



THE AUTHORITIES OF LOCAL GOVERNMENT INSTITUTIONS AND OFFICIALS IN ADMINISTRATIVE PROCEEDINGS

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Summary

The article investigates problematic issues connected with powers of bodies and officials of local self-government in administrative justice in Ukraine. Based on research author outlines basic problems related with process of realization of powers by bodies and officials of local government. Author emphasizes that it is impossible formation of Ukraine as a democratic and social, legal and economically developed state, where human and civil rights are not only proclaimed declarations and become a reality, where people will be really great social value, without the effective work in this direction, without enormous efforts of state, authorities and citizens.

Key words: authority, competence, local governments, administrative proceedings, judicial protection.

Аннотация

Статья посвящена исследованию проблемных вопросов, связанных с полномочиями органов и должностных лиц местного самоуправления в административном судопроизводстве Украины. На основании проведенного исследования автором очерчены основные проблемы, а также некоторые пути их решения, связанные с процессом реализации полномочий органами и должностными лицами местного самоуправления. Автор акцентирует внимание на том, что без эффективной работы в данном направлении, без колоссальных усилий государства, его органов и граждан, невозможно становление Украины, как демократического и социального, правового и экономически развитого государства, где права человека и гражданина не будут только провозглашенными декларациями, а станут реальностью, где человек действительно будет величайшей социальной ценностью.

Ключевые слова: полномочия, компетенция, органы местного самоуправления, административное судопроизводство, судебная защита.

Problem definition. The legislation enshrined in Constitution of Ukraine that outlines three basic principles of Ukrainian state as democratic, civil and lawful aren't entirely fulfilled as of today. However, above principles hold most preeminent policies of constitutional development of Ukraine, and country's national ideal sought by those who stood at cradle of its statehood.

Background research is that achievement of above will take time and tremendous effort of state, its agencies, and each of us. An essential element of this process encompasses study of complex issues associated with implementation of duties of local government institutions and their officials.

State of research. The authority of bodies and local government officials in administrative proceedings discussed in works of many foreign and national scholars, among whom V. Averyanov, A. Bachun, I. Solonenko, D. Holosni-chenko, I. Schebetun, P. Bilenchuk, V. Bordenyuk, V. Kopeychukov, V. Krav-chenko, V. Kornienko, N. Nyzhnyk and other scientists.

The purpose and issues of article is research of issues related to process of realization powers by officials and local government. The novelty of work is manifested during a analyzing regulations

of applicable legislation regarding status of public officials, public authorities, and local governments, we can conclude that almost all of them have rules that to varying degrees, regulate competence of these entities, but theoretical problems of implementation of competence considered insufficient, causing confusion and even confrontation in their application.

Statement of basic provisions. The main task of local authorities is comprised in resolving issues of public affairs according to the laws of Ukraine and with regard to interests of population [1, p. 58]. Local government as an autonomous form of public power is characterized by its own scope of authority.

The European Charter of Local Self-Government uses term «competence of local government». In the literature competence of local government is presumed to embody rights, duties and subjects of territorial communities, and local government officials to carry out functions and tasks of local government established by norms of Constitution, laws, and regulations [2, p. 478].

O. Bachun states that in accordance with Law of Ukraine «On the Local Government in Ukraine» competence of local government in matters of judicial protection applies to appeals from

executive bodies of villages, towns and city councils to court for recognition of illegal acts of executive authorities, other local governments, enterprises, institutions and organizations that restrict right of territorial communities and authorities of local government officials (Art. 38). In addition to those subjects of appeal, right to address court is also held by mayors of villages, towns and cities (Art. 42); by Board – Chairman of district, regional, and district in city council (Art. 55) [3, p. 106].

The interests of public authorities and local governments in legislation are usually not mentioned, instead there are norms established by law regarding their jurisdiction and authority. For instances, in article 4 of law of Ukraine «On the Local Government in Ukraine» last basic principle of local government defines basis of judicial protection of their rights. Farther, above law specifies functions and discretions of local governments. As public authorities, local governments must act directly in accordance with laws. Therefore it is advisable to reference chapter 1 of article 2 CAP of Ukraine, which defines task of administrative proceedings through establishment of regulations on rights of public authorities and local governments, rather than their abstract «interests» [4, p. 83].



The authority as an essential structural element of competence is defined as a set of rights and obligations of powerful nature that determine type and extent of behavior of an entity at appropriate territorial level in order to meet legitimate interests of population [5, p. 122].

In the Great Encyclopedic Dictionary of Legal Concept term «authority» means a set of rights and responsibilities of state agencies and public organizations as well as officials and other persons assigned to them in accordance with legislation to carry out their functions [6, p. 693].

Agreeing with scholar I. Solonenko who defines authority as the right to give orders, and seek their implementation, carry out necessary actions and make managerial decisions, hence authority is used for meeting commitments [7, p. 82].

Some scholars define authority as specific rights and obligations that characterize availability of administrative functions that allow public entities to perform their tasks. The authority of state or local government is a fundamental element of their competence, established by law under Constitution of Ukraine, ensuring implementation of appropriate functions in relation to specific objects of their jurisdiction [8, p. 261].

Thus, local government – is a form of self-organization of social and territorial communities (regional groups), in which citizens form territorial staff in area of its competence established by law, implement a public authority through established entities or provide possibility of permanent participation for citizens in management [9, p. 17].

Analyzing regulations of applicable legislation regarding status of public officials, public authorities, and local governments, we can conclude that almost all of them have rules that to varying degrees, regulate competence of these entities, but theoretical problems of implementation of competence considered insufficient, causing confusion and even confrontation in their application. The Constitution of Ukraine, recognizing local government as a fundamental structure of state and society, describes its status, using terms such as «authority», «right», «competence».

Competence of local government, if characterized in most general terms, is a legal category that includes items in their jurisdiction and authority, has

internal unity and consistency as defined by Constitution and laws of Ukraine [9, p. 62].

According to D. Holosnichenko authority is a broad and generalized concept in terms of theory of law and state. Its content is a system of rights and obligations acquired in legitimate way by state, local government, state agencies, their officials and other legal entities for purpose of providing opportunities, satisfying needs and interests of man and citizen, individual social groups and society as a whole [10, p. 54].

Local governments and its officials have powers of private character, general powers defined in Constitution of Ukraine and laws, and are applicable to all these entities, but authority to direct management of administrative and territorial units are governed by charter community. Statutory powers are defined in rules of statutes of local communities and apply only to relevant communities. Publication of charters as a way to consolidate powers of local government is conditioned by several factors that affect regulations of local municipalities [10, p. 195].

Despite fact that rights of local governments almost always are their responsibilities, and vice versa, this does not mean that among them there is no difference. The rights and responsibilities of local government within competence of latter exhibit relatively independent character. The rights of subject of local government constitute a discretion in deciding on an issue of public life in area of its jurisdiction [11, p. 397].

Obligations of local government do not provide that freedom of choice for addressing specific issues of public life within their jurisdiction, strictly regulating their actions in a particular field of competence.

Powers of local government entities can be divided into powers of general and specific nature. The powers of a general nature define objectives and areas of activity of local government. In turn, powers of a specific character are always associated with resolution of certain current issues and operations in management, ensuring at same time implementation of powers of local government with general nature [11, p. 398].

The powers of local government define boundaries of its entities in matters that are subject of its jurisdiction. Local government's actions result in defining, changing, terminating powers of its organs and officials, as well as rights and responsibilities of enterprises, organizations and other legal entities and citizens in local government relations [11, p. 403].

It's worth noting that there is no unity in classification of authorities of governmental subjects in legal science nowadays. Thus, according to I. Schebetun powers of local governments are divided into following types: 1) a general nature, which is always associated with management and administration, publication of legal acts, mandatory for all bodies and local government officials, individuals and businesses with practical implementation of all basic functions of local community; 2) particular nature, which are related to addressing specific issues of local life; 3) powers that contribute to implementation of local governments, and related to establishment of its own initiatives in addressing various issues of local life and performance of certain functions of local community [12, p. 110].

According to P. Liubchenko powers of local governments are divided by areas of public life: 1) in socio-economic and cultural development; 2) in budget and finance; 3) in management of municipal property; 4) in environmental safety; 5) in rights, freedoms and legal interests of citizens; 6) powers related to organization and control; 7) powers related to interaction between state government and local governments; 8) organizational and constituent powers of nature [9, p. 102].

Based on implementation of theoretical and legal characteristics of current legislation, we can conclude that powers of local governments are divided according to following criteria:

– Depending on authority which they exercise a) powers of representative bodies, which, according to article 10 of law of Ukraine «On Local Government», are village and city councils, representing respective municipalities and carry out on their behalf and in their interest functions and powers of local government by Constitution of Ukraine, this and other laws. Regional and district councils are representative bodies of local self-



governments that embody common interests of territorial communities of villages, towns, cities, within the powers defined by Constitution of Ukraine, this and other laws and powers transferred to them by villages, settlements and city councils [13]; b) powers of executive bodies of villages, towns, cities, and city district boards (if established), including executive committees, managerial departments and institutions, etc. In town councils that represent municipalities, numbering up to 500 people, by decision of territorial community or village council executive entities may not be established [13]; c) powers of other entities of local government (territorial community, village, mayor, community organizations);

– By influence of local governments in areas of public life: powers in the field of socio-economic and cultural development; authority in forming local budget; authority to communal property management; powers in the field of housing and communal services; powers in field of construction; authority in education, health, culture, physical culture and sports; powers in sphere of land relations and protection of environment; authority to provide law and order, protection of rights, freedoms and legal interests of citizens in all spheres of public life;

– By subject composition: 1) power of collective entities of local government, including: local communities, representative bodies; executive bodies of villages, towns or city councils; community organizations, sessions of councils, standing committees of councils, temporary control commissions of councils, divisions, departments and other executive bodies of villages, towns, cities, borough council presidium (board) district and regional councils, executive office district and regional councils; 2) powers of individual entities of local government, in particular: village, mayor, head of district, regional, district in city council, deputy head of district, regional, district in city council, secretary of village, town council, deputies of councils, manager and staff executive committees, etc.;

– By legal force of a legislation in which they are established: a) powers enshrined in legislation; b) powers enshrined in regulations, including local;

– By place and role of local governments in public administrations:

1) own (self-governing) authority, implementation of which is connected with solving local issues, and providing public services to citizens; 2) delegated powers (powers of executive authority granted by law to local authorities) that involve performing functions of executive powers [14, p.16].

– By the exclusivity: a) powers of local governments, lost of which is exclusive. Exceptional powers enshrined in law regarding rights and duties that are exclusive responsibility of representative bodies, and are performed by them directly. Exceptional powers provide certain guarantees of rule in system of representative bodies and local government officials; b) powers of local governments, which can be determined later. Thus, in accordance with article 40 of law of Ukraine «On Local Government» executive bodies of villages, towns and city councils, except powers under this Act, exercise other rights granted to them by law [13]. The article 43 of same Act states, «district and regional councils can consider and decide in plenary and other matters within jurisdiction of this and other laws» [13]. And article 146 of Constitution of Ukraine states that other issues of local self-government, as well as its formation, operation and responsibility are determined by law [15];

– By presence (absence) of authority requirements: a) authority (making decisions that are mandatory for all citizens, officials and organizations; use of state coercion, control, etc.). Y. Tikhomirov defines authority as a «secured by law demand of authorized subject that is addressed to individuals and legal entities» [16, p.139]; b) powers that are not associated with implementation of governmental regulations (e. g. intra-organizational solution of economic issues; powers that are performed in a horizontal relationship, etc.).

Thus, the authority of local governments must be understood as rights and responsibilities of local communities to ensure rights and freedoms of man and citizen that is specified in functions of their realization, protection and security, and are established by law.

The Constitution of Ukraine defines most important functions of state, which include ensuring human rights and freedoms, and legal protection of citizens. Furthermore rights and freedoms of man

and citizen, as well as their guarantees determine content and direction of state. The implementation of these constitutional canons is largely dependent on effective judicial protection – especially administrative courts, whose jurisdiction applies to disputes involving bodies (officials) that have state-power, and mandatory authority.

The order of administrative proceedings, regulated by Administrative Code of Ukraine, involves implementation of relevant procedures by subjects of local governments. Such subjects include administrative court, a person who requests protection of their rights, freedoms and lawful interests, and persons who legally have right to protect rights, freedoms and interests of others (attorney, ombudsman, local governments, public authorities, individuals and legal entities). Empowering these actors of procedural rights and obligations means that legislature has defined powers of each entity in administrative proceedings, so that it becomes orderly conducted and has a consistent character.

Article 49 of Code of Administrative Procedure of Ukraine stipulates that persons involved in case have equal procedural rights and obligations. Above persons must conscientiously use their procedural rights and comply strictly procedural obligations.

It is eminent that Article 47 of CAP of Ukraine defines that persons involved in administrative process can be divided into three groups: a) sides (one side is plaintiff, and other – defendant); b) a third party (a) third parties that claim independent demands on subject of dispute; b) third parties that do not claim independent demands on subject of dispute); c) representatives of parties and third parties (Ukraine Parliamentary Commissioner for Human Rights, prosecutor, public authorities, local governments, individuals and legal entities) [17].

The administrative lawsuit is an appeal by plaintiff. However, based on content of article 60 of CAP of Ukraine, administrative lawsuit may be initiated not only at request of plaintiff, but claim of prosecutor and other persons who are entitled to protect rights and freedoms of others. It should be noted that a plaintiff is always a person whose rights freedoms and interests are subject of administrative case.



The plaintiff in an administrative case according to chapter 2, article 50 of CAP of Ukraine can be: a) an individual – citizen of Ukraine, foreigner or stateless person, and entrepreneur; b) legal entities – enterprises, institutions, organizations, associations of citizens; c) public authorities.

Based on specific legal administrative proceedings, one can identify specific subjects of court cases – bodies of power (public authorities, local governments and their officials). Public disputes between these entities considered in administrative proceedings regarding implementation of their competence in management, including delegated powers and on conclusion and implementation of administrative agreements. Given peculiarity of actors of public authority to conduct their duties exclusively within law, their duty to open a lawsuit is executed in case of violation of their competence, and act or action of another public entity. As already stated, village, town and city mayor may appeal to court to demand recognition of illegal acts of other local governments, local authorities, enterprises, institutions and organizations that limit rights and interests of local community, as well as powers of board and its organs.

Civil servants are special plaintiffs who are entitled to appeal to administrative court to resolve disputes related to public service [17]. Article 17 of CAP of Ukraine determines jurisdiction of administrative courts to hear cases in administrative proceedings. Analyzing content of this article, subjects of appeals to court with administrative lawsuits are primarily individuals and legal entities, and defendants – public authorities. Article 50 of CAP of Ukraine stipulates and follows objectives of administrative proceedings that plaintiff must be a physical or legal person, who request protection of their rights, freedoms and interests, if it considers that subject of power affects these rights, freedoms and interests. However, part 4 of above articles provides cases of administrative claims by public authorities, meaning that law defines cases where plaintiff in administrative proceedings is subject of public authority. According to article 50 of CAP of Ukraine citizens of

Ukraine, foreigners, stateless persons, legal persons (companies, institutions, organizations), individuals who are not public authorities can be defendants in administrative proceedings only with administrative claim of government agencies in cases: a) a temporary ban (suspension) all or certain types of activities of association; b) a forced dissolution (liquidation) of associations; c) a forced expulsion of a foreigner or a person without citizenship of Ukraine; d) restrictions on right to peaceful assembly (meetings, rallies, demonstrations, strikes, etc.); e) in other cases specified by law. This list is not exhaustive – law may establish other similar cases.

Consequently, legislator limits right of appeal to authority of administrative lawsuit, referring only to extent legally required. Thus, only in exceptional cases specifically established by law, defendant in administrative proceeding may be a physical or legal person who doesn't have public authority.

Conclusions. The authority of local government officials in administrative proceedings should be understood as enshrined in current legislation rights and duties of officials and local government to ensure rights and freedoms of man and citizen, specifically regarding protection of rights, freedoms and interests of individuals and legal persons in public law relations and aimed to confirm or restore right violated or disputed.

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