

Improving Interactions between State Administration and Local Self-governments of Ukraine

Nadiya Meltyukhova, Lyudmyla Naboka

*Kharkiv Regional Institute of Public Administration
of the National Academy of Public Administration
attached to the Office of the President of Ukraine
75 Moskovsky Ave., Kharkiv 61050, Ukraine*

Main contradictions in relations between the local state administrations and local self-governments of Ukraine are observed. Approaches to improve the governance performance of social and economic communities' development are proposed. The situation with legal-normative and structural-functional provision of the activity of territorial power bodies is analyzed. The effectiveness of their cooperation organized in the form of contractual relations is assessed, as well as the issues of their implementation in the operation of the existing institutions. Propositions on improving organizational provision of the territorial managerial authorities' activity are elaborated.

Raktažodžiai: *valstybės valdžia vietos lygmenyje, vietos savivaldos valdžia, sąveika, valdžių pasidalinimas, kompetencija, funkcijos reguliavimas.*

Keywords: *local state authorities, local self-government authorities, interaction, division of powers, competences, functions, regulation.*

Introduction

Realization of administrative reform presupposes creation of a public administration system able to ensure Ukraine's formation as a highly developed civilized legal European state with high standards of living, social stability, culture, democracy, related to the needs and demands of citizens, and based on the scientific principles. Practice proves that to achieve positive results in performance of any branch it is necessary to take into account the peculiarities of the state policy formation and realization in certain spheres of the society's life, to consider specific features of territorial development, the character, forms, and

essence of relations which are established between subjects and objects of management, the level of their mutual influence. With due regard to the crucial character of the problems Ukraine is facing today, it is vital to improve subject-to-subject state managerial relations between state and local self-governmental authorities. These authorities are responsible for a balanced development of a territory as a whole and every management branch in particular. To organize a joint activity they use horizontal links which are to be coordinated and formalized. However researchers argue that "it is one of the most complicated types of relations as it is not regulated by a single document, and duty regulations of the staff do not cover the issues of when and how to establish relations with units of equal status of other managerial bodies" [2]. Today this aspect of governmental activity is the least researched one, and therefore causes numerous contradictions during organization of power authorities' joint work. That is why it requires a thorough study, search for and development of appropriate forms and methods of the interaction. All the above-mentioned reasons stipulate the main point in this article.

Nadiya Meltyukhova – Nacionalinės viešojo administravimo akademijos prie Ukrainos Prezidento Charkovo regioninio instituto (KRI NAPA) Administravimo ir vadybos katedros vedėja, docentė, ekonomikos mokslų daktarė.

E. paštas: teor_ist@ukr.net

Lyudmyla Naboka – KRI NAPA Administravimo ir vadybos katedros lektorė, viešojo administravimo magistrė.

E. paštas: teor_ist@ukr.net

Straipsnis įteiktas redakcijai 2008 m. gegužės mėn.; recenzuotas; parengtas spaudai 2008 m. rugpjūčio mėn.

Basic contradictions in organization of territorial power authorities' activity and ways to overcome problems

State power in Ukraine is divided into three branches: legislative, executive, and judicial. The highest body in the system of executive powerful authorities is the Cabinet of Ministers of Ukraine. The executive power in regions (oblasts) and districts (rayons) is performed by local state administrations which are responsible to the President of Ukraine and the Cabinet of Ministers while fulfilling their duties. They are accountable to and controlled by the executive power authorities of a higher level and to the councils of deputies within the sphere of responsibilities delegated to them by the relevant district and region councils. Local self-government is performed by the territorial communities directly or through the local self-governmental authorities - rural, settlement, city councils and their executive bodies. Regional (oblast) and district (rayon) councils represent common interests of the territorial communities of villages, settlements, and cities. The only body of legislative power in Ukraine is the Parliament (Verkhovna Rada of Ukraine). The highest body of judicial power is the Supreme Court of Ukraine [10, p. 68].

Local self-government authorities, though not being state executive bodies, also participate in forming and implementing state managerial relations. According to Article 16 of the Law "On Local Self-Government in Ukraine" certain executive powers can be granted to them. While implementing these powers they are accountable to and controlled by the state agencies [4]. Besides, they administer enterprises and organizations owned by territorial communities. Through them, a person can express himself/herself as a source of power, an object of management, and the one to order services [7, p. 17]. Thus today local self-government authorities play a double role: on the one hand - as state authorities they control and supervise; on the other hand - as a basic managerial link at the territorial level they meet citizens' needs directly. It causes certain contradictions in the organization and operation of local territorial bodies, resulting in their less effective performance.

One of the contradictions is between the powers of local state authorities and those of local self-government, which cannot be separated due to poor coordination of laws regulating their activity [4, 5]. This results in conflicts between

administrative bodies. Most of them are related to administration of public property, budget, regulation of land resources, ecology and sanitation, etc. Such an indefinite character of the state authorities' activity to a large extent has a negative impact on the level of their responsibility and the quality of administrative performance. Situations when administrative decisions (such as those on draft budgets, programs of socio-economic development, unemployment and poverty elimination projects, AIDS and tuberculosis prevention plans, etc) are prepared by local public administrations while their approval is within the jurisdiction of the appropriate councils are quite common. Meanwhile the deputy corps (especially in district councils and in big cities) do not have opportunities (either temporal or technical) to consider all the alternatives. The only option that is discussed at the session is the one that state authority considers the best (or most effective and acceptable). The permanent committees that preliminarily discuss the alternative do not always consist of the deputies professionally able to provide an expert opinion. Besides in accordance with the above-mentioned regulatory documents, implementation of decisions is vested largely with the local state authorities as they are empowered to allocate financial and other resources, and employ a staff of professionals. But it is the councils that control the implementation (through their regular reports). On the one hand, such a distribution of powers demonstrates a mechanism of "restraint and counterbalance" stipulated by mutual constraints on functioning of the bodies that represent the interests of state and territorial communities. However on the other hand, the contents of administrative activity are strained: the administrative process integrity i.e. the entire cycle of preparation, reaching and implementing key decisions - is broken as a result of the fact that different management subjects are responsible for different stages. This is regarded as ineffective as it complicates managing an administration subsystem at the territorial level, and limits the initiative and independence of the local power.

To find a way out of the current situation we should use the managerial experience of European states: Poland, Germany, Great Britain and France most of the state functions of administering territorial units are delegated to local self-governments that have the necessary powers and resources. However it does not mean that state authorities keep away from participation to pas-

sively watch the process. On the contrary, they control and supervise observation of the legislation. The main tasks of state authorities are rather creating conditions for legal activity of judicially independent local self-government bodies and implementing the functions which they cannot perform themselves than to directly govern the territory through administrative functions (as today's local state administrations do it in Ukraine). Thus in the sphere of functions and powers delegated to them by the state, local self-governments observe the legislative norms adopted for the appropriate fields. Just like regional and central managerial bodies, they constitute a component of the executive power system, though without being its part institutionally, and keeping autonomy in staffing, finance, legal and organizational matters.

Another contradiction arises between the actual role of the object - a society as a source of power - and the possibility to implement that power. Today there are no legislative mechanisms for the object to exercise its power: state authorities do not analyze citizens' complaints to find what causes them, the results of referendums concerning vital issues of state development and operation have no legal impact. Due to weakness of legislation it is impossible to solve important problems in functioning of certain territories, management of industries, or satisfaction of social development needs. That is why certain conditions influenced by internal or external factors of management environments, social life, different managerial levels force managers to search for ways to improve efficiency of their subordinate units, divisions, and systems. This approach to organizing state authorities activity is not acceptable in terms of society democratization, and needs to be improved. The focus in 'state-person' relations should shift to citizens' full enjoyment of their rights and freedoms, as well as their participation in management. At the same time the activity of state and self-government institutions should depend upon the will and interests of citizens of territorial communities and their associations. Thus we have to introduce changes in instructions regulating the functions, activities, structure, number and qualification characteristics of territorial authorities' staff, improvement of managerial technologies and procedures, their relevance to actual needs of citizens and community projects they are in charge of.

The basic instruments to optimize monitoring of socio-economic development of territorial communities are:

1. Improvement of normative and legal provision of the power authorities' activity.
2. Rational division of functions and responsibilities between the state power authorities and local self-governments.
3. Implementation of contractual relations as the most effective form of maintaining cooperation between the state power authorities and local self-governments.

Further on we'll consider each of the trends in detail.

Improvement of normative and legal provision of the power authorities' activity

Analysis of the documents regulating local self-government reveals much greater capacity of their institutions (compared to the state ones) to form an executive body structure and determine the number of staff based on a territorial community's needs and interests. It is the deputies of the appropriate councils who approve the structures of an administrative apparatus, executive committee, functional divisions, and their staff arrangements. Decisions on creating new positions and arrangement of structural units are grounded economically on estimation of expenses to meet new needs or tasks (functions) that stimulate the necessary change. Thus a decision on changes in the structure of a managerial body is made collectively though by a single subject - a council.

Unlike the regulations on local public administrations [5], the procedures for local councils [4] do not cover organization and proceedings of their executive bodies. These documents focus on arranging and holding sessions; determining the working order for deputy factions and permanent commissions regulated by different legislative acts (Law of Ukraine "On Local Self-government in Ukraine" [4], regulations on permanent commissions [3], statutes of territorial communities). However Articles 51-59 of the Law of Ukraine "On Local Self-government in Ukraine" [4] and separately approved rules for executive bodies of local councils regulate creation and functioning of executive committees in the appropriate councils, and specify their staff number and competences. They regulate the interaction among the city mayor, the executive

committee and other executive bodies of the local council concerning implementation of their powers stipulated by the Law of Ukraine "On Local Self-government in Ukraine", as well as those delegated by the appropriate state authorities. They also determine organizational, documentary and information procedures to support their activity.

However neither the Law nor regulations manage the interaction which local officials maintain with subjects and objects of the territorial level. Articles 17 and 18 of the Law of Ukraine "On Local Self-government in Ukraine" provide for the relations between self-government institutions and enterprises, agencies and organizations, whether owned or not by territorial communities, and which are subordinate and accountable to them. On the other hand, the regulations emphasize the way to establish relations of executive power authorities with the territorial community and the city council, its permanent commissions and deputies. The relations with state authorities (Article 20) are those pertaining to their control over operation of local self-governments and their officials. However it is prohibited to interfere with the implementation of self-governments' powers. Yet there are no concrete forms of joint activity, limits and fields of influence of each managerial body. Thus the Laws of Ukraine "On Local State Administrations" and "On Local Self-government in Ukraine" [4, 5] regulate each managerial subsystem separately. Still the problems of subject-to-subject and system-to-system relations and horizontal coordination of managerial bodies and their subunits remain unsolved.

At the same time the analysis of regulations and normative acts proves that local self-governments have wider opportunities for direct cooperation with individual citizens, establishing feedback, getting people involved in community life and administrative decision-making. These activities are encouraged by local initiatives, referendums, public hearings, general public meetings, close collaboration of deputies with their electors, and citizens' participation in volunteer unions and organizations (Art. 7-10, 13-15) [4]. Legislation on these measures and various monitoring researches could help to improve both relations of power authorities with the public and to standardize forms and methods of administrative authorities' operation leading to improved performance of their structural units.

Rational division of functions and powers between state power authorities and local self-governments

With service rendering increasingly meeting consumers' needs, it becomes necessary to redistribute functions between state authorities and local self-governments. Even now many issues of the territorial development lie within the competence of local self-government. The number of such issues, in particular those concerning socio-economic matters of community life, is going to grow as the administrative reform continues. The Concept of Administrative Reform states that in future the necessity to establish territorial subdivisions of the central executive bodies will be determined after a careful study of every individual case. It is planned to dissolve district state authorities with their functions being transferred to executive committees of district councils [6]. For efficient performance, the executive committees of local councils should possess sufficient power for current administration and sufficient resources. In case certain functions of district state administrations can not be transferred to local self-government (e.g. due to the latter being inefficient) though they must be performed at the district level, it might be necessary to set up subdivisions of state authorities in the district territory (or to create inter-district unions). For example, an emergency department or citizens' civil defence [7]. Thus units of the district state authorities will implement those functions of executive power that can not be transferred to local self-government, namely: control and supervision of how all objects of management in a territory observe the legislation, and representation of district state administrations at the territorial level. Implementation of this approach based on the subsidiarity principle allows to effectively distribute powers among the appropriate bodies of local self-government and those of state authorities, and ensures protection of interests (whether state or local) by every administrative body. At the same time, it requires a preliminary performance analysis of both local self-governments and all the executive authorities located in the territory of regions and districts (especially villages and settlements). It is also necessary to study the actual ability of self-government institutions to implement powers to be transferred to them (available resources, professional staff, budget implementation, transport and other facilities). Only such an analysis can clearly estimate the competence, distribute the functions

and powers, make a list of administrative services provided by executive bodies, and specify the spheres of local self-governments responsibility.

Contractual relations as the most effective form of organizing cooperation between state power authorities and local self-governments

The distribution of powers and functions among territorial authorities encourages them to improve forms and methods of their interaction, and thus requires specification of activities in the fields where. That is why contract relations become widely used and especially popular. As a result of administrative contracts and agreements we can implement certain administrative functions; ensure work coordination among different authorities with equal organizational and legal status; achieve a complex regulation of different relations: legal, organizational, specific features of a certain filed or social vital activity including economy, policy, education, labour, employment, etc. or their combination.

The classification of the administrative contracts is a subject of discussion in the literature on law. In particular Yu. P. Bytyak suggests the following classification: contracts on competency (division and delegation of powers and competence); agreements on public property management; contracts ensuring public needs (state contracts); contracts with civil servants, students; financial and taxation agreements; contracts on the interaction and cooperation; concessions and investment agreements; agreements on certain services provision to private persons, for example the protection of the public order, property, public utilities etc [2, p. 145].

However as the territorial powers do not have a sufficient number of law experts with the necessary professional background they can not use the potential of this form of joint activity in full. Today the departments of legal support to local self-governments exist only in the district councils, and certain big cities. Advisers on legal and political issues working in the district councils are not required to have a higher education in law. A sector responsible for the legal provision of district state administrations consists of 1 or 2 employees. Nevertheless it does not lessen positive features of such an organization and procedures of state-administrative relations. Compared to the power-administrative ones implemented through direct and indirect links, they are more flexible and dynamic. The power-administrative relations provide the opportunity to compare different points of view, to search for a

compromise, to consider ways of how to best reach the set goals and, what is more important, to fix in writing and sign a contract by participants, i.e. their wish gains an official status. As a result, we observe strict and clear positions in the relations, a division of duties and responsibilities.

Conclusions

By summing up the above mentioned we can say that local self-governments implementing state-administrative relations are influenced by many different factors, in particular: legal, organizational, financial, and logistic support; number of their own resources; strict and clear division of powers between territorial bodies; available mechanisms of how to meet the needs and interests of territorial authorities' development as objects of state administration.

That is why to enhance the efficiency and effectiveness of their work it is necessary:

- to conduct a careful research of the state-administrative relations existing between the administrative subjects and objects at the territorial level;
- to analyze the current division of powers and functions, a list of administrative services, offered by executive authorities and local self-governments;
- to improve structural and functional support to the executive bodies of local self-governments based on the results of the above mentioned analysis, taking into consideration the evaluation of results produced by the subordinate departments (structural units) and conclusions of the monitoring of citizens' and entrepreneurial subjects' actual needs as well as to the field of manufacture, service provision offered on its territory;
- to design and legally establish the periodicity of monitoring, the way to conduct local referendums and initiatives, public hearings and other interaction between the citizens of a territorial community and local self-government; give further explanations of how their results are to be considered by regulations influencing living conditions or the community citizens' interests;
- to study world and national experience of contract relations applied in the practice of power authorities;
- to ensure employees' constant professional upgrading in the executive bodies of local self-governments.

The propositions mentioned above require a solid scientific grounding, methodological provision, permanent monitoring of practical implementation, which shapes the trends for further research.

References

9. Атаманчук Г. В. *Теория государственного управления*. Курс лекций. Изд. 2-е дополн. Москва: Омега-Л, 2004.
10. Битяк Ю. П., Богуцький В. В., Гаращук В. М та ін. *Адміністративне право в Україні* Підручник для юридичних вузів і факультетів. Харків: Право, 2001.
11. Біленчук П. Д., Кравченко В. В. Підмогильний М. В. *Місцеве самоврядування в Україні* (муніципальне право). Навчальний посібник. Київ: Атака, 2000.
12. Закон України “Про місцеве самоврядування в Україні” від 21 травня 1997 р. № 280/97 – ВР. *Відомості Верховної Ради України*, 1997, № 24.
13. Закон України “Про місцеві державні адміністрації” від 9 квіт. 1999 р. № 586-XIV. *Урядовий кур’єр*, 1999, № 89.
14. *Концепція адміністративної реформи в Україні*. Київ: Державна комісія з проведення в Україні адміністративної реформи, 1998.
15. Корженко В. В., Одінцова Г. С., Мельтюхова Н. М. та ін. *Територіальне управління: проблеми. Рішення, перспективи*. Харків: Вид-во ХарПІ НАДУ “Магістр”, 2004.
16. Коротич О. Б. *Державне управління регіональним розвитком України*. Харків: Вид-во ХарПІ НАДУ “Магістр”, 2006.
17. Мельтюхова Н. М., Коржено В. В., Одінцова Г. С. та ін. *Структурно-функціональне забезпечення діяльності територіальних органів влади*. Харків: Вид-во ХарПІ НАДУ “Магістр”, 2007.
18. Meltyukhova N., Doronina, N. Interaction between the State Executive Authorities: European Experience and Lessons for Ukraine. *Viešoji politika ir administravimas*, 2006, № 16, p. 65-72.

Nadiya Meltyukhova, Lyudmyla Naboka

Ukrainos valstybės administravimo ir vietos savivaldos sąveikos gerinimas

Santrauka

Aptarti pagrindiniai Ukrainos valstybės administravimo ir vietos savivaldos sąveikos prieštaramai ir numatytos valdymo tobulinimo gairės socialiniam ir ekonominiam vystymui. Teritorinių valdžios institucijų situacija analizuojama teisiniu normatyviniu ir struktūriniu funkcinu aspektais. Įvertintas jų bendradarbiavimo sutartinių santykių efektyvumas. Pateikti pasiūlymai dėl teritorinių valdžios įstaigų organizacinės veiklos tobulinimo.