

THE MODERN STATUS OF LEGAL REGULATION OF DELEGATION OF AUTHORITY FROM BODIES OF EXECUTIVE POWERS TO LOCAL SELF-GOVERNMENT BODIES IN UKRAINE

Novak A. O.

INTRODUCTION

The constitutional reform, the reform of decentralization of state power and the development of local government initiated in Ukraine are recognized as one of the priority tasks of modern state-building. The experience of many democratic countries shows that the rational distribution of responsibilities between executive authorities and local authorities enables them to ensure the most effective interaction in order to create conditions for proper life support and harmonious development of a person, to provide integrated and stable territorial development using all the potential of administrative territorial units.

Juridical science has traditionally paid considerable attention to the constitutional and legal issues of regulating the competence of local government and its bodies. In particular, we can specify the works of such Ukrainian scholars as M.O. Baymuratov, O.V. Batanov, I.I. Bodrova, V.I. Bordenyuk, G.V. Bublik, M.I. Kornienko, A.R. Krujian, V.S. Kuibida, P.M. Lyubchenko, A.Yu. Lyalyuk, A.V. Martselyak, S.G. Seryogina, K.E. Solyanik, Yu.M. Todyka, V.L. Fedorenko, I.S. Szcetbetun and others. However, the overall study of the legal regulation of delegated powers do not occur often and do not cover all problematics of this issue.

The power delegation of executive authorities to the local self-government bodies, having an importance in terms of optimizing the mechanism of public administration and improving the quality of service for the population, should have its clear legislative regulation and legal framework for implementation. It should be noted that the legal framework can be defined from the point of view of narrow and broad approaches. The first one allows us to speak about the legal basis for the power delegation, characterizing the range of legal rules on the basis certain powers of the executive authorities are given to the municipal authorities. The second, which is broader, provides opportunities to cover the legal norms that regulate social relations not only with the giving of delegated powers to local self-government bodies, but also arrangements on provision and implementation of such powers. So, this approach we consider more effective, since it allows us to investigate the systemacity of legal regulation and the actual legal aspects of the implementation of delegated authority.

On the basis of the definition of the term “legal basis of organization and activity of local authorities”, studied in the science of municipal law, under the legal basis of the delegation of powers from executive bodies to local self-government bodies we understand the set of rules of law governing social relations that arise in connection with the giving the local authorities with certain powers of bodies of executive authorities and their appliance, provide with necessary and sufficient conditions for them and are implemented into the relevant municipal legal relations. At the same time as a collecting term it includes: the legal basis of the delegation to local authorities the certain powers of executive authorities and the use of delegated powers of bodies of executive authorities by local authorities; constitutional, legislative, sub-legislative and municipal-legal foundation.

1. Constitutional and international legal bases of the delegation of certain powers from bodies of executive power to local self-government bodies

The modern institution of delegated powers of local self-governing authorities is based on constitutional foundation, which include general and special components. The norms of the Fundamental Law of Ukraine which ensure the constitutional and legal conditions and more generally determine the requirements for the application of this institute refer to the general components. These include, in particular, the following: a) constitutional norms-principles on the organization and implementation of public authority in Ukraine (principles of a democratic, social, law-governed, unitary country with the highest social value of a person, people power, the separation of state power, the guarantee of local self-government, supremacy of law, legitimacy etc.; b) constitutional determination of the legal nature of local self-government in Ukraine; c) norms on the constitutional regulation of the systemic and structural organization of local self-governing authorities; d) norms defining certain issues of the functioning of local self-governing authorities (issues of the own jurisdiction of the territorial communities and bodies, created by them, material and financial basis of local self-government); e) norms on the regulation of issues of organization and implementation of executive power (in terms of determining the authorized person delegating powers to local self-government bodies, as well as systems of executive power exercising control of such powers); f) norms which establish the state guarantees of local self-government (financial support of local government, legal independence within the limits of powers determined by the law, judicial protection of the rights of local government).

At the same time, we must take note that the regulatory influence of the constitutional norms on the institution of delegation of authority to local self-government bodies is much broader and includes the norms of Section II of the

Constitution of Ukraine “Rights, Freedoms and Responsibilities of a Person and a Citizen”¹. They establish the highest legal standards for those powers that are aimed at ensuring appropriate living standards, providing the administrative services to citizens. The delegated powers accounting half of the content of functioning of local self-governing authorities are bound to obey to general trends of the development of humanistic principles in public administration. As it is noted in actual scientific sources, the humanism as a theory and practice of modern state development is more oriented not to a wide range of democratic values, but to the protection of collective and personal rights, needs and interests².

In this regard, we propose to supplement the list of fundamental rights and freedoms of man and citizens indicated in Section II of the Constitution of Ukraine with the right of good governance and to establish its guarantees. In our opinion, the constitutionalizing of this right will provide grounds for demanding from the state a new quality of public administration where management processes are carried out in order to ensure the realization of human rights and freedoms in a transparent, responsible and competent way, with the respect to the values of democratic procedures and institutions³.

The special constitutional foundations of the institution concerning the delegated powers of local self-governing authorities form the norms of the Basic Law which establish the institution of delegated authority and regulate relations that are directly connected to the provision and implementation of such powers. For example, we speak about norms of parts 3, 4 Art. 143 of the Constitution of Ukraine⁴. Actually, they establish the powers of executive authorities, which are given to local self-government bodies and determine its way (the means) by law; in the most general terms the subject – there are local self-government bodies – of such powers is also established. The state guarantees are fixed regarding the full financial provision of such powers and its sources. It also establishes the principle of subordination of local self-government bodies to bodies of executive power for the exercise of such powers.

We must emphasize the existence of significant deficiencies in assessing the existing state of the constitutional regulation of delegated powers. Thus, the legislator uses the term “delegated powers” in the text of the current version of the Constitution of Ukraine (Item 7, Part 1, Art. 119), but in the Part 3 of Art.

¹ Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР. *Відомості Верховної Ради*. 1996. № 30. Ст. 141.

² Конституционные преобразования в Украине: история, теория и практика : монография / М.Ф. Орзих и др.; под ред. М.Ф. Орзиха. Киев : Юринком Интер, 2013. С. 333.

³ Новак-Каляева Л.М. Сучасні тенденції до конвергенції в концепціях державного управління. *Вісник Національної академії державного управління при Президентові України*. 2013. № 1. С. 34.

⁴ Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР. *Відомості Верховної Ради*. 1996. № 30. Ст. 141.

143 it is not used⁵. Instead, he/she uses the formulation “certain powers of the bodies of executive power may be given by law”. It is obvious that the Basic Law laid the model of so-called “given” powers⁶, but it does not correspond to the classical ways of forming competence such as: establishment, transfer, delegation, recognized in scientific circles. Such a situation does not contribute to the formation of doctrinal foundations and the development of sustainable conceptual approaches to the definition of competence of local self-governing bodies. In addition, the legislator used the model of legal regulation of delegated authority, which does not allow the use of contractual mechanisms.

In the text of Parts 3, 4 of Art. 143 of the of the Constitution of Ukraine⁷ also does not clearly define the circle of local self-government bodies, which can be given powers of executive authorities. This raises the question of the possibility of giving such powers to representative self-governing bodies. Therefore, it may put representative bodies of local self-government in a subordinate position to the bodies of executive power. At the same time, the circle of “relevant executive bodies” remains unclear, which should control the implementation by local government of powers given by executive authorities.

Above-mentioned weaknesses as well as the absence of clear conceptual foundations of local government, the lack of separation of the subject matter jurisdiction of state authorities and local self-government bodies, the incompleteness of the formation of the competence sphere of the activity local authorities, the lack of an effective system of control over the activities of municipal structures, so all these disadvantages necessitate significant modernization of constitutional regulation as the institution of delegated powers and local government as a whole.

This task should be the draft Law of Ukraine “On Amendments to the Constitution of Ukraine (regarding the decentralization of power)” (Reg. №. 2217a)⁸, which among others proposes to clarify the way of extending the competence of local self-governing bodies (by delegating them certain powers of executive bodies), circles of local governing authorities which may be delegated certain powers of the bodies of executive power (executive bodies of local self-government of the community, executive committees of the district, regional councils), levels of territorial organization of power, which may use the mechanism of delegation (community, district, region), sources of material and financial support by the state in order to implement and exercise such powers by

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Про внесення змін до Конституції України (щодо децентралізації влади) : проект Закону України від 1.07.2015 р. № 2217. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55812.

local authorities as well as circles of controlling, exercising of such powers, the bodies of executive power. In addition, the mechanism of revocation of delegated authority is introduced.

Supporting the amendments and supplements in proposed draft law, we believe that: 1) the term “exercise” of delegated powers needs to be clarified, which is out of character with the established forms of realization of the law; 2) it is necessary to preserve, along with the agreement way of delegation, the possibility of delegating certain powers of executive bodies to local self-government bodies by law; 3) to establish additional guarantees of the autonomy of local self-government, establishing a mechanism of the termination of the implementation delegated powers upon an initiative of the local self-government bodies on the grounds and in the manner prescribed by law.

An important role in the legal regulation of the delegation of powers from executive bodies to local self-government bodies shows the provisions of the European Charter of Local Self-Government the implementation of which is recognized as one of the tasks of the Ukrainian legal policy in the field of local self-governing. First of all, it is necessary to pay attention to the fact that the Charter operates with the notion of “delegation of authority”, in contrast to the national level where a variety of models is allowed (Part 5 Art. 4). But, at the same time, says about the possibility of empowering local authorities with powers and functions for special purposes in accordance with the law (Part 1 Art. 4)⁹. In defining the main requirements for the sphere of competence of local self-governing, the European Charter bases on several basic principles: a) the principle of legality, which requires the definition of the main powers and functions of local self-government bodies at the constitutional or legislative level (Part 1 Art. 4); b) the negative principle of legal regulation of the competence of municipal structures (Part 2 Art. 4); c) the principle of subsidiarity, which involves the transfer of functions to the maximum close level to the population, but only when this level is capable of effectively fulfilling this function (Part 3 Art.4)¹⁰; d) the principle of fullness of powers, which manifests that the scope and content of powers should be sufficient for local self-governing bodies in order to be able to implement independently and without obstructions provide achievement of all issues of local importance (Part 4 Art. 4)¹¹; e) the principle of exceptional powers, which means the prohibition of the

⁹ Європейська хартія місцевого самоврядування: Хартія, міжнародний документ від 15.10.1985 р. URL: http://zakon2.rada.gov.ua/laws/show/994_036.

¹⁰ Щодо відповідності національного законодавства України положенням Європейської хартії місцевого самоврядування: експертний висновок / підгот. Директор. з пит. демократич. інститутів Генерал. директор. з пит. демократії та політ. справ РЄ у спів-ві з В. Прошко. Страсбург, 2010 р. URL: <http://www.slg-coe.org.ua/wp-content/uploads/2012/10/Висновок-РЄ-щодо-відповідності-національного-законодавства-України-положення.pdf>.

¹¹ Муниципальное право России / под ред. А.Н. Кокотова. 2-е изд., перераб. и допол. Москва : Юрайт, 2012. С. 179.

removal of such powers or their transfer by the local self-government bodies with the exception of legislatively defined cases (Part 4 Art. 4)¹²; f) the requirements of consulting with local self-government bodies in the process of planning and decision making on all issues that directly concern them (Part 6 Art. 4)¹³. All these provisions have general nature for relations in the area of the formation and implementation of the competence of municipal authorities, and therefore they are extended to the delegation of powers.

Speaking directly about the institution of delegation of authority, Part 5 Art. 4 of the European Charter¹⁴, firstly, outlines it as a facultative and an additional way of competence formation of local self-governing. This means that delegated powers should not be dominant in the competence of municipal authorities and prevail over their own authority. Secondly, the delegating person may be a well-defined body (both national and regional) of the territorial organization of state power. Thirdly, when we delegate to local self-government bodies the powers of central or regional authorities, it guarantees them the right and the possibility to adapt their activities to local conditions¹⁵. Since the “adaptation” of government action to implement delegated powers can be carried out in legal forms, so the relevant provision of the Charter actually provides the possibility of exercising municipal-legal regulation of such relations.

The problem of implementing the provisions of the European Charter of Local Self-Government into the Ukrainian legislation is solving slowly. The remarks of European experts in the sphere of legal regulation of delegated powers relate to the uncertainty of the delegating subject and the unclear definition of the subject receiving the delegated authority; the dominance of delegated powers within the competence structure of executive bodies of local councils; the lack of control powers in local councils in the sphere of implementation of delegated powers, which, according to experts, leads to the fact that executive bodies act not as bodies of the council, but as bodies of state power¹⁶. The solution of these and other problems of the legal regulation of the competence of local self-governing cannot be ensured without the implementation of the constitutional reform in the part of the decentralization of power.

¹² Ibid.

¹³ Європейська хартія місцевого самоврядування: Хартія, міжнародний документ від 15.10.1985 р. URL: http://zakon2.rada.gov.ua/laws/show/994_036.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Щодо відповідності національного законодавства України положенням Європейської хартії місцевого самоврядування: експертний висновок / підгот. Директор. з пит. демократич. інститутів Генерал. директор. з пит. демократії та політ. справ РЄ у спів-ві з В. Прошко. Страсбург, 2010 р. URL: <http://www.slg-coe.org.ua/wp-content/uploads/2012/10/Висновок-РЄ-щодо-відповідності-національного-законодавства-України-положення.pdf>.

2. Legislative and sub-legislative bases of the delegation of certain powers from bodies of executive power to local self-government bodies

The constitutional and international legal norms are concretized in the norms of the Law of Ukraine “On Local Self-Government in Ukraine” (hereinafter – the Law № 280/97-VR)¹⁷. The regulatory role of this legal act is important, because this document defines not only the system of delegated powers of local self-governing bodies, but also their notions, legal, organizational, material and financial bases for the implementation of such powers. But in a legislative way as well as in a constitutional the legislator did not manage to overcome all problems of the legal regulation of delegated powers.

Thus, the Law № 280/97-VR¹⁸ defined the delegated powers as powers of executive authorities, given to local self-government bodies by law as well as powers of local self-government bodies, which are transferred to the relevant local state administrations by the decision of district and regional councils. For this reasons, the legislator used the concept of “given” and “delegated” powers as synonymous, setting the legal specificity of the powers delegated to local self-government bodies of powers of executive bodies, which can be traced at their correlation with the general theoretical understanding of delegated powers and with the own powers of local self-government bodies.

Presently, a lot of questions are caused by the system of own and delegated powers of the executive authorities of village, town and city councils envisaged by the Law № 280/97-VR. In particular, it does not fully meet the requirements of the principles of subsidiarity, the completeness and the exceptional powers, as well as a significant number of powers, directly related with the interests of territorial communities and are directed to the creation conditions for essential services, remain delegated powers. For example, such powers include the implementation of measures to expand and improve the network of trade enterprises, public catering, consumer services of the population (item 1, Part 1, Article 30), ensuring the availability and free of charge of education and medical care at the corresponding territory (item 1, Part 1, Article 32), etc.¹⁹.

The powers system of executive bodies, established by the Law № 280/97-VR, as well as powers of other bodies of local self-government is supplemented and specified by sectoral laws. The general grounds for this are established by the Law, Art. 40, which confirms that the executive bodies of village, town and city councils, in addition to the powers, envisaged by this Law, fulfill other given powers, provided by the law²⁰.

¹⁷ Про місцеве самоврядування в Україні : Закон від 21.05.1997 р. № 280/97-ВР. *Відомості Верховної Ради України*. 1997. № 24. Ст. 170.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

But an important point in the sectoral regulation of powers of local self-government bodies is that such laws do not define the nature of their powers, whether they are either own (self-governing) or delegated, with the exception of certain laws (for example, Article 18 of the Law of Ukraine “On Land Reclamation”²¹). In law enforcement activity this issue is solved by municipal officers by correlation of the norm of the branch law with the relevant provisions of Section II of the Law № 280/97-VR, since the latter formulate powers in a sufficiently general form²². However, this approach, in our opinion, carries a large part of subjectivity and often depends on the competence and professionalism of officials. On this occasion, we believe that the distinction between the own and delegated authorities must be clearly stated in the law. If the law does not show their delegated character, such powers should be considered as their own. In this regard, the relevant rule may be provided in Art. 40 of the Law of Ukraine “On Local Self-Government in Ukraine”²³.

Another problem of the correlation of powers envisaged by the Law of Ukraine “On Local Self-Government in Ukraine” and the sectoral legislation is a significant retardation of more dynamic development of the sectoral legislation. As an example we can point out the non-compliance of the provisions of Art. 34 of the Law № 280/97-VR and the Law of Ukraine “On Social Services” where the list of own and delegated powers of the executive bodies of local self-government lags behind the changes in social legislation in the part that regulates the provision of social services according to the place of residence²⁴.

Our analysis of sectoral legislation in the main spheres of subject-matter jurisdiction concerning the executive bodies of local councils has shown the existence of other problems of legal regulation, including: duplication of the powers of local bodies of executive power and local self-government bodies, their abstraction and declaratives. For example, the “compatibility” of the powers of local executive bodies and local self-government bodies is contained in Articles 5, 19 of the Law of Ukraine “On the Protection of Childhood”²⁵, in Articles 35, 36, 37, 39 of Law of Ukraine “On Regulation of Urban Development”²⁶ etc. In this regard, according to the S.G. Seryogina it is

²¹ Про меліорацію земель : Закон України від 14.01.2000 р. № 1389-XIV (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2000. № 11. Ст. 90.

²² Про місцеве самоврядування в Україні : Закон від 21.05.1997 р. № 280/97-ВР. *Відомості Верховної Ради України*. 1997. № 24. Ст. 170.

²³ Ibid.

²⁴ Ibid.

Про соціальні послуги : Закон України від 19.06.2003 р. № 966-IV (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2003. № 45. Ст. 358.

²⁵ Про охорону дитинства : Закон України від 26.04.2001 р. № 2402-III (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2001. № 30. Ст. 142.

²⁶ Про регулювання містобудівної діяльності : Закон України від 17.02.2011 р. № 3038-VI (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2011. № 34. Ст. 343.

necessary to consolidate in the Laws of Ukraine “On Local Self-Government in Ukraine” and “On Local State Administrations” the provision that all legislative conflicts of competence between local state administrations and local government should be interpreted in favor of the last one²⁷.

The non-specific statement has the powers stipulated in Art. 13 of the Law of Ukraine “On the Fundamentals of Social Security of the Disabled in Ukraine”. They refer to central and local executive bodies and local self-government bodies who should provide assistance and assist civic organizations of the disabled in their activities²⁸. The Part 1 of Article 26 of Law of Ukraine “On Physical Education and Sports”: where the powers of state authorities and local self-government bodies should promote the development of physical education in training establishments²⁹. Such powers do not have a clear organizational and legal mechanism for implementation, and therefore they have a formal nature. They do not identify a functional role of local authorities in the relevant sphere of public relations.

The study of the legal regulation of delegated powers of local self-government bodies by the norms of sectoral laws identified another problem. This is the distribution of delegated powers in various legislative acts. The experts from the Council of Europe have repeatedly given a negative assessment of such a state of legal regulation. The constitutional meaning of “given by law” of certain powers of the executive authorities gives grounds to emphasize the necessity of adopting a certain law, the norms of which should not only systematize delegated powers, but also determine the terms of delegation and implementation of such powers³⁰. In addition, there are proposals for the adoption of broader legal regulation of legislative acts. In particular, the need for such a codified legal act as the Municipal Code of Ukraine is increasingly emphasized.

In our opinion, the most optimal model of legal regulation of the institution of delegation of powers in the context of the decentralization of power is the adoption of a certain, basic law “On delegation to local authority of certain power of executive bodies”. Such law should define the purpose, conditions, methods and procedure for the delegation of certain powers of executive authorities. The law should outline the subject of delegation and the list of those powers that are not subject to delegation to local governments. It is also

²⁷ Серьогіна С.Г. Форма правління: питання конституційно-правової теорії та практики : монографія. Харків : Право, 2011. 768 с.

²⁸ Про основи соціальної захищеності інвалідів в Україні : Закон України від 21.03.1991 р. № 875-ХІІ (з наст. змін. та доп.). *Відомості Верховної Ради УРСР*. 1991. № 21. Ст. 252.

²⁹ Про фізичну культуру та спорт : Закон України від 24.12.1993 р. № 3808– ХІІ (з наст. змін. та доп.). *Відомості Верховної Ради України*. 1994. № 14. Ст. 80.

³⁰ Бублик Г.В. Делегування повноважень місцевими органами влади: організаційно-правовий аспект : дис. ... канд. юрид. наук : 12.00.07. Нац. акад. держ. управління при Президентові України. Київ, 2005. 178 с.

necessary to consolidate the system of powers delegated by law; the subjective composition; the terms for which powers are delegated. It is important to establish a procedure for the transfer of financial, material resources for the exercise of delegated powers; ways of interaction of municipal authorities with executive authorities on the implementation of delegated powers; forms of state control and actors that carry it out; responsibility for failure or improper performance of delegated authority, inadequate material-financial provision of authority. The law should introduce the procedure for consideration of disputed issues arising during the implementation of delegated powers; to establish the grounds and procedure for revoking delegated authorities and their termination on the initiative of local self-governing bodies.

The aforementioned legislative acts with some other laws regulating certain groups of relations in the investigated sphere (the Budget Code of Ukraine, the Tax Code of Ukraine, the Law of Ukraine “On Transferring the Objects That are in State and Municipal Ownership”, etc.) constitute the legal basis of the delegation of certain powers from executive bodies to local authorities from the point of view of the narrow approach.

The application of a broad approach to the legal basis for the exercise of delegated powers predetermines the need the research of sub-legal level of regulation for the institution of delegation of authority. First of all, it is necessary to pay attention to the acts defining the conceptual framework for the modernization of the territorial organization of power as a whole and the institution of delegation in particular. This is the Concept of reforming local self-government and territorial organization of power in Ukraine, approved by the Cabinet of Ministers of Ukraine from the 1st of April, 2014 № 333-r (hereinafter – the Concept)³¹.

In the aspect of the issues, the Concept is based on the preservation of the institution’s delegated authority within the competence structure of local self-government bodies, the need to strengthen the funding guarantees by the state on the basis of objective and established criteria. It takes into account the provision of proper organizational conditions for the implementation of delegated powers, the introduction of mechanisms for differentiating powers on the principles of decentralization and subsidiarity. The Concept should be embodied in specific legislative and sub-legislative acts regardless as it is a program document.

There is a point of view in legal science that emphasizes the inadmissibility of legal regulation of delegated powers of local self-government bodies by acts of executive authorities. This violates the constitutional requirement regarding the

³¹ Про схвалення Концепції реформування місцевого самоврядування та територіальної організації влади в Україні : Розпорядження, Концепція від 01.04.2014 р. № 333-р. *Офіційний вісник України*. 2014. № 30. Ст. 831.

legal form of the allocation of such bodies by certain authorities of executive powers³². But we do not agree with this point of view as the powers are not delegated by subordinate acts of executive power. They govern the social relations associated with the ensuring of the implementation of such powers.

Actually, no Laws of Ukraine “On the Cabinet of Ministers of Ukraine”³³, “On Central Executive Bodies”³⁴, “On Local State Administrations”³⁵, nor the provision on certain central executive bodies does not establish the powers of the relevant executive authorities regarding the legal regulation of the exercise of delegated powers by local authorities. So, we see one of the guarantees of autonomy of local self-government, because the legislator highlighted the impossibility of establishing additional, special regulation for local self-governing authorities. Thus, he/she does not indicate the expansion of state control over their activities. The regulatory framework implemented by these authorities is of a general nature and is connected with the organizational and procedural and procedural safeguards for the fulfillment of certain functions and tasks of state administration, including given to local authorities as delegated powers.

The range of sub-legislative normative legal acts regulating the relations related to the provision and implementation by local governments of delegated powers of executive power bodies can be systematized according to several criteria.

Firstly, according to the subject who issued the document there are the acts of the Cabinet of Ministers of Ukraine, the acts of Central Bodies of Executive Power and the acts of local state administrations.

For the moment, a significant number of regulatory powers of the Cabinet of Ministers of Ukraine are established by sectoral legislation. But, item 1 Part 1 of Art. 7 of the Law of Ukraine “On Central Executive Bodies” stipulates that provision of normative-legal regulation in certain spheres and branches of government should be carried out by ministries as bodies providing formation and implementation of state policy in one or several spheres³⁶. In this regard, we believe that the powers to ensure normative, organizational and procedural-procedural aspects of the implementation of sectoral policies should be entrusted to the relevant ministries. The powers to determine the principles of the

³² Кузнецова Н.В. Делегирование полномочий в сфере взаимодействия органов государственной власти и местного самоуправления в Российской Федерации : дис. ... канд. юрид. наук: 12.00.02. Российская академия гос. службы при Президенте РФ. Москва, 2005. С. 129–130.

³³ Про Кабінет Міністрів України : Закон України від 27.02.2014 р. №794-VII . *Відомості Верховної Ради*. 2014. № 13. Ст. 222.

³⁴ Про центральні органи виконавчої влади : Закон України від 17.03.2011 р. № 3166-VI (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2011. № 38. Ст. 385.

³⁵ Про місцеві державні адміністрації : Закон України від 09.04.1999 р. № 586-XIV (з наст. змін. та доп.). *Відомості Верховної Ради України*. 1999. № 20. Ст. 190.

³⁶ Про центральні органи виконавчої влади : Закон України від 17.03.2011 р. № 3166-VI (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2011. № 38. Ст. 385.

functioning of industries, rule-making powers of inter-sectoral nature should be retained by the Cabinet of Ministers of Ukraine.

Secondly, according to the subject of legal regulation, it is possible to distinguish sub-legislative acts of bodies of executive power that determine the organizational aspects of law enforcement activities. It establishes its rules and procedures, rules of administrative activity, determines the forms of rights-setting, permitting and other documents, establishes the order of interaction of subjects of management activities (including information) and determines the procedure for exercising control over the implementation of management functions and tasks.

For example, we would like to mention: the delegated authority regarding the organizational provision giving of administrative services of executive authorities through the provision of administrative services indicated in subsection 4 item b Part 1 Article 27 of the Law № 280/97-VR and detailed by the Law of Ukraine “On Administrative Services”³⁷, is implemented by the executive bodies of local self-governing in accordance with the procedure established by Decrees of the Cabinet of Ministers of Ukraine from 20.02.2013 № 118 “On Approval of the Model Provision on the Center for the Provision of Administrative Services”³⁸, from 30.01.2013 № 44 “On approval of requirements for the preparation of a technological card for administrative services”³⁹, in accordance with the Order of the Cabinet of Ministers of Ukraine from 16.05.2014 № 523-r “Some Issues of Providing Administrative Services of the Executive Bodies through the Provision of Administrative Services”⁴⁰, the joint Order of the Ministry of Economic Development and Trade of Ukraine and the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine from 08.09.2016 № 1501/248 “On Approval of the Procedure for Integration of Information Systems of State Bodies and Local Self-Government Bodies into the Uniform State Portal of Administrative Service”⁴¹ and several other government and departmental acts.

³⁷ Про адміністративні послуги : Закон України від 06.09.2012 р. № 5203-VI (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2013. № 32. Ст. 409.

Про місцеве самоврядування в Україні : Закон від 21.05.1997 р. № 280/97-ВР. *Відомості Верховної Ради України*. 1997. № 24. Ст. 170.

³⁸ Про затвердження Примірного положення про центр надання адміністративних послуг : Постанова Кабінету Міністрів України від 20.02.2013 р. № 118. *Офіційний вісник України*. 2013. № 16. Ст. 557.

³⁹ Про затвердження вимог до підготовки технологічної картки адміністративної послуги : Постанова Кабінету Міністрів України від 30.01.2013 р. № 44. *Офіційний вісник України*. 2013. № 9. Ст. 333.

⁴⁰ Деякі питання надання адміністративних послуг органів виконавчої влади через центри надання адміністративних послуг : Розпорядження Кабінету Міністрів України від 16.05.2014 р. № 523-р. *Офіційний вісник України*. 2014. № 45. Ст. 1193.

⁴¹ Про затвердження порядку інтеграції інформаційних систем державних органів та органів місцевого самоврядування до Єдиного державного порталу адміністративних послуг : Наказ Мін. економ. розвитку і торгівлі України та Мін. регіон. розвитку, буд-ва та жит.-комун. гос-ва України від 08.09.2016 р. № 1501/248. *Офіційний вісник України*. 2016. № 85. Ст. 2791.

A special place is occupied by sub-legislative acts that establish standard documents, on the basis of which the subjects of executive activity develop and adopt their own provisions, procedures, regulations, etc. In this way, the conditions for taking into account the peculiarities of the organization and activities of individual entities while maintaining unified regulation of management activity are created. Such acts are of a recommendatory nature for local self-government bodies. They also provide legal grounds for the adoption of municipal normative legal acts on specific issues of the implementation of delegated authority. Thus, the Kharkiv city council approved the Provision on the Center for Administrative Services of city Kharkiv and the Regulations of Procedure of the Center for the Provision of Administrative Services in city Kharkiv for the purpose of carrying out the aforementioned delegated authority regarding the organizational provision giving of administrative services of executive authorities through the provision of administrative services⁴².

3. Municipal-legal bases of the delegation of certain powers from bodies of executive power to local self-government bodies

To date, the problem of the municipal level of legal regulation of the implementation by local authorities of delegated powers of executive bodies remains relevant. In the absence of a clear legislative basis, local self-government bodies must adopt various legal acts aimed at ensuring the exercise of such powers. Summing up the range of such acts, it is necessary to distinguish the decisions of village, town and city councils, the orders of village, town and city heads, acts of executive bodies of local councils.

In particular, through the decisions of local councils the system is determined and executive bodies are created, the regulations on them are approved, as well as the composition of the collegial executive body, the division of powers between the executive bodies of the council and the local head within the powers provided by the law to executive bodies of the council, which is actually determined by the subjects of the implementation of delegated powers and the circle of such powers. In addition, the number of officers of executive bodies that ensure the exercise of delegated authority is approved; and the procedure for the use of state property objects transferred to ensure the implementation of delegated authority is established. Moreover, the issue of spending public funds provided for the exercise of delegated authority is being addressed.

In general, the ordinances of local heads solve the issues of personnel support and the organization of control over the implementation of delegated authority.

⁴² Про оптимізацію надання адміністративних послуг у м. Харкові : Ріш. 16-ої сесії ХМР від 22.06.2012 р. № 763/12 (з наст. змінами та доп.). URL: https://www.dozvil.kh.ua/polozhennya_ta_reglament.htm.

The decisions of the executive committees, orders of the chairmen of other executive bodies of local councils determine certain issues of the implementation of certain delegated authority organizational and procedural-procedural nature. For example, in pursuance of delegated powers stipulated by item 1 Part 1 of Article 37-1 of the Law № 280/97-VR, the Executive Committee of the Kharkiv City Council approved the Regulations on the Register of Territorial Community; stipulated by subsection 4 item b Part 1 of Article 34 of the Law – the Rule of the Commission on the Protection of the Rights of the Child of the Executive Committee of the Kharkiv City Council, as well as the Procedure for the Conservation and Transfer of Rentals of Residential Premises and Other Property, which belongs to the right of ownership of an orphan child or a child deprived of parental care⁴³.

At the same time, the Law № 280/97-VR establishes the legal basis for the exercise of powers by local self-government bodies. It does not differentiate its own and delegated powers, but also does not take into account the municipal acts in regulating issues of its own powers and acts of executive authority in regulating delegated powers. This gives grounds to assert that the norm of Part 3 Art. 24⁴⁴ is unclear and incomplete and therefore needs its refinement and meaningful correction.

In determining the subject, competent to make a decision of normative nature regarding the implementation of delegated authority, we proceed from the following information. According to Part 1 of Art. 59 of the Law of Ukraine “On Local Self-Government in Ukraine”, the Council, within the limits of its powers, adopts normative and other acts in the form of decisions⁴⁵. At the same time Art. 25 of the same Law stipulates that the village, town and city councils shall be entitled to consider and resolve issues referred by the Constitution of Ukraine, this and other laws to their jurisdiction.

The delegated powers are classified by the rules of Chapter 2 of the Law № 280/97-VR to the executive bodies of these councils⁴⁶. The system of such bodies is rather branched out. According to part 1 of Art. 11 of the Law № 280/97-VR, executive bodies of village, town and city, district in cities (in case of their creation) councils consist of their executive committees, offices, departments and other executive bodies created by councils⁴⁷. This allows for the organization of the municipal development management system, including the implementation of certain administrative powers, to distinguish between

⁴³ 1. Офіційний сайт Харківської міської ради. URL: <https://doc.citynet.kharkov.ua/ru/user/login>

2. Про місцеве самоврядування в Україні : Закон від 21.05.1997 р. № 280/97-ВР. *Відомості Верховної Ради України*. 1997. № 24. Ст. 170.

⁴⁴ Ibid (2).

⁴⁵ Ibid (2).

⁴⁶ Ibid (2).

⁴⁷ Ibid (2).

actors (bodies) that exercise regulatory, enforcement and control functions. Thus, the implementation of delegated authority in specific industries and spheres is usually carried out by offices, departments and other executive bodies which are specialized on sectoral or functional field. The tasks of the regulatory, organizational-coordinating and controlling nature should be assigned to the executive committees of the local councils. This is fully consistent with the norms of Parts 1, 2 of Art. 52 of the Law № 280/97-VR⁴⁸. The establishing a procedure for the exercise of one or other authority by a collegial executive bodies will allow for the intra-municipal coordination of all the bodies involved in the process of implementing such powers. The local council as the body responsible for the integrity of the functioning of the local self-government system of the territorial community should be given the right to exercise control over such acts.

At the municipal-legal settlement of the relations of implementation of delegated authority, the question of the degree of legal independence becomes of paramount importance. It has a limited character. So, the local regulation should be carried out within the limits of authority and in the manner prescribed by the Constitution and laws of Ukraine, with the observance of acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, as well as acts of those executive authorities to whose subject area of activity the respective powers belong. Thus, the local self-government body may determine the procedure for the implementation of the delegated authority without changing its scope and content, in particular: the specific subject that exercises the powers; the scope of his functional duties and powers; the question of the organization of execution with the specification of the general procedure provided for by law, to the specifics of the work of a particular body; the procedure of activity, including interaction with other subjects (state, municipal authorities, physical and legal persons) in the implementation of the delegated authority.

Describing the state of municipal rule-making, it is necessary to pay special attention to the fact that the regulatory capacity of the statutes of territorial communities remains insufficiently used. The analysis of these documents has shown that they mostly reproduce the general rules of the Law of Ukraine “On Local Self-Government in Ukraine”. At the same time, the role of statutory rulemaking in the legal regulation of the investigated sphere of relations, in our opinion, could be, in particular, in the defined functional role of specific bodies of local self-government in the organization and implementation of delegated powers, consolidation of the requirement for the implementation of delegated authority taking into account the characteristics of the territorial community, the establishment of guarantees and forms of interaction between local self-government bodies with the territorial community, its representatives on the implementation of delegated authority, the determination of grounds and conditions

⁴⁸ Ibid (2).

for the use of communal property objects for the financial and financial support of delegated authority exercised by local self-government bodies.

Among the areas for further improvement of the legal basis for the exercise of delegated powers, in the context of the reform of decentralization of power in Ukraine, it is also necessary to introduce the practice of concluding administrative agreements when applying the contractual way of delegation of authority. The scientific circles repeatedly highlight the need to apply an agreement form for regulating the delegation of powers and made proposals on the procedure for the conclusion and essential conditions of such agreements⁴⁹.

Supporting such an idea, we consider that the essential and necessary conditions of the agreement on the delegation to local authorities of certain powers of the executive bodies can be defined: the purpose of the delegation, a specific list of powers, the term of their execution, the subjects of delegated authority, mutual obligations of the parties, the procedure and the volume of material and financial, informational and other support for the implementation of delegated powers, the form and order of control of execution, the grounds and procedure for liability of the parties for non-fulfillment or improper performance of the agreement, the grounds and the procedure for termination of the agreement.

We believe that such agreements should be concluded by local heads with their subsequent approval by representative bodies of local self-government and come into force not earlier than their official publication in local mass media. As O. Yu. Lyalyuk notes, the spread of the practice of concluding such agreements will make the institution of delegation of authority more mobile and dynamic, will give the last signs of temporality⁵⁰.

CONCLUSIONS

The research of the legal regulation of the implementation by local governments of delegated powers of executive authority allow to identify a number of problematic issues at each of its levels, in particular, the disadvantages of constitutional and legal regulation; there is no certain law on delegation of authority; there is a high degree of conflict between the norms of the Law of Ukraine “On Local Self-Government in Ukraine” and the norms of sectoral laws regarding the establishment of powers of local self-government bodies, as well as duplication with the powers of local executive bodies; uncertainty of the own or delegated nature of powers envisaged by sectoral laws, etc.

We believe that solving these problems is possible by delimiting own and delegated powers of local authorities under the strict guidance of the law. In the

⁴⁹ Любченко П.М. Конституційно-правові основи розвитку місцевого самоврядування як інституту громадянського суспільства : монографія. Харків : Одиссей, 2006. С. 308.

Бублик Г.В. Делегування повноважень місцевими органами влади: організаційно-правовий аспект : дис. ... канд. юрид. наук : 12.00.07. Нац. акад. держ. управління при Президентові України. Київ, 2005. С. 93.

⁵⁰ Лялюк О.Ю. Проблемні питання перерозподілу компетенції в системі органів публічної влади на місцях. *Проблеми законності*. Харків. 2012. Вип. 118. С. 46.

event that the latter does not provide for their delegated character, such powers may be considered their own. The most optimal model of legal regulation of the institution of delegation of authority is the adoption of the law “On delegation to local authority of certain power of executive bodies”.

The problem of the sub-legislative level of legal regulation of the implementation by local self-government bodies delegated authorities of executive bodies, in particular municipal level, remains extremely urgent. It should act as a kind of generalization and adaptation of the provisions of the legislation to the needs and conditions of the functioning of the local self-government system of a particular territorial community. It is necessary to implement the provisions of Part 5 Art. 4 of European Charter of Local Self-Government by means of legislative guarantee of the right of municipal authorities to establish the procedure for the implementation of the powers delegated to them by executive authorities taking into account local conditions and peculiarities⁵¹. Of particular importance is the formation of a proper legislative basis for municipal rule-making, the strengthening of the regulatory role of the statutes of territorial communities, as well as the definition of rule-making powers of local self-government bodies.

It is advisable, in the context of the government’s decentralization reform initiated in Ukraine, to introduce the practice of concluding administrative agreements when applying the agreement method of delegating to the bodies of local self-government powers of executive bodies. Such agreements should be concluded by the local heads with their subsequent approval by the representative bodies of local self-government and come into force not earlier than their official publication in the local mass media.

This implies the need for substantial modernization of the constitutional, legislative, sub-legislative regulation of the institution of delegated powers and local self-government as a whole.

SUMMARY

The article presents detailed characteristics of the legal basis for the delegation to local authority bodies powers of executive authorities, as well as developed the current state of legislative regulation of delegated powers of local self-government bodies, the legal nature and the procedure for concluding agreements on the delegation of powers from executive bodies to local self-government bodies. Proposals on the improvement of the constitutional and legal regulation on the delegation of the separate authority of the executive bodies to local self-government bodies are formulated. It is proposed to supplement the list of fundamental rights and freedoms of man and citizens with the right of proper government provided for in Section II of the Constitution of Ukraine. Reasoned that the most optimal model of legal regulation of the

⁵¹ Європейська хартія місцевого самоврядування: Хартія, міжнародний документ від 15.10.1985 р. URL: http://zakon2.rada.gov.ua/laws/show/994_036.

institution of delegation of authority is the adoption of a separate basic law “On delegation to local authority of certain power of executive bodies”; the subject of legal regulation of the specified law is determined. It is suggested that agreements on the delegation to local government bodies of separate powers from the executive bodies should be concluded by local heads with their subsequent approval by representative bodies of local authorities and come into force not earlier than their official publication in local mass media.

REFERENCES

1. Бублик Г.В. Делегування повноважень місцевими органами влади: організаційно-правовий аспект : дис. ... канд. юрид. наук : 12.00.07. Нац. акад. держ. управління при Президентові України. Київ, 2005. 178 с.
2. Деякі питання надання адміністративних послуг органів виконавчої влади через центри надання адміністративних послуг : Розпорядження Кабінету Міністрів України від 16.05.2014 р. № 523-р. *Офіційний вісник України*. 2014. № 45. Ст. 1193.
3. Європейська хартія місцевого самоврядування: Хартія, міжнародний документ від 15.10.1985 р. URL: http://zakon2.rada.gov.ua/laws/show/994_036.
4. Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР. *Відомості Верховної Ради*. 1996. № 30. Ст. 141.
5. Любченко П.М. Конституційно-правові основи розвитку місцевого самоврядування як інституту громадянського суспільства : монографія. Харків : Одиссей, 2006. 352 с.
6. Лялюк О.Ю. Основи організації і діяльності місцевих рад в Україні : автореф. дис. ... канд. юрид. наук : 12.00.02. Нац. юрид. акад. України ім. Ярослава Мудрого. Харків, 2007. 20 с.
7. Лялюк О.Ю. Проблемні питання перерозподілу компетенції в системі органів публічної влади на місцях. *Проблеми законності*. Харків. 2012. Вип. 118. С. 40–47.
8. Новак-Каляєва Л.М. Сучасні тенденції до конвергенції в концепціях державного управління. *Вісник Національної академії державного управління при Президентові України*. 2013. № 1. С. 29–41.
9. Офіційний сайт Харківської міської ради. URL: <https://doc.citynet.kharkov.ua/ru/user/login>.
10. Про адміністративні послуги : Закон України від 06.09.2012 р. № 5203-VI (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2013. № 32. Ст. 409.
11. Про внесення змін до Конституції України (щодо децентралізації влади) : проект Закону України від 1.07.2015 р. № 2217. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55812.

12. Про затвердження вимог до підготовки технологічної картки адміністративної послуги : Постанова Кабінету Міністрів України від 30.01.2013 р. № 44. *Офіційний вісник України*. 2013. № 9. Ст. 333.

13. Про затвердження порядку інтеграції інформаційних систем державних органів та органів місцевого самоврядування до Єдиного державного порталу адміністративних послуг : Наказ Мін. економ. розвитку і торгівлі України та Мін. регіон. розвитку, буд-ва та житл.-комун. гос-ва України від 08.09.2016 р. № 1501/248. *Офіційний вісник України*. 2016. № 85. Ст. 2791.

14. Про затвердження Примірного положення про центр надання адміністративних послуг : Постанова Кабінету Міністрів України від 20.02.2013 р. № 118. *Офіційний вісник України*. 2013. № 16. Ст. 557.

15. Про Кабінет Міністрів України : Закон України від 27.02.2014 р. № 794-VII. *Відомості Верховної Ради*. 2014. № 13. Ст. 222.

16. Про меліорацію земель : Закон України від 14.01.2000 р. № 1389-XIV (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2000. № 11. Ст. 90.

17. Про місцеве самоврядування в Україні : Закон від 21.05.1997 р. № 280/97-ВР. *Відомості Верховної Ради України*. 1997. № 24. Ст. 170.

18. Про місцеві державні адміністрації : Закон України від 09.04.1999 р. № 586-XIV (з наст. змін. та доп.). *Відомості Верховної Ради України*. 1999. № 20. Ст. 190.

19. Про оптимізацію надання адміністративних послуг в м. Харкові: Ріш. 16-ої сесії ХМР від 22.06.2012 р. № 763/12 (з наст. змінами та доп.). URL: https://www.dozvil.kh.ua/polozhennya_ta_reglament.htm.

20. Про основи соціальної захищеності інвалідів в Україні : Закон України від 21.03.1991 р. № 875-XII (з наст. змін. та доп.). *Відомості Верховної Ради УРСР*. 1991. № 21. Ст. 252.

21. Про охорону дитинства : Закон України від 26.04.2001 р. № 2402-III (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2001. № 30. Ст. 142.

22. Про регулювання містобудівної діяльності : Закон України від 17.02.2011 р. № 3038-VI (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2011. № 34. Ст. 343.

23. Про соціальні послуги : Закон України від 19.06.2003 р. № 966-IV (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2003. № 45. Ст. 358.

24. Про схвалення Концепції реформування місцевого самоврядування та територіальної організації влади в Україні : Розпорядження, Концепція від 01.04.2014 р. № 333-р. *Офіційний вісник України*. 2014. № 30. Ст. 831.

25. Про фізичну культуру та спорт : Закон України від 24.12.1993 р. № 3808– XII (з наст. змін. та доп.). *Відомості Верховної Ради України*. 1994. № 14. Ст. 80.

26. Про центральні органи виконавчої влади : Закон України від 17.03.2011 р. № 3166-VI (з наст. змін. та доп.). *Відомості Верховної Ради України*. 2011. № 38. Ст. 385.

27. Серьогіна С.Г. Форма правління: питання конституційно-правової теорії та практики : монографія. Харків : Право, 2011. 768 с.

28. Щодо відповідності національного законодавства України положенням Європейської хартії місцевого самоврядування: експертний висновок / підгот. Директор. з пит. демократич. інстит. Генерал. директор. з пит. демократії та політ. справ РЄ у спів-ві з В. Прошко. Страсбург, 2010 р. URL: <http://www.slg-coe.org.ua/wp-content/uploads/2012/10/Висновок-РЄ-щодо-відповідності-національного-законодавства-України-положення.pdf>.

29. Конституционные преобразования в Украине: история, теория и практика : монографія / М.Ф. Орзих и др.; под ред. М.Ф. Орзиха. Киев : Юринком Интер, 2013. 512 с.

30. Кузнецова Н.В. Делегирование полномочий в сфере взаимодействия органов государственной власти и местного самоуправления в Российской Федерации: дис. ... канд. юрид. наук : 12.00.02. Российская академия гос. службы при Президенте РФ. Москва, 2005. 180 с.

31. Муниципальное право России / под ред. А.Н. Кокотова. 2-е изд., перераб. и допол. Москва : Юрайт, 2012. 508 с.

Information about author:

Novak A. O.,

Candidate of Science of Law, Assistant of the Department of State Construction,
Yaroslav Mudryi National Law University
77, Pushkinska str., Kharkiv, Ukraine