

# THE INSTITUTION OF SUPERVISION IN POLISH LOCAL GOVERNMENT IN THE LIGHT OF THE PRINCIPLE OF PROPORTIONALITY

Monika Augustyniak  
Professor  
Kozminski University, dr habil.  
Department of Administration  
and Administrative Law  
Jagiellońska 57,  
03-301 Warszawa, Poland  
monikaugustyniak1@gmail.com  
ORCID: 0000-0001-6196-1989

**Abstract:** *The idea of the proportionality principle is related to the application of appropriately moderate actions of public authorities and minimising their interference in the sphere of individual rights and freedoms. This principle, also known as the principle of commensurability, is essentially addressed to the legislator and to public administration bodies, including supervisory bodies. The purpose of this paper is to present the institution of supervision in Polish local self-governments in the light of the proportionality principle. Establishing the legal basis of this principle and its impact on the application of supervisory measures in the Polish supervisory procedure concerning the activities of local self-government units. This will, in the final assessment, allow conclusions to be drawn with regard to the legal issue considered.*

**Keywords:** *Proportionality Principle; Supervision of Local Self-Government Units' Activities; Local Self-government; Supervisory Measures*

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## 1. INTRODUCTION

The proportionality principle is an important element in the establishment and application of administrative law in the Polish legal order. This principle is increasingly used in the area of conflicts between certain values and goods, including in local self-government law. The doctrine indicates that this principle arose to protect individuals from the arbitrariness of power (Śledzińska-Simon, 2019, p. 29). According to Cz. Martysz, the essence of the proportionality principle may be summarised as "the need for relative equality between the inconvenience of interferences undertaken in the name of the public interest and the value of the objective pursued" (Martysz, 2010, p. 92).

The idea of the proportionality principle is related to the application of appropriately moderate actions of public authorities and minimising their interference in the sphere of individual rights and freedoms. This principle is also referred to as the principle of commensurability and adequacy (Kijowski, 1999, p. 59 et seq.). It is essentially addressed to the legislator and public administration bodies. It requires these actors to ensure that there is compatibility and a balance between the purpose of the legal regulation or individual administrative interference and the procedural measures applied.<sup>1</sup>

The proportionality principle is known to the Polish doctrine of constitutional law, in judicial decisions, as well as in international and European law (Saganek, 2008). It is

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<sup>1</sup> Judgment of the Supreme Administrative Court of 17.05.2013. I FSK 435/13, LEX No. 1369482.

increasingly used in the jurisprudence of the Court of Justice of the European Union as well as the European Court of Human Rights (Mudrecki, 2020, p. 271 et seq.).

The purpose of this paper is to present the institution of supervision in Polish local self-governments in the light of the proportionality principle. Establishing the legal basis of this principle and its impact on the application of supervisory measures in the Polish supervisory procedure concerning the activities of local self-government units will, in the final assessment, allow conclusions to be drawn with regard to the legal issue considered.

The paper uses the dogmatic and legal method that involves analysis of the legal text. The views found in the doctrine, literature, as well as constitutional and administrative court in light of the conclusions are a recapitulation of the considerations presented in the text.

## 2. THE PROPORTIONALITY PRINCIPLE - LEGAL CONTEXT

The proportionality principle plays a very important role in administrative law. "It acquires great importance, given, in addition, the extensive scope and nature of the public authority granted to public administration bodies" (Duniewska, 2022, p. 23).

The proportionality principle in the Polish legal order is based on the Constitution of the Republic of Poland and on the provisions of the European Charter of Local Self-Government,<sup>2</sup> which is part of the Polish legal order.

The content of the proportionality principle is defined by Polish constitutional law doctrine and the jurisprudence of the Constitutional Tribunal. The regulations of the 1997 Constitution of the Republic of Poland<sup>3</sup> allow to derive this principle directly from Article 31 of the Constitution of the Republic of Poland and indirectly from Article 2 of the Constitution of the Republic of Poland. Pursuant to Article 31(3) of the Constitution of the Republic of Poland, "Restrictions on the exercise of constitutional freedoms and rights may be established only by law and only if they are necessary in a democratic state for its security or public order, or for the protection of the environment, health, and public morals, or the freedoms and rights of others. These restrictions must not affect the essence of freedoms and rights".

Already in the decision of 26 April 1995 (K 11/94), the Constitutional Tribunal<sup>4</sup> referred to the essential components of the proportionality principle, corresponding to the test of three questions (criteria) for the application of this principle: 1) whether the introduced legislative regulation is capable of producing the effects it intends; 2) whether the regulation is necessary for the protection of the public interest to which it is linked; 3) whether the effects of the introduced regulation remain in proportion to the burdens it imposes on the citizen".<sup>5</sup> By the time the 1997 Constitution entered into force, the proportionality principle had already been an established element of the democratic state of law (Garlicki and Wojtyczek, 2016).

Currently, the views expressed in the doctrine and in the jurisprudence of the Constitutional Tribunal on the grounds of the new Polish Constitution have made it possible to establish the content of the proportionality principle provided for in Article 31(3) of the Polish Constitution, indicating three important elements that define it:

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<sup>2</sup> The European Charter of Local Self-Government was drawn up in Strasbourg on 15.10.1985 (OJ of 1994, No. 124, item 607, as amended - hereinafter referred to as the **ECLS**).

<sup>3</sup> Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483) - hereinafter referred to as the **Polish Constitution**.

<sup>4</sup> See decision of the Constitutional Tribunal of 26.04.1995, K 11/94, OTK 1995, No. 1, item 12.

<sup>5</sup> See decision of the Constitutional Tribunal of 26.04.1995, K 11/94, OTK 1995, No. 1, item 12.

- the suitability requirement - "is understood to mean that the measure of action provided for in the law that restricts the freedoms and rights of the individual is suitable for achieving the objectives pursued by the law" (Trzciński, 2023, p. 79);
- the necessity requirement - "puts emphasis on whether the legislator could have chosen a measure that is equally effective but less restrictive of the individual" (Zakolska, 2008, p. 25);
- the prohibition of excessive interference (requirement of proportionality *sensu stricto*) - "means the requirement to maintain a proportion between the restriction of a given constitutional right or freedom (...) and the intended purpose of a given regulation"<sup>6</sup>) (Zakolska, 2008, p. 27).

It is important to emphasise that a restriction on constitutional freedoms and rights is only permissible if the three criteria in question are met. Understood in this way, the proportionality principle is an important criterion for assessing the constitutionality and legality of public authority's actions.

The proportionality principle also derives from the standard of Article 2 of the Polish Constitution.<sup>7</sup> This provision states that "the Republic of Poland is a democratic state governed by the rule of law, implementing the principles of social justice". The need to refer to the principle of the democratic state governed by the rule of law as a more general source for the proportionality principle (referred to as the prohibition of excessive interference by the legislator) in the current jurisprudence of the Constitutional Tribunal is limited to:

- those situations where controlled regulation goes beyond the matter of constitutional rights and freedoms. This applies, in the first place, to regulations imposing obligations on the individual (similar entities), but without interfering with constitutional rights and freedoms;<sup>8</sup>
- where is also applicable in the institutional sphere, e.g., with regard to the relationship between the state and local self-government units or between the executive and the judiciary authority;
- to the violation of other constitutional principles closely linked to the proportionality principle, e.g. the principle of social justice (Trzciński, 2023, p. 65 and p. 81).

A separate legal basis for the proportionality principle is Article 8(3) of the European Charter of Local Self-Government (ECLS). The constitutional grounds for the proportionality principle and the fact that the ECLS has been ratified by the Republic of Poland entail an obligation to treat this principle as part of the national legal order and to apply it. These acts are a direct source for shaping patterns of normative regulations reflecting the provisions of the Charter. The ECLS is therefore an appropriate source of standards addressed to the national legislator<sup>9</sup> when establishing internal legal regulations.<sup>10</sup> The content of the ECLS regulations has been taken into account in the norms of constitutional and substantive administrative law as well as in administrative

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<sup>6</sup> Judgment of the Constitutional Tribunal of 10.12.2013, U 5/13, OTK-A 2013, No. 9, item 136.

<sup>7</sup> See the judgment of the Constitutional Tribunal of 11.02.2014, P 24/12, OTK-A 2014, No. 2, item 9. The judgment in question indicates that in the jurisprudence of the Tribunal it is accepted that the proportionality principle, resulting from Article 2 of the Polish Constitution, is also of particular importance for the assessment of regulations providing for administrative liability - see also the judgment of the Constitutional Tribunal of 9.10.2012, P 27/11, OTK-A 2012, No. 9, item 104.

<sup>8</sup> See the judgment of the Constitutional Tribunal of 18.07.2013, SK 18/09, OTK-A 2013, No. 6, item 80 point III.6 - in the context of tax liabilities.

<sup>9</sup> Judgment of the Constitutional Tribunal of 20 March 2007, K 35/05, OTK ZU 2007, No. 3A, item 28.

<sup>10</sup> See judgment of the Constitutional Tribunal of 31 January 2013, OTK ZU 2013, No. 1A, item 7.

and judicial-administrative procedure. This also applies to the institution of supervision of the activities of local self-government units.

According to Article 8(1) and (2) of the ECLS, administrative control over the activities of local communities may only be exercised in the manner and in the cases provided for in the Constitution or by law, and any administrative control over the activities of local communities should in principle only be aimed at ensuring compliance with the law and constitutional principles. This control may, however, include control of purposefulness carried out by a higher-level body with regard to the tasks delegated to local communities.

In line with Article 8(1) and (2) of the ECLS, administrative control over the activities of local communities may only be exercised in the manner and in the cases provided for in the Constitution or by law, and any administrative control over the activities of local communities should in principle only be aimed at ensuring compliance with the law and constitutional principles. This control may, however, include control of purposefulness carried out by a higher-level body with regard to the tasks delegated to local communities.

The proportionality principle expressed in Article 8(3) of the ECLS dictates that, in assessing the degree of infringement, the bodies exercising such control should examine the extent and degree of the infringement of the proportion between the extent of the control body's intervention (i.e., the use of supervision instruments) and the importance of the interests it is intended to protect.<sup>11</sup>

The proportionality principle referred to in Article 8(3) of the ECLS is addressed to supervisory bodies and expresses the obligation to minimise supervisory interference and the gradation of supervisory measures. The purpose of its application is to ensure the existence of legal acts in legal transactions while respecting the autonomy of local self-government units (Chlipała, 2014, p. 27).

The proportionality principle is also expressed in the administrative procedure. According to Article 8 §1 of the Code of Administrative Procedure,<sup>12</sup> "Public administration bodies shall conduct proceedings in a manner that inspires confidence of their participants in public authority, guided by the principles of proportionality, impartiality, and equal treatment". It is the procedural duty of a public administration body to be guided by the principles mentioned *in fine* of this article. These principles are fully applicable to the assessment of procedural issues emerging in the course of administrative proceedings (Wróbel, 2023). In this case, the legislator limited itself to indicating the name of the proportionality principle only, without filling its content, due to the provisions of the Polish Constitution specifying its meaning. Thus, the regulations of the administrative procedure must be considered formal and not substantive in nature.

As Barak points out the term 'proportionality' is not mentioned in the constituent documents as the law of the European Union. The concept was developed by the European Court of Justice. The Court of Justice developed the concept both in matters relating to review of EU institutions and in matters where a member state court referred a legal question to the Court of Justice to be determined in accordance with the principles of European law.

This was done in light of the recognition by the Court of Justice - following the notion of French law - of general principles of law that exist alongside formal written texts.

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<sup>11</sup> See the judgment of the Voivodeship Administrative Court in Kraków of 14.12.2017, II SA/Kr 1283/17, LEX No. 2427470.

<sup>12</sup> See the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws 2023, item 775), hereinafter referred to as **Code of Administrative Procedure**.

Among those general principles are the protection of human rights, the fulfilment of legitimate expectations, the basic principles of natural justice, and the principles of the rule of law. The concept of proportionality was given a central place among those principles. According to most commentators, the concept was adopted by the European Court of Justice as influenced by German law" (Barak, 2012, pp.184 -185; see also Emiliou, 1996).

It should be pointed out that the principle of proportionality is set out in Article 5 of the Treaty on European Union<sup>13</sup> and is one of the most frequently applied general principles of Community law. It exists in three forms: '1) as a constitutional principle, it regulates the manner in which the Community exercises its competence under the Treaty establishing the European Community in so far as the relations between the Community and the Member States are concerned; 2) as a principle of Community administrative law, it sets limits on the discretion of Community bodies taking sovereign action against individuals; 3) as a principle serving to protect individuals against the actions of Member States, it is the final element in the test of the compatibility of national law with Community law when Member States make use of treaty derogations or when implementing Community law (...) In Community law, the proportionality test is also a three-element one' (Saganek, 2008). In the system of European Union law, the principle of proportionality currently plays an important role.

The principle of proportionality sets out 'a kind of instrumental rationality which safeguards all subjects of law against excessive and unwarranted interference by both the Union and national legislatures, as well as interference by the legitimate entities forming part of the administrative apparatus. (...) This principle is therefore governed by the exercise of competence by the legitimate entities (...) This is done through the precise definition of the criteria to be applied in the selection of the appropriate means and instruments intended to achieve certain aims and objectives' (Wajda, 2016, p. 256).

### 3. THE INSTITUTION OF SUPERVISION OF LOCAL SELF-GOVERNMENT UNITS' ACTIVITIES IN LIGHT OF THE PROPORTIONALITY PRINCIPLE

In the theory of administrative law, supervision appears as a set of authority measures and powers (Jagielski, 1999, p. 12).<sup>14</sup> The institution of supervision makes it possible to apply, on the basis of the analysis of the controlled phenomena, certain supervisory measures (Dolnicki, 2009, p. 104), which can be divided into measures concerning:

- acts (e.g., approval, revocation, suspension of enforcement);
- persons (e.g., approval of the election, appointment from among the candidates presented, suspension from office);
- bodies (e.g., dissolution, establishment of a commission body) (Izdebski, 2008, p. 301).

Supervision is a broader term than control<sup>15</sup> and includes an element of control. Control, on the other hand, does not necessarily entail supervisory measures. Supervision

<sup>13</sup> Treaty on European Union (consolidated version: OJ EU L 202 of 2006, p. 13).

<sup>14</sup> The jurisprudence of the Constitutional Tribunal presents views that supervision is the embodiment of specific procedures creating the right for the relevant state bodies, equipped with the relevant competencies, to establish the state of affairs and to correct the activities of the supervised body (resolution of the Constitutional Tribunal of 5 October 1994, W 1/94, Wspólnota 1994, No. 48, p. 18).

<sup>15</sup> On the subject of control, see Augustyniak (2024, pp. 487 et seq.).

is the right to issue orders, binding directives to change courses of action (Augustyniak, 2012, p. 274).

Supervision corresponds to the autonomy of local self-government units, which is, however, always relative, as autonomy results from the interrelationships between different entities and the division of tasks between the state and local self-government segments. The state should reserve for itself the legal possibility to take certain actions against a local self-government institution. This is intended to create guarantees that the actions of the local self-government will be within the framework of the state's legal order and the democratic rule of law.

In the Polish local self-government, verification-related supervision is based on the criterion of legality.<sup>16</sup> This type of supervision "is typical of structures of decentralised public administration, i.e. exercised autonomously under the rules laid down by law. At the same time, the intensity of supervision determines the limits of the autonomy of entities exercising public administration functions. It includes control measures and measures to correct the activities of supervised entities" (Dolnicki, 2005, p. 60).

Along with the restriction of self-government units' autonomy through the institution of supervision, judicial protection of their self-governance was granted to municipalities/communes/counties and voivodeship self-governments (under the Polish Constitution as well as laws). It is a consequence of their subjective nature. This thesis is also confirmed by court-administrative jurisprudence: the judgment of the Voivodeship Administrative Court in Gdańsk of 29 March 2018 indicates that "the autonomy of a municipality/commune is considered to be a fundamental, immanent feature of municipal/commune self-government and concerns both the legal-public and legal-private sphere of its activities. It is also a value protected by the Polish Constitution as one of the foundations of the State's territorial system. The municipality's/commune's public-law autonomy means that it is a decentralised entity of public authority, acting on the basis and within the limits of the legislation in force. Within these limits, the municipality/commune takes legal and actual measures guided solely by the law and its own will expressed in a statutory form by its elected bodies or by the will of the members of the municipal/commune community expressed in the form of a local referendum. This autonomy is subject to supervision by the State bodies from the perspective of lawfulness and in the forms prescribed by law. The correlate of the supervision of the autonomy of a municipal/commune self-government is the guarantee of its judicial protection contained in Article 165(2) of the Polish Constitution."<sup>17</sup> The aim of supervision will be both the need to maintain the uniform operation of all elements of the public administration and the autonomy of supervised entities. This includes defining the relationship between centralised and decentralised administration structures (Leoński, 2006, p. 182).

The supervisory measures are the entire competencies available to the supervisory bodies in relation to the local self-government bodies. Supervisory powers

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<sup>16</sup> It is pointed out in the court-administrative jurisprudence that the activity of a local self-government unit is assessed by the supervisory body exclusively on the basis of the criterion of compliance with the law, *ergo* the body cannot make this assessment from other points of view, i.e. efficiency, purposefulness of activity, or cost-effectiveness. Despite the fact that the supervision exercised over the activities of a given local self-government unit by the voivode covers all aspects of the functioning of the local self-government, the supervisory body may intervene in the activities of the municipality/commune/county/voivodeship assembly only in cases specified in the law - see Judgment of the Voivodeship Administrative Court in Gdańsk of 22.03.2018, III SA/Gd 97/18, LEX No. 2474020.

<sup>17</sup> Judgment of the Voivodeship Administrative Court in Gdańsk of 29.03.2018, III SA/Gd 125/18, LEX No. 2473988.

are inextricably linked to the obligation to apply these measures if the relevant statutory grounds are found to exist (Izdebski, 2008, p. 304).

According to B. Dolnicki, the statutory supervisory measures concerning the tasks of the local self-government can be divided as follows: information and advisory measures, corrective measures, and personal measures (Dolnicki, 2012, p. 399 et seq.).

The **information and advisory measures** guarantee the supervisory bodies the right to request the necessary information and data concerning the organisation and functioning of the local self-government units (see Article 88 of the Act on the municipal/commune self-government, Article 77a of the Act on the county self-government and Article 80 of the Act on the voivodeship self-government). This broad access to information granted to supervisory bodies is consistent with the regulation corresponding to access to public information. These measures do not have the effect of changing the actual or legal situation. Without them, an appropriate response of the supervisory body is not possible. Further information obligations boil down to a requirement that the monocratic executive body of the municipality/commune, the starost or the voivodeship marshal, respectively, must submit to the voivode any resolution of the council/assembly within seven days of its adoption. At the voivodeship level, this obligation also applies to voivodeship management resolutions.

**Corrective measures**, on the other hand, aim to change the actual or legal situation. This interference in the activities of local self-government units' bodies ensures that they operate properly, by reviewing and amending supervised acts if they are found to be inadequate. This also applies to the issuing of substitute acts by the supervisory bodies in the event of the expiry of the time limit for issuance of supervised acts. Corrective measures include:

- approval, agreement, opinion. The provisions of Article 89(1) of the Act on the municipal/commune self-government, Article 77b of the Act on the county self-government and Article 80a of the Act on the voivodeship self-government provide for the possibility that special provisions may require the approval, agreement, or opinion of a decision of a local self-government body by another body as a *sine qua non* condition for the validity of such a decision (Dolnicki, 2015, p. 66). The criterion for distinguishing between these measures is the stage at which they are applied in the decision-making process of the local self-government unit;
- suspension of the implementation of the supervised act;
- declaration of the supervised act invalid. This measure should be applied in the case of unlawful acts (Dolnicki, 1997, p. 47). The deprivation of a given supervised act of its validity may concern both the whole act and its parts, and will be retroactive (*ex tunc*), which means that such an act will be invalid by operation of law from the moment of its adoption.<sup>18</sup> Depending on the type of infringement, a distinction can be made between a material infringement (which has the effect of depriving the supervised act of its validity) and a non-material infringement (which has the effect of indicating an infringement, but which does not have the absolute effect of depriving such an act of its validity).<sup>19</sup> The declaration of invalidity takes the legal form of a supervisory

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<sup>18</sup> See the judgment of the Supreme Administrative Court in Lublin of 12 October 1990 (SA/Lu 663/90, ONSA 1990, No. 4, item 6). Similarly, see the judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 17 September 2009 (II SA/Go 514/09, LEX No. 569879).

<sup>19</sup> See the judgment of the Voivodeship Administrative Court in Gliwice of 1 October 2010 (III SA/GI 2083/10, LEX No. 756684).

decision, which should contain a statement of factual and legal reasons and a note on the possibility to file a complaint to the administrative court. The declaration of invalidity of a resolution of a local self-government body is the primary means of supervision;

- issue of a substitute act. Supervisory bodies may issue substitute supervisory acts in the event that a local self-government unit's body has failed to issue a particular act that it was obliged to issue within the relevant time limit (prescribed by law). Thus, if the municipal/commune council fails to adopt a resolution, contrary to the obligation arising from the provisions referred to in Article 98a of the Act on the municipal/commune self-government, Article 85a of the Act on the county self-government and Article 86a of the Act on the voivodeship self-government, the voivode requests the body to do so within 30 days. Upon the ineffective lapse of this period, the voivode, after notifying the minister responsible for public administration, will issue a substitute order. The legislator has allowed for the possibility of filing a complaint against a substitute order by a person (councillor) whose legal interest or right is affected by the order (Chłopała, 2005, p. 82 et seq.).

**The personal measures** concern the bodies, not directly the defectiveness of the acts issued by these bodies (Dolnicki, 2005, p. 133). Their use is a consequence of a repeated violation of the law in the form of failure to issue or issuing defective acts by local self-government units' bodies. A typical measure of a personal nature is the dismissal of such bodies. This should be done as a last resort when, despite a whole range of supervisory measures, the bodies are still malfunctioning.

**When analysing the institution of supervision in light of the proportionality principle, it should be noted that Polish** legal regulations related to supervision have been incorporated in the Polish Constitution and in local self-government system acts or other acts of administrative law (e.g., in the scope of supervision exercised by the voivode). Moreover, even at the level of the Polish Constitution (see Article 171(1) of the Constitution), as well as in individual local self-government system acts, the criterion for exercising supervision over the activities of local self-government units was regulated, clearly indicating the criterion of lawfulness.

In addition, the subjective scope of supervision has also been regulated under the Polish Constitution as well as by laws. Thus, the supervisory bodies for the activities of local self-government units are the President of the Council of Ministers and voivodes, and in the scope of financial matters - the regional chambers of auditors (see Article 171(2) of the Polish Constitution Article 85 of the Act on the municipal/commune self-government, Article 77 of the Act on the county self-government and Article 79 of the Act on the voivodeship self-government).<sup>20</sup> However, the catalogue of these entities has been expanded to include the Sejm of the Republic of Poland, which may dissolve a local self-government's decision-making body if that body grossly violates the Constitution or laws. This occurs at the request of the President of the Council of Ministers, who is also the supervisory body. **Thus, it should be noted that, in formal terms, the Polish legislator, both at the level of the Constitution and at the level of laws, has regulated the issues of supervision to the extent and in the manner indicated in the provisions of Article 8(3) of the ECLS, although without direct reference to this legal basis.** It should be emphasised that administrative courts deal with the judicial control of public

<sup>20</sup> See Article 85 of the Act of 8 March 1990 on the municipal/commune self-government (Journal of Laws 2023, item 40, as amended), Article 77 of the Act of 5 June 1998 on the county self-government (Dz.U.2024.107) and Article 79 of the Act of 5 June 1998 on the voivodeship self-government (Dz.U.2024.566).



administration, *ergo* they do not belong to the catalogue of supervisory entities. The enumerative identification of the supervisory entities in the regulations of the Polish Constitution and the local self-government system acts should be assessed positively. "This strict rationing of supervisory entities has the effect of limiting oversight and thus reinforces the independence of local self-governments" (Dąbek and Zimmermann, 2005, p. 23).

The substantive description of the proportionality principle encompasses the extent and degree of violation of the proportion between the intervention of the supervisory body and the importance of the interests it is intended to protect. This relationship has been preserved through the creation of a catalogue of supervisory measures by the Polish legislator and the possibility of declaring an act invalid in the event of a "material infringement". In the event of a non-material infringement, the supervisory body will not declare a resolution or order of a local self-government unit invalid. It will solely indicate that the resolution or order was issued in breach of the law. The concept of a "material infringement" has been defined in court-administrative jurisprudence and includes the infringement by the local self-government unit's body "that adopts a resolution concerning the provisions on competence, the adoption of such an act without a legal basis, the incorrect application of the legal norm constituting the legal basis for the adoption of the act, as well as the infringement of the provisions governing the procedure for the adoption of the resolution. In other words, a failure leading to consequences that cannot be tolerated in a democratic state under the rule of law is considered a <<material>> infringement of the law".<sup>21</sup> This therefore forces the elimination of defective legislation from the legal transactions.

The proportionality principle referred to in the ECLS obliges supervisory bodies to apply appropriately moderate supervisory measures through their gradation and minimising supervisory interference in order to respect the principle of local self-governments' autonomy. **The gradation of supervision measures involves several elements.** First, an assessment of the nature of the infringement (whether the infringement is material or non-material). This assessment entails certain mandatory legal consequences indicated in the local self-government system acts. Second, consideration of the extent and intensity of the supervisory interference under the supervisory measure in question (this includes the declaration of an act subject to the supervisory procedure as invalid in whole or in part). Third, an important element is the justification of supervisory decisions, which is part of the proof that the supervisory body has applied a proportionate supervisory measure. The application of the measure in question must be adequate to protect the interests that the supervision is intended to protect.

In the area of supervisory activities, a breach of the proportionality principle referred to in Article 8(3) of the ECLS may involve two situations:

- the application of a supervisory measure of excessive intensity when a more lenient measure could have been applied in the given situation;
- or the application of a supervisory measure while there were no grounds for doing so, i.e. no infringement occurred (Chlipala, 2014, p. 28).

The result of a breach of the proportionality principle in the application of the supervision institution is the revocation of the supervisory act.

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<sup>21</sup> Judgment of the Voivodeship Administrative Court in Kraków of 22.04.2024, III SA/Kr 30/24, LEX No. 3710906. Similarly, see the judgment of the Voivodeship Administrative Court in Szczecin of 7.03.2024, II SA/Sz 1029/23, LEX No. 3705494.

Local self-government units have been equipped with the possibility to lodge a complaint with an administrative court, e.g., against a supervisory decision as a supervisory measure. This creates safeguards to protect the autonomy of local self-government units against undue interference by supervisory bodies, while allowing public tasks to be carried out on the basis of the autonomy principle. Judicial control should include an examination of lawfulness of the supervisory act for any breach of this principle. It should be emphasised that "proportionality cannot take precedence over lawfulness, but the assessment of lawfulness should be made through the prism of proportionality" (Chlipala 2014, p. 33).

The supervisory measure in the form of a substitute order of the voivode is of an exceptional nature and should be subject to special attention with regard to the possible infringement of the proportionality principle. The court-administrative jurisprudence indicates that this measure should be applied with this very principle in mind<sup>22</sup>.

The proportionality principle is applied in a variety of contexts, but in the system law of local self-governments, all of its applications relate to the protection of local self-government units and their autonomy against excessive and restrictive supervisory action.

The principle of proportionality in light of the institution of supervision thus encompasses two levels of action of the authorities: the objective and the subjective plane.

The object plane includes the gradation of supervisory measures by supervisory bodies. Three elements of it can be distinguished, influenced by the principle of proportionality:

- the supervisory authority's assessment of the nature of the infringement of the act issued by the local authority (material infringement / non-material infringement). This entails certain legal consequences indicated
- in the local government acts;
- the scope of intensity of supervisory interference under a given measure, which includes the declaration of invalidity of a given act in part or in whole;
- the justification of the supervisory acts (supervisory decisions), which is an element of persuasion that the supervisory authority has applied a proportionate supervisory measure.

The subjective plane includes the judicial review of supervisory acts in light of the principle of proportionality, which is a guarantee of the self-government's independence. Administrative courts are increasingly assessing the correctness of supervisory measures in light of the principle of proportionality, indicating its importance in the application of appropriate supervisory measures. A supervisory decision issued by a supervisory authority violates the principle of proportionality of supervisory measures when the supervisory sanction applied is inadequate to the extent of the alleged infringement of the law and is too far-reaching in relation to the purpose it was intended to serve. The principle of proportionality is the guideline for the administrative court in issuing a judgment involving the resolution of disputes between local government units and supervisory authorities. From a subjective (vertical) point of view, the institution of supervision is assessed on the basis of the principle of proportionality at the level of the supervisory authorities and the administrative court. This pattern should be assessed positively, as it creates the possibility of double verification of the correct action of the local self-government bodies.

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<sup>22</sup> Judgment of the Voivodeship Administrative Court in Lublin of 25.04.2017, II SA/Lu 1291/16, LEX No. 2291389.

#### 4. CONCLUSIONS

The doctrine indicates that this principle arose to protect individuals from the arbitrariness of power (Śledzińska-Simon, 2019, p. 29). The proportionality principle offers a type of protection against the actions of the state and public administration bodies, so that they interfere with citizens' rights in a reasonable and rational manner and do not abuse their measures and competencies, thereby harming the citizen. Its purpose is also to ensure that there is an appropriate balance between the objectives of the administration actions and the strictness of measures used to achieve those objectives<sup>23</sup>. Attention should be drawn to the conflict-related function of this principle, which is a tool for resolving conflicts of values and weighing rules (Wyrzykowski and Ziółkowski, 2012, pp. 42-45).

In the state legal order, we can distinguish several legal bases for the application of the proportionality principle. This principle is also explicitly expressed in Article 8(3) of the ECLS and has a direct impact on the shape of contemporary Polish local self-government. The proportionality principle defines the current shape of the supervision institution, protecting local self-government units against unjustified interference of supervisory bodies in their sphere of autonomy. This principle should apply as widely as possible to the triggering of individual supervisory measures by administrative supervision bodies. It should be concluded that, in formal and substantive terms, the Polish legislator, both at the level of the Constitution and at the level of laws, has regulated the issues of supervision over activities of local self-government units to the extent and in the manner indicated in the provisions of Article 8(3) of the ECLS. A *de lege ferenda* postulate is the widest possible application of the proportionality principle, explicitly expressed in the regulations of the European Charter of Local Self-Government in the field of supervision and in court-administrative control in the Polish legal order. The effectiveness of the implementation of the proportionality principle in local self-government regulations allows for a positive assessment of the functioning of the supervisory instrumentarium as a correlate of local self-governments (Dolnicki, 2015, p. 60) in the Polish legal order.

The principle of proportionality in the light of the institution of supervision covers two planes of action of the authorities: the objective and the subjective plane. The objective plane includes the grading of supervisory measures by the supervisory authorities (including the assessment of the nature of the breach of the act, the extent of the intensity of supervisory interference under the measure, and the justification of supervisory acts). The subjective (vertical) plane includes the judicial review of supervisory acts in light of the principle of proportionality. In vertical terms, the institution of supervision is assessed based on the principle of proportionality at the level of supervisory bodies and administrative judiciary, which creates the possibility of double verification of the correct action of the bodies of local self-government units. This clearly indicates the legitimacy of this supervisory pattern adopted in Polish local self-government.

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