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ON THE ISSUE OF DEFINING THE CONCEPT OF DELEGATED POWERS AS THE BASIS OF NOTARIAL SELF-GOVERNANCE

Abstract. Purpose. The purpose of the article is to propose the author's definition of the concept of delegated powers as the basis of notarial self-governance. **Results.** To date, several draft laws have been registered in the Verkhovna Rada of Ukraine, the provisions thereof provide an interpretation of the concept of "delegated powers." For example, the Draft Law on the procedure for delegation of powers of executive authorities and local self-government bodies No. 1472 of 01.02.2008 defines: delegated powers are certain powers or a part of powers that are assigned by law to another executive authority or local self-government body in accordance with the law (delegation by law) or an agreement (delegation by agreement), which are situationally, temporarily or indefinitely transferred to the executive authority or local self-government body. The delegated state powers may include powers provided for by law as such that may be delegated and powers that may be transferred by concluding an agreement. **Conclusions.** It is concluded that delegation is a transfer of powers, duties or tasks from one person or body to another with the purpose of improving management efficiency, distribution of responsibility and optimisation of a certain process. That is, delegated powers are an atypical for an actor, additional system of rights and duties which it receives from another in accordance with the procedure established by law. Despite the fact that the category described above finds the greatest application and legal definition in the field of local self-government, it can be used in other sectors of social and legal relations, for example, in the labour process, where a manager transfers part of his/her competence to a subordinate. Therefore, the delegation of powers in the field of professional self-government of notaries means the transfer of rights and duties from the State to self-governing institutions, which, despite the public nature of the notary and the existence of a strict mechanism of state regulation of its activities, are officially able to regulate the work of the latter.

Key words: notary, self-government of notaries, powers, delegated powers.

1. Introduction

In November 2017, the International Union of Notaries presented the document 'Professional Ethics and Rules of Notary Organisation', according to which a notary is an official to whom public authority has delegated the right to confer authenticity on documents that he/she prepare, ensure their safety, and endow them with evidentiary and enforcement power (Ethics and rules of notarial organization: international document of the International Union of Notaries, 2004; Statute of the International Union of Notaries, 2007). The above definition emphasises that delegated powers are the basis for the functioning of the entire notary institution, as well as the professional self-government of its representatives. In addition, this is the content of one of the key principles of self-organisation and self-management of notaries, which determines the subject of this research.

Nowadays, the category of 'delegated powers' is actively used in many sectors of social

and legal relations, and this leads to a high level of scientific interest in it. In particular, the content, essence and legal nature of the latter have been analysed in the works of scholars such as: S.I. Bezv, O.L. Levchyshyna, O.V. Medvedchuk, V.F. Pohorilko, M.V. Tsvik, I.S. Shchebetun and others. Moreover, the phenomenon of delegation is so broad that the definition of the latter in certain sectors of public life still remains unclear. One of them is the professional self-government of notaries, which is based on delegated powers.

That is why, the purpose of the article is to propose the author's definition of the concept of delegated powers as the basis of notarial self-governance.

2. Regulatory and legal framework for the concept of 'delegated powers'

To date, several draft laws have been registered in the Verkhovna Rada of Ukraine, the provisions thereof provide an interpretation

of the concept of "delegated powers". For example, the Draft Law on the procedure for delegation of powers of executive authorities and local self-government bodies No. 1472 of 01.02.2008 defines: delegated powers are certain powers or a part of powers that are assigned by law to another executive authority or local self-government body in accordance with the law (delegation by law) or an agreement (delegation by agreement), which are situationally, temporarily or indefinitely transferred to the executive authority or local self-government body. The delegated state powers may include powers provided for by law as such that may be delegated and powers that may be transferred by concluding an agreement (Draft Law on the procedure for delegation of powers of executive authorities and local self-government bodies, 2008).

Alternative Draft Law on Delegated Powers No. 1472-1 of 15.02.2008 defines the process of delegation of powers as the vesting of one body, in accordance with the procedure established by law, with another body's own powers, while preserving the right of the delegating body to return such powers to its own exercise. According to the Draft Law, a delegating body is a body that has made a decision to delegate its own or its established powers to another body or official (Draft Law on Delegated Powers, 2008).

In the current legislation, delegated powers are explained quite clearly in the Decree of the President of Ukraine "On measures to implement the Concept of Administrative Reform in Ukraine," which states the following: "Delegated functions, powers - functions, powers (rights and obligations) acquired by a certain actor (body or official) by transferring them to him/her for performance from another actor by the latter's own decision or on the basis of a legal provision. 'Delegation' means, as a rule, the transfer of functions and powers for a certain period of time with the delegating entity retaining the right to return them to its own performance. Moreover, the delegating party acquires the right to control the status and results of the delegated functions and powers; it may also finance their implementation from its own funds, transfer the property objects necessary for this purpose" (Decree of the President of Ukraine on measures to implement the Concept of Administrative Reform in Ukraine, 1998). According to the Law of Ukraine "On Local Self-Government," delegated powers are the powers of executive authorities granted to local self-government bodies by law, as well as the powers of local self-government bodies that are transferred to the relevant local state administrations by decision of district and oblast radas (Law of Ukraine On Local Self-Government in Ukraine, 1997).

3. Scientific interpretations of the concept of delegated powers as the basis of notarial self-governance

In the scientific literature, delegation is not limited to the activities of public authorities. For example, this category has been studied quite actively in the field of management and administration. According to O.O. Darmohrai, delegation of powers means the process of transferring powers and responsibilities by a manager to subordinates, which is intended to ensure that the latter assume responsibility and effectively perform tasks at the most appropriate level of the organisational structure (Darmohrai, 2012).

V.I. Peresunko suggests that delegation is the process of transferring by a manager or supervisor and acceptance by an employee of a part of managerial functions, necessary powers and responsibility for their timely and high-quality performance. Therefore, as a result of delegation, the employee is able to clarify the content of the assigned tasks, independently manage the resources provided, independently make the necessary decisions, and assumes responsibility for the quality of his/her activities. In this interpretation, delegation is seen as one of the technologies of democratisation of HR management, which enables an individual to influence organisational conditions, provides additional powers, forms responsibility and to some extent meets the interests of the employee. The scientist notes the following advantages of the delegation process as a personnel management tool: first, the involvement of personnel in decision-making processes, providing the employee with personal independence, which contributes to his/her recognition as a full-fledged member of society; second, the development of labour potential due to the provision of opportunities for self-improvement through the acquisition of new knowledge, skills and experience; third, stimulation of activity, productivity and creativity of the employee, as a result of moral satisfaction from new achievements, which include successful completion of a complex task, broadening of horizons or change of the monotonous nature of activity; fourth, removal of moral and psychological stress of the employee due to the realisation of hopes, expectations and self-realisation of individual capabilities; fifth, the development of responsibility and awareness of organisational goals due to the focus on key performance criteria – timeliness and quality of results (Peresunko, 2009).

M.D. Pryshchak states that delegation of powers is an important aspect of any head's managerial activity and is a necessary element of the organisation's development efficiency.

Delegation of powers gives independence to subordinates, opens up greater opportunities to meet their legitimate needs, and hence their motives. When motivated, an employee works proactively and efficiently, which contributes to the effectiveness of managerial work in general. In addition, the scientist emphasises that delegation of powers creates preconditions for the development and adoption of more informed managerial decisions and their more effective implementation, and also enables the manager to expand the range of management, relieves him/her of secondary issues, routine operations, and allows him/her to focus on solving major, long-term tasks and fundamental issues that cannot be solved by anyone else but him/her. In addition, delegation of powers contributes to increasing the responsibility and efficiency of managerial activities of both the manager and the executor (Zhalin, Pryshchak, 2017).

According to T. Obydiennova and Yu. Dudnieva, delegation is a process of temporary transfer of powers and tasks to other persons under conditions of fulfilment of these tasks and full responsibility for the results of their implementation. Effective delegation of powers increases the time for making strategic managerial decisions by managers, and solves standard operational tasks more efficiently from the point of view of executives. Motivation to delegate managerial powers is a necessary means of improving the efficiency of any enterprise, institution or organisation (Obydiennova, Dudnieva, Sylantieva, 2021).

In the context of the activities of state authorities and local self-government bodies, delegated powers have been studied by Ya.V. Zhuravel, who argues: "Delegated powers are a kind of requisite for the initial stage of the process of decentralisation of public administration, the logical conclusion of which should be the complete transfer of these powers to the self-governing powers of the executive bodies of village, settlement and city radas that will be fully capable in the future. In the meantime, they can be fully regarded as a way of temporary control over the activities of local self-government bodies by executive authorities" (Zhuravel, 2007).

A.O. Neuhodnikov suggests that it is appropriate to consider delegated powers as the delegating entity's own powers, which are granted by the will of both parties in order to implement it most effectively to the delegated entity, responsible for the proper exercise of these powers by concluding an administrative agreement or by law (Neuhodnikov, 2006). A.H. Korbutiak and N.Ya. Sokrovska define delegation of powers as a bilateral mandatory legal relationship in which one body has its own competence defined

by regulations, and the other has the proper legal capacity to obtain and exercise these powers. Delegation means granting powers to lower-level bodies for a certain period of time, while retaining the right to reclaim them. Meanwhile, the delegating entity is responsible for the consequences of the actions of the lower-level bodies to which it has delegated powers and assumes obligations (Korbutiak, Sokrovska, 2018).

S.V. Shevchuk, studying the theory of delegation of state powers, argues that the legal nature of this process is as follows: only certain powers that form part of the competence of the relevant public authority may be delegated; after delegation of powers, the competence of the delegating authority does not change; the competence of the body to which these powers are delegated is temporarily expanded; the act of delegation shall necessarily come from the delegating body; delegation extends the competence of the delegating body by vesting new powers in the object of delegation; the delegated powers may be revoked by the delegating body at any time; if the powers are delegated for a certain duration, the termination of the delegation does not require the issuance of a legal instrument revoking these powers (the competence of the body to which the powers are delegated is automatically narrowed). If the powers are delegated for an indefinite duration, they may be revoked at any time by the decision of the body that delegated the powers (Shevchuk, 1997; Tytykalo, 2023).

O.A. Tereshchuk believes that the content of delegation of powers is a system of the following characteristics: 1) delegation of powers is an institution of administrative law; 2) initiation of delegation of powers requires justification of its expediency; 3) imperative or discretionary nature of delegation is established in a legislative provision; 4) the general purpose of using the institution of delegation of powers is to ensure effective, high-quality public interest/public administration; the purpose is justified and detailed in a particular case of delegation; 5) the content of delegation is the process of transferring powers; 6) this process involves entities whose legal status is characterised by certain features: for example, the competence of the delegating entity and compliance with the regulatory requirements of the potential entity with delegated powers (executor of delegated powers); 7) the subject matter of delegation is public administration powers; 8) delegation is usually for a fixed term, but there is still an unlimited delegation; 9) along with delegated powers, additional guarantees (financial/property security) and restrictions (control/responsibility) are transferred. Consolidating the above characteristics into a single concept, the author emphasises: delegation of pow-

ers should be considered as an administrative and legal institution, the content of which is the process (legal relations) of transferring public administrative powers of the delegating party to another participant (public administration body, individual or legal entities of private/public law) for a specified period with mandatory resource provision (financial/property), relevant control and supervisory restrictions and responsibility, implemented in the form of an agreement or act (Tereshchuk, 2016).

4. Conclusions

To sum up, we can state that delegation is a transfer of powers, duties or tasks from one person or body to another with the purpose of improving management efficiency, distribution of responsibility and optimisation of a certain process. That is, delegated powers are atypical for an actor, additional system of rights and duties which it receives from another in accordance with the procedure established by law. Despite the fact that the category described above finds the greatest application and legal definition in the field of local self-government, it can be used in other sectors of social and legal relations, for example, in the labour process, where a manager transfers part of his/her competence to a subordinate.

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ДО ПРОБЛЕМИ ВИЗНАЧЕННЯ ПОНЯТТЯ ДЕЛЕГОВАНИХ ПОВНОВАЖЕНЬ ЯК ОСНОВИ САМОВРЯДНОГО НОТАРІАЛЬНОГО УПРАВЛІННЯ

Abstract. Purpose. Метою статті є: запропонувати авторське визначення поняття делегованих повноважень як основи самоврядного нотаріального управління. **Results.** На сьогоднішній день у Верховній Раді України зареєстровано декілька законопроектів в положеннях яких наводиться тлумачення поняття «делеговані повноваження». Наприклад, у Проекті Закону про порядок делегування повноважень органів виконавчої влади та органів місцевого самоврядування від 01.02.2008 №1472 визначається: делеговані повноваження – це ситуаційно, тимчасово або безстроково передані у відповідності із законом (делегування законом) або договором (делегування договором) органу виконавчої влади або органу місцевого самоврядування окремі повноваження або частина повноважень, які віднесені законом до компетенції іншого органу виконавчої влади або іншого органу місцевого самоврядування. До складу делегованих державних повноважень можуть входити повноваження які передбачені законодавством як такі, що можуть бути делегованими та повноваження, що можуть бути передані шляхом укладання договору. **Conclusions.** Зроблено висновок, що делегування – це передача повноважень, обов'язків або завдань від однієї особи чи органу, іншому суб'єкту з метою підвищення ефективності управління, розподілу відповідальності та оптимізації певного процесу. Тобто, делеговані повноваження – це нетипова для суб'єкта, додаткова система прав та обов'язків, які він отримує від іншого у встановленому законом порядку. Незважаючи на те, що розкрита категорія знаходить найбільшого застосування та юридичного окреслення в сфері діяльності органів місцевого самоврядування, її можна використати у інших галузях суспільно-правових відносин, наприклад, в трудовому процесі, де керівник передає частину своєї компетенції підлеглому. Таким чином, делегування повноважень у сфері професійного самоврядування нотаріусів – це передача прав та обов'язків від держави самоврядним інституціям, які, незважаючи на публічний характер нотаріату, існування жорсткого механізму державного регулювання його діяльності, отримують офіційну можливість упорядковувати роботу останнього.

Ключові слова: нотаріат, самоврядування нотаріусів, повноваження, делеговані повноваження.