



UDC 35.072.1

THE THEORETICAL AND LEGAL BASIS FOR THE DISTRIBUTION OF POWERS BETWEEN DISTRICT ADMINISTRATIONS, DISTRICT COUNCILS AND UNITED TERRITORIAL COMMUNITIES IN UKRAINE

Anna PAVLOVSKAYA,

Postgraduate Student at the Department of Public Administration and Innovation Management of the Education and Research Institute of Continuing Education of the National University of Life and Environmental Sciences of Ukraine

SUMMARY

The article considers the distribution of powers between district state administrations, district councils and united territorial communities in the context of decentralization in Ukraine. It is noted that the current relationship between the above-mentioned bodies is unworkable and sometimes contradictory.

Problems have been identified with regard to the distribution of powers between district State administrations, district councils and united territorial communities in Ukraine, in particular in the educational, medical and social spheres.

Author's proposals aimed at optimizing the process of distribution of powers among district state administrations, district councils and united territorial communities in Ukraine have been submitted.

Key words: unified territorial communities, district state administrations, district councils, powers, decentralization, relations, financing.

ТЕОРЕТИКО-ПРАВОВЫЕ ОСНОВЫ РАСПРЕДЕЛЕНИЯ ПОЛНОМОЧИЙ МЕЖДУ РАЙОННЫМИ АДМИНИСТРАЦИЯМИ, РАЙОННЫМИ СОВЕТАМИ И ОБЪЕДИНЁННЫМИ ТЕРРИТОРИАЛЬНЫМИ ОБЩИНАМИ В УКРАИНЕ

Анна ПАВЛОВСКАЯ,

аспирант кафедры публичного управления и менеджмента инновационной деятельности
Учебно-научного института последипломного образования
Национального университета биоресурсов и природопользования Украины

АННОТАЦИЯ

В статье рассмотрено распределение полномочий между районными государственными администрациями, районными советами и объединёнными территориальными общинами в условиях проведения децентрализации в Украине.

Отмечено, что современные взаимоотношения вышеуказанных органов характеризуются неслаженностью и иногда носят противоречивый характер. Установлены проблемы распределения полномочий между районными государственными администрациями, районными советами и объединёнными территориальными общинами в Украине, в частности, в образовательной, медицинской сферах и сфере социального обеспечения.

Предоставлены авторские предложения, направленные на оптимизацию процесса распределения полномочий между районными государственными администрациями, районными советами и объединёнными территориальными общинами в Украине.

Ключевые слова: объединённые территориальные общины, районные государственные администрации, районные советы, полномочия, децентрализация, взаимоотношения, финансирование.

Introduction. The reform of local self-government and territorial organization of power on the basis of decentralization, the conceptual basis of which was approved in 2014 [9], has proved to be one of the most effective since the declared strategic reforms in Ukraine. Reform of decentralization is directed to creation of a modern system of local government in Ukraine on the basis of the European values of development of local democracy, investment of territorial communities with powers and resources which will provide local economic development, providing high-quality and available public services to the population. It is the role of local self-government in ensuring the interests

of citizens in all spheres of life in the relevant territory that should become key.

A key prerequisite for the stable development of society and the effective functioning of the state is the balancing of national interests with the interests of the population of the regions and territorial communities. It, in turn, is impossible without decentralization and deconcentration of functions and powers and the implementation of the principles of real local self-government [5, p. 151].

The creation of a new system of relations between the various branches of government and a new balance of checks and balances raises the question of the effective distribution of pow-

er between central and local authorities. At first glance, the redistribution of powers in a country in a state of war and in need of strong central governance and the integration of all the efforts of the nation and the resources of the country can be perceived as a countervailing step. However, the reform of decentralization of power in itself does not provoke the development of centrifugal trends in the country, but does not lead to tension between the centre and the regions.

Relevance of research. An important issue that needs to be addressed immediately is the issue of the optimal distribution of powers between local self-government bodies and local public authorities in



general and, in particular, the distribution of functions and powers between local councils of the united territorial communities (hereinafter referred to as UTC) and district administrations and district councils of the districts in whose territory UTC are established.

Previously unsettled problem constituent. Problems of distribution of powers of local bodies of state power and bodies of local self-government were studied by such famous ukrainian scientists: V. Averyanov, O. Batanov, K. Vashchenko, I. Volosnickenko, I. Grishchenko, I. Gritsak, I. Meldar, V. Campo, A. Koval.

However, among the unresolved parts of the general problem remains the lack of unity of approaches to solving the problem of the distribution of powers of district State administrations, district councils and UTC at the present stage of decentralization in Ukraine.

Main purpose of the article is a comprehensive analysis of scientific works and legislative acts on the distribution of powers between district state administrations, district councils and united territorial communities in the context of decentralization in Ukraine, the identification of problematic issues and the submission of proposals to solve them.

According to the purpose of the article, the following objectives are defined:

1) analysis of the scientific doctrine regarding the distribution of powers among district state administrations, district councils and unified territorial communities;

2) defining the range of problems in the distribution of powers between district state administrations, district councils and joint territorial communities;

3) to provide proposals on the optimal distribution of powers between district state administrations, district councils and unified territorial communities.

Main material. During the independence of Ukraine, the distribution of powers between local executive bodies and local self-government bodies was carried out without sufficient consistency and the necessary integration of legislative acts adopted at different times and on different issues of organization of local self-government and executive power on the ground. Scientists believe that one of the highest priorities of our time continues to be the legislative settlement of problems related to the reform

of the system of local executive authorities and local self-government bodies of the country with the simultaneous division of their powers [1, p. 111].

To date, the situation has hardly changed. The process of establishing the UTC, which takes place in the absence of an official position on the model of reform of all levels of the administrative and territorial structure, leads to an increase in contradictions between the authorities of the newly UTC and local state authorities.

Thus, according to local self-government experts, in particular I. Grishchenko, "the process of creating united territorial communities in Ukraine has been going on for years, but a mechanism for forming capable communities has not yet been formed. The vast majority of new communities do not have sufficient capacity to exercise their powers, so there is growing dissatisfaction with the population with the standard of living and the quality of service provided" [11, p. 98].

According to the Ministry of regional development, construction and housing and communal services of Ukraine, our state already has 5 UTC, the territory of which fully coincides with the territory of the corresponding administrative districts: Naroditska (Zhitomir region), Starosinyavska, Leticivska (Khmelnitsk region), Snovsky (Chernihiv region) and Apostol (Dnipropetrovsk region) [10]. There are also a number of areas whose territory is completely or almost entirely covered by several established UTCs. In these areas, the District Council and the District Public Administration (hereinafter referred to as the DPA) continue to operate and maintain their apparatus, although most of the powers from them under the legislation must be transferred to the UTC.

Therefore, there are now acute problems in the distribution of powers and the effectiveness of the organization of power in these territories, which require rationalization. It is necessary to clearly define the powers that remain with the DPA and the District Council, to review the number and accordingly the costs of maintaining their apparatus.

The detailed study of the Snovsky UTC [7], the territory of which fully coincides with the territory of Snovsky district of Chernihiv region, showed: the district council consisting of 26 deputies also

acts and makes a decision on the district budget, land, social issues, which are still under the control of the district. The district administration transferred most of the powers to the UTC Council, the functions that remained in the DPA – the department of labour and social protection of the population, as well as the assessment of land outside settlements. At the same time, the number of DPA did not decrease (80 people in 2015, 78 people – in 2017). Planned in 2017 the volume of expenditures from the state budget for the maintenance of the apparatus and structural subdivisions of the district state administration is almost 7.8 million of hryvnias.

In 2018–2019, scientists conducted a survey of representatives of the UTC and local state authorities, which found that the lack of regulation of the transfer of powers and property from district authorities to the UTC bodies was a fairly common problem. In this context, respondents interviewed mentioned problems with the distribution of educational and medical subvention between the area and the UTC, in particular uncertainty over who should fund secondary health facilities. Representatives of the DPA drew attention to the absence of a legally established procedure for returning part of the medical subvention to the district budget for the maintenance of secondary medical care institutions. Some respondents spoke about refusal of representatives of UTC to return such a subvention. It is worth noting that through these legislative gaps the representatives of the DPA organized the transfer of powers and property to the UTC in a contractual manner.

Problems in the relationship of the UTC from the DPA also arise in the social sphere. For example, the financing of social security at the local level remains a regulatory issue. As practice has shown, the DPA usually "drops" this issue to the decision of united territorial communities, noting that these are the direct interests of society. The issue of data collection and reporting to other authorities also remains uncertain. Thus, in terms of reporting to the regional administration, previously certain data were transmitted through the DPA. Now UTC independently transmit data to the regional state administration, because DPA refuse to perform this function. In addition, very often local administrations do not include



issues where there are common interests that the UTC cannot solve (especially in terms of infrastructure, road repair). This demonstrates the DPA reluctance to cooperate with local UTC councils.

In the scientific field there is a position that the modern state of interaction between the DPA and the UTC gradually leads to the fact that the district link of the administration in its current form becomes unnecessary [2]. This applies both to district councils and to a large extent to district state administrations. Therefore, in areas where all or most communities have united, the meaning of the existence of the district council as such disappears, and the powers of the DPA are significantly narrowed. At the same time, with the reform of the subregional level of the territorial structure actually slowed down, the united communities need to develop relationships with the district authorities. In general, the culture of interaction both with the district authorities and with the executive authorities of the regional level needs to be improved. The UTC need to develop their ability to engage in dialogue with the executive authorities, to engage in constructive negotiations [2]. In this regard, it is worth noting that practitioners have the opposite opinion, noting that district state administrations not only have the right to exist, but also have to monitor the exercise of powers by local self-government bodies. Otherwise, the representatives of the UTC feel their impunity [2].

In general, most practitioners and academics note that it is appropriate for different branches of government to coordinate their steps within the framework of decentralization. In particular, some experts warned that the reduction of state support and the imposition of additional costs on the UTC is in conflict with the tasks of reform, and therefore recommended the Cabinet of Ministers of Ukraine to reconsider its position on this issue. Some practitioners suggested the need to develop a clear plan of action and timetable for the completion of the main stages of the reform. Moreover, among the representatives of the DPA interviewed, it was repeatedly suggested that the voluntary unification process should be completed at some stage and made mandatory. This view was supported by individual chapters of the UTC [8].

In addition to the above-mentioned problems of distribution of powers among district state administrations, district councils and UTC, scientists also highlight such:

1) a high level of centralization of the powers of the executive authorities and the resource base for their implementation; dependence of the model and the state of separation of powers on the political situation and sentiment in the country; administrative pressure on local self-government bodies and their officials by local executive authorities and their officials;

2) gaps and conflicts in the regulatory regulation of the procedure for the consolidation and separation of powers between individual executive bodies and local self-government bodies, The relative inconsistency between constitutional and legislative norms and provisions of legal acts adopted at different times, and the existence of a considerable volume of regulatory acts by laws, which provide grounds for legal interference of executive authorities in the sphere of competence of local self-government bodies; lack of clear distribution of powers and responsibilities between executive authorities and local self-government bodies of different levels; lack of harmonization of the domestic legislative framework according to European standards and principles of the European Charter of Local Self-Government etc.;

3) imperfections and contradictions of the institution of delegated powers in Ukraine, as well as its inconsistency with European practice (Institution of contractual authority). No established procedure for delegation of authority and no possibility of non-exercise of delegated authority (for example, in the case of resource insolvency) duplication of powers of local executive and local self-government bodies, existence of related areas of competence; lack of development of effective methods of separation of powers, except for legislative (in particular, contractual etc.); inadequacy of the criteria for the classification of territorial communities in terms of granting them some scope of powers; double status of local state administrations – at the same time, the executive authorities and the executive bodies of local councils; shortcomings in the system of control over the activities of executive bodies, especially local

self-government bodies; complicated the system and structure of management institutions and the resulting excessive increase in budgetary expenditures and the like;

4) problems of material and financial nature: limited material and financial base of local self-government, low level of financial independence and, accordingly, high degree of dependence of local self-government bodies on executive authorities and others [3, p. 74].

In order to solve conflict problems, we support the proposal of scientists in the laws of Ukraine “On local self-government in Ukraine” and “On local state administrations” to provide for provisions, all legislative conflicts of competences between local self-government and local state administrations should be interpreted in favor of local self-government [4, p. 15].

A pressing issue, in our opinion, is the need to adopt a basic law “On the administrative-territorial arrangement of Ukraine”, which would specify the foundations of State policy in this area, the design of a new administrative-territorial arrangement, as well as indicate the same criteria for administrative-territorial units of all levels. This contradiction means uncertainty of the powers of local self-government bodies in Ukraine, and in practice leads to a clash of interests of state authorities and local self-government bodies [6].

Also, the provision requires further scientific justification, the position of scientists on the adoption of a new version of the Law of Ukraine “On local self-government in Ukraine”. We consider this opinion to be fair because this current version of the law does not solve the above-described problems. It is advisable to improve the functioning of full local self-government at various levels of government and to define a clear procedure for the redistribution of powers in the system of local self-government bodies and between local self-government bodies and state executive bodies.

It is necessary to regulate by law the question of the exercise by district councils of the powers defined by law in the districts, the territory of which is fully or partially covered by the established joint territorial communities, to settle the issue of optimization of the structure and number of employees of district state



administrations in the districts, the territory of which is fully or partially covered by the established integrated territorial communities and to consider improving the mechanism of state financial support for voluntary integration of territorial communities and ensuring stable sources of such support.

Conclusions. On the basis of the analysis of legislative acts and scientific sources, the article summarizes the key problems of the distribution of powers among local self-government bodies, district councils and district state administrations. Among the largest changes in the powers of local self-government bodies, district councils and district state administrations caused by the reform of decentralization are the provision of services in the field of secondary education and health care, the provision of administrative and social services. Further grounds for scientific research should be the legislative non-regulation of these spheres of authority, as well as the necessary procedures for the performance of these powers (budgetary and financial planning, contractual relations with counterparties, tender procedures, management of communal assets, management of human resources etc.).

References:

1. Бабич О.М. Реформування системи місцевих органів виконавчої влади та органів місцевого самоврядування: сьогодення та перспективи. *Часопис Київського університету права*. 2009. № 2. С. 110–116.
2. Балдич Н., Гнидюк Н., Трутковські Ц. Дослідження навчальних потреб представників органів місцевого самоврядування України: Аналітичний звіт. URL: https://nads.gov.ua/wp-content/uploads/2019/06/tna_ukraine-2018-2019-final-report_ukr_f-1.pdf (дата обращения: 10.07.2019).
3. Буглак Ю. Проблеми розмежування повноважень між органами виконавчої влади і органами місцевого самоврядування в Україні. *Підприємництво, господарство, право*. 2018. № 11. С. 70–75.
4. Державне будівництво та місцеве самоврядування : метод. вказівки до семінарських занять. Держ. вищ. навч. заклад «Укр. акад. банк. справи Нац. банку України» ; уклад.
- М.П. Кунцевич. Суми : ДВНЗ «УАБС НБУ», 2013. 32 с.
5. Дудар В.І. Шляхи підвищення ефективності делегування повноважень місцевими органами виконавчої влади органам місцевого самоврядування в контексті децентралізації влади в Україні. *Державне управління: теорія та практика*. 2014. № 1. С. 151–156.
6. Корбутяк А.Г., Сокровольська Н.Я. Фінансування повноважень органів місцевого самоврядування в умовах децентралізації. *Ефективна економіка*. 2018. № 11. URL: http://www.economy.nauka.com.ua/pdf/11_2018/104.pdf (дата обращения: 10.07.2019).
7. Об'єднана громада, що «поглинула» весь район: візит до Сновської ОТГ. URL: <http://decentralization.gov.ua/news/item/id/5646> (дата обращения: 10.07.2019).
8. Опитування. Децентралізація: результати, виклики та перспективи: офіційний сайт Фонду Демократичні ініціативи імені Ілька Кучеріва. URL: <https://dif.org.ua/article/detsentralizatsiya-rezulbtati-vikliki-i-perspektivi> (дата обращения: 10.07.2019).
9. Про схвалення Концепції реформування місцевого самоврядування та територіальної організації влади в Україні : розпорядження Кабінету Міністрів України від 1 квітня 2014 р. № 333-р / Офіційний портал Верховної Ради України. URL: <http://zakon4.rada.gov.ua/laws/show/333-2014-%D1%80> (дата обращения: 10.07.2019).
10. Регіональний розвиток: офіційний сайт Міністерства регіонального розвитку, будівництва та житлово-комунального господарства України. URL: <http://www.minregion.gov.ua/napryamki-diyalnosti/regional-dev/> (обращения: 10.07.2019).
11. Hryshchenko I.M. Development of the capacity of territorial communities. *Науковий вісник Полісся. Чернігів : ЧНТУ*, 2018. № 2 (14). Ч. 1. С. 98–104.

INFORMATION ABOUT THE AUTHOR

Pavlovskaya Anna Alekseyevna – Postgraduate Student at the Department of Public Administration and Innovation Management of the Education and Research Institute of Continuing Education of the National University of Life and Environmental Sciences of Ukraine.

ИНФОРМАЦИЯ ОБ АВТОРЕ

Павловская Анна Алексеевна – аспирант кафедры публичного управления и менеджмента инновационной деятельности Учебно-научного института последипломного образования Национального университета биоресурсов и природопользования Украины

vip_s123@ukr.net