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Technology Application of Normative Evidence for Resolving Administrative Disputes Concerning the Operation of Small Architectural Forms and Temporary Structures

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Abstract*: under the conditions of decentralization of power in Ukraine, positive changes in the management of cities in the regions of the country, unfortunately, are accompanied by an increase in the number of disputes between citizens (entrepreneurs) and local self-government bodies regarding the operation of small architectural forms and temporary structures. In settling disputes these disputes, there is an ambiguity in the judicial practice of courts of various instances and the legal position of local authorities, that often leads to an imbalance of private and public interests. The general purpose of this article is the formulation of a normatively grounded position, suitable for use in practical activities of local self-government bodies, state bodies, jurists, lawyers and administrative judges on the issues of functioning of small architectural forms and temporary structures that require resolution in the process of municipal and state administration and while the exercising justice. The methodology of the research was based on the use of normative theory of positive law with the use of mainly logical and semantic, comparative and legal methods, as well as the method of legal modeling and sociological survey. The main results of the study are: the definition of inconsistencies of legal acts and regulatory gaps in the mechanism of legal regulation of relations in the sphere of the functioning of small architectural forms and temporary structures; distinguishing normative features of unauthorized objects of urban development; determined the scope and defined the line of competence of local self-government bodies in rule-making and management in the sphere of the functioning of small architectural forms and temporary structures.

Keywords*: administrative dispute, administrative justice, competence of local self-government bodies, small architectural form, temporary structure, urban development.

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I. INTRODUCTION

The current stage of the administrative reform in Ukraine is characterized by a significant redistribution of power functions at the national and regional levels, with the provision of wider administrative and financial autonomy for local communities. At the same time, the reformation of the territorial division of the country with the formation of new territorial entities (communities), the creation of appropriate authorities at the local level, on the one hand, promotes the optimization of local government, access of citizens to the authorities to meet their needs and interests, on the other hand – often enough, tempts new and upgraded local self-government bodies to act authoritatively, especially in the context of a significant reduction of state control and supervision and low social activity in appropriate human settlement. This negative state also exacerbates an imperfect legislation which is characterized by numerous collisions and gaps etc. In this situation, unfortunately, an abuse on the part of both local administration and citizens arise.

One of the public spheres, in which today the conflict of substantive private (citizens) and public (territorial community in the person of its powerful subjects) interests, is the construction (installation) and use of small architectural forms (hereinafter – SAF) and temporary structures (hereinafter – TS). At the same time, according to judicial practice, the subject-causer of such conflicts can be citizens as well as officials of local self-government bodies and the bodies themselves. Such conflicts are exacerbated by ambiguous (non-uniform) practice of resolving administrative disputes in courts, whose advantageous decisions in many cases are used by interested persons (citizens, jurists and lawyers of local self-government bodies) in their own interests. This, in combination with many other factors, indicates the relevance of theoretical study of the situation in this area. Obviously, in the scientific sphere of Ukraine, although are contained a lot of theoretical developments, both fundamental and situational attempts to raise sharp issues for their social consideration, their role and

meanings remain largely in the field of theoretical discussions, forming a legal doctrine, but cannot be used in law enforcement, in particular, in the process of resolving administrative disputes in courts.

A. Purpose and methodological

Based on the foregoing, the main methodological idea, which actually reflects the purpose of this article, is the formulation of a statutory position, suitable for use in practical activities of local self-government bodies, state bodies, jurists, lawyers and judges on the issues of functioning of small architectural forms and temporary structures, arising in the process of municipal and public administration and the exercising of justice. The applied tasks of the article are: the clarification of the normative notion of small architectural forms and temporary structures; establishment of the scope and limits of competence of local self-government bodies in rule-making and management of the processes of functioning of small architectural forms and temporary structures.

To achieve this goal, the authors used methodological tools based on normative theory of positive law and consisted of general scientific and special research methods, in particular: logical and semantic, comparative law, and also the method of legal modeling. In the course of the survey, was conducted a sociological survey of two main groups of respondents: local government officials and citizens who used small architectural forms and temporary structures. The total number of respondents was 180 persons in the first group and 240 persons in the second group; the main area of the survey was the Kyiv region, with a total area of 28,121 square metres. Object of study were social relations in the field of city planning and justice, and the subject area of the study were regulatory acts, municipal normative and instructional acts, decisions of courts of administrative jurisdiction of different instances.

II. Normative Definition of the Concept of Small Architectural Forms and Temporary Structures

A. The concept of a small architectural form

A general overview of Ukrainian legislation in the field of city planning indicates the normative delimitation of the concepts of "a small architectural form" and "a temporary structure" as well as their legal regimes.

Thus, the term and concept of a small architectural form is determined by the Law of Ukraine "On Improvement of Human Settlements" of September 6, 2005, No 2807-IV: "A small architectural form is an element of decorative or other equipment of an object of improvement" [9]. The analysis of part 2 of Article 21 of the Law No 2807-IV allows to reveal that the legislator establishes a sufficiently wide open list of objects belonging to small architectural forms, namely: "... bowers, pavilions, canopies; park arches (arcades) and columns (colonnades); street vases, flowerpots and amphorae; decorative and game sculpture; street furniture (benches, tables); stairs, balustrades; park bridges; fences, gates, lattices; information stands, boards, signboards; other elements of improvement, determined by the law" [9].

The application of the formal and logical method gives grounds to distinguish two legislative classification obligatory conditions to assign objects to the SAF, namely:

firstly, it is a placement (installation) on an object of improvement, that is, within the territories strictly defined by the law: a) territories of general use; b) adjacent territories; c) territories of buildings and structures of engineering protection of the territories; d) territories of enterprises, establishments, organizations and territories entrusted to them under the terms of the agreement; e) other territories within the human settlement;

secondly, such an object is an element of an improvement, which is provided exclusively by the legislation.

In addition, the current Resolution of the Cabinet of Ministers of Ukraine of March 30, 1994, No 198, which additionally uses the concept of "a small architectural form for conducting entrepreneurial activity" draws attention. In accordance with paragraph 2 of clause 4 of this Resolution (the Uniform rules of repair and maintenance of highways, streets, railway crossings, rules of their use and protection), a small architectural form for business activities conducting is "... a small (up to 30 square metres) construction of a retail and service purpose, which is made of lightweight constructions and is installed temporarily without the construction of the foundation" [1].

However, the comparative and legal analysis and comparison of this definition with the definition of the concept of a temporary structure stated in the Law of Ukraine "On Regulation of Urban Development Activities" of February 17, 2011, No 3038-VI gives grounds for the identification of these concepts that is considered inadmissible and indicates inconsistence of the provisions of the law and the by-law normative and legal act.

B. Concept and legal regime of temporary construction

The concept of a temporary structure is embodied in Article 28 of the Law of Ukraine "On Regulation of Urban Development Activities" in February 17, 2011, No 3038-VI. Thus, "a temporary structure of retail, service, sociocultural or other purpose for business activities – one-storey building, which is made of lightweight constructions, taking into account the basic requirements for constructions specified by the technical regulations of building products, buildings and constructions, and is established temporarily, without arrangement of the foundation" [10].

More substantially, the main varieties of temporary structures (hereinafter referred to as TS) make the notion of this concept, determined by the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine, in the Procedure for the placement of temporary structures for entrepreneurial activity conducting [2].

The provisions of the decree classify the constructions into two groups:

1) mobile TSs – buildings that do not have a closed room for temporary staying of people, in which retail equipment, a frosted food cabinet, a tray, a container, a vending machine, other devices for seasonal retail and other business activities can be located there;

2) fixed TSs – buildings with a closed room for temporary staying of people and an outer contour area up to 30 square metres [2].

As a result of the generalization of normative features, it can be asserted that for being considered as a temporary structure the object must possess a set of obligatory characteristics, the absence of at least one of which excludes such an opportunity. These features are the following:

1) retail, service, cultural and social or other purpose of the object;

2) the object is the so-called means of enterprise;

3) the technical condition of the object, namely, is a one-story building, made of lightweight constructions, without the laying the foundation;

4) the temporary nature of placement (use).

In addition to the essential features, it is necessary to point out the features that determine the legal status and mode of temporary structures. The following features are the result of a systematic analysis of the main branch legal rules.

Firstly, temporary structures belong to urban construction projects at local level (local urban construction activities) – have a self-governing local basis;

secondly, temporary structures are subject to the prohibition of unauthorized placement, defined by two main laws No 2807-IV (paragraph 5 of part 1 of Article 16) and No 3038-VI – have a permissive legal regime;

thirdly, the documentary basis for the placement and use is the Certificate for temporary structure (clause 2.1 of the Procedure for the placement of temporary structures No 244) [2];

fourthly, the legal basis (procedure) for the placement of temporary structures for entrepreneurial activity conducting is established by the central executive authority, which ensures the formation of state policy in the field of city planning (part 4 of Article 28 of the Law No 3038-VI) – Procedure for the placement of temporary structures for entrepreneurial activity conducting approved by the decree of the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine dated October 21, 2011, No 244 – has a state-legal constituent nature.

III. Legal Grounds for Defining Objects (SAFs and TSs) as Unauthorized (Unwarranted) Placed (Set or Constructed)

Studying this issue, first of all, it should be noted that although in practice, including law enforcement one, the terms "unauthorized (unwarranted) placed (constructed)" concerning SAFs and TSs are commonly used, but the current Ukrainian legislation does not contain the terms or definitions of these categories.

In the legal field, the analysis of only bylaws makes it possible to highlight some of the main features that contribute to identifying objects as "unauthorized placed (unwarranted constructed)", in particular:

a) the absence of appropriate, legalized in accordance with the established procedure permission documentation for the object (in particular, the Certificate for temporary structure), determined by the current legislation, decisions of local councils, their executive bodies;

b) non-compliance with the requirements of the certificate or deviation from it during placement, etc.

At the same time, the analysis of judicial practice, as well as the results of a sociological survey (68% of respondents from local government officials and 72% of respondents from entrepreneurs) give grounds to consider that more rational and legally correct in the law enforcement process regarding the functioning of SAFs and TSs is the term "groundlessly placed or installed". Arguments-features according to such a position, in agreement with the above-mentioned features and peculiarities of the legal status and the regime of SAFs and TSs, can be the following:

a) the facts of cancellation of permission documentation (in particular, the Certificate for temporary structure) of the TSs, SAF, the expiration (for example, it is typical for disputes regarding the recognition of the SAF or TS unauthorized (unwarranted) placed (constructed), when such an object was set by decision (permission) of the authorized authority, however, after the expiration of the certificate, was not independently (by entrepreneur) taken away (demolished, dismantled) or the non-prolonged certificate of the object) and remained on the original legally determined place, even without its further target (for example, entrepreneurial) usage. Obviously, what most respondents agree with (96% of employees of local self-government bodies, 98% of respondents-entrepreneurs), such an object should be recognized not autonomously, but unreasonably placed;

b) the discrepancy between the actual location of the TS, SAF, other similar buildings to the Certificate for temporary structure, construction norms (74% of employees of local self-government bodies, 89% of respondents-entrepreneurs);

c) the absence of a document certifying the right to use the land, including the termination of the land lease agreement, if the operation of such an agreement is not prolonged in accordance with the established procedure (for the TS) (67% of employees of local self-government bodies, 81% of respondents-entrepreneurs).

Consequently, the correspondence of an object to the above features will make it possible to recognize it "unreasonably located or established" (instead of the term "unauthorized (unwarranted) placed (constructed))".

IV. Powers of Local Self-Government Bodies

Since SAFs or TSs, which are constructed (placed) both on legal grounds and autonomously (without reason), are objects of activity for improvement or city-planning activity accordingly,

the following issues of powers of local self-government bodies and their limits in the specified spheres are important for studying.

A. The powers of local self-government bodies regarding the placement of SAFs at the objects of improvement, dismissal (including by means of dismantling) of them

It should be noted that the Law of Ukraine No 2807-IV defines the legal, economic, ecological, social and organizational principles for the improvement of settlements and is aimed at creating conditions conducive to human life.

In accordance with part 1 of Article 1 of this Law, improvement of settlements is a complex of works on engineering protection, clearing, drainage and greening of the territory, as well as social and economic, organizational and legal and ecological measures for improvement of the microclimate, sanitation, noise reduction, etc., which are carried out on the territory of the settlement with the purpose of its rational use, proper maintenance and protection, creation of conditions for protection and restoration of favorable environment for human life [9].

In order to provide management in the field of improvement of settlements, Article 5 of the Law No 2807-IV a list of relevant bodies is determined, namely:

a) the Cabinet of Ministers of Ukraine;

b) the central executive body, which ensures the formation of state policy in the sphere of housing and communal services;

c) the Council of Ministers of the Autonomous Republic of Crimea, local state administrations;

d) local self-government bodies;

e) other authorities within their powers [9].

Distinguishing the local self-government bodies as the object of our study, we note, that in accordance with the provisions of Articles 20 and 40 of the Law No 2807-IV, the organization of improvement and self-regulation in the field of improvement of settlements is carried out by village, township, city councils and their executive bodies, which decisions are obligatory within the respective territory [9].

The meaning of the concept "executive bodies" of local councils is disclosed in another legislative act. Thus, Article 1 of the Law of Ukraine "On Local Self-Government in Ukraine" (hereinafter Law No 280/97-VR) stipulates, that executive bodies of the councils are bodies, which according to the Constitution of Ukraine and this Law, are created in village, township, city and city-district (in case of their creation) councils for the exercise of executive functions and powers of local self-government within the limits specified by this and other laws [4].

When examining the issue of authority of local self-government bodies in the management of SAFs, it should be noted, that in accordance with paragraph 44 of the first part of Article 26 of the Law No 280/97-VR, namely village, township, city councils authorized at their plenary meetings to decide on the issue of placement, in accordance with the law, the rules on issues of improvement of the territory of a settlement, ensuring cleanliness and order in it [4].

Moreover, owned (self-governing) authorities of executive bodies of village, township, city councils include, in particular, the organization of improvement of settlements and monitoring of the condition of improvement of settlements [4]; issuing a permission to violate objects of improvement in cases and order in accordance with the procedure provided for by law (art. 30, part 1, par. ‘a’, subpar. 17) [4].

Another legislative act that establishes the powers of local councils and their executive bodies in the field of improvement of settlements is the Law of Ukraine "On the Improvement of Settlements".

Thus, according to Article 10 of the Law No 2807-IV, the powers of village, township, city councils in this area, in particular, include:

a) approval of the rules of improvement of the territories of settlements (art. 10, part 1, par. 2) [9];

b) the establishment, if necessary, of the bodies and services to ensure the implementation, in conjunction with other entities of communal ownership, of the improvement of settlements, the determination of the powers of these bodies (services) (art. 10, part 1, par. 3) [9].

The powers of the executive bodies of village, township, city councils, in accordance with Article 10 of the Law of Ukraine "On the Improvement of Settlements", in particular include:

a) implementation of measures for the improvement of settlements (art. 10, part 2, par. 1) [9];

b) self-regulatory control over the condition of improvement and maintenance of the territories of settlements (art. 10, part 2, par. 5) [9];

c) issuing a permission to violate objects of improvement in cases and order provided by this Law (art. 10, part 2, par. 14) [9].

In order to control the state of improvement of settlements, the implementation of the Rules of improvement of the territory of a settlement, part 2 of Article 40 of the Law No 2807-IV authorizes village, township, city councils to set up inspections for the improvement of settlements. The Regulation on inspection of improvement of settlements is approved by the relevant village, township or city council on the basis of the Model Regulation, which is approved by the central executive body, which ensures the formation of state policy in the field of housing and communal services. At the same time, it should be noted that the central executive body, which ensures the formation of state policy in the field of housing and communal services, has not approved the Model Regulation on the inspection of improvement of settlements yet. Thus, currently there is no legal basis for approval by village, township and city councils of local regulations for the inspection of improvement of settlements, and hence for the establishment of such inspections (which should operate on the basis of status regulation).

That is, in this situation, the local councils, which have set up appropriate inspections and approved their regulations, have actually exceeded their authority.

Determining the status of acts of local self-government bodies, it should be noted that in accordance with Article 73 of the Law No 280/97-VR acts of the council of village, township, city mayor of city-district council, executive committee of village, township, city, city-district council, adopted within their powers are binding on all executive bodies, associations of citizens, enterprises, institutions, and other organizations that are located within the respective territory, officials as well as citizens permanently or temporarily living within the respective territory [4].

In addition, Article 34 of the Law No 2807-IV stipulates that the rules for the improvement of the territory of a settlement are a regulatory legal act, which establishes requirements for the improvement of the territory of a settlement [9]. The rules are developed on the basis of the Model Rules for the improvement of the territory of the settlement for all villages, townships, cities and are approved by the relevant local self-government bodies. The aforementioned law clearly stipulates that the Rules for the improvement of the territory of a settlement should include: the procedure for accomplishment of improvement and maintenance of the territories of the objects of improvement; requirements for the organization of territories of enterprises, institutions, organizations; requirements for the maintenance of green planting within the objects of improvement – public areas; requirements for the maintenance of buildings and structures of engineering protection of the territory; requirements for sanitation of the territory; the size of the boundaries adjacent to the enterprises, institutions and organizations of the territory in numerical value; the procedure for placement of small architectural forms; the procedure for exercising self-government control in the sphere of improvement of settlements; other requirements stipulated by this and other laws.

It should be noted that the delegation of powers of local self-government bodies to other bodies (except executive bodies and other local self-government bodies) is not explicitly provided by law. At the same time, part one of Article 14 of the Law of Ukraine "On Local Self-Government" provides that village, township, city, city-district (if they are created) councils may allow upon the initiative of residents to create house, street, street block, and other bodies of self-organization of the population and partly empower them with their competence, finances, property [4]. In turn, in accordance with the Law of Ukraine "On Bodies of Self-Organization of Population" of July 11, 2001, No 2625-III, it is determined that these entities are given the scope of their powers only for the implementation of measures for the accomplishment of improvement works [7]. According to the provisions of Article 2 of the Law No 2625-III, municipal enterprises, institutions, and organizations do not belong to self-organization bodies of the population.

The current legislation does not provide for the possibility of delegating authority of local self-government bodies to the bodies of self-organization of the population concerning carrying out organization and control in the field of urban development.

As a summary of the abovementioned, here we present a number of factors that determine the legal status of local self-government bodies in the field of governance of the SAFs, namely:

- the content of the legislative definition of the concept of "improvement";
- belonging of local self-government bodies to governing bodies in the sphere of improvement of settlements;
- existence of appropriate powers of local councils and their executive bodies (namely their own (self-governing) in the sphere of improvement, in particular, the organization of improvement and self-governmental control in the sphere of public improvement of settlements);
- possibility to adopt a local regulatory legal act - Improvement Rules;
- the principle of legal, organizational and financial autonomy within the powers defined by law, and paragraphs 1, 2 of Article 4 of the European Charter of Local Self-Government (ratified by the Law of Ukraine "On the Ratification of the European Charter on Local Self-Government"), according to which the main powers and functions of local self-government bodies are determined by the Constitution or law [50]. However, this provision does not prevent the delegation of powers and functions to local self-government authorities for special purposes under the law. Local self-government bodies have the right within the law to freely resolve any matter that is within the scope of their competence and which is not delegated to any other body.

As a result of comparing the regulations and the factors mentioned above, we come to the following conclusions:

1) local self-government bodies represented by village, township, city councils within the limits of their powers have the right:

a) to approve the Improvement Rules, which should include the procedure for the placement of SAFs;

b) to establish the Procedure for dismissal of the object of improvement from unjustifiably set up (placed) SAFs (part 4 of Article 20 of the Law No 2807-IV provides that the decisions of local executive authorities and local self-government bodies on the improvement of the territory of a certain settlement are explicit for implementation by enterprises, institutions, organizations located within this territory and citizens living within this territory), in the form of a separate legal regulatory act, or section of the Improvement Rules (which is covered by the part of the legal direction "other requirements provided by this and other laws", which, according to part 1 of Article 1 of the Law No 2807-IV,

refer to "organizational and legal measures ... carried out within the territory of a settlement for the purpose of its ... protection, creation of conditions on the protection and restoration of a favourable environment for human activity)" (art. 1, part 2) [9];

c) to create, on the basis of the second part of Article 40, Law No 2807-IV, if necessary, bodies (of inspection of the improvement of a settlement) and services to ensure the accomplishment of the improvement of settlements together with other entities of communal ownership, and to establish the powers of these bodies (services);

2) local self-government bodies, represented by village, township, city councils and their executive bodies, within the limits of their powers, have the right:

a) to carry out self-governmental control over the state of improvement of settlements, including by carrying out inspections of the territories;

b) if violations of the rules of improvement are detected (found out), for their immediate elimination (bringing to the state of proper maintenance of the objects of improvement) – to carry out "organizational and legal measures", including directions for voluntary dismissal of the object of improvement, and in the case of its non-compliance – making a decision on compulsory dismissal;

3) delegation of powers of local self-government bodies in the sphere of improvement, in particular concerning making directions for the voluntary dismissal of the object of improvement, and in case of failure of its implementation – making a decision on compulsory dismissal by non-governmental entities (including communal enterprises) is not provided by legislation.

B. Powers of the entities of urban development in the organization of placement, control, dismantling of temporary structures

Legal and organizational foundations of urban development are determined by the Law of Ukraine "On Regulation of Urban Development Activities" of February17, 2011, No 3038-VI [10].

However, the definition of the concept of "urban development (urban development activities)" is contained in another act – the Law of Ukraine "On the Basics of Urban Development" of November 16, 1992, No 2780-XII. According to Article 1 of this Law, urban development (urban development activities) is "a purposeful activity of state bodies, local self-government bodies, enterprises, institutions, organizations, citizens, associations of citizens in creating and maintaining a complete living environment, which includes forecasting the development of settlements and territories, planning, construction and other use of territories, design, construction of urban development objects, construction of other objects, reconstruction of historical settlements in the course of keeping the traditional nature of environment, restoration and rehabilitation of cultural heritage objects, creation of engineering and transport infrastructure [3].

Article 6 of the Law No 3038-VI defines the list of governing bodies in the field of urban development, architectural and construction control and supervision, among which there are local self-government bodies (part 1, Article 6).

As can be seen from part 3 of Article 15 of the Law No 3038-VI, the competence of the local self-government body as an authorized body in the field of urban development is determined in accordance with the law. Thus, within the competence of the executive bodies of village, township, city councils in the field of urban development according to Article 14 of the Law, the following directions of urban development control belong:

a) carrying out works on entering into service of completed construction projects in accordance with the procedure established by law; organization of protection of cultural heritage;

b) ensuring the state control over the observance of the legislation, the approved urban development documentation during the planning and construction of the respective territories in accordance with the procedure established by law;

c) suspension in the cases provided for by law of construction, which is carried out in violation of urban development documentation and projects of individual objects, and which may also cause damage to the environment;

d) control over ensuring the reliability and safety of the operation of buildings and structures, regardless of ownership form in areas affected by dangerous natural and man-made phenomena and processes [10].

At the same time it should be noted that the Law simultaneously operates with several concepts of control:

1) control over observance of urban development legislation;

2) control in the field of urban development;

3) control over urban development;

4) architectural and construction control.

Logical and semantic analysis of these quintessences gives grounds to conclude that control over observance of urban development legislation, control in the field of urban development and control over urban development are identical concepts, and architectural and construction control is a part of control in the sphere of urban development.

The essence of architectural and construction control is defined by Article 41 of the Law No 3038-VI (state architectural and construction control is a set of measures aimed at compliance with the requirements of legislation in the field of urban development, building codes, state standards and rules by the customers, designers, contractors and expert organizations during preparatory and construction works) [10].

Local self-government bodies carry out their activities in the field of urban development and architecture in accordance with the Law of Ukraine "On Local Self-Government".

Thus, only at plenary meetings of the village, township, city council the approval of local urban development programs, general plans of development of the respective settlements, other urban development documentation (paragraph 42 of part 1 of Article 26 of the Law of Ukraine) is carried out in accordance with the established procedure.

As for the powers of the executive bodies of village, township, city councils in the field of urban development and architecture, which are provided in the Law of Ukraine "On Local Self-Government" (both own (self-governing) and delegated), they are reduced only to the powers in the field of construction (there is also a corresponding name of these powers in the Law), which represent only a part of urban development activity (clauses "a", "b" of part one of Article 31 of the Law of Ukraine "On Local Self-Government").

At the same time it should be noted that executive bodies of village, township, city councils in matters of fulfillment of the delegated powers provided by subparagraph “b” of part one of Article 31 of the Law of Ukraine "On Local Self-Government" are under the control of the respective executive bodies [6].

Thus, a systematic analysis of the legal norms mentioned above gives grounds to draw the following intermediate conclusions:

1) the current legislation does not regulate the control relations in the field of placement of temporary structures, and the corresponding control powers are not assigned to any authority by law;

2) temporary structures and their customers by parties involved do not belong to objects of state architectural and construction control, but are covered by the concept of control in the field of urban development;

3) in case of creation and approval by local self-government bodies of the procedures for placement of temporary structures, their dismantling (dismissal) such activity may be considered illegal, since the regulatory activity on the relevant issues does not belong to their own or delegated powers of local self-government bodies in the field of urban development;

4) a gap in the legislation is the regulation of relations on the control of urban development activities in the matter of placement of temporary structures and their dismantling in the case of unauthorized placement, as well as the creation of a direction on voluntary dismantling, and in case of its implementation failure – making a decision on forced dismantling;

5) existing practice of actual application by local self-government bodies, local state administrations of the analogy of law in these legal relations is considered inadmissible, since it leads to the establishment of new rights and responsibilities of authorized entities;

6) in the event of a dispute on the law under investigated issues not regulated by the law, its resolution should be carried out exclusively in court. Therefore, based on the requirements of part 7 of Article 9 of The Code of Administrative Proceedings of Ukraine, according to which in the absence of a law regulating the relevant legal relations, the court applies the law regulating similar legal relations (analogy of law), and in the absence of such law the court proceeds from the constitutional principles and general principles of law (legal analogy) [8], it is advisable to be guided in legal practice by the principle of analogy of law, applying the rules governing relations in the field of architectural and construction control.

V. CONCLUSION

Current legislation of Ukraine is not perfect in terms of regulation of relations with the administration of urban development. At present, there are no legal regulations that would authorize local self-government bodies to independently establish an order for dismantling small architectural forms and temporary structures, as well as to enforce this order, including delegating such duties to other entities. This leads to unequal rulemaking practice of local self-government bodies in the development and approval of the rules of placement and dismantling of small architectural forms and temporary structures, as well as to ambiguous enforcement activity of these bodies and bodies of state power. The existing legal uncertainty complicates the process of hearing relevant cases in administrative justice courts and passing unambiguous decisions from them.

In the cities of Ukraine, the functioning of small architectural forms differs from temporary structures by the legal regime, which does not allow to consider them and their related relations in a complex, according to one algorithm. The basic legislative act defining the legal, economic, environmental, social and organizational foundations of small architectural forms is the Law No 2807-IV; and the legal and organizational foundations of temporary structures are stated in the Law of Ukraine "On Regulation of Urban Development Activities" No 3038-VI.

Accordingly, based primarily on the provisions of the abovementioned laws, it is proposed to consider the activity of local self-government bodies to establish at the local level the Procedure (Rules) for the dismantling of small architectural forms legitimate.

At the same time, it is suggested to pay attention to some warnings, namely:

a) this authority is conditionally exceptionally its own one, as it is not expressly provided by the law, but it may be recognized so in connection with the competence to establish the order of placement of small architectural forms and carry out control in this area, as well as in accordance with paragraph 44 of part 1 of Article 26 of the Law of Ukraine No 280/97-VR, in which the exclusive competence of the village, township, city councils includes "the establishment in accordance with the legislation of rules on the improvement of the territory of a settlement, ensuring its cleanliness and order, trade in the markets, maintaining silence in public places, for breaking which administrative liability is provided";

b) such order may form a part (section) of the Rules for the improvement of the territory of a settlement as a single regulatory legal act, which establishes the requirements for the improvement of the territory of a settlement

(par. 9 "other requirements provided by this and other laws" of part 2 of Article 34 of the Law No 2807-IV), textually placed, for example, after the "order of self-government control in the sphere of the improvement of settlements" or may be adopted in the form of a separate regulatory legal act;

c) such an order must be approved by the decision of the local council (paragraph 44 of part one of Article 26 of the Law of Ukraine No 280/97-VR).

The regulatory activity of local self-government bodies on the establishment at local level of the Procedures (Rules) for the dismantling of temporary structures should be considered unauthorized. After all, according to part 4 of Article 28 of the Law No 3038-VR the right to establish the procedure for placement of temporary structures for conducting business activities is vested in the central body of executive power, which ensures the formation of state policy in the field of urban development (The Ministry of Regional Development, Building and Housing and Communal Services of Ukraine), which approved the relevant Order by the Decree of October 21, 2011 No 244. Such order is not typical but unique for use and guidance in the activity by all authorized entities, in particular local self-government bodies of all territorial communities, cities.

Based primarily on the provisions of the laws, in cases of violations of the rules of improvement (in the part of the unauthorized placement of SAFs), in order to immediately eliminate them, it is necessary to consider legitimate the activity of local self-government bodies to make orders for the voluntary dismissal of the object of improvement,

and in the case of a failure to carry it out – compulsory dismissal, which is an activity covered by activities related to the organization of improvement (bringing to the state of proper maintenance of the objects of improvement) and carried out within the framework of organizational and legal measures in the sphere of improvement.

Due to the legislative non-regulation of control relations in the field of placement of temporary structures (presence of a gap in the law) in case of disputes about the law, it is considered necessary to resolve this gap through law-making process, and until then, it is considered advisable to settle disputes exclusively in court. Herewith it is recommended that court should be guided by the principle of analogy of law, applying the rules governing relations in the field of architectural and construction control.

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