

GENERAL GROUNDS FOR TERMINATION OF DELEGATION OF PUBLIC POWERS

Shevchenko Mykhailo

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Annotation. The pertinence of the research stems from the fact that against the background of the growing practice of delegation of public powers in the legislation and judicial case-law of some countries there is no unity in determining the grounds for termination of delegation of public powers. Relying on the results of generalizing the legislative provisions on the withdrawal (revocation) of delegated public powers, as well as referring to relevant foreign experience, the author summarized that the main grounds for terminating the delegation of public powers are generally recognized to include: (1) early return by a public authority of the delegated powers (with compensation for losses caused by this decision to the relevant public authority or private entity); (2) impossibility of exercising delegated powers for objective reasons; (3) systematic violation of the principles and rules for the exercise of delegated powers; (4) negative assessment of the effectiveness of the exercise of delegated powers; (5) non-compliance of a public authority or private entity with delegated powers with the requirements for eligibility for delegated powers. Nevertheless, the study found that there could be no legal consequences for the participants in the delegation of powers of the fact that the legal act serving as a basis for an administrative act or administrative agreement on delegation of powers was amended, except if respective legal provisions have not undergone substantive changes. Similarly, changes in the name, as well as a reorganization of public authorities or private entities as participants in the delegation of powers do not entail the termination of delegation of powers. Instead, in such circumstances, public succession takes place, during which the rights and duties under the document on the delegation of powers are transferred to their successors, unless this has led to the acquisition of power by an entity that does not meet the criteria for this. The author, moreover, maintained that the provisions of the legislation governing the matter of termination of delegation of powers should determine the rules for administrative proceedings that have been initiated and not completed by the time the delegated powers were withdrawn (revoked).

Key words: delegation of public powers, delegated public powers, public administration, public authority, rules governing the activities of public authorities.

1. Introduction.

The growing trend towards the wider implementation and use of mechanisms for redistributing power through delegation necessitates the proper regulation of the main aspects of such mechanisms for making a public administration more efficient. This issue is particularly acute for countries such as Ukraine, whose legislation does not have a consolidated legal act on the delegation of public powers. Instead, such countries have numerous special legal acts establishing the procedure for delegating powers, as well as providing for the rules ensuring their proper execution, including the grounds for terminating an administrative act or administrative agreement on the delegation of powers, which entails the return of the respective powers to the public authority that was their initial wielder. Such special legal acts often allow for a variety of approaches to the legal regulation of the termination of delegation of powers relations, which complicates the formation of the doctrine of delegated powers in judicial case-law practice and increasingly highlights the need for unification of these approaches.

2. Analysis of scientific publications.

In the scientific literature, the topic of delegation of public powers is given incoherent attention and studied predominantly with relation to certain specific issues of legislative regulation of this

phenomenon and the practice of delegation of public powers in certain spheres of social relations. The general doctrine of delegation of public powers with a scholastic definition of general principles and rules of functioning of all contours of the mechanism of delegation of public powers is still emerging. This as well concerns factual and procedural grounds for termination of relations of delegation of public powers.

3. The purpose of the work.

The study seeks to proffer a theoretical account of what the rules on termination of delegation of public powers ought to be.

4. Review and discussion.

Embarking upon the research from a review of provisions of the Ukrainian legislation on the termination of the delegation of public powers, it seems advisable to refer to clause 5 of the Decree of the Cabinet of Ministers of Ukraine of 11 December 2019 No. 1041 on the procedure for delegating certain powers of the head of the civil service in the central executive body. This provision indicates that in the event of the impossibility of exercising delegated powers for objective reasons (temporary disability, business trip, vacation, etc.), the person to whom the powers have been delegated shall notify the head of the civil service who delegated the powers in writing (in electronic or paper form). A notification (statement) by the person to whom the powers have been delegated about the impossibility of exercising delegated powers for objective reasons is grounds for their termination. In addition, the head of the civil service who has delegated powers may terminate the delegated powers early and on his/her own initiative, notifying the person to whom the powers were delegated in writing (in electronic or paper form) [1].

The complexities of delegated powers and the environment for their implementation may dictate the need for more detailed regulation of the grounds and consequences of their withdrawal (revocation). For example, according to clause 5 of section III of the Procedure for authorizing a classification organization (recognized organization) to supervise the implementation on seagoing vessels of the requirements of Ukrainian legislation and international treaties of Ukraine in the field of merchant shipping (approved by the Order of the Ministry of Development of Communities, Territories and Infrastructure of Ukraine of 10 November 2023 No. 1030), a bilateral agreement on delegation of powers may be terminated early in accordance with its terms. A prerequisite for the termination of this bilateral agreement is a comprehensive analysis by the Shipping Administration of the fulfillment of the terms of the bilateral agreement by the recognized organization, in particular, based on the results of control (monitoring) of its activities. In view of the outcomes of the analysis, a formal conclusion is drawn up, which is approved by the head of the Shipping Administration. Moreover, the Shipping Administration is obliged to initiate the termination of the bilateral agreement in the event of:

- (a) failure by a recognized organization to eliminate the deficiencies specified in the act of an inspection within the period specified in this act or systematic violation by a recognized organization of the terms of a bilateral agreement (more than twice within one calendar year);
- (b) non-compliance of the recognized organization with the requirements (criteria) making it eligible to exercise public powers;
- (c) change of owners or participants (shareholders, members) or beneficiaries of a recognized organization to citizens (entities) of an aggressor state (occupying state), or individuals or legal entities against whom special economic and other restrictive measures (sanctions) have been applied in accordance with the Law of Ukraine 'On Sanctions';
- (d) detention of a ship under the supervision of a recognized organization by the port state control authorities 3 or more times within 12 months, if the grounds for detention include deficiencies related to documents issued by the recognized organization;
- (e) obstruction by the recognized organization of the inspection of its activities by the Shipping Administration;

(f) refusal by the recognized organization to pay compensation provided for by the bilateral agreement [2].

The shipping administration shall notify the recognized organization in writing of the termination of the bilateral agreement in accordance with the procedure established by the bilateral agreement (no later than 3 months before the date of termination). At the same time, the shipping administration shall notify the shipowners, to whose ships the recognized organization provides services, and the Ministry of Infrastructure of Ukraine of the termination of the bilateral agreement. Ship documents issued by the recognized organization with which the bilateral agreement has been terminated shall remain valid until the first survey of the ship by another recognized organization to which the powers of supervision of the ship have been transferred, but no later than the validity period of these ship documents [2].

It seems also necessary to have regard to those circumstances that may serve as grounds for terminating the delegation of powers that were proposed by the authors of the draft law of Ukraine 'On the Procedure for Delegation of Powers by Executive Authorities and Local Self-Government Bodies'. In their opinion, a public authority may refuse to exercise delegated powers in cases where the exercise of delegated powers is impossible for reasons beyond the control of a public authority exercising them, namely in the event of:

- (1) introduction of a state of emergency or martial law in Ukraine or in its certain areas;
- (2) threats to the independence of Ukraine;
- (3) declaration of certain localities of Ukraine as zones of an environmental emergency;
- (4) inadequate financial and logistical support for their implementation;
- (5) creation of such conditions for the exercise of delegated powers that impede the exercise of one's own powers;
- (6) delegation of powers, the implementation of which is not ensured by legal and organizational means of their implementation or requires the adoption of unlawful decisions (Article 21 of the draft law of Ukraine 'On the procedure for delegation of powers of executive bodies and local self-government bodies' of 1 February 2008 No. 1472) [3].

Summarizing the above grounds for terminating the delegation of powers and returning powers to the delegator, it is to be concluded that the main ones are early return by a public authority of the delegated powers (with compensation for losses caused by this decision to the relevant public authority or private entity); impossibility of exercising delegated powers for objective reasons; systematic violation of the principles and rules for the exercise of delegated powers; negative assessment of the effectiveness of the exercise of delegated powers; non-compliance of a public authority or private entity with delegated powers with the requirements for eligibility for delegated powers.

At the same time, the modifications in the provisions of the legal acts on the basis of which the relevant administrative act on delegation of public powers was issued (administrative agreement was concluded) does not have any legal consequences for the participants in the delegation of powers, if such legislative provisions have not undergone substantive changes.

In particular, under American law, the powers and functions delegated by the President of the United States are determined with reference to the legal act that enshrines them. Delegations shall apply to any provisions of any future public laws that are the same or substantially the same as the provisions referenced in the memorandum. Any reference in the memorandum shall be deemed to be a reference to them as amended from time to time. [4].

Similarly, changes in the name and reorganization of public authorities or private entities as participants in the delegation of powers scheme do not entail the termination of these relations. Instead, in such circumstances, a administrative (public) legal succession takes place, during which the rights and duties under the delegation act/agreement are transferred to their successors, unless otherwise provided for in the terms of the delegation of powers.

In this context it is to be noted that the administrative (public) legal succession involves the full or partial transfer (acquisition) of administrative competence of one public administration institution

to another either as a result of the termination of the original institution, or as a result of the full or partial termination of its administrative competence (Supreme Court of Ukraine, 2020) [5]. In other words, administrative (public) legal succession is the conditions and procedure for the transfer of administrative competence from one public administration institution to another, which acquires certain public powers as a result of the dissolution of the institution or position of the public entity, the termination of the original institution, or as a result of the complete or partial termination of the area of purview of the public administration institution (Supreme Court of Ukraine, 2023) [6].

The termination of a public institution that delegated its public powers is not an unconditional basis for the termination of the delegation relations in several countries. In particular, Article 27A(8A) of the Queensland Acts Interpretation Act of 1954 indicate that if the delegator is a specified officer or the holder of a specified office; and the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the officer or holder of the office; then the delegation continues in force; and the person for the time being occupying or acting in the office concerned is taken to be the delegator [7].

5. Conclusions.

The main grounds for terminating the delegation of public powers are generally recognized to include: (1) early return by a public authority of the delegated powers (with compensation for losses caused by this decision to the relevant public authority or private entity); (2) impossibility of exercising delegated powers for objective reasons; (3) systematic violation of the principles and rules for the exercise of delegated powers; (4) negative assessment of the effectiveness of the exercise of delegated powers; (5) non-compliance of a public authority or private entity with delegated powers with the requirements for acquiring delegated powers. Nevertheless, the study found that there could be no legal consequences for the participants in the delegation of powers of the fact that the legal act serving as a basis for an administrative act or administrative agreement on delegation of powers was amended, except if respective legal provisions have not undergone substantive changes. Similarly, changes in the name, as well as a reorganization of public authorities or private entities as participants in the delegation of powers do not entail the termination of delegation of powers. Instead, in such circumstances, public succession takes place, during which the rights and duties under the document on the delegation of powers are transferred to their successors, unless this has led to the acquisition of power by an entity that does not meet the criteria for this. The author, moreover, maintained that the provisions of the legislation governing the matter of termination of delegation of powers should determine the rules for administrative proceedings that have been initiated and not completed by the time the delegated powers were withdrawn (revoked).

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Mykhailo Shevchenko,
Doctor of Philosophy in Law, Senior Lecturer
Department of Public and Private Law, University of Customs and Finance
Dnipro, Ukraine
ORCID: 0009-0004-9446-7513