DELEGATED POWERS OF LOCAL SELF-GOVERNMENT BODIES AND ISSUES RELATED TO THEIR IMPLEMENTATION IN THE REPUBLIC OF ARMENIA

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Introduction

As a result of the constitutional reforms implemented in the Republic of Armenia in 2015, in Chapter 9 of the Constitution, the types of powers of local self-government bodies, the purpose of their implementation and general characteristics were defined in a separate article [RA Constitution, 2015, article 182]. The fundamental provisions related to the powers of local self-government bodies were reflected back in 1985. October 15, 2015 in the European Charter of Local Self-Government [Xartia, Strasbowrg, article 4].

The powers of local self-government bodies are for the purpose of solving their own, mandatory and voluntary problems of the community, as well as delegated by the state. In the context of the aforementioned constitutional regulation, another regulation enshrined in the Constitution of the Republic of Armenia provides that for the purpose of more effective implementation of the powers of state bodies, they may be delegated by law to local self-government bodies [RA Constitution, 2015, article 182, part 2].

The legal description of delegated powers given by the Constitution indicates that the transfer of these powers to local self-government bodies by law has one main goal, so that they can be exercised more effectively. At the same time, such a regulation is also established by the European Charter of Local Self-Government, according to which the exercise of state powers, as a rule, should be primarily entrusted to the authorities closest to the citizens. In the event of granting authority to any other body, the scope and nature of the task at hand, as well as the requirements of economy and efficiency, should be taken into account [Xartia, Strasbowrg, article 4, part 3]. It is noteworthy that both from the point of view of international law and in the context of national legislative regulations, delegated authority is considered as a guarantee of the effectiveness and cost-effectiveness of the exercise of authority. Perhaps this is the reason why in advanced European countries, states pursue a policy aimed at decentralization, which enables local authorities to assume a range of powers of public importance, in which case it will be possible to provide more targeted and important services to community residents. The institutional and law enforcement practice of Armenia is vulnerable, therefore it is credible to discuss the legal characteristics of delegated powers, identify and highlight the institutional problems related to them, presenting possible ways and means for their solution.

Methodology

The article is based primarily on the comparative method, within the framework of which legal comparative analyses of the relevant regulations of the RA Constitution, the European Charter of Local Self-Government and the Law "On Local Self-Government" related to local self-government were carried out. The comparative method was used and an attempt was made to conduct comparisons between the national and international legal practice of delegated powers, as well as between domestic legislation and the norms of international law. At the same time, the systemic method was also used, in the context of which an attempt was made to discuss the issues raised in the article in the light of the sustainable institutional development of the local self-government system, proposing possible legal solutions, as a result of the adoption or implementation of which, these problems will receive their logical solutions.

The literature was studied both through the use of comparative and systemic methods, as well as through the use of other methods known to law and social science.

Literature review

The work was conducted by studying theoretical and practical literature, materials and publications available in Armenian, Russian and English. In this sense, the article focuses on the study of legislative acts, while references to international law norms and resolutions and recommendations adopted by the Committee of Ministers of the Council of Europe on Armenia were used. The article was also based on several scientific articles, which discussed the main issues of the domestic legislation and law enforcement practice of the Republic of Armenia regulating the sphere of local self-government.

According to the French theorist of municipal law, Gerard Marcou, the guarantee of local self-government and the independent exercise of the powers of local bodies at the constitutional level testifies to the obligation assumed by the state, by which the state not only ensures the protection of the rights of communities, but also guarantees the organizational, financial and economic independence of communities, as well as increasing the efficiency of local self-government in the context of the effective exercise of delegated powers [Marcou, 2017, 44-46]. The scientist considered the full transfer of delegated powers to local self-government bodies to be one of the most effective means of exercising the right to local self-government, especially for those states whose administrative-territorial policy addresses the issue of unifying communities and decentralizing powers.

In this regard, the conclusions made by Stefan Dräger [Dräger, 2021, 77-82], are also important. According to Dräger, decentralization of powers at the local level should not be based on the method of delegation of powers, but rather the method of implementing decentralization through one’s own authority should be emphasized. In our opinion, decentralization generally implies the transfer of authority from the central level to local-level authorities, in which case the emphasis on a specific type of authority is not essential, es-

pecially in developing countries with not yet completed administrative-territorial reforms. The example of Luxembourg is noteworthy, where the legislation does not provide for the classification or form of the powers of local self-government bodies, limiting itself exclusively to the legislative stipulation that "power is the authority reserved by law for the purpose of solving community problems" [Moreno, 2016, 45].

According to another theory, the delegation of powers is the exclusive competence of the state authority, which should be accompanied by comprehensive state control over local self-government bodies [Chebotarev, 2015, 214]. This theory, in our opinion, is closer to the essence of the state governance system and its description, since the right to local self-government excludes direct state control; it should be limited to control, which should aim to ensure legality. Also noteworthy is the advanced European theory, according to which the authority delegated by the state is equal to the own authorities reserved for local self-government bodies, to the extent that local authorities should have the freedom, based on local peculiarities, to determine the procedure for implementing the delegated authority [Siket, 2020, 54]. The possibilities of implementing delegated authorities in accordance with the peculiarities of communities, as well as the possible legal consequences arising from non-financing of delegated authorities, are presented in the works of various scientists-theorists, which, in our opinion, have been presented by the author within the framework of this article.

Scientific novelty

The article comprehensively analyzes not only the general characteristics of delegated powers, but also the issues related to their financing, the consequences of the lack of funding from the state budget for the implementation of these powers, the Armenian and international law enforcement practice of local self-government bodies challenging the inaction of the central government through administrative and judicial procedures, almost all the norms related to this sphere defined by the Constitution, the European Charter of Local Self-Government, and the national legislation of Armenia. Within the framework of the article, the following innovations are presented:

1. In the absence of adequate funding from the RA state budget for the implementation of delegated powers, the legal necessity of declaring the delegated powers of local self-government bodies as invalid as defined by the current legislation has been substantiated.
2. In cases of inaction by the executive authority in terms of financing delegated powers, the necessity of defining appropriate legal instruments by legislation for the exercise of the right of communities to judicial protection, including the protection of constitutional rights, has been substantiated.
3. In cases of inaction by the executive authority in terms of financing delegated powers, the legislation has been justified in reserving the authority to apply to the court to the community union, which will allow the community union (association), representing the

general position of the communities and committed to protecting the interests of the communities, to act in defense of the violated rights and legitimate interests of the communities. This conclusion is more relevant in the case of Armenia, where:
1) communities do not yet have the capabilities that would allow them to protect their violated rights in the context of relations with the state authorities;
2) local self-government bodies of communities are not politically mature enough to not feel constrained to file a lawsuit against the Government in court.
4. In addition to the prosecutor's authority to file a lawsuit to protect state interests, including financial resources directed to the community by the state for the implementation of delegated powers, the need to reserve the authority by law to apply to court with a lawsuit to protect state interests in the event of non-financing of the powers delegated to the community by the state has been substantiated.
5. The necessity of making amendments to the Law "On Local Self-Government" due to the lack of financing of delegated authority was substantiated to entitle local self-government bodies to apply to court to challenge the inaction of the Government.

These justifications presented in the article and the proposals arising from them can essentially be considered as scientific innovations. Based on the conclusions drawn as a result of the research, specific proposals were made, which are aimed at improving national legislation, ensuring the harmonious alignment of constitutional norms at the legislative level, and bringing them closer to EU standards, aiming to increase the effectiveness of local self-government in the context of the proper implementation of delegated authority.

Analysis

According to part 2 of article 186 of the Constitution, the authorities delegated by the state to communities are subject to mandatory financing from the state budget. Based on this norm, the Law “On Local Self-Government” establishes the powers delegated by the state subject to mandatory financing from the state budget at the expense of the allocations intended for the financing of the powers delegated by the state [article 10, part 8, 5].

One of the principles of local self-government is the transfer of powers of state bodies to local self-government bodies, if these powers can be more effectively exercised in communities [article 8, part 1, clause 3, 5]. The mentioned principle, in essence, has been established by the domestic legislation with the following reasoning, so that the purpose of delegating powers defined for the state, has its place in the context of the exercise of the right to local self-government, in this case, acting as a principle of local self-government.

It turns out that in the context of constitutional and legislative regulations, an imperative requirement for mandatory financing from the state budget for the delegation of powers by the state is enshrined, which implies, or is precisely the case, that among the sources stipulated by law for the formation of community budgets, allocations from the state budget for the purpose of financing the costs of implementing powers delegated by the state

to local self-government bodies are singled out. In the framework of the above, it is worth noting that the norms and standards established by the Government or the Ministry of Finance for the calculation of budget expenditures when preparing draft community budgets are of an advisory nature when calculating the expenditures envisaged by community budgets. The exceptions are cases of financing the expenses of local self-government bodies for the implementation of delegated powers and other targeted expenditures provided to community budgets from the state budget [article 31, part 3, 6].

In fact, local self-government bodies are granted delegated powers by law in order to ensure that the powers of state bodies are exercised more effectively. Our analysis of the law enforcement practice allows us to conclude that the powers delegated by the state to local self-government bodies by law are transferred not for this purpose, but, it seems, in order to exercise the powers of state bodies more “inefficiently”. Since it is pointless to talk or prove the effectiveness of the implementation of any authority when this authority is not implemented at all due to the lack of appropriate funding from the state.

The above conclusion is based on the following analyses and indicators. The Law "On Local Self-Government" and other legislative acts define numerous delegated authorities for local self-government bodies, for the organization and implementation of which the state does not provide appropriate financial resources. Studies of the legislation regulating the sphere of local self-government, as well as legal practice allow us to record that in the absence of appropriate funding, local self-government bodies do not directly implement these authorities.

Our studies show that local self-government bodies are assigned about 100 delegated authorities by the domestic legislation of the Republic of Armenia. In general, only the Law "On Local Self-Government" defines "31" delegated authorities for local self-government bodies of communities. For local self-government bodies, in addition to the Law "On Local Self-Government", delegated powers are also defined by the Civil Code of the Republic of Armenia, the Electoral Code of the Republic of Armenia, the Constitutional Law, the Land Code of the Republic of Armenia, the legislation regulating the water and environmental protection sector, dozens of laws regulating agriculture, urban development and other sectors.

The delegated power is the power transferred by the state itself to the local self-government bodies of the community in the form of an "order", in which case, the state, in the person of the state administration body authorized for the transferred or delegated power, defines the "basic rules of the game" (standards or norms), in the case of application of which it will be possible to organize and implement the corresponding power[1]:

[1] This is the author’s conclusion.

If we look at it from the perspective of legislative regulation, the legal consequence of excluding the community council from the processes of implementing delegated powers becomes obvious. The emergence of such a legal consequence poses a serious and significant threat to the proper implementation of the right to local self-government, in particular, the main governing body of this democratic institution is considered to be the representative body of the community, which has received a direct mandate from the community voters, which from the very beginning, despite all kinds of actions, spheres of activity, types of powers, etc., should not only be aware of the implementation of these processes, but should also have a direct and decisive role in the organization and implementation of these processes, in relations. In the event of delegation of powers to local self-government bodies by central or regional authorities, they should, to the extent possible, have the freedom to adapt their implementation to local [article 4, part 5, 2].

The analysis of the above-cited legal norm of international law shows that local self-government bodies should be given appropriate guarantees by national legislation, which will enable the latter, based on the specific characteristics of the given community, to have freedom in terms of specific powers, including powers delegated by the state, which implies developing local policies aimed at implementing this power at the community level. In this sense, it is worth noting that local policies in communities are developed by the community head and approved by the community council. Ultimately, both community governance bodies have an equal role in the context of both the development and implementation of the community's local policy.

The mechanism for local self-government bodies to challenge the inaction of the central government as a result of non-financing of delegated powers in many member states of the Council of Europe (hereinafter referred to as the CoE) is envisaged and operates in the context of the implementation of the principle of judicial protection of the rights of local self-government bodies, in particular, of the financial guarantees of local self-government activities, which in turn stems from the requirements of article 11 of the “European Charter of Local Self-Government”. According to the article, local self-government bodies must have the right to judicial protection in order to ensure the free exercise of their powers and to preserve the principles of local self-government enshrined in the country’s constitution and legislation.

In terms of legislatively enshrining the right of local self-government bodies to judicial protection in the event of non-financing of their delegated powers, the experience of Ukraine is noteworthy, where the principle of judicial protection of local self-government is one of the important principles of local self-government (article 4 of the Law “On Local Self-Government”), which is also enshrined in article 145 of the Constitution of Ukraine [Ukrainian experience, 2022]. The article specifically stipulates: “The rights of local self-government bodies are protected by judicial procedure.”

It should be noted that not all European countries have legislated this important guarantee of local self-government. For example, the constitution of the Netherlands does not provide for any provision on the possibility of judicial protection of the rights of local self-government bodies, although it has a separate chapter devoted to the administration of regions and communities.

Hungary also lacks legal norms that provide for effective judicial protection of local community rights.

In most of the CoE member states, the main mechanism for local governments to challenge the inaction of the central government as a result of the non-financing of delegated powers is to file a complaint with the Constitutional Court, with the possibility of appealing to the administrative court on the issue of challenging the constitutionality of regulatory legal acts of state authorities concerning the financial activities of local governments that have not yet entered into force or that are in force.

In Ukraine, for example, in the event of a violation of the rights of local self-government bodies by state bodies, an effective means of legal protection is the right established by law for the prosecutor's office in Ukraine to apply to an administrative court with a claim for the protection of the interests of local self-government bodies, although it should be noted that in practice the said right is mostly used by the prosecutor's office in cases of disputes between state bodies and local self-government bodies related to powers [The Constitution of the Republic of Poland of 2.04.1997].

The relevant jurisdiction of the prosecutor is also provided for by judicial norms, in particular, article 53 of the Code of Administrative Procedure of Ukraine, Article 54 of the Code of Civil Procedure. In case No. 903/129/18/19, the decision of the Supreme Court of Ukraine reaffirms the position of the legislator, enshrined in the above-mentioned article of the Law of Ukraine “On the Prosecutor’s Office”, that in the event of inaction by a local government body (in this case, a village council) in not applying to court with a claim for the protection of the interests of the community, the Prosecutor’s Office is entitled to file a claim for the protection of these interests with the Supreme Court of Ukraine.

The issues of financing the powers delegated by the central government to local government bodies are regulated by the Constitution of Poland; in particular, article 167 thereof provides for a provision with the following wording: “Changes in the scope of functions and powers of local government bodies shall be carried out in accordance with changes in the allocation of public revenues [Vallo Olle. The Financial Guarantee].

The financial resources necessary for the exercise of the powers of local self-government bodies shall be transferred to local self-government bodies in the form of targeted subsidies (voivodes) in accordance with the established procedures. Property disputes arising

from the violation of these procedures shall be examined by the court of general jurisdiction. Such disputes concern the non-financing or insufficient financing of delegated powers [Vallo Olle. The Financial Guarantee].

It is worthy to emphasize the fact that article 167 of the Polish Constitution, discussed above, allows local self-government bodies to exercise their powers in accordance with the amount of financial resources allocated by the state for the implementation of these functions.

The right to legal protection of local self-government bodies as an important principle of local self-government is also guaranteed by Article 165.2 of the Polish Constitution, according to which: "The self-governing nature of local self-government bodies shall be protected by the courts." Article 166 of the Constitution stipulates that administrative courts resolve legal disputes between local self-government units and state government bodies.

The Constitution also stipulates that local self-government units whose rights have been violated by legislative acts have the right to file a complaint with the Constitutional Court. In particular, article 191.1 of the Constitution stipulates: "Constitutional bodies of local self-government may file a complaint with the Constitutional Court on the issue of challenging any normative legal act that concerns their activities. Article 188 (3) defines the scope of the Court's jurisdiction, including the conformity of legal acts issued by state authorities with the Constitution, ratified international treaties and statutes.

The right of local self-government bodies to receive sufficient funding from the State for the exercise of their powers is provided for in article 154 of the Constitution of Estonia and in article 9 (1) and (2) of the Estonian Law on the Organisation of Local Self-Government.

Article 15 (1) of the Estonian Constitution states that everyone whose rights and freedoms are violated has the right to a remedy before a court. Everyone has the right to file an application during the examination of his or her case with a request to declare any applicable law, other legal regulation or procedure unconstitutional.

A local government body, depending on the nature of the legal dispute, may file a claim against a state or local government body with an administrative court or, in accordance with Section 7 of the "Procedure for Constitutional Review", directly with the Supreme Court. The "Procedure for Constitutional Review" allows a local government council to file a claim with the Supreme Court of Estonia with a request to challenge legal acts of the government or a minister that have been published but have not yet entered into force, requesting that the said legal acts or regulations be declared contrary to the Constitution.

Accordingly, a local government council may, in accordance with the established procedures for constitutional review, challenge a sub-legislative normative legal act, such as, for example, the procedure for calculating the amount of financial assistance to be allocated from the state budget to the local government budget for the exercise of delegated powers [Constitution of the Republic of Montenegro].

A similar set of tools for challenging the inaction of state authorities in the case of protection of the rights of local self-government bodies, including non-financing of delegated powers, is also provided for by the Constitution of Montenegro and the legislation on local self-government. The Constitution of Montenegro, following the example of other CoE member states, clearly defines the principle of legal protection of the rights of local self-government bodies [Constitution of the Republic of Montenegro].

Article 16 of the Law "On the Organization of Local Self-Government" also reaffirms the right to legal protection of the local community, in accordance with the Constitution and laws. In particular, article 9 of the Law establishes the obligation not to obstruct the implementation of local self-government functions by state bodies, except for cases provided for by the Constitution and laws. Article 17 of the same Law stipulates that local communities shall have the opportunity for legal protection, in accordance with the Constitution and laws.

Article 142 of the Law on the Protection of Local Self-Government Bodies states: "The Municipal Council shall be entitled to initiate a process of assessing the constitutionality of laws and other regulatory legal acts adopted by state bodies that violate the rights of local self-government bodies established by the Constitution or laws." [HH varchakan datavarowt'yan o'rensgirq, 2013]

It should be noted that the examination of a case in the Constitutional Court does not postpone the execution of the contested individual legal act. As an exception, at the request of the applicant, the Constitutional Court may order the suspension of the execution of the legal act until a final decision is made on the case. In the event of a violation, the Constitutional Court shall declare the legal act invalid in whole or in part and return the legal act to the body that adopted it for review.

In terms of legislative protection of financial guarantees for the activities of local self-government bodies, a noteworthy legal norm is article 144 of the Law of Montenegro "On the Organization of Local Self-Government", which reserves the right for the association of communities to apply to the President of the Republic in the event of the adoption by the Parliament of a law that violates the rights of local self-government bodies, with the issue of its non-promulgation by the President. According to general practice, in order to protect their interests in the event of actions or inaction of state bodies, local self-government bodies file a claim with the Administrative Court of Montenegro.

It should be noted that not all disputes between local self-government and state bodies are resolved in accordance with the Law “On Local Self-Government”. The practice of local communities applying to executive bodies for the protection of rights is also widespread.

Taking into account the law enforcement practice of Armenia, there can be no talk of a more effective exercise of authority. On the contrary, we are dealing with the general non-execution of these powers, as a result of which many services of public importance are simply not provided in public legal relations. As a result, it turns out that the non-execution of the power and the impossibility of providing the services arising from it are considered legal consequences. In this case, local self-government bodies have the right to apply to the administrative court to challenge the inaction of the central government in accordance with the procedure established by the Code of Administrative Procedure [article 3, part 1, 13].

Conclusion

Out of the 31 delegated powers assigned to the head of the community by the Law “On Local Self-Government”, 28 are not funded by the state. Out of the 71 powers established by sectoral laws, only the two powers provided for in the Electoral Code and the Constitutional Law are funded, which relate to the furnishing of polling stations and the provision of places for campaign posters. The remaining delegated powers are also not funded. In general, out of 102 delegated powers defined by the laws of the Republic of Armenia, only 4 are funded. Based on the analyses and conclusions presented in the article, we believe that it is necessary to review the scope of delegated powers defined by national legislation, repealing those delegated powers defined by laws that are not funded from the state budget.

According to the Constitution and the European Charter of Local Self-Government, delegated powers are reserved for local self-government bodies, which implies that for each power, the community council and the community head should have equal and appropriate functional capabilities and tools. However, from the studies of the national legislative field, it can be concluded that delegated powers are reserved by law exclusively to the community head, as a result of which the community council is excluded from the context of exercising these powers.

Based on the provisions of article 4, part 5 of the European Charter of Local Self-Government, taking into account the provisions of article 182, part 4 of the Constitution, it is proposed to the Ministry of Territorial Administration and Infrastructure of the Republic of Armenia, in the draft law "On Amendments to the Law "On Local Self-Government", to rewrite all delegated powers in the context of equal exercise of these powers by local self-government bodies, in particular, by reserving delegated powers to both the head of the community and the community council. It is proposed to adopt the above-mentioned

proposal for guidance in the future implementation of the process of decentralization of powers at the institutional level.

In the Republic of Armenia, there is no practice of local self-government bodies appealing the inaction of the central government through administrative and judicial procedures. At the same time, in terms of institutional regulation, the current Law "On Local Self-Government" has not in any way defined the relations related to the disputing of the Government's inaction by local self-government bodies in cases of non-provision of funding from the state budget for delegated powers.

We believe that local self-government bodies should have the authority to appeal, both administratively and judicially, and to dispute the actions or inaction of the central government, especially the Government, related to the failure to implement the mandatory financing guaranteed by the Constitution and law in terms of delegated powers by the state.

In the context of the above, we emphasize the legal necessity of establishing such guarantees in the main law regulating the field of local self-government, the Law "On Local Self-Government", and, of course, the necessity of establishing appropriate legislative instruments in procedural legislation. It is proposed to amend the Law on Local Self-Government, in particular by establishing a regulation according to which local self-government bodies, due to the lack of funding for delegated powers, are entitled to apply to court to challenge the inaction of the Government in accordance with the procedure established by the legislation of the Republic of Armenia.

In the context of the above, it is proposed, based on the legislative experience of Ukraine, to amend Article 29 of the Law on the Prosecutor's Office to provide, in addition to the prosecutor's authority to file a lawsuit to protect state interests, including financial resources directed by the state to the community for the implementation of delegated powers, also the prosecutor's authority to apply to court with a lawsuit to protect state interests in the event of non-financing of powers delegated to the community by the state.

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Delegated powers of local self-government bodies and issues related to their implementation in the Republic of Armenia

Key words: community, local self-government, local government bodies, problems, delegated, efficiency, authority, law, legal regulation, institutional, charter, law, legislation

The article is devoted to the analysis of the delegated powers of local self-government bodies in Armenia, the legal enforcement practice of the implementation of delegated powers, the study of financing tools, the legal necessity of reviewing the scope of delegated powers, the legal enforcement practice conditioned by the lack of financing of delegated powers and the basic issues of an institutional nature arising from it. The article presents the essence of delegated powers and the analysis of the main purpose of reserving them to local self-government bodies by law, the legal enforcement practice of the implementation of delegated powers, international experience in the legal consequences arising in cases of non-financing of these powers, and reveals the existing institutional and procedural problems and issues that hinder the effective implementation of delegated powers. The article develops and presents recommendations aimed at improving the domestic legislative framework and law enforcement practice of the Republic of Armenia, directed at the proper implementation of delegated powers arising from the constitutional status of local self-government bodies, which may have practical significance in the context of the state policy being developed in the field of local self-government.