

SECTION 4. MUNICIPAL LAW

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4.1 Improving the legal mechanism of state control over delegated local self-government powers: directions for development

One of the crucial tasks in building a modern European competitive Ukrainian state, ensuring its recovery and sustainable development, is reforming the territorial organization of power. Delegation of powers is recognized as an important institution of such organization and a method of power decentralization. Achieving the objectives and tasks of delegating specific powers from executive authorities to municipal bodies is only possible with an effective system of control over the exercise of such powers. Therefore, control should be considered a necessary element of the power delegation mechanism, and improving its legal regulation is one of the directions for Europeanizing the national model of local self-government.

As stated in the Lima Declaration of Guidelines on Auditing Precepts, adopted by the IX Congress of the International Organization of Supreme Audit Institutions in Lima (Republic of Peru) in 1977, control is an integral part of the regulatory system. Its purpose is to identify deviations from accepted standards and violations of principles of legality, efficiency, and economy in resource management at the earliest possible stage to enable the adoption of corrective measures, and in certain cases, holding responsible parties accountable, obtaining compensation for damages, or implementing measures to prevent or reduce such violations in the future [74].

Control over the exercise of delegated powers by local self-government bodies is an important function of state administration. As O.F. Andriiko notes, in terms of content, this is external control since it is carried out by entities outside the municipal system [75, p. 101]. The necessity of such control is justified by many researchers: central authorities' control over local administration should be welcomed when it contributes to ensuring the effectiveness of local governance, standardization of services, implementation of national policy in finance, economics, and general planning (M.V. Dannet); while the absence of control over local authorities would

altogether contradict the principle of equal opportunities for citizens, which should not depend on the territory of the municipality where they reside (H.U. Jensen).

The task of state control over the exercise of delegated powers by municipal bodies is to prevent actions beyond the set parameters, ensure proper implementation of such powers in line with legality and expediency, prevent possible deviations, and in case of their occurrence - eliminate negative consequences. These tasks are implemented through certain functions.

The stabilizing function is manifested in ensuring the stability of public administration at all levels of territorial power organization, coordinated and effective activities of municipal bodies in implementing national decisions, their legality, which simultaneously promotes proper life support of territorial communities, guaranteeing and protecting human and citizen rights and freedoms. Indeed, as O.H. Daniliyan points out, control is the foundation of stability in society [76, p. 221-222].

Control is essentially connected with receiving and analyzing certain information necessary and sufficient to identify the actual state of affairs in various sectoral spheres of delegated powers implementation, the nature and content of relevant socio-economic, environmental, and other social relations at the local level, the status of execution of decisions made by state bodies, and set state tasks. In this context, the importance of control as a universal means of obtaining feedback information becomes particularly significant, without which the social management process would lose objectivity, purposefulness, and validity. Control allows obtaining operational information reflecting the state of affairs in controlled objects, the compliance of their activities with the established program, identifying shortcomings in the content of decisions being made, the organization of their execution, methods and means of their implementation. In this way, the state receives information about the effectiveness and efficiency of its implemented policies and corresponding grounds for adjusting political and legal decisions. This reveals the informational function of control.

Performing its protective function, control over the exercise of delegated powers by municipal bodies serves the purpose of protecting national interests, preventing their possible violations, eliminating deviations from the state-established order of ensuring

such interests, and stopping detected violations of administrative activity order. Being one of the elements of the power delegation mechanism, control provides for targeted and effective influence on local self-government bodies in cases where facts of non-execution or improper execution of state-delegated powers by local self-government bodies were detected, and this reflects the regulatory function of such control.

From the perspective of European standards, it is noteworthy that the European Charter of Local Self-Government operates with the concept of supervision rather than control. Researchers, attempting to distinguish between control and supervisory activities, indicate that the main and defining feature that distinguishes these concepts is the clearly expressed departmental nature of supervision and non-interference in the operational and economic activities of the supervised object, which is not characteristic of control [77, p. 5]. However, we support the view that supervision is one form of control activity, which in its basic features and functional orientation coincides with the characteristics of control. It has a narrower scope of application, therefore in current legislation there is a tendency to replace the term "supervision" with the term "control," not vice versa. Control has the status of a generic concept that encompasses supervision as a special type of control in certain areas of law [78, p. 10]. The use of the concept of supervision to characterize control activities in the sphere of municipal bodies' exercise of delegated powers allows emphasizing the non-interference of the state in the sphere of guaranteed local self-government autonomy.

The limits of control are defined by general principles established by the Constitution of Ukraine and Ukrainian laws. Thus, Article 71, Part 1 of the Law of Ukraine "On Local Self-Government in Ukraine" states that territorial communities, local self-government bodies and officials independently exercise their granted powers [79]. Key in this context can be considered the provisions of Part 2 of this article, according to which executive bodies and their officials do not have the right to interfere in the lawful activities of local self-government bodies and officials, as well as to resolve issues attributed by the Constitution of Ukraine, this and other laws to the powers of local self-government bodies and officials, except for cases of exercising delegated powers by councils and in other cases provided by law.

A similar provision in content is contained in Part 4 of Article 35 of the Law of Ukraine "On Local State Administrations," which establishes a legal prohibition on interfering in the exercise of own powers by local self-government bodies [80]. Based on such wording of norms, it can be concluded that the legislator does not consider the exercise of control by executive bodies over the state of delegated powers execution by local self-government bodies as interference in local self-government activities. As V. Shariy notes, local self-government autonomy is always relative, as it is characterized by the existence of certain limitations. One of them is imposed on local autonomy by higher levels of administration. The main aspects influencing it are: forms and methods of control over local self-government bodies' activities by state authorities; sphere of competence, main functions of local self-government bodies, as well as forms and methods of their implementation [81, p. 160].

Thus, the only case when the law allows interference of executive bodies in local self-government activities is ensuring control over the exercise of delegated powers by local self-government bodies. In all other cases, state actions regarding interference in the sphere of competence of local self-government bodies and officials will be qualified as illegal. In the latter case, bodies and officials have the right to challenge illegal actions or inaction of the state represented by executive bodies and officials in court. At the same time, as provided in the European Charter of Local Self-Government (Article 8), administrative control over local self-government bodies should be exercised in such a way that the degree of interference by the controlling body is proportionate to the importance of interests it intends to protect [82]. Authorized bodies of executive power should only assess the quality and effectiveness of delegated powers exercised by local self-government bodies, and cannot interfere in the operational activities of local self-government bodies in the exercise of delegated powers.

Control over the execution of delegated powers by local self-government bodies has a legislative basis in our state. Thus, the execution of delegated powers is accompanied by mandatory control over their execution by executive bodies: local self-government bodies are accountable to the respective executive bodies regarding

matters of exercising delegated powers of executive bodies (Part 4 of Article 143 of the Constitution of Ukraine, Part 2 of Article 76 of the Law of Ukraine "On Local Self-Government in Ukraine") [83]. Village, settlement, city mayors who head the executive committee of the city council are accountable to the respective executive bodies on matters of exercising delegated powers of executive bodies by the executive bodies of the city council (Part 6 of Article 42 of the Law of Ukraine "On Local Self-Government in Ukraine").

According to Section VII of the Concept of Administrative Reform in Ukraine, "accountability" means a certain state (regime) of organizational relations between bodies of power, where one body has the right to verify the activities of another, including the right to cancel or suspend its acts, and the latter is obliged to provide necessary opportunities for such verifications and report on its activities [84]. Accountability gives executive bodies the right to determine general policy in exercising powers, their methodology, provides the right of instruction and inspection, staff education of executive bodies of local councils, provide guidance on the appropriateness of certain measures, evaluate their implementation.

The provisions of Part 4 of Article 143 of the Basic Law of Ukraine determine the circle of potential subjects of local self-government that are accountable to executive bodies in exercising delegated powers but do not specify them. And therefore, it is not clear whether these are executive bodies of local self-government or the respective council, which can make decisions regarding the peculiarities of delegated powers implementation in the respective territory. Given that responsibility should be borne by local self-government bodies that directly exercise delegated powers, as well as the provisions of Part 2 of Article 11 of the Law "On Local Self-Government in Ukraine," which states that executive bodies of local councils are accountable bodies, it would be appropriate to provide at the constitutional level for the accountability of executive bodies of local self-government. In particular, it is proposed to provide such wording of Part 4 of Article 143 of the Constitution: "Executive bodies of village, settlement, city council, executive committee of district,

regional, district in city council on matters of exercising delegated powers of executive bodies are accountable to executive bodies that delegated such powers."

To implement Article 143 of the Constitution of Ukraine and Article 76 of the Law of Ukraine "On Local Self-Government in Ukraine," the Cabinet of Ministers of Ukraine approved the Procedure for Control over the Exercise of Delegated Powers of Executive Bodies by Local Self-Government Bodies (hereinafter - Resolution #339) [85]. For effective organization of control, central executive bodies also approve methodological recommendations regarding the participation of their territorial bodies in implementing the mentioned resolution. On behalf of the state, according to Article 35 of the Law of Ukraine "On Local State Administrations" and Resolution #339, control over the execution of delegated powers is exercised by local state administrations and territorial bodies of ministries and other central executive bodies. In addition, according to the Law of Ukraine "On Local Self-Government in Ukraine," control over the execution of these powers by executive bodies of the council is exercised by the representative body - the local council, which has the right to hear reports from the local mayor about the work of executive bodies.

Currently, two types of state control can be distinguished depending on the mechanism of its implementation. The first provides for legislative regulation, where interference of state authorities in local self-government details is minimized. This is the so-called "remote control," where appropriate laws are adopted and local self-government bodies can act at their discretion as long as they remain within the legal field. The only form of central interference under such conditions lies in quasi-legal interpretation (for example, through courts and auditors) of legality. The second involves administrative regulation and provides for such an interaction between the center and localities, which is based on creating rules and instructions. The state, represented by central executive bodies, thoroughly regulates a certain way of local self-government bodies' activities. During such control, the degree of legality of local self-government bodies' activities is determined by individual decisions of state officials themselves. Moreover, in conditions of administrative regulation, legally binding prior approval of relevant actions is often necessary, while with legislative

regulation there is only judicial evaluation of already committed actions. Administrative control is not "remote." An example of administrative implementation of control by Ukrainian state administration bodies over the activities of executive bodies of local self-government is precisely the delegated powers of executive bodies, for which executive committees of councils are accountable to local state administrations [81, p. 160].

Meanwhile, in the organizational aspect, the control exercised by local state administrations over the execution of delegated powers is dispersed among different structural subdivisions of administrations, and therefore, is inefficient from the perspective of balanced state administration, which negatively affects the systematic nature of such control. We believe that a separate structural subdivision of control and supervisory activities should be formed within the structure of local state administrations.

It should be noted that state control over the implementation of delegated powers by local self-government is entrusted not only to local state administrations. This function is also performed by central executive bodies and/or their territorial subdivisions. According to paragraph 5 of Resolution #339, ministries and other central executive bodies, their territorial bodies exercise control in accordance with their powers and in the manner determined by legislation.

Within the framework of implementing the policy of decentralization of public authority, it has been proposed to make changes to the Constitution of Ukraine (draft law "On Amendments to the Constitution of Ukraine (regarding decentralization of power)"), which provide for the liquidation of local state administrations and introduction of the institution of prefects for the purpose of exercising control-supervisory and coordination functions. The action of local self-government acts on grounds of their non-compliance with the Constitution or laws of Ukraine, in case of adoption of relevant changes, is to be suspended by the prefect with simultaneous appeal to the court. The court, not the prefect, will make the final decision.

In general, the modernization of the system-structural organization of power at the territorial level should become an important step towards democratizing the

mechanism of public authority exercise. However, reforming public-power administration, especially the liquidation of certain power structures, requires gradualness, balance, and responsibility so that the implemented measures do not lead to the loss of administrative connections and to the deterioration of the quality of functional obligations execution by newly created institutions.

State control over delegated powers takes the form of substantive control, which concerns not only legality but also the expediency of solving certain tasks, that is, control is actually transformed into a means of management and regulation. As a result of proximity to local issues, local authorities themselves should decide questions related to the expediency of certain measures. Therefore, state control should extend to the final result. It is through such mechanisms that the state has the possibility of indirect, informal influence on local self-government activities. This manifests itself in both positive and negative consequences. The former include the possibility of involving local self-government bodies in the process of promoting national interests at the local level in this way. But on the other hand, state influence is not always beneficial for territorial communities, and sometimes may directly contradict their interests, and therefore there will be cases of abuse by the state through the above-mentioned mechanism.

The Law "On Local Self-Government in Ukraine" emphasizes that state control over the activities of local self-government bodies and officials can be exercised only on the grounds, within the powers and in the manner provided by the Constitution and laws of Ukraine, and should not lead to interference by state authorities or their officials in the exercise of local self-government bodies' own powers. Therefore, authorized executive bodies should evaluate only the quality and effectiveness of delegated powers exercise by local self-government bodies and cannot interfere in the operational activities of local self-government bodies in the exercise of delegated powers. This provision is an important guarantee of quality implementation of powers by local self-government bodies.

State control over the exercise of delegated powers by local self-government bodies can occur in various spheres of social relations where state powers are

delegated. In our opinion, the most relevant from the perspective of ensuring national interests is control over the exercise of delegated powers in the budget and financial sphere. Indeed, as practice shows, it is in this sphere that violations of legislation most often occur during the implementation of delegated powers. Article 69 of the Law "On Local Self-Government in Ukraine" states that the state exercises control over the legal, appropriate, economical, efficient spending of funds and their proper accounting. That is, the universal method of state bodies' influence on local self-government bodies in the execution of delegated powers is financial control. At the same time, control and supervisory activities in the sphere of land relations require reform - it is necessary to improve the legal foundations of self-governing control over the targeted use and protection of lands, grant local self-government bodies the right to independently establish the procedure for organizing and implementing control over land use and protection, which will ensure not only local peculiarities of such control but also operative response to detected violations in this sphere.

The main forms of control implementation have been reflected in the aforementioned Resolution #339 of Ukraine, which includes: 1) exercising control through analysis of acts of local self-government bodies; 2) provision of information by local self-government bodies about the execution of delegated powers of executive bodies; 3) conducting inspections of activities of executive bodies of city councils. Thus, the presence of different forms of control over the exercise of delegated powers by local self-government bodies demonstrates its importance for ensuring proper cooperation between the state and territorial communities on the grounds determined by the Constitution and laws of Ukraine.

Along with the forms, it is also proposed to distinguish stages of administrative procedures for exercising control over the execution of delegated powers of executive authority by local self-government bodies: 1) preparation stage for conducting inspection; 2) direct inspection stage; 3) preparation stage of inspection materials; 4) stage of summarizing inspection results. Currently in Ukraine, to determine the mechanism for exercising control powers in the execution of delegated powers of executive bodies by local self-government bodies, the practice of heads of local state

administrations adopting orders regarding the procedure, periodicity, and terms of conducting inspections is quite common. For conducting inspections of executive bodies of local councils, local state administrations form inspection commissions, determine the list of issues for study, as well as the duration of inspection, and submit them for approval to the head of administration. If necessary, by decision of the head of the body exercising control, unscheduled inspections may be conducted. Thus, legislation provides for two types of inspections of delegated powers execution by local self-government bodies: scheduled and unscheduled. In addition, by decision of the Cabinet of Ministers of Ukraine, Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations, comprehensive inspections of the exercise of delegated powers of executive bodies by executive bodies of village, settlement, city councils may be conducted, with the participation of territorial bodies of ministries and other central executive bodies. Based on the inspection results, an act is drawn up signed by the persons who conducted the inspection. It should contain analysis, conclusions, and proposals on all inspected issues. If necessary, inspection materials are transferred to relevant law enforcement bodies and higher executive bodies.

Executive bodies of village, settlement, city councils must send information about the execution of delegated powers of executive bodies to the bodies exercising control once every six months by the tenth day of the month following the reporting period. Copies of acts of local self-government bodies adopted on matters of exercising delegated powers of executive bodies shall be sent within ten days from the date of their adoption to the body exercising control. In case of detecting non-compliance of an act with legislation, the controlling body, within three months, sends a notification to local self-government bodies about the non-compliance of this act. At the request of the body exercising control, executive bodies of village, settlement, city councils must provide information about the execution of specific delegated powers.

In light of the initiated reforms of local self-government in Ukraine, it is necessary to clearly define the basic principles of organizing executive power supervision over the execution of delegated powers by local self-government bodies,

taking into account European standards. The problem of legislative definition of principles and forms of control over the exercise of delegated powers by local self-government bodies, as well as the responsibility of local self-government, their officials for non-execution or improper execution of delegated powers needs to be resolved.

Issues of legal regulation of control activities of local state administrations over the implementation of delegated powers by local self-government bodies are quite complex, as the controlling and controlled subjects are in different power subsystems - state and self-governing - which complicates the very mechanism of legal regulation of their control activities. In connection with this, the question arises of developing a legal mechanism for effective control over the legality of delegated powers execution. For this purpose, one of the possible ways is to make changes to the Laws of Ukraine "On Local State Administrations" and "On Local Self-Government in Ukraine," which currently regulate these issues only in general terms. However, for the further development of the institution of delegation of state powers to local self-government bodies, it is important that the objects of control activities, functional obligations of persons exercising control, be in the sphere of regulation not of a series of different regulatory legal acts, but in the sphere of a single law on delegated powers, which should establish the legal foundations of state control in the sphere of executive power [86, p. 427].

However, constitutional amendments must precede the adoption of the aforementioned law. At the end of 2015, the Verkhovna Rada of Ukraine approved in the first reading the Draft Law on Amendments to the Constitution of Ukraine (regarding decentralization of power) [87]. A systematic analysis of this document revealed that Article 143 of the current Constitution of Ukraine could undergo the most significant changes. In particular, the advantages of this draft law include clarity and unambiguity in defining the entities responsible for delegated executive power authorities. These are the executive bodies of local community self-government and executive committees of district and regional councils. This approach, in our opinion, is acceptable and justified, as executive bodies of local self-government have similar

functional purposes and legal nature to executive authorities that delegate their powers. Furthermore, unlike the current version of the Constitution of Ukraine, the draft law used the term "delegated powers" instead of "granted powers." If these constitutional amendments are finally adopted, there will no longer be a need for scientific and other discussions regarding the correlation between these concepts and the necessity to harmonize them. Another advantage of the draft law, in our view, is the provision contained in Part 5 of Article 143. According to it, the possibility of withdrawing delegated powers is provided for on grounds and in accordance with procedures defined by law. The current version of the Constitution of Ukraine does not regulate this issue in any way, thus amending the Basic Law will eliminate this constitutional and legal gap.

An important step by the legislator was the attempt to specify the constitutional mechanism for suspending local self-government acts due to their non-compliance with the Basic Law or other laws of Ukraine. Obviously, this also applies to acts of local self-government bodies adopted within the framework of exercising delegated powers. If the draft law is adopted, the newly introduced official – the prefect – will have the constitutionally defined right to suspend acts that contradict current legislation, while simultaneously applying to the court.

Additionally, the Law on Amendments to the Constitution of Ukraine proposed adding several entirely new provisions to the current Constitution of Ukraine. For instance, there is an uncharacteristically detailed elaboration of the mechanism for reviewing the constitutionality of local self-government acts. According to Parts 3-6 of Article 144 of the draft law, "...if a community head, community council, district, or regional council adopts an act that does not comply with the Constitution of Ukraine, creates a threat to state sovereignty, territorial integrity, or national security, the President of Ukraine suspends the respective act while simultaneously appealing to the Constitutional Court of Ukraine, temporarily suspends the powers of the community head, community council, district, or regional council, and appoints a temporary state commissioner. The temporary state commissioner directs and organizes the activities of the respective executive bodies of local community self-government and the

executive committee of the district or regional council. The Constitutional Court of Ukraine considers such an appeal from the President of Ukraine immediately. If the Constitutional Court of Ukraine recognizes the act of the community head, community council, district, or regional council as compliant with the Constitution of Ukraine, the President of Ukraine revokes the act... If the Constitutional Court of Ukraine recognizes the act of the community head, community council, district, or regional council as non-compliant with the Constitution of Ukraine, the Verkhovna Rada of Ukraine, upon submission by the President of Ukraine, prematurely terminates the powers of the community head, community council, district, or regional council and calls early elections in accordance with the procedure established by law."

The proposed changes provide for quite powerful state control over the activities of local self-government bodies and prohibit any attempts by territorial communities and local self-government bodies, particularly within the framework of delegated powers, to encroach upon the supremacy of the Constitution of Ukraine, state sovereignty, territorial integrity, or national security. In fact, local self-government bodies and officials are proposed to face the harshest sanction for relevant violations - early termination of their powers, both inherent and delegated. Thus, the legislator apparently attempts to prevent cases of recurring situations where certain local self-government bodies adopt illegal decisions aimed at violating the principles of Ukraine's constitutional order.

However, certain provisions of the mentioned draft law not only fail to eliminate some existing shortcomings in the current edition of the Constitution of Ukraine regarding the legal regulation of exercising delegated powers but may also create additional problems and lead to new legal conflicts in relations between territorial communities, local self-government bodies, and the state. In our opinion, the removal from the Basic Law of the provision regarding the necessity to finance delegated powers by allocating certain national taxes to the local budget according to the procedure established by law will negatively impact the activities of local self-government bodies concerning the execution of delegated powers. The provision of Article 142, Part 1, Paragraph 2 of the draft law, which defines "...a portion of national

taxes and other local budget revenues" as the material and financial basis of local self-government, cannot fully compensate for the removal of the aforementioned provision from the current version of the Constitution of Ukraine. Therefore, local self-government reform must be accompanied by financial modeling that provides for the necessity of transferring a portion of national taxes to local self-government bodies.

The detailed elaboration of the legal mechanism for delegating certain powers of executive bodies to local self-government bodies in general, and state control over their execution in particular, should occur within the framework of adopting a separate, comprehensive regulatory act - the Law of Ukraine "On Delegated Powers." The absence of such a law currently complicates both the delegation and revocation of delegated powers. The adoption of an expanded version of such law is possible, which provides for comprehensive resolution in a single legal act of all issues related to the exercise of delegated powers at different levels of public authority, as well as a narrower version that only considers the delegation of powers between executive authorities and local self-government bodies.

In our view, the law should reflect fundamental, conceptual provisions that will facilitate productive cooperation between territorial communities and the state through the institution of delegated powers, starting from establishing a list of such powers, their content and scope, and ending with determining the grounds and procedures for holding local self-government entities liable for non-performance or improper performance of delegated powers. However, the adoption of such a law should occur within the framework of constitutional reform of local self-government based on the decentralization of public authority and subsidiarity. In this regard, provisions regarding any issues of delegating powers from executive bodies to local self-government bodies can be removed from the current Law of Ukraine "On Local Self-Government in Ukraine." Instead, it is necessary to provide blanket (referential) norms to the Law of Ukraine "On Delegated Powers." The provisions of such law should become an organic continuation of the Law of Ukraine "On Local Self-Government in Ukraine."

The Law of Ukraine "On Delegated Powers" should reflect several key aspects of the exercise of delegated powers by local self-government bodies and officials from executive authorities. First, the principles of power delegation must be enshrined, which in their totality will constitute a single, cohesive system. It is important in this aspect to provide for international principles, such as subsidiarity and proportionality, and to reveal their essence. The establishment of a system of delegation principles should create an appropriate legal foundation for developing effective and mutually beneficial relationships between territorial communities and the state.

No less important from the perspective of proper, problem-free functioning of the local self-government system in Ukraine is the clear definition in the proposed law of, firstly, the spheres in which powers may be delegated, an exhaustive list of such powers, and their scope, taking into account territorial, geographical, historical, economic, social, spiritual-cultural, and linguistic characteristics of territorial communities within certain administrative-territorial units of Ukraine. After all, territorial communities in Ukraine differ not only in size but also in other parameters that the state must consider when initiating the process of delegating its powers to them.

Secondly, one of the unresolved problems in current legislation is the absence of a norm that would clearly define the range of executive authority powers that cannot be subject to delegation. Since not all inherent powers of executive authorities can be delegated to local self-government bodies without harming state interests, it is necessary to define the scope of state powers that under no circumstances can be subject to delegation (state prerogatives). Thus, we consider it necessary to legislatively establish provisions according to which the powers of executive authorities in the spheres of national security and defense, as well as certain powers in the economic sphere (for example, adoption of certain regulatory acts, prohibitions, permits, etc.), land sphere (for example, arbitrary change of land purpose), social sphere (for example, refusal or blocking of social benefits to certain categories of citizens residing in the respective territory) and other spheres cannot be delegated to local self-government bodies.

It is necessary to define in the law the time period for which local self-government bodies will be vested with delegated state powers and the procedure for exercising powers in case of expiration of the period for which they were delegated if such condition was provided. And also the grounds and procedure for terminating the execution of delegated powers by local self-government bodies.

It is important to legislatively differentiate powers, including delegated ones, in the system of local self-government bodies and executive authorities at different levels of the administrative-territorial structure based on the principle of subsidiarity, as well as between executive authorities and local self-government bodies on the basis of power decentralization. This will prevent future disputes regarding jurisdictional conflicts both between local self-government bodies and executive authorities, and between local self-government bodies of different levels, and will contribute to strengthening the institution of local self-government and increasing the level of trust between it and the state.

Special attention in the Law of Ukraine "On Delegated Powers" should be paid to the legal regulation of the mechanism for implementing delegated powers. The legislator should clearly define procedural issues. In our opinion, in this case, preference should be given to the institution of administrative agreement. The law should provide for the possibility, in case of relevant prerequisites and established grounds, to conclude such an agreement between the executive authority that has shown intention to delegate its powers, and the local self-government body that has agreed to accept these powers for implementation. Executive authorities should refrain from making decisions about vesting local self-government bodies with delegated powers if the objections of the respective bodies indicate an objective impossibility to execute these powers. Meanwhile, local self-government bodies are not entitled to refuse delegated powers through a legally binding decision in a unilateral manner without indicating objective reasons for such refusal. This will help avoid existing questions about the possibility and advisability of delegating powers, as currently all local self-government bodies in Ukraine are delegated by law the same list of executive authority powers in the same scope. Thus, the matter of power delegation should be

resolved in each individual case on the basis of appropriate agreement and mutual consent. This approach will foster the territorial community's and state's desire to improve citizens' lives, make delegation relationships more understandable and defined on one side, and will help minimize risks of abuse or non-performance (improper performance) on the other.

According to current Ukrainian legislation, local self-government bodies are deprived of the legal possibility to refuse the acquisition of delegated powers or their acceptance for implementation. In fact, legislation establishes an obligation for local self-government bodies to exercise delegated powers against their own will. This can be viewed as a gross violation of one of the important principles of power delegation - voluntariness. Moreover, such "coercion" does not create proper prerequisites for exercising delegated powers, which may negatively affect the effectiveness of their practical implementation.

The legislator should provide in the future law an exhaustive list of executive authorities that can delegate their own powers to local self-government and a list of executive authorities that are explicitly prohibited from being subjects of power delegation. After all, not all executive authorities can be involved in the process of power delegation, based on considerations of national security, ensuring state sovereignty, preserving territorial integrity, etc. For example, it is dangerous, primarily for the state itself, to delegate powers to local self-government bodies and officials from such central executive authorities as: the Ministry of Defense of Ukraine, Ministry of Internal Affairs of Ukraine, State Fiscal Service of Ukraine, National Agency for Prevention of Corruption, State Emergency Service of Ukraine, and several others, particularly those that formally do not belong to the system of central executive authorities but are such by their formation procedure, tasks, functions and powers (Security Service of Ukraine, National Anti-Corruption Bureau).

The legislative act on delegated powers must reflect an important norm that is currently proposed in the draft Law of Ukraine on Amendments to the Constitution of Ukraine (regarding decentralization) concerning the range of subjects-recipients of delegated powers. In our opinion, such bodies should exclusively be executive

committees and other executive bodies of village, settlement and city councils, as well as executive bodies of district and regional councils.

The future adoption of the Law of Ukraine "On Delegated Powers" should establish a clear system of guarantees for the exercise of delegated powers. An important place among these should be given to material and financial support. The financing of powers delegated to local self-government bodies should follow the principle of 100% advance provision by the state of respective powers, that is, exclusively through sources of funding transferred by it to local self-government bodies or subsidies, grants, and subventions. This will prevent the financing of delegated powers from local self-government's own revenue sources and will contribute to better performance of both inherent and delegated powers. Non-compliance with this legal requirement by the state should be legal grounds for local self-government bodies to refuse further implementation of delegated powers or suspend (temporarily suspend) their implementation until state funding is restored in full.

Finally, for the effective functioning of the institution of delegated powers, the provisions of the future Law of Ukraine "On Delegated Powers" need to clearly outline the issues of organizing state control over the exercise of delegated powers. First, the law must establish an imperative norm regarding the accountability of local self-government bodies and officials on matters of their exercise of delegated powers to relevant executive authorities, and must detail its forms and periodicity. Second, the responsibility of subjects who receive delegated powers before their nominal holders, i.e., the executive authorities that delegated their own powers, must be established.

The problem of responsibility of local self-government bodies and officials for non-performance, refusal to perform, or improper performance of delegated powers is the most complex, ambiguous, and least developed in the science of municipal law. The responsibility of local self-government bodies before the state may arise, primarily, as a consequence of their violation of the Constitution or laws of Ukraine in the execution of powers, as well as in cases of misuse of budget funds. In academic literature, opinions have also been expressed that in cases where damage is caused to

the rights and legitimate interests of natural and legal persons during the execution of delegated powers by local self-government bodies, the obligation for compensation should be directly imposed on the state [88, p.226].

The completeness and effectiveness of the exercise of delegated powers by local self-government bodies and officials, in our opinion, depends on two factors - the availability of adequate funding from the state and legally established responsibility for non-performance or improper performance of such powers. The absence of a legally established mechanism for holding bodies and officials accountable undermines the institution of delegated powers, as it creates a foundation for the unfair execution of delegated powers by local self-government bodies and effectively transforms these bodies' obligation into a corresponding right.

Currently in Ukraine, neither the type nor the limits of responsibility of local self-government bodies for non-fulfillment of delegated powers are defined. At the legislative level, as noted above, only the principle of accountability of local self-government bodies in executing delegated powers is provided for. If an act of a local self-government body, adopted regarding the implementation of delegated powers of executive authorities, is found to be inconsistent with Ukrainian legislation, the local self-government body is only notified of the act's non-compliance; mechanisms for suspending such acts and other procedural matters are absent. However, the legislation does not define the list of entities that have the right to suspend decisions of local self-government bodies and can apply to court for the annulment of an act. According to the Decision of the Constitutional Court of Ukraine dated 16.04.2009 No. 7-rp/2009 (case on the annulment of acts of local self-government bodies), which clarifies the content of Part 2 of Article 144 of the Constitution of Ukraine and Article 59.10 of the Law, it appears that decisions of local self-government bodies and their officials can be declared illegal due to non-compliance with the Constitution or laws of Ukraine by a court of general jurisdiction upon the initiative of interested persons, that is, through judicial procedure. However, as the Constitutional Court of Ukraine considers, this does not deprive the local self-government body of the right to modify or cancel its legal act on its own initiative or at the initiative of other interested persons (including

on grounds of non-compliance with the Constitution or laws of Ukraine) [89]. In our opinion, it is necessary to make appropriate additions to Ukrainian legislation and empower heads of local state administrations with the authority to suspend illegal acts of local self-government bodies that are adopted regarding the implementation of delegated powers of executive authorities.

Also, no accountability measures are established in case local self-government bodies fail to provide relevant control authorities with information about the implementation of certain delegated powers; if during inspection certain violations or abuse of delegated powers by local self-government bodies are discovered, materials are transferred to relevant law enforcement agencies and superior executive authorities. In other words, what occurs is not so much state control as monitoring of the situation. The role of executive authorities is essentially reduced to observation: they can only point out deficiencies, propose their elimination, or initiate the process of holding local self-government bodies and officials accountable through other entities vested with relevant powers by the Constitution and laws of Ukraine.

One form of accountability for local self-government bodies and officials is the court's recognition of their decisions as invalid [90, p. 294]. The mechanism for bringing culpable local self-government bodies and officials to account is through relevant appeals by executive authorities to the Verkhovna Rada of Ukraine, in cases of collective responsibility of a body, or to law enforcement agencies in cases of personal legal responsibility of local self-government officials. The highest form of constitutional legal accountability could be, for example, the Verkhovna Rada of Ukraine calling early elections for village, settlement, city, city district, district, or regional councils. However, such accountability would still be indirect, as the body that directly identified the violation does not impose accountability, but rather other authorized state institutions do so upon its petition. This procedure delays or may even prevent altogether the process of holding the guilty party accountable or the possibility of applying response measures to the violator.

Ukrainian legislation recognizes a model of accountability for bodies of another form of public authority - the accountability of local state administrations to district

and regional councils for failure to perform delegated powers. Thus, according to the Constitution of Ukraine, district and regional councils may express no confidence in the head of the respective local state administration, based on which the President of Ukraine makes a corresponding decision [91]. Therefore, in the Law of Ukraine "On Local Self-Government in Ukraine," it is advisable to establish the possibility for executive authorities to raise justified questions before authorized local self-government bodies (local councils) regarding the accountability of local self-government executive bodies for non-performance or improper performance of delegated executive powers.

Following European practice, local self-government bodies and officials should be held accountable for the implementation of delegated powers only to the extent to which they were provided with necessary material and financial resources by state authorities. In particular, this can be established in bilateral acts between executive authorities and local self-government bodies. Ensuring real accountability of local self-government bodies for implementing their assigned delegated powers is possible only in the case of joint accountability of state bodies for inadequate material and financial support of delegated powers. Germany's experience can be taken as an example, where the following rule is currently in effect: when assigning tasks to communities, the state bears responsibility for their financing. In cases of insufficient funding or its absence, communities have the right to appeal to regional constitutional courts. Therefore, the delegation of certain state powers to local self-government bodies should not be interpreted as absolute exemption of state authorities from responsibility, as the powers continue to retain their state nature.

Agreeing with the opinions of various scholars, we consider it expedient and necessary to legislatively establish:

- the responsibility of local self-government executive bodies for non-performance or improper performance of delegated powers of executive authorities;
- responsibility for refusal without valid, justified reasons to execute delegated powers;

- responsibility of bodies that delegated powers, and their officials for failure to provide, insufficient provision of material-financial, personnel, informational, and other resources that should be legally prescribed for proper execution of delegated powers;
- material responsibility of bodies that delegated powers and their officials in cases where their decisions, actions, or inaction led to the impossibility of further execution of delegated powers or resulted in material damages [92].

The adoption of a separate law on delegated powers, which has already been emphasized, is an important direction in resolving issues related to establishing legal responsibility of local self-government bodies for non-performance, improper performance of delegated powers, and joint responsibility of state bodies that executed the delegation.

The sanctions for non-performance or improper performance of delegated powers should include warnings, suspension of local self-government body acts adopted within the scope of delegated powers, and early termination of powers of the local council whose executive body committed the offense. The initiators of such termination can be both the state, represented by respective executive authorities through the mechanism of extraordinary (early) elections of local self-government bodies, and the territorial community through the mechanism of local referendum within the framework of controlling their governing bodies.

As a separate sanction, one can recognize the withdrawal of delegated powers at the initiative of the respective executive authority at any time, but given the factual and legal grounds of non-performance or abuse thereof. It is also necessary to provide for an appropriate mechanism for applying this sanction, which should consist of several stages: initiating the procedure, evaluation of factual and legal grounds, discussion, coordination and consideration of the draft decision, adoption of the decision and its entry into force, legal consequences of withdrawing delegated powers.

Ensuring real responsibility of local self-government bodies for implementing delegated powers can be achieved under the following conditions:

- establishing at the legislative level the principle of responsibility of local self-government bodies and officials before the state for non-performance or improper performance of delegated powers and revealing its content by supplementing the system of local self-government principles defined in Article 4 of the current Law of Ukraine "On Local Self-Government in Ukraine"
- adherence to the principles of the European Charter of Local Self-Government by Ukrainian legislators and their implementation into national legislation norms. According to these, joint responsibility should arise for the implementation of state-delegated powers between the self-government body and the state institution whose powers were received for execution by the local self-government body through the delegation mechanism;
- establishing real, not declarative, responsibility of local self-government for implementing granted powers. This can only happen when the state bears the same responsibility towards local self-government bodies. In such case, state authorities are obliged to intervene in local self-government bodies' activities if their unsatisfactory work may threaten the territorial community's well-being.

In the near future, the Ukrainian state's tasks aimed at reforming the local government system are focused not so much on the distribution of powers as on fundamentally changing its organizational model at local and regional levels, strengthening the responsibility of local self-government bodies and their officials for decision-making. The success of the reform largely depends on transparency, clarity of implemented changes for all parties, competence, and professionalism of executors. Within the framework of implementing the reform, particularly regarding powers delegated to local self-government bodies, it is necessary to organize training programs explaining changes for politicians at all levels and local council deputies. Also, training and experience exchange with foreign colleagues are needed to ensure proper execution of powers.

Thus, Ukraine must overcome a challenging path for the effective functioning of the institution of delegated powers at the local self-government level in Ukraine. This requires successful implementation of constitutional, administrative reforms, and local

self-government reform within the framework of power decentralization. Additionally, for further democratic development of the state, it is necessary to consider the positive experience of European countries regarding the organizational and legal mechanism of relationships between the state and local self-government bodies.