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Administrative Supervision of Local Self-Government as an Expression of the Rule of Law in the Context of Good Governance: the Case of Lithuania

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Abstract

The article analyses the administrative supervision of local self-government in the context of good governance in the Republic of Lithuania. Administrative supervision of local authorities is the requirement of the Rule of Law. In accordance with the theory, documents of international organisations, and international and Lithuanian acts of law, the Rule of Law is one of the main principles of good governance. The analysis of the Rule of Law principle helps to disclose the importance of the administrative supervision of local self-government. The research has shown that the institutions of local self-government have to follow the Constitution and the laws both in enacting legal acts and in their daily work. The Government Representative in the County is the main officer who exercises the administrative supervision of local authorities, ensuring that local authorities act in compliance with the Constitution and laws of the Republic of Lithuania and that they carry out the decisions of the Government.

Keywords: good governance, the rule of law, administrative supervision, administrative supervision of local self-government, Government Representative in County.

Introduction

The Government of the Republic of Lithuania in the Program for the Development of Public Governance 2012-2020 (Zin., 2012, No. 22-1009) has emphasized that the efficiency of local governance processes is conditioned by the institutions of public governance, as well as by the society's whiles and abilities to accept and implement the public governance decisions which most of all correspond to society's requirements. This programme also emphasises that to ensure the balance between the municipalities' freedoms of activity and accountability to the state and society in forwarding or assigning functions and rights for the municipalities, the responsibility of municipal entities for the appropriate execution of these functions must be determined, and the supervision of the municipal activities must be improved – the competence of the Government Representative has to be increased in this field.

The preparation of the program has been conditioned by the growing requirements of society, that public governance institutions, acting openly and responsibly, effectively using the budget of the Republic of Lithuania and the budget of the municipalities, would accept and implement those decisions which correspond to the requirements of society and would provide high quality administrative and public services. To ensure these requirements the Rule of Law and administrative supervision of local self-government are needed.

The United Nations Conference on Sustainable Development in the outcome document "The Future We Want" (2012) acknowledged that democracy, good governance and the Rule of Law at the national and international levels are essential for sustainable development.

The theme of the Rule of Law takes acceleration in both scientific and practical debates. The Rule of Law is discussed in various sciences: in law, sociology, economics, politics and other. It is especially discussed in law and public governance. According to Neate (2007), the Rule of Law is a recent and developing concept. It is the foundation of a civilized society. It is the only mechanism so far devised to provide impartial control of the use of power by the state. That single sentence is sufficient to explain why the Rule of Law is pre-eminently the best available system for organizing civil society. It follows that the law must be devised and administered in such a way as to continue to receive widespread acceptance within society (Neate, 2007). The requirement of widespread acceptance means that the law must be responsive to the needs of the people it serves.

Meanwhile the topic of municipal administrative supervision is not so much under dispute, though this is a very important theme. The wider investigations are not done on this topic. Vidrinskaite (2001), Puskorius (2002), Bekkers and Homburg (2002), Kalesnykas (2005), Deviatnikovaite (2009), Paskeviciene (2011),

and Nikitin (2013) provide a brief characterization of this institute. Harbich (2009) has analyzed state supervision of local government authorities. Sellers and Lindstrom (2007) have analyzed supervision in the infrastructure of local governance in the context of decentralization, local government and the welfare state. Bakaveckas (2004, 2006, 2007) and Andruskevicius (2004, 2008) have disclosed problems and development and legal regulation of the administrative supervision of local self-government. However, there is no research on the administrative supervision of local self-government as an expression of the Rule of Law in the context of good governance.

The research object is the administrative supervision of local self-government as an expression of the Rule of Law.

The research aim is to present the administrative supervision of local self-government as an expression of the Rule of Law in the context of good governance and to disclose the Lithuanian experience in this regard.

The research tasks are:

1. To define the Rule of Law as one of the main principles of good governance.
2. To analyze the Rule of Law in Lithuania.
3. To disclose the administrative supervision of local self-government as one of the ways of ensuring the principle of the Rule of Law.
4. To present the representative of the Government in the County as the main officer who executes the administrative supervision of local self-government.
5. To disclose the legal status, the main forms of the realization of powers, and the rights of Representative of the Government in the County.

The research methods. The theoretical generalized methods of the analysis of legal acts and documentation, of the analysis of scientific literature and sources, of comparative and logical analysis and of induction are applied in the article.

The Rule of Law – one of the Main Principles of Good Governance

The term "governance" is used in connection with several contemporary social sciences, especially economics and political science.

Rhodes (1996) emphasizes that the concept of governance is currently used in contemporary social sciences with at least six different meanings: the minimal State, corporate governance, new public management, good governance, social-cybernetic systems and self-organized networks.

Bevir (2010) states that as a concept "governance" is defined as a more plural way of governance than the concept of government: governance pays less attention to state institutions, and more to the processes and interactions which also involve the civil society.

According to Lynn, Heinrich and Hill (2000), the term "governance" may be defined as regimes of laws, administrative rules, judicial rullings, and practices that constrain, prescribe, and enable government activity, where such activity is broadly defined as the production and delivery of publicly supported goods and services.

Peters and Pierre (2005) characterise the four main activities in governance: articulating a common set of priorities for society, coherence, steering, and accountability.

These and other concepts of public governance confer that public governance is inherently political. It can't be left only to professional politicians; within this process other concerned parties, including citizens, must be involved. Not only are the aims important in public governance, but also the features of interactions in the administrative processes, such as clarity, equity, efficiency, legality, responsibility, participation and likewise. The public governance, described by these concepts, means not any, but specifically "good governance".

Good governance is governance supported by democratic principles to which justice, efficiency, accountability and transparency as well as the clear interaction of government, society, private sector and non-government organisations and characteristic are ascribed (Saparniene, 2010).

As Bevir (2010) states, from the beginning good governance was related with liberal institutions and values, including the principle of the superiority of rights, the independent system of courts, the control of the executive government, accountability, and less frequently pluralism, the rights of man and strong civil society.

Good governance is considered a synonym for democratic governance which stresses the interaction of governmental, private sector's and civil society's organizations in economic, political and administrative management areas (Domarkas, 2011).

Saparniene and Valukonyte (2012) in describing the implementation of good governance principles in local self-government refer to the principle of the Rule of Law. According to them, the Rule of Law is ensured that local authorities abide by the law and judicial decisions; rules and regulations are adopted in accordance with procedures provided by the law and are enforced impartially.

Kaufmann, Kraay and Mastruzzi (2005) also emphasize the element of the Rule of Law. They state that the definition of good governance may be measured in the following dimensions: the right to vote; external accountability; political stability; absence of violence,

crimes and terrorism; management efficiency; Rules of Law; and corruption control.

According to Rhodes (1996), good governance is epitomised by predictable and enlightened policy making (that is, transparent processes); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs and all behaving under the Rule of Law.

Pivoras and Visockyte (2011) state that the interpretation of good governance refers to the position of international organizations. These authors have discussed the concept of good governance explicated by the international organizations, presenting and describing all criterions of good governance.

The World Bank, International Monetary Fund, Asian Development Bank, Canadian International Development Agency, Office of the United Nations High Commissioner for Human Rights and some other international organizations, when presenting the conceptof good governance, emphasize the element of the Rule of Law.

The World Bank in the determination of the concept of good governance has accentuated four criteria of good governance: the Rule of Law, accountability, transparency and information about actions of government, and accessibility. Referring to these abstracted principles of the World Bank, many other international organizations and institutions which render assistance have created very similar definitions of good governance, to which they have included some or even all these principles (Pivoras, Visockyte, 2011).

The United Nations International Development Agency (2005), in defining good governance, accentuates the strengthening of the legislative procedure. According to this agency, good governance is democratic governance: transparency, pluralism, citizen participation when adopting laws, and representation and accountability by concentrating on five spheres: strengthening of the legislative procedure, decentralisation and democratic local governance, anti-corruption, civil and war relationships, and the improvement of policy implementation.

The Rule of Law, as one of nine good governance criteria, has been abstracted in the United Nations Development Programme "Governance for Sustainable Human Development" (2012). Here the Rule of Law means that legal frameworks should be fair and enforced impartially, particularly the laws on human rights. With the Rule of Law is connected with other criteria of good governance - participation, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability, and strategic vision (Rondinelli, 2007). The principles of Good Governance in local self-government are closely interrelated and they play an important role in democratic governance (Saparniene, Valukonyte, 2012).

The United Nations Conference on Sustainable Development in the outcome document "The Future We Want" (2012) acknowledged that democracy, good governance and the Rule of Law, at the national and international levels, as well as an enabling environment, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger. The United Nations reaffirmed that to achieve our sustainable development goals states need institutions at all levels that are effective, transparent, accountable and democratic.

The Canadian International Development Agency (CIDA) abstracts the Rule of Law as one of the principles which disclose the content of good governance. This agency emphasizes that good governance is closely related with human rights and democracy and common values: with respect for the human rights, justice, equity, participation and responsibility. CIDA has supported a wide range of interventions in support of human rights, democratization and good governance objectives. Among these has been the initiative to improve the functioning of the legal system, for example, through the training of judges and practitioners, provision of equipment and facilities, and the provision and dissemination of statutes and law reports (CIDA, 1996).

Graham, Amos and Plumptre in "Principles for Good Governance in the 21st Century" (2003) identify five principles of good governance: legitimacy and voice, direction, performance, accountability, and fairness. Legitimacy and voice involves participation and consensus orientation. Fairness involves equity and the Rule of Law.

Generalising, we may state that the definitions of the Rule of Law as one of the main principles of good governance presented by researchers and international organisations means that legal frameworks should be fair and enforced impartially, particularly the laws on human rights. This principle encompasses an independent judiciary, equality of citizens before the law, the requirement for governments to base their actions on legal authorities, and citizens having the right to seek legal remedies against their governments.

The Rule of Law in Lithuania

The Rule of Law is a universal principle. As Vaisvila (2000) states, the Rule of Law or legality is the basis of democracy, and the strength of democracy is, first of all, the strength of legality. Vansevicius (2005) states that the basis of legality expresses the

humane content of the dominant world-view, the nature of society's system, its attitude to protect human's rights, and to eliminate the lawlessness. The Rule of Law is also the component element of democracy and the evidence of public civilization. Urmonas (2005) assigns the principle of legality to the main principles of administrative law.

Vaisvila (2009) calls the principle of the Rule of Law the common law principle, because it involves the entire system of law. According to the author the aim of legality principle is the assurance of the execution and implementation of law orders. According to him, the Rule of Law is the requirement that all law subjects must implement orders of law exactly and unconditionally in their actions. Vaisvila (2009) characterises three appropriate features for the Rule of Law principle:

1) generality of legality (the legal orders must be understandable, executable and applicable equally in the whole territory of the country. Only equal interpretation and application of laws is possible);
2) the general obligation of law application (it is applicable for all legal subjects and also for the highest institutions of Government);
3) the supremacy of law against other legal acts (all legal acts must conform with the laws, between which the highest juridical power has the Constitution).

Trumpulis (2007) states that the interpretation and application of the Rule of Law principle depend on the circumstances of the particular problematic situation; therefore, the content of legality is detectable more clearly during the research of particular issues and in pursuing the legality in the courts.

The Rule of Law principle is analyzed not only in the investigative works of law and public administration. On this principle the whole legal system of Lithuania and public administration is based. In the preamble of the Constitution of the Republic of Lithuania (Zin., 1992, No. 33-1014) the objective of open, just and harmonious civil society is declared. The content of principle of the Rule of Law is not dissociated from this objective and is disclosed in various attitudes of the Constitution of the Republic of Lithuania. In the 5th article of the Constitution (Zin., 1992, No. 33-1014) it is solidified that the scope of power shall be limited by the Constitution. The principle of the Rule of Law, without other purpose, must determine the security of human rights and freedom. Also in the 5th article of the Constitution is established that state institutions shall serve the people. State and municipal institutions implementing the state government have to act referring with the law and conform to the law, and all legal acts must correspond to the Constitution, which has the highest juridical power.

The constitutional legality and its security bases are solidified in the 6th and 7th articles of the Constitutions of the Republic of Lithuania (Zin., 1992, No. 33-1014) . Article 6 of the Constitution declares that the Constitution shall be an integral and directly applicable act and everyone may defend his rights by invoking the Constitution. Article 7 of the Constitution emphasises that any law or other act, which is contrary to the Constitution, shall be invalid; only laws which are published shall be valid and the ignorance of the law shall not exempt one from liability.

The Law of the Republic of Lithuania on Public Administration (Zin., 2006, No. 77-2975) is the main legal act regulating public administration. One of most important purposes of the Law is to create the necessary legal preconditions for the implementation of the clause of the Constitution of the Republic of Lithuania stipulating that the responsibility of governmental institutions is to serve the people. According to that this Law defines the subjects of public administration and their system, principles of the activities, grounds for administrative regulation, administration of the rendering of public services and internal administration of institutions, as well as the administrative procedures and duties while analysing and making decisions on personal applications and claims.

Public administration in this Law means the executive activities of state and local authorities and the activities of other entities empowered by law, regulated by laws and other legal acts, intended for the implementation of laws, other legal acts and local government ordinances and for the administration of planned public services.

The Rule of Law means the supremacy of law. The Law of the Republic of Lithuania on Public Administration (Zin., 2006, No. 77-2975) declares that the activities of entities of public administration shall be based on the supremacy of law. This principle means that the powers of entities of public administration to engage in public administration must be stipulated in laws, and their activities must comply with the legal principles laid down in this Law. Administrative acts related to the implementation of the rights and duties of persons must in all cases be based on laws.

Briefly discussed are the theories of Lithuanian researchers in the aspect of the Rule of Law and after analysis of the main legal acts, where the legality principle is solidified, this principle in the context of the executive is analysed in two aspects: as a base of creation of the system of executive institutions and as a base of activity of the system of executive institutions.

The Rule of Law principle is very important in creatign the system of executive institutions. Its

essence is that the system of executive institutions must be created with reference to the Constitution and laws, by which base it is functioning. The mentioned legal acts are the means by which the nation is establishing (not directly) the executive institutions and defining their power and the extent of government.

For the principle of the Rule of Law, as for the base of the system of executive institutions, is characterized that all executive institutions and state servants that are equal against the laws and in their activities have to follow the Constitution and other legal acts. None of the executive institutions can adopt the legal acts in the matters which are not assigned by the Constitution or by the laws to its capacity. The pursuit of legality is the most important efficiency and effectiveness condition of activity's of executive institutions (Ovsianko, 1997).

The Administrative Supervision of Local Self-Government as one of the Ways of Ensuring the Principle of the Rule of Law

In the Rule of Law the public administration subjects must adopt such administrative acts by which the civics initiatives, the progress of social and economy of the state, and the preparation of constructive reforms in every possible way would be encouraged. Thus, the administrative decisions of public character adopted by the state servants can't violate the constitutional human rights and freedoms and must correspond with the public requirements. The administrative acts are the essence of administrative right, a special public administrative field in the implementation the functions of government and a special kind of public administrative process (Kalesnykas, 2005).

The Law of the Republic of Lithuania on Public Administration (Zin., 2006, No. 77-2975) determines the administrative act. The administrative act shall mean a legal act of the established form adopted by an entity of public administration.

If the practice of the Supreme Administrative Court of Lithuania is accented, that the powers of state institutions are limited by the legal act of supreme power – the Constitution and resulting from it the principle of the Rule of Law. Due to this reason the institutions of executive government, in enabling the legal acts, must follow not only the acts which regulate their activity, but also other supreme power legal acts. It is very important to ensure that in implementation the state government, the principles of human rights and freedom would not be violated.

The hierarchy of legal acts is a guide which explains the legality of legal acts, and determinates that the lower power acts can't contradict the legal acts of the upper stage (Andruskevicius, Paskeviciene, 2011). The activity of the public administration institutions (officers) is called sub-statutory. It means, that public administration institutions (officers), itself, must follow the Constitution and the laws and the requirements, solidified there, in adopting the decisions of government, in controlling the execution of them and herewith to demand from other persons to follow them.

The theory and practice of the implementation of public administration show that one of the main conditions to implementing public administration is the security of legality. The Rule of Law in the public administration of Lithuania is ensured in various ways: through control, supervision, court control activity and through the examination of applications, proposals, statements and claims of the citizens.

The administrative supervision in Lithuania is understandable as a special control of the activity of natural persons and bodies, as well as the control of how the stated and defined rules are followed in the field of public administration. The execution order of administrative supervision is regulated in the laws and other legal acts.

Kalesnykas (2005) names the administrative supervision of municipalities as specific activity of public administrative entities, authorized by the state, intended to control and inspect how in the organization order and not the subordinated state and other companies, institutions, organizations, and citizens follow the special rules (instructions, stated orders) obligatory for all, and which are solidified in the laws and other legal acts.

The administrative supervision is the control of authorized public administrative subjects how in the organization's way not subordinated entities in the execution of appropriate activities follow and execute the requirements stated in the legal acts. For the function of administrative supervision it is possible to exclude two purposes. First, the administrative supervision helps to forecast, warn and stop the uprising of undesirable results for the society. Second, for the commitment of violation the administrative compulsion means, that which performs precautionary and educational functions are foreseen (Bakaveckas, 2012).

The institutions of local self-government, like the institutions of state public administration, have to follow the Constitution and the laws both in enacting legal acts and in their daily work. Such attitude is based on the concept of local self-government. In the3rd article of the European Charter of local self-government (Zin., 1999, No. 82-2418) the local self-government is defined as the local authorities, within the limits of the law, having a right and the ability to regulate and manage a substantial share of public

affairs under their own responsibility and in the interests of the local population. A valid concept of local self-government in Lithuania is identical to the concept given in the European Charter of Local Self-Government. Such content of local self-government corresponds the idea of the Legal State.

The legal basis for administrative supervision over the local authorities in Lithuania derives from the European Charter of Local Self-Government, the Constitution of the Republic of Lithuania and other legislative acts as the Law on Local Self-Government of the Republic of Lithuania, the Law on the Government of the Republic of Lithuania and other laws.

The European Charter of Local Self-Government (Zin., 1999, No. 82-2418) provides that administrative supervision of local authorities may only be exercised according to the procedures provided for by the constitution or by law and that it should be aiming to ensure compliance with the law and with constitutional principles. According to the European Charter of Local Self-Government any administrative supervision of local authorities may only be exercised and organized according to the constitution or statute.

The Constitution of the Republic of Lithuania (Zin., 1992, No. 33-1014) specifies that the observance of the Constitution and the laws as well as the execution of decisions of the Government by municipalities shall be supervised by the Representatives appointed by the Government. The Constitution of the Republic of Lithuania also declares that the powers of the Government Representative and the procedure of their execution shall be established by law. The same attitude is embeded in the Law on the Government of the Republic of Lithuania (Zin., 1998, No. 41(1)-1131)

The Law on Local Self-Government of the Republic of Lithuania (Zin., 2008, No.113-4290) also states that the compliance of local authorities with the Constitution and laws of the Republic of Lithuania and decisions of the Government shall be supervised by the Government Representative. This law also states that one of main principles on which the local self-government is based, is the legality principle of adopted decisions by the municipality's actions and its institutions. Following this principle, activities of local authorities and other public administration entities of a municipality, as well as decisions taken on all the issues related to their activities, must meet the requirements of laws and other legal acts.

The main provisions of the administrative supervision of local self-government are regulated by the Law on the Administrative Supervision of Local Authorities of the Republic of Lithuania (Zin., 2004, No. 98-3626). This law implements the provisions laid down in the Constitution of the Republic of Lithuania and specifies powers of the officers who exercise administrative supervision of local authorities. Officers appointed by the Government – Representatives of the Government exercise the administrative supervision of local authorities, and supervise that local authorities act in compliance with the Constitution and laws of the Republic of Lithuania and carry out decisions of the Government.

The analysis of theory and legal acts, which regulate the administrative supervision of the municipalities, allows to state that the administrative supervision of municipalities in Lithuania means that the action of local authorities is supervised by the state government. That is to say, the administrative supervision of municipalities as a control form of public administration first of all is characterized by this, that the Government executes this function through their appointive Representatives, who thus ensure the implementation of the principle of the Rule of Law.

Representative of the Government in the County – the Main Officer who executes the Administrative Supervision of Local Self-Government

As far as the municipalities act within their own sphere of activity, they are subject to legal supervision. Here legal supervision is restricted to supervising the performance of public law tasks and the obligations of the municipalities as laid down by law and adopted, as well as the legality of their administrative activity. The state may thus not interfere in the exercise of discretion where the municipalities have been given discretion by law and where they exercise this discretion lawfully (Harbich, 2009). However, in those situations where the institutions of municipalities act illegally, the officers who execute the administrative supervision must interfere. In Lithuania that is the Government Representatives in the Counties, whose power, rights and duties, and offices are defined by the Law on Administrative Supervision of Local Authorities of the Republic of Lithuania.

The Representative of the Government exercises administrative supervision of local authorities, i.e., supervises that local authorities act in compliance with the Constitution and laws of the Republic of Lithuania, and carries out decisions of the Government.

The Government Representative is the civil servant – the manager of the institution who is appointed for these duties for four years in the competition way, which is organized by the Government. The Government Representative is subordinate to the Government and accountable to the Prime Minister. A person with university education and with at least five year's experience in the field of public administration,

or with university legal education or the public administration education and with at least three year's experience in the field of public administration may be appointed as Government Representative.

The Law on Administrative Supervision of Local Authorities of the Republic of Lithuania (Zin., 2004, No. 98-3626) states that the Government assigns one Representative of the Government to each county. Each Representative of the Government has Office. This Office helps the Government Representative to implement his authorities and rights. The Government establishes the Office of the Government Representative and the amount of state officers.

According the Constitution of Lithuania the powers of the Government Representative and the procedure of their execution is established by law. The Law on Administrative Supervision of Local Authorities of the Republic of Lithuania (Zin., 2004, No. 98-3626) establishes the implementation forms of the authorities of the Government Representatives:

1) *advance supervision of drafts of legal acts of municipal collegial administration entities;*
2) *reasoned motion;*
3) *written request;*
4) *decree;*
5) *application to the Administrative Court regarding legality of legal act;*
6) *application to the Administrative Court regarding defending the public interest;*
7) *claim to the Court of General Jurisdiction regarding defence of public interest;*
8) *application to the Administrative Court regarding abolition of legal act or regarding obligation to execute the law or decision of Government.*

The main implementation forms of the authorities of the Government Representatives implementing the principle of the Rule of Law are the advance supervision of drafts of legal acts of municipal collegial administration entities, the reasoned motion and the written request.

The advance supervision of drafts of legal acts of municipal collegial administration entities.

The Government Representative in the County performs the advance supervision of drafts legal acts drawn up by municipal collegial administration entities (municipal council). This supervision is one of the most important stages of administrative supervision, which allows reducing the number of illegal acts admitted in the municipalities within the process of legal act admission.

According to the Law on Administrative Supervision of Local Authorities of the Republic of Lithuania (Zin., 2004, No. 98-3626) when carrying out the control of draft legal acts, the Government Representative in the County may:

1) examine draft legal acts submitted to municipal collegial administration entities for adoption;
2) attend meetings of municipal collegial administration entities and, where appropriate, inform the municipal councillors that the drafts under consideration do not comply with laws or decisions of the Government.

After examination municipalities most of the time have considered to the given remarks of Government Representatives. The indicated contradictions to the legal acts in the drafts can be corrected before the session of municipal council or during the session. In the cases, if municipalities do not consider to the Government Representative's submitted notice regarding drafts legal acts, which don to comply with valid legal acts and admit such legal acts, the Government Representative prepares the presentation for the Municipal Council to abolish the admitted decision. If Municipal Council refuses to fulfill such

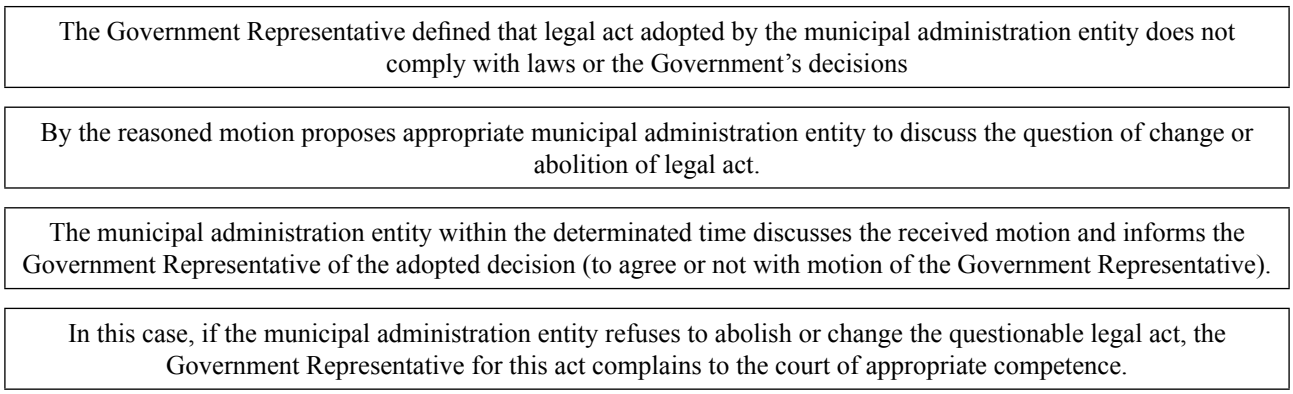

Fig. 1. Reasoned motion form of implementation of powers of Government Representative.

Source: author concluded on the basis of the Law on Administrative Supervision of Local Authorities of the Republic of Lithuania

The Government Representative defined that legal act adopted by the municipal administration entity does not comply with laws or the Government's decisions

To the appropriate municipal administration entity submits the written request to implement the law or execute the decision of the Government immediately.

The municipal administration entity within the determined time discusses the received request and informs the Government Representative about the adopted decision (to agree with request of the Government Representative or to not implement).

In the case, when the municipal administration entity refuses to execute the request, the Government Representative for this act complains to the court of appropriate competence.

Fig. 2. The request form of implementation of Government Representative powers.

Source: author concluded on the basis of the Law on Administrative Supervision of Local Authorities of the Republic of Lithuania

presentation, the Government Representative appeals to the Court regarding abolishment of admitted decision.

The reasoned motion as the control of admitted legal acts of municipal entities.

According to the Law on Administrative Supervision of Local Authorities of the Republic of Lithuania (Zin., 2004, No. 98-3626) the Government Representative in the County executes not only supervision of drafts legal acts, but also controls, if legal acts adopted by the municipal collegial and non-collegial administration entities do not comply with laws, decisions of Government and other legal acts related to the implementation of laws, and adopted by the central state administration entities. In this case the main form of implementation of Government Representative's power is the written reasoned motion (see Fig. 1).

The written request as the supervision of municipal entities regarding implementation of laws and execution of decisions of Government.

When municipal administration entities do not comply with the Constitution and laws or do not execute the decisions of the Government, the Government Representatives require that the Constitution must be followed, the laws implemented, and the decisions of Government executed. In this case the main implementation form of Government Representatives' powers is the written request (see Fig. 2).

The Government Representative's rights.

The Government Representative, in fulfilling its authorities, controls the legitimacy of the action of municipal institutions and officers. For this purpose the Government Representatives are empowered by the law to react if illegal solutions are adopted or the decisions of the Government are not executed. That administrative supervision of municipalities executed by the Representatives of Government is important and useful, and has been confirmed by 27 of 35 questioned municipalities; 3 municipalities have indicated that this supervision is not useful (The National Audit Office of the Republic of Lithuania, 2010).

According the Law on Administrative Supervision of Local Authorities of the Republic of Lithuania (Zin., 2004, No. 98-3626), the Government Representative in the County in the implementation of its powers has the rights:

1) to get access to the legal acts within the field of public administration adopted by units of the administration of a municipality;
2) to request from municipal administration entities copies of the adopted legal acts as well as copies of the minutes of meetings of municipal collegial administration entities. This requirement must be fulfilled not later than within 5 working days after the receipt thereof;
3) to apply to municipal administration entities for the provision of the information about their activities in the course of implementation of laws and execution of decisions of the Government;
4) upon the disappearance of the circumstances which served as the grounds for the suspension of a legal act, the submission of a proposal to amend or repeal a legal act, or the request for the immediate implementation of a law, the execution of a decision of the Government, to revoke such a proposal or request with a reasoned ordinance, provided that the proposal or the request has not been executed;
5) to set a different time limit for fulfilling the actions of the Government Representative subject to the receipt of a reasoned request to extend this time

limit, submitted by a municipal administration entity within its remit;

6) to attend sittings of the Government in accordance with the procedure laid down by the rules of procedure of the Government, as well as in the events organized by state institutions where issues of activities of municipalities are considered;
7) to apply to state institutions according to their competence with a request to explain the procedure for applying resolutions of the Government, if this is directly related to activities of municipalities, their relations with state institutions and activities of the Government Representative.

To get access to the legal acts within the field of public administration adopted by units of the administration of a municipality, to request from municipal administration entities copies of the adopted legal acts as well as copies of the minutes of meetings of municipal collegial administration entities, to apply to municipal administration entities for the provision of the information about their activities in the course of the implementation of laws and the execution of the decisions of the Government, as well as the right to attend meetings of municipal collegial administration entities and where there are grounds for this – to inform the municipal councillors that drafts under consideration do not comply with laws or decisions of the Government, the Government Representative may authorize the state servant of Government Representatives office.

Conclusions

To define the Rule of Law unambiguously is quite difficult. Although the definitions of the Rule of Law as one of the main principles of good governance presented by researchers and international organisations means that legal frameworks should be fair and enforced impartially, particularly the laws on human rights. This principle encompasses an independent judiciary, the equality of citizens before the law, the requirement for governments to base their actions on legal authorities, and citizens having the right to seek legal remedies against their governments.

It has been determined that with the Rule of Law is connected to other criteria of good governance - participation, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability, and strategic vision. The Rule of Law and other principles of Good Governance in local self-government are closely interrelated and they play an important role in democratic governance.

The Rule of Law and the administrative supervision of local self-government are needed to ensure the growing requirements of society, that public governance institutions, acting openly and responsibly, using effectively the budget of the Republic of Lithuania and the budget of the municipalities, would accept and implement the decisions which correspond to the requirements of society and would provide good quality administrative and public services.

It has been determined that good governance requires ensuring the balance between municipalities' freedoms of activity and accountability to the state and society in forwarding or assigning functions and rights for the municipalities, must be determined the responsibility of municipal entities for the appropriate execution of these functions, and must also be improved the supervision of the municipal activities – the competence of the Government Representative has to be increased in this field.

Good governance is transparent, participatory, consensus oriented, accountable, effective and efficient, responsive and inclusive and follows the Rule of Law. Improved governance requires an integrated, long-term strategy built upon cooperation between government and citizens. It involves both participation and institutions. Institutions must act under the Rule of Law. The Rule of Law is a technical and legal issue at the local self government level, but also interactive to produce local self government that it is legitimate, effective and widely supported by citizens, as well as a civil society that is strong, open and capable of playing a positive role in politics and self-government.

The main aim of the administrative supervision of local self-government is to ensure that the principle of the Rule of Law and the constitutional principles would be followed.

The institutions of local self-government have to follow the Constitution and the laws both in the enacting legal acts and in their daily work. Such attitude is based by the concept of local self-government. In the European Charter of local self-government the local self-government is defined as the local authorities, within the limits of the law, havng a right and the ability to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. The valid concept of local self-government in Lithuania is identical to the concept given in the European Charter of Local Self-Government.

The legal basis for the administrative supervision over local authorities in Lithuania derives from the European Charter of Local Self-Government and the Constitution of the Republic of Lithuania.

The main provisions of administrative supervision of local self-government are regulated by the Law on the Administrative Supervision of Local Authorities of the Republic of Lithuania. This law implements the provisions laid down in the Constitution of the Republic

of Lithuania and specifies powers of the officers who exercise administrative supervision of local authorities. Officers appointed by the Government – Representatives of the Government exercise administrative supervision of local authorities, supervise that local authorities act in compliance with the Constitution and laws of the Republic of Lithuania and carry out decisions of the Government.

The analysis of legal acts, which regulate the administrative supervision of the municipalities, allows to state that the administrative supervision of local self-government in the Republic of Lithuania means that the action of local authorities is supervised by the state government. That is to say, the administrative supervision of municipalities as a control form of public administration first of all is characterized by this, that the Government executes this function through their appointive Representatives. The purpose of the Government Representatives in Lithuania is to control the legality of the activities of municipal entities and officers. To implement this aim the Government Representatives have a right to react in the ways which are defined in the laws, if adopting the decisions in municipalities are illegal or the laws and Government decisions are not executed.

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Savivaldybių administracinė priežiūra kaip teisėtumo principo išraiška gero valdymo kontekste. Lietuvos atvejis

Santrauka

Straipsnyje teoriniu ir praktiniu aspektais nagrinėjama savivaldybių administracinė priežiūra kaip teisėtumo principo išraiška gero valdymo kontekste.

Analizuojama teisėtumo kaip vieno pagrindinių gero valdymo kriterijų sąvoka Lietuvos ir užsienio mokslininkų publikacijose, tarptautiniuose dokumentuose. Teisėtumo tema diskutuojama įvairių mokslų srityse: teisėje, sociologijoje, ekonomikoje, politikoje, viešojo administravimo ir kitose. Tuo tarpu savivaldybių administracinės priežiūros tema nėra labai aktyviai diskutuojama, nors tai — aktuali tema. Savivaldybių administracinės priežiūros raidą, teisinį reglamentavimą bei su juos susijusias problemas nagrinėjo A. Bakaveckas (2004, 2006, 2007), A. Andruškevičius (2004, 2008). Su savivaldybių administracine priežiūra bendrais bruožais, nesigilindami į problematiką, susijusią su šiuo konstituciniu institutu, supažindina įvairūs autoriai mokomosiose knygose arba vadovėliuose, pavyzdžiui S. Vidrinskaitė (2001), S. Puškorius (2002), V. Bekkers ir V. Homburg (2002), R. Kalesnykas (2005), I. Deviatnikovaitė (2009), L. Paškevičienė (2011), A. Nikitin (2013) ir kt. Tyrimų, susijusių su administracinės priežiūros institutu, atlikta nedaug. Bene giliausiai šį institutą analizavęs A. Bakaveckas (2004, 2006, 2007). Vis dėlto konstatuotina, kad teisėtumas kaip vienas pagrindinių gero valdymo principų, savivaldybių administracinė priežiūra kaip vienas iš pagrindinių būdų, užtikrinančių teisėtumo principo įgyvendinimą vietos savivaldoje, Lietuvos Respublikos Vyriausybės atstovų apskrityse įgaliojimai, jų įgyvendinimo formos bei teisės Lietuvoje plačiau analizuoti nebuvo nė karto. Dėl šios priežasties straipsnyje analizuojamos būtent šios temos.

Tyrimas parodė, kad teisėtumas – vienas pagrindinių gero valdymo principų, neatsiejamai susijusių su tokiais gero valdymo principais, kaip skaidrumas, nešališkumas, efektyvumas, atsakingumas, skaidrumas, dalyvavimas ir pan. Teisėtumas analizuojamas ne tik teisės ir viešojo administravimo tiriamuosiuose darbuose. Šiuo principu grįsta visa Lietuvos teisės sistema bei viešasis administravimas. Lietuvos Respublikos Konstitucijos preambulėje yra skelbiamas atviros, teisingos, darnios pilietinės visuomenės siekis. Teisinės valstybės principo turinys yra neatsiejamas nuo šio siekio ir yra atskleidžiamas įvairiose Lietuvos Respublikos Konstitucijos nuostatose bei teisės aktuose. Teisinės valstybės principas, be kitų paskirčių, turi lemti žmogaus teisių ir laisvių užtikrinimą.

Aptarus Lietuvos mokslininkų teorijas teisėtumo aspektu ir paanalizavus pagrindinius teisės aktus, kuriuose įtvirtintas teisėtumo principas, nustatyta, kad šis principas vykdomosios valdžios kontekste analizuotinas dviem aspektais: kaip vykdomosios valdžios institucijų sistemos kūrimo ir kaip vykdomosios valdžios institucijų sistemos veiklos pagrindas.

Tyrimu nustatyta, kad viena pagrindinių viešojo administravimo proceso įgyvendinimo sąlygų yra teisėtumo užtikrinimas. Teisėtumas Lietuvos viešajame administravime užtikrinamas įvairiais būdais: kontrole, priežiūra, teismo kontroline veikla bei nagrinėjant piliečių prašymus, pareiškimus, pasiūlymus ir skundus.

Atlikta Lietuvos mokslininkų publikacijų bei teisės aktų analizė parodė, kad administracinė priežiūra Lietuvoje suprantama kaip fizinių ir juridinių asmenų veiklos specialus tikrinimas bei tikrinimas, kaip laikomasi nustatytų ir apibrėžtų taisyklių viešojo administravimo srityje. Administracinės priežiūros vykdymo tvarka reglamentuota

įstatymuose bei kituose teisės aktuose. Administracinė priežiūra, kaip Lietuvos valstybės vykdomosios valdžios funkcija, įstatymuose ir kituose teisės aktuose minima dvejopai: kaip valstybinių inspekcijų, departamentų tarnybų veikla ir kaip savivaldybių veiklos administracinė priežiūra.

Nustatyta, kad savivaldybių administracinė priežiūra – tai valstybės vykdomosios valdžios funkcija, kurią vykdo Vyriausybės skiriami atstovai. Esminis jų veiklos principas – kontroliuoti savivaldybių institucijų veiklos teisėtumą. Vyriausybės atstovų atliekama savivaldybių administracinė priežiūra reglamentuojama visais teisės aktų hierarchiniais lygmenimis: Europos vietos savivaldos chartija, Lietuvos Respublikos Konstitucija, Lietuvos Respublikos savivaldybių administracinės priežiūros įstatymu.

Vyriausybės atstovas apskrityje, prižiūrėdamas, ar savivaldybės laikosi Konstitucijos ir įstatymų, ar vykdo Vyriausybės sprendimus, savo įgaliojimus įgyvendina įvairiomis formomis, numatytomis Lietuvos Respublikos savivaldybių administracinės priežiūros įstatyme: parengia motyvuotą teikimą, rašytinį reikalavimą, atlieka išankstinę kolegialių savivaldybės administravimo subjektų teisės aktų projektų analizę, kreipiasi į teismą, kai teikimai nepatenkinami, o reikalavimai nevykdomi, kreipiasi į teismą su pareiškimu dėl norminio administracinio teisės akto teisėtumo arba teikia teismui prašymą dėl viešojo intereso gynimo.

Vyriausybės atstovų vykdoma išankstinė savivaldybės kolegialių administravimo subjektų teisės aktų projektų kontrolė yra geriausia prevencinė priemonė, savivaldybių taryboms neleidžianti priimti neteisėtų sprendimų ir skatinanti savivaldybių administravimo subjektus įgyvendinti teisėtumo principą.

Nustatyta, kad Vyriausybės atstovas apskrityje, įgyvendindamas įgaliojimus, turi gana plačias teises, numatytas Lietuvos Respublikos savivaldybių administracinės priežiūros įstatyme.

Pagrindiniai žodžiai: geras valdymas, teisėtumas, administracinė priežiūra, administracinė priežiūra vietos savivaldoje, vyriausybės atstovas apskrityje.

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