-19#Text>
- Liubchenko, P. M. (2015). Zarubizhnyy dosvid orhanizatsiyi kontrolyu u sferi mistsevoho samovryaduvannya [Foreign experience in organizing control in the field of local self-government]. *Derzhavne budivnytstvo ta mistseve samovryaduvannya: zb. nauk. pr. Nats. Akad. Prav. Nauk Ukrayiny, NDI derzh. bud. ta mist. samovryaduvannya*, (29), 18–31.
- Pál, E. (2018). Models of Legal Supervision over Local Self-Governments in Continental Europe (Excluding France). *Pécs Journal of International and European Law*, 2018(II), 6–20.
- Petryshyn, O., Serohina, S., & Serohin, V. (2015). Glocalization and the decentralization of public power in Ukraine. *International Comparative Jurisprudence*, 6(2), 190–200.
- Petryshyna, M. O. (2016). *Mizhnarodno-pravovi standarty u sferi mistsevoho samovryaduvannya* [International legal standards in the field of local self-government]. Kharkiv: Pravo.
- Petryshyna, M. O. (2019). Osoblyvosti zdiysnennya derzhavnoho kontrolyu u sferi mistsevoho samovryaduvannya [Features of the implementation of state control in the field of local self-government]. *Porivnyal'no-analitychne pravo*, (5), 69–73.
- Sadowski, P., & Mojski, W. (2020). Normative Model of Supervision over the Activities of Communes in Poland. *Lex Localis. Journal of Local Self-Government*, 18(4), 791–805. [https://doi.org/10.4335/18.3.791-805\(2020\)](https://doi.org/10.4335/18.3.791-805(2020))
- Serohina, S., Bodrova, I., & Petryshyna, M. (2021). Municipal policy as a priority area of legal policy in the context of reforming the territorial organization of power and European integration of Ukraine. *Visnyk NAPrNU*, (3), 129–143.
- Yakovyyuk, I., & Sheplyakova, O. (2018). Mizhnarodno-pravove spivrobotnytstvo Ukrayiny i EU u budivnytstvi suchasnoyi systemy yevropeys'koyi bezpeky [International legal cooperation between Ukraine and the EU in building a modern European security system]. *Problems of Legality*, (141), 185–200.
- Urmonas, A., & Novikovas, A. (2011). Europos vietos savivaldos chartijoje įtvirtintų principų įgyvendinimo vietos savivaldoje ir inkorporavimo nacionalinėje teisės sistemoje ypatumai [The peculiarities of the implementation and incorporation of the principles of European Charter of Local Self-Government in Lithuanian local government and national legal systems]. *Jurisprudencija*, 18(3), 1019–1034.

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