

UDC 349.2

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## ADMINISTRATIVE AND LEGAL STATUS OF LOCAL STATE ADMINISTRATIONS AND COUNCILS IN THE FIELD OF LABOUR

**Abstract. Purpose.** The purpose of the article is to describe the administrative and legal status of state administrations and councils in the field of labour. **Results.** Relying on the analysis of scientific views of scholars and provisions of current legislation, the article describes the administrative and legal status of local state administrations and councils in the field of labour. It is noted that the tasks of local state administrations and councils in the field of labour are derived from their more general tasks. The author emphasises that today the powers of municipal authorities to exercise control in the field of labour and to impose sanctions for violations of legislation in this field need to be revised. It is found that powers are not a set of separate rights and duties, but a single holistic construction; powers are an expression not only of power capabilities, but also of what is required of the authorised entity. **Conclusions.** It is concluded that the administrative and legal status of local state administrations and councils in the field of labour needs to be improved. In particular, we are convinced that the powers of municipal authorities to exercise control in the field of labour and to impose sanctions for violations of legislation in this field need to be revised. In our opinion, all control and jurisdictional powers in the field of labour should be transferred to executive authorities that have the necessary facilities and resources to exercise them effectively and efficiently. Instead, municipal authorities should retain supervisory powers that will enable them to monitor the state of labour law in the territories and facilities under their jurisdiction but will not involve interference by local government officials in the work of the entities under their supervision. In cases where, in the course of supervisory activities, local government officials have reasonable suspicions that a particular employer has violated labour legislation, they should apply to the relevant executive authorities with an initiative to conduct an inspection and bring the perpetrators to legal liability as provided by law.

**Key words:** administrative and legal status, local state administrations, legislation, labour.

### 1. Introduction

The organisational and legal mechanism for managing the labour sector is a complex multi-element formation, one of the key links of which is the entities that actually perform the relevant tasks and functions in the field (or sector) under study. Among the system of these entities, a special role is assigned to local state administrations and local self-government bodies (municipalities). In order to clearly understand their place and role in the field of labour, the administrative and legal status of these entities should be considered. The relevance of this issue is also enhanced by the fact that reforms of local self-government and the labour protection management system are still underway in our country, in the course of which some aspects of the legal status of the above-mentioned public authorities should change.

Some problematic issues related to supervision and control by local state administrations and councils in the field of labour have

been considered in their scientific works by: S.I. Dvornyk, V.I. Zahumennyk, I.Yu. Kailo, A.V. Melnyk, Yu.O. Poliakova, Ye.M. Popovych, V.V. Protsenko, M.M. Sirant, H.V. Terela V.M. Shapoval and many others. However, despite the significant theoretical achievements, the legal literature lacks comprehensive studies on the administrative and legal status of local state administrations and councils in the field of labour.

Therefore, the purpose of the article is to describe the administrative and legal status of state administrations and councils in the field of labour.

### 2. Specific features of the administrative and legal status of local state administrations and councils

In the context of this research, it should be noted that the administrative and legal status of local state administrations and councils in the field of labour should be interpreted as a comprehensive social and legal phenomenon which

expresses the legal position of local state administrations and councils as entities implementing public policy on labour, determined by means of administrative law. The content of the legal status under study is the range of those properties of these entities that are important from the legal perspective and the set of which, in fact, determines which issues and tasks in the field of labour are entrusted to state administrations and councils, what they must (should) do in this regard, and what opportunities they have for this.

It should be noted that, unlike the legal status of a physical person, the legal status of a public authority or official has a more extensive structure, in particular, it means that in addition to the rights and duties that form the core or keystone of any legal status the indispensable elements of the legal status of a public authority are tasks, functions, and subject matter of jurisdiction, which together determine the social purpose and mission of this entity, indicate why such an entity exists and why it is vested with the appropriate range of powers and receives certain resources.

It is necessary to consider some elements of administrative and legal status of local state administrations and councils in the field of labour more detailed. First of all, a focus should be made on the purpose and tasks of these entities in the field of labour, since these elements of the legal status enable to understand the role of local state administrations and councils in the field of labour and their purpose in the mechanism of public administration of this sector of public life. A purpose is usually understood as something that someone strives for, something they want to achieve, a specific end result of certain activities (Busel, 2005).

Therefore, we believe that objectives, as an element of the administrative and legal status of local state administrations and councils in the field of labour, are a certain result of the managerial influence of these entities on relations and processes in the field of labour, for the achievement of which they (these entities) are actually vested with certain powers and provided with the appropriate range and number of resources. This results in a certain state of affairs in the labour sphere, which these entities strive to achieve and maintain as the most appropriate and necessary at a particular stage of development of social life. Unfortunately, the current legislation regulating the legal status of local state administrations and councils does not clearly define their goals in the field of labour. However, based on the content of the powers in the field of social protection, employment and labour vested in the entities under study, the purpose of their activities in the field of labour is to ensure

timely and full implementation of public policy on labour at the regional and local levels, to maintain a high level of legality in this field, to promote the accumulation, development, and most efficient and appropriate use of labour potential in the respective area.

In order to achieve this goal, local state administrations and councils have to fulfil a number of tasks assigned to them. For example, the tasks of these administrations are generally enshrined in Article 2 of Law of Ukraine "On Local State Administrations" No. 586-XIV of 9 April 1999, which states that local state administrations within the relevant administrative-territorial unit shall ensure:

1) Implementation of the Constitution, laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other higher-level executive authorities;

2) Law and order, observance of the rights and freedoms of citizens;

3) Implementation of state and regional programmes of socio-economic and cultural development, environmental protection programmes, and, in areas where indigenous peoples and national minorities live compactly, programmes of their national and cultural development;

4) Preparation and approval of prognoses of the respective budgets, preparation and implementation of the respective budgets;

5) Report on the implementation of the respective budgets and programmes;

6) Interaction with local self-government bodies;

7) Exercise of other powers granted by the state and delegated by the respective councils (Law of Ukraine On Local State Administrations, 1999).

With regard to local councils, their tasks are not even generally defined in the Law of Ukraine "On Local Self-Government in Ukraine", but as a rule, the main tasks of municipal authorities include the following: strengthening the foundations of the constitutional order of Ukraine; ensuring the exercise of constitutional human and civil rights; creating conditions for meeting the vital needs and legitimate interests of the population; developing local democracy (Official site of the Pereyaslav-Khmelnytskyi City Council, 2022; The official website of the Veliko Aleksandriv District Council, 2022; Official website of Velikos Severinivska village council, 2022).

Obviously, the tasks of local state administrations and councils in the field of labour are derived from their more general tasks mentioned above, in particular, considering the content of the purpose of these entities' activities in the field of labour, we believe that the follow-

ing should be included in the scope of the tasks of these entities under study:

1. Administrations:

a) Ensuring proper implementation of labour legislation and monitoring its observance by employers;

b) Formulation and consolidation in the relevant documents of goals and priorities for strengthening and developing labour potential in the respective area, identification of ways and means, formation of a mutually agreed system of measures to achieve the declared goal and fulfil the planned tasks;

c) Ensuring coordination of activities of territorial subdivisions of specialised executive authorities on implementation of public policy on labour protection and labour, supervision and control over compliance with labour legislation, and employment of the population;

d) Interaction with municipal authorities on the implementation of public policy on labour;

e) Addressing other issues related to ensuring proper implementation of public policy on labour at the regional and local levels.

2. Councils.

a) Promoting the implementation of public policy on labour protection and hygiene, employment (in particular, promoting the employment of persons with disabilities) in the area under its jurisdiction;

b) Ensuring compliance with labour legislation by participants in labour and similar relations;

c) Interaction with local state administrations and other state authorities on labour issues;

d) Development and approval of targeted programmes for the efficient use of labour potential in the respective territories, improvement of working conditions and strengthening of labour safety.

In addition to the purpose and tasks, important elements of the legal status of a public authority, which reflect the competence component of this legal status, are functions, that is, the main areas of activities of the entity, in which the above-mentioned tasks are actually implemented. In our opinion, the key functions of local state administrations and councils in the field of labour include the following: rule-making, control and supervision, establishment, planning, social protection, communication, coordination, forecasting, resource provision, and jurisdictional one. In addition to the above functions, local state administrations and councils have a number of other areas of activities, but the above, in our opinion, most clearly reflect the key areas in which the entities under study operate to achieve their goals and fulfil their respective labour-related tasks.

**3. Content of powers of public authorities**

The core of the legal status of any public authority is its powers. Specialised literature provides many perspectives on what powers

are, that is, whether they are a set of rights only, or rights and duties, or whether they are competence or a mandate (Solonar, 2014). In our opinion, it is more appropriate to understand powers as a duty, that is, powers are not a set of separate rights and duties, but a single holistic construction; powers are an expression not only of power capabilities, but also of what is required of the authorised entity. For example, the powers to control compliance with labour legislation, on the one hand, provide local state administrations and councils with the opportunity to take appropriate control measures, but on the other hand, the existence of these powers in these entities is a kind of requirement of the state and society to supervise the state of legality in the field of labour, to systematically check compliance by participants in labour and similar relations. Accordingly, local state administrations and councils, on the one hand, have rights in relation to those over whom they exercise this control, and on the other hand, they are obliged to those who have vested them with these powers and to those in whose interests they actually function and are provided with appropriate resources. Therefore, in this context, it can even be argued that the primary obligation in powers is the duty, for the proper fulfilment of which the entity is granted a certain amount of legal opportunities.

The list of powers of both local state administrations and councils is enshrined in the current legislation. In particular, the Law on Local State Administrations now in force stipulates that a local state administration 1) ensures the implementation of state guarantees in the field of labour, including the right to timely remuneration for work; 2) develops and organises the implementation of long-term and ongoing territorial employment programmes and measures for social protection of various groups of the population against unemployment; 3) ensures that public and temporary works are performed in accordance with the law for persons registered as unemployed; 4) ensures social protection of employees engaged in work with hazardous working conditions at enterprises, institutions and organisations of all forms of ownership, and quality certification of workplaces; 5) participates in collective bargaining and conclusion of territorial tariff agreements, and resolution of collective labour disputes (conflicts); 6) participates in the involvement of the production capacities of enterprises of penitentiary institutions for the socio-economic development of regions and the acquisition by convicts of professions in demand on the labour market; 7) develops and implements measures to implement public policy to promote employment at the regional level; 8) studies the processes in the labour market, in employment and vocational

training, assesses them, forecasts labour supply and demand, informs the population and executive authorities about the state of the labour market; 9) ensures the implementation of state guarantees in the field of labour; 10) takes measures to prevent mass unemployment in a timely manner; 11) determines trends in expanding the scope of labour application in the region by creating jobs in priority sectors of the economy, developing small businesses, entrepreneurship, peasant (farm) enterprises, etc.; 12) develops and implements measures to promote the employment of dismissed workers, including professional orientation and vocational training; 13) undertakes other work to promote employment (Law of Ukraine On Local State Administrations, 1999).

In general, we can state that the administrative and legal status of local state administrations and councils in the field of labour is very similar, which of course raises a number of concerns, especially in the context of the fact that each of these entities has controlling powers that enable them to interfere with the activities of the entities under their control. This situation is obviously not normal, because in addition to duplication of functions and powers, it also creates unjustified additional pressure on employers. In addition, it should be noted that, in general, labour control powers are not inherent in local self-government bodies, and effective and high-quality implementation of such control measures requires a high level of competence of officials (inspectors) who take such measures. The lack of proper training of local government labour inspectors leads to abuses and violations of legality by the inspectors themselves. This is also emphasised by the Federation of Employers of Ukraine, experts of which note that entrepreneurs often complain that local government inspectors have a low level of competence to conduct inspections, incorrectly determine the disposition for imposing penalties, the legal nature of the contract under which services are provided, and all civil law contracts are legally qualified as labour contracts, which is subject to fines of 30 times the minimum wage for each employee not registered under an employment contract. For minor violations of labour legislation, a fine of UAH 6,000 is imposed for each such offence, multiplied by the number of employees, and multi-million fines are imposed, whereas in case of minor offences, an official may be exempted from administrative liability with a verbal warning (Official website of the Ukrainian financial and accounting portal "Debit-Credit", 2021).

#### 4. Conclusions

Therefore, the administrative and legal status of local state administrations and councils in the field of labour needs to be improved. In particular, we are convinced that the powers

of municipal authorities to exercise control in the field of labour and to impose sanctions for violations of legislation in this field need to be revised. In our opinion, all control and jurisdictional powers in the field of labour should be transferred to executive authorities that have the necessary facilities and resources to exercise them effectively and efficiently. Instead, municipal authorities should retain supervisory powers that will enable them to monitor the state of labour law in the territories and facilities under their jurisdiction but will not involve interference by local government officials in the work of the entities under their supervision. In cases where, in the course of supervisory activities, local government officials have reasonable suspicions that a particular employer has violated labour legislation, they should apply to the relevant executive authorities with an initiative to conduct an inspection and bring the perpetrators to legal liability as provided by law.

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## АДМІНІСТРАТИВНО-ПРАВОВИЙ СТАТУС МІСЦЕВИХ ДЕРЖАВНИХ АДМІНІСТРАЦІЙ ТА РАД У ГАЛУЗІ ПРАЦІ

**Анотація. Мета.** Метою статті є надати характеристику адміністративно-правовому статусу державних адміністрацій та рад у галузі праці. **Результати.** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, надано характеристику адміністративно-правовому статусу місцевих державних адміністрацій та рад у галузі праці. Відмічено, що завдання місцевих державних адміністрацій та рад у галузі праці є похідними від їх більш загальних завдань. Акцентовано увагу на тому, що на сьогодні потребують перегляду повноваження муніципальної влади щодо здійснення контролю у галузі праці та застосування санкцій за порушення законодавства у цій сфері. З'ясовано, що повноваження – це не сукупність окремих прав та обов'язків, а єдина цілісна конструкція, повноваження є виразом не лише владних можливостей, але й того, що вимагається від суб'єкта-владних повноважень. **Висновки.** Зроблено висновок, що адміністративно-правовий статус місцевих державних адміністрацій і рад у галузі праці потребує вдосконалення. Зокрема, переконані, що потребують перегляду повноваження муніципальної влади щодо здійснення контролю у галузі праці та застосування санкцій за порушення законодавства у цій сфері. На нашу думку, всі контрольні та юрисдикційні повноваження у сфері праці слід передати органам виконавчої влади, які мають необхідні бази та ресурси для їх ефективного та якісного здійснення. Натомість муніципальній владі доцільно залишити наглядові повноваження, які дозволять їй здійснювати спостереження за станом законності у галузі праці на підвідомчих їй територіях та об'єктах, однак не передбачатимуть втручання посадових осіб місцевого самоврядування у роботу піднаглядних суб'єктів. У випадках же, коли у ході здійснення наглядових заходів у повноважених осіб органів місцевого самоврядування виникатимуть обґрунтовані підозри щодо порушення законодавства про працю тим чи іншим роботодавцем, вони мають звертатися до відповідних органів виконавчої влади з ініціативою про проведення перевірки та притягнення винних у порушенні осіб до юридичної відповідальності, що передбачена законом.

**Ключові слова:** адміністративно-правовий статус, місцеві державні адміністрації, законодавство, праця.