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Pashinskiy V.Y.,
Candidate of Juridical Sciences, Associate Professor,
Doctoral Student at the Department of Administrative Law of Faculty of Law,
Taras Shevchenko National University of Kyiv
Kyiv

MILITARY-ADMINISTRATIVE LEGAL RELATIONSHIP: CONCEPT AND STRUCTURE

Summary

The issue of administrative-legal relations remains one of the most complicated in both administrative and legal science, and in the theory and practice of legal science and requires further scientific research. In this article, the administrative-legal relations in the field of defense of the state are considered based on the understanding of the category of legal relations at the general theoretical and administrative-legal level. Modern science of administrative law, administrative-legal relations are considered as the result of the regulatory influence of the administrative-legal norm on social relations, as a result of which social relations turn into administrative-legal relations.

On the basis of the existing theoretical approaches and attitudes in the administrative-legal science, the question of essence, characteristic features and features of a group of homogeneous administrative-legal relations in the field of state defense is considered. As a result of the study, the author concludes that the development of public relations in the field of state defense leads to the formation within the system of modern administrative law of a separate group of qualitatively homogeneous administrative and legal relations in the field of state defense, which, based on their legal nature, can be called military – administrative legal relations.

The author's definition of the concept of «military-administrative legal relations» is proposed. The structure of military-administrative legal relations is determined and its elements are investigated: the subject of military-administrative legal relations, the object of military-administrative legal relations, legal facts on the basis of which there is a military-administrative legal relationship.

Introduction

In recent scientific research that addresses the problems of administrative and legal support of various spheres of public life, various spheres of public administration, a considerable attention is paid to the issues of definition of the concept, essence, characteristic features and features of administrative-legal relations,

depending on the legal phenomenon or sphere of public relations which are being investigated. At the same time, in spite of the urgency of the issues of the administrative and legal provision of state defense in the conditions of military aggression, the need for the conduct of defense reform, the study of administrative-legal relations in the field of defense is not given due attention.

That is why, the question of the nature, characteristics and characteristics of a separate group of qualitatively homogeneous administrative-legal relations in the field of defense are relevant and require further clarification for the science of administrative law, within the scope of studying the issues of administrative and legal support for the defense of the state, as a multifaceted state-legal phenomenon that permeates all spheres of society's life, a separate sphere of public administration. The importance of considering both theoretical and practical issues of the emergence, development and termination of administrative and legal relations in the field of defense is defined as a place of administrative and legal relations in the structure of administrative and legal support of defense, and their importance for regulating public relations in the field of state defense.

Under the current conditions of the aggression of the Russian Federation, the occupation of the Autonomous Republic of Crimea and some districts of Donetsk and Lugansk regions, the state's defense function, the restoration of sovereignty and territorial integrity, the reintegration of the occupied territories, the protection and restoration of the rights and freedoms of citizens is impossible without scientifically substantiated legal influence on the public relations in the field of defense and tasting on this basis necessary for the defense of the state of administrative-legal relations.

Administrative (military-administrative) legal relations in the field of state defense

The concept and features of administrative legal relations in the field of defense should be considered based on the nature of the category of legal relations at the general theoretical level. Despite numerous scientific studies of this problem, the issue of relationship remains one of the most difficult in the theory and practice of juridical science, among scientists there are different approaches and different views on legal relations. So O. I. Kharitonova, on the basis of the analysis of scientific views on this issue, highlights several approaches to understanding the legal relationship. In particular, supporters of the most radical position interpret the legal relations as covering the whole array of social relations, since the latter, in their beliefs, cannot exist beyond the law. In their opinion, any volitional relations between people should be normalized, that is, expressed through legal relations [1, pp. 57-58]. Proponents of a different point of view, which is more popular, and which is followed by the majority of scholars, consider legal relations as a category that is not identical to the concept of social relations. In their view, social relations are a broader category than legal relations, which should be regarded as one of the types of social relations regulated by law [1, p. 59]. In general, in legal literature on the general theoretical level, legal relations are considered as: social relations governed by law [2, p. 44]; social relations that are provided by the juridical (legal) norm, expressed in mutual legal rights and obligations of subjects of law [3, p. 77]; social relations that arise and

are carried out on the basis of the norms of law and are expressed in mutual legal rights and obligations of subjects of law [4, p. 31]; regulated by the norms of law and provided by the state volitional social relations, expressed in a concrete connection between the subjects – eligible (holders of subjective rights) and obliged (bearers of duties) [5, p. 384]; the type of social relations that arise on the basis of law and whose participants are the bearers of subjective rights and legal obligations [6, p. 226]. According to O. I. Kharitonova, based on the differentiation of the definition of legal relations at the level of the general division of the right to private and public, the description of legal relations as social relations, regulated by the rules of law, to a greater extent relate to relations that arise in the field of public industries rights (first of all, administrative, all procedural, etc.) [1, p. 60]. Concerning the definition and characterization of legal relations at the concrete branch (administrative) level, they act as their own specific social relations, regulated by certain norms of the relevant branch of law with respect to specific subjects existing and operating within the legal regulation of the relevant field of law [1, p. 61].

The administrative-legal relations are considered by the modern science of administrative law as: stable legal relationship between the subjects and objects of the public (mostly state) management, arising as a result of the action of administrative and legal norms [7, p. 34]; social relations regulated by the norms of administrative law in which their parties (subjects) are interconnected and interact through the exercise of subjective rights and obligations established and guaranteed by the relevant administrative and legal regulations [8, p. 178]; public relations in the sphere of public administration, participants of which act as bearers of rights and obligations, regulated by the norms of administrative law [9, p. 96; 10, p. 57]; social relations regulated by the rules of administrative law, which are formed in the sphere of the public administration [11, p. 34].

So T. O. Kolomoets considers the administrative-legal relations as public relations, regulated by the norms of administrative law, whose subjects are endowed with rights and obligations in the field of ensuring the rights, freedoms and legal interests of individuals and legal entities, as well as the process of public (state and self-government) administration in the spheres of socio-economic, administrative and political development and the protection of public order [12, p. 43-44].

Having studied the conceptual foundations and the legal nature of administrative-legal relations, O. I. Kharitonova has come to the conclusion that the administrative-legal relations should be considered as social relations regulated by the administrative-legal norm, which are formed in the branch of public administration and administrative protection of public order, one of the participants (or all participants) of which is (are) the holder(s) of power, as well as subjective rights and legal obligations that are under the protection of the state [13, p. 193].

Thus, most academic administrators within the framework of a single approach consider administrative-legal relations as the result of the regulatory influence of the administrative-legal norm on social relations, as a result of which social relations turn into legal relations, and more specifically, into administrative-legal relations. In this case, social relations constitute the content of administrative legal relations and exist as a real relationship. As V. B. Averyanov emphasizes, the administrative-legal forms

can acquire various types of social relations, but first of all it concerns state-management relations, which make up a significant share in the content of the subject of administrative law regulation [8, p. 178]. Thus, the scientist emphasizes that administrative relations are primarily related directly with public administration, the practical realization of the tasks, functions and powers of the state in the process of public management, with the public management of the state in various spheres of public life, one of which is the sphere of state defense. In this case, the state (public) administration in administrative law is defined as the rule-making and regulatory activity of executive authorities for the purpose of power-organizational influence on the relevant social relations and processes in various spheres of social life, as well as the internal organizational activity of the apparatus of all state bodies in ensuring proper fulfillment of the tasks, functions and powers assigned to them [8, p. 60-61].

This refers to the characteristics of administrative legal relations in the sphere of state defense, is liable to the norms of administrative law by public relations in the sphere of state defense. In the juridical literature, this homogeneous group of law-visionaries, by which public relations are regulated in the sphere of state defense, are covered by the notion of «military relations» or «military relations» [14, p. 17]. Considering that military legal relations, firstly, mainly consist of public administration, and the domination of administrative and legal aspects and administrative norms is a feature of the legal regulation of the sphere of military security and defense of the state; secondly, military legal relations, in their legal nature and intrinsic nature, are a kind of qualitatively homogeneous social relations, which are formed in the process of implementation by the state of public administration (executive and administrative activities) in the field of defense and governed by the norms of administrative law, in our opinion, this separate group of homogeneous administrative legal relations in the sphere of defense of the state can be called military-administrative legal relations.

Development of military-administrative legal relations (administrative-legal relations in the field of defense) is associated with the development of major groups of social relations governed by the norms of administrative law, tendencies in the development of the modern administrative law system. At the same time, military-administrative relations develop in all these groups of administrative-legal relations, as an integral part of the system, a separate group of homogeneous administrative legal relations governing the sphere of public administration of state defense [15, p. 70-76]. The development of a separate group of homogeneous administrative-legal relations in the field of defense (military-administrative legal relations) within the limits of modern administrative law leads to the formation on this basis, a separate sub-branch of the Special Administrative Law – Military Administrative Law. In this case, military-administrative relations (administrative relations in the field of defense) act as specific social relations, regulated by the norms of military-administrative law [14, p. 40-46; 16, p. 46-51].

Currently, in the scientific juridical literature and dissertation research, various definitions of features characteristic for administrative-legal relations as a whole are given [1, p. 69-70; 9, pp. 43-44; 11, pp. 34-35; 17, p. 20; 18, p. 234-236], as well as features of administrative-legal relations based on various spheres of public

administration [19, p. 33-34; 20, p. 92]. It is possible to distinguish a number of characteristic features, which generalize the common in the science of administrative law, the view on the signs of administrative-legal relations, in particular: 1) the emergence in the field of public administration; 2) one of the parties must be the authority; 3) regulated by administrative-legal norms; 4) their members act as bearers of rights and responsibilities in the field of public administration; 5) have public-public character; 6) are relations of «power – subordination» and determined by legal inequality of the parties; 7) may arise at the initiative of any subject of administrative law, the consent of the other party is not mandatory; 8) the violation by a party of its obligations causes its responsibility to the state in the person of its competent authorities; 9) for the management of their rights are both duties and responsibilities; 10) for the violation of obligations, as a rule, apply measures of administrative coercion; 11) disputes between the parties have a special legal regime ensuring the law (administrative and judicial) [21, p. 11-18]. Such features and peculiarities of administrative-legal relations are inherent in the field of public defense of the state. According to P.P. Bogutsky, the military sphere of social activity (the sphere of defense of the state) is characterized by inherent relations only that arise and exist within the framework of the functioning of the Military Organization of the State (Sector of Security and Defense) [22, p. 4-17]. In accordance with the Law of Ukraine «On National Security of Ukraine» (Article 1), the security and defense sector is covered by the unified leadership and coordination of the aggregate of state authorities, the Armed Forces of Ukraine, other military forces formulated in accordance with the laws of Ukraine, law enforcement and intelligence agencies, the forces of civil defense, the defense industry of Ukraine, whose activities are under democratic civilian control and in accordance with the Constitution and laws of Ukraine on the functional purpose of the direction and the protection of national interests of Ukraine threats and individuals and associations who voluntarily participate in national security [23]. The features of the military-administrative legal relations (administrative-legal relations in the sphere of defense of the country) will be manifested precisely in the activity, in relations between the components of the security and defense sector, the subjects of defense, in the exercise of their rights and responsibilities.

Characteristic features of administrative-legal relations in the sphere of national security, an integral part of which is the sphere of defense of the state, was considered by V. A. Lipkan in his dissertation paper [20, p. 92]. In his opinion, the administrative-legal relations in the sphere of national security are regulated by the rules of law social relations in the sphere of national security, in which their parties (subjects) are interconnected and interact with the exercise of the subjective rights and obligations established and guaranteed by the relevant administrative and legal regulations [24, p. 83]. According to the scientist, administrative and legal relations in the field of national security have the main characteristic features of administrative-legal relations, as well as due to a specific area of public administration, based on its specifics.

Undoubtedly, military-administrative relations, arising in the sphere of defense of the state, as one of the spheres of public administration is a kind of administrative-

legal relations, and as administrative-legal relations in a specific area of public relations. They have the following characteristics: 1) the administrative-legal relations in the field of state defense is an integral part of relations in the field of public administration; they arise in the process of practical realization of the functions and tasks of the state with regard to defense; 2) the rights and obligations of legal entities in the field of defense asymmetric and related to the activities of public administration in the field of defense; 3) a public state administration body or an entity of civil society, endowed with rights and responsibilities in the field of defense, acts as one of the subjects in these relations; 4) these relations arise at the initiative of one of the subjects, and the consent of the other party is not a prerequisite for their occurrence; 5) administrative-legal relations in the field of defense is a special legal relationship between the entities, one of which has the right to demand from another such behavior, which is provided by the administrative law; 6) the subject of defense is obliged to realize its own material and procedural rights, that is, the right acts simultaneously and the duty of the subject of administrative legal relations in the field of defense; 7) in the case of violation of the norms regulating social relations in the field of defense, the offender is not responsible to the other party, but to the state, depending on the level of social danger of the offense; 8) administrative-legal relations in the field of defense can be implemented on the basis of both power and subordination, and on the basis of equality of parties, when each subject must comply with specific requirements of the administrative law. It is precisely the existence of mutual rights and responsibilities among defense actors as a special feature of administrative and legal relations in the field of defense; 9) resolving disputes between the subject of administrative and legal relations in the field of defense, are resolved both in the administrative order, and in administrative and other courts.

Organization of military-administrative legal relations

The military-administrative legal relations (administrative legal relations in the field of state defense) have their own organization, which is inherent in administrative legal relations [1, p. 74; 25, p. 102-103; 26, p. 57; 27, p. 50; 28, p. 15]. The organization of military-administrative legal relations includes the following elements: the subject of military-administrative legal relations; the object of military-administrative legal relations; legal facts on the basis of which military-administrative legal relations arise.

We briefly review some elements of the organization of military-administrative legal relations. Taking into account that the administrative-legal relations are formed, as a rule, in a special sphere of social life – public administration, in connection with the implementation by public administration bodies of public functions, defined by law, including the implementation of the constitutional function of providing state defense, subjects have a paramount role in determining the content and implementation of military-administrative legal relations. The subjects (participants) of the military-administrative legal relations will be the subjects of administrative law, the subjects of administrative and legal protection of defense, etc., specific carriers (legal and physical persons) provided by the administrative and legal norms

of rights and obligations who are able to exercise their rights and fulfill their state defense responsibilities.

Thus, the subject of military-administrative legal relations (administrative and legal relations in the field of state defense) is the subject of administrative law, administrative and legal protection of defense, which entered into specific, regulated by administrative and legal norms of legal relations in the field of state defense, for the defense of the state, realization of rights and obligations in the field of defense.

Military-administrative relations as relations of public administration arise in the course of the implementation of public administrative activities, that is, in the process of activity of the subject, which is manifested in the purposeful impact on the object in order to bring it to the desired state for the subject. At the same time, public administration, according to V. K. Kolpakov, consists of: a) state administration; b) self-government; c) public administration [25, p. 102-104]. Therefore, in our opinion, among the subjects of military-administrative legal relations (administrative-legal relations in the field of defense), the following groups can be singled out: 1) the Ukrainian state and bodies of public government (state bodies); 2) local self-government bodies; 3) civil society institutions: associations of citizens, volunteer organizations, religious organizations, other non-governmental organizations, citizens of Ukraine. The concrete circle of subjects of military-administrative legal relations, endowed with rights and obligations in the field of state defense is defined by the law of Ukraine «On the Defense of Ukraine» [29].

The reason for the participation of subjects in specific military-administrative legal relations is the availability of rights and obligations in the sphere of defense of the state envisaged by the administrative and legal norms and the ability to exercise these rights, and to perform duties in accordance with the procedure established by the administrative-legal norms.

The social relations in the field of defense should be understood as the object of military-administrative legal relations (administrative-legal relations in the field of defense), then, from what the administrative relations arise: behavior, material values, intangible goods, etc. [25, p. 102-104]. The protection of human rights and freedoms, state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from military threats belong to such objects, in accordance with the National Security Strategy of Ukraine, the Law of Ukraine «On National Security of Ukraine» [30; 23].

Military-administrative legal relations (administrative-legal relations in the field of defense) arise, change, develop and cease on the basis of legal facts, the main feature of which is the ability to cause legal consequences [24, p. 86] and cause the emergence of legal relationship, primarily management [31, p. 27], between the subjects of the defense. Actions and events belong to the legal facts, on the basis of which arise military-administrative relations at a specific administrative level. Action is a legal fact that arises and depends on the will of people in the process of realizing their rights and responsibilities as subjects of the relationship. For the sphere of defense of the state the most characteristic actions on the basis of which there are military-administrative relations are acts of management, among which should be distinguished the normative acts of the subjects of defense, including acts of state

authorities, military command and military command. Acts of management are the most common form of application of the norms of administrative law in the realization of the tasks of public administration in the field of state defense. According to O. I. Kharitonova, the acts of management should be considered as lawful actions committed by authorized entities in order to establish, modify, terminate, etc. administrative-legal (managerial) relations, either by the publication of rules of law, or by the issuance of individual administrative acts (individual acts of administration) [31, p. 27]. Acts of management in the field of defense are the lawful actions of the defense actors that meet the requirements of administrative law. Such acts of management as decrees and orders of the President of Ukraine, directives and orders of the President of Ukraine as the Supreme Commander-in-Chief of the Armed Forces of Ukraine; resolutions and orders of the Cabinet of Ministers of Ukraine; directives and orders of military command and military command units; orders of commanders, etc. concerning the activities of the Armed Forces of Ukraine, other military formations, and all entities providing defense of the State belong to the lawful actions of the subjects of defense, which give rise to administrative and legal relations in the field of defense. Administrative-legal relations in the field of defense also arise in connection with the actions of some individuals (citizens, servicemen, persons called for military service, etc.) and officials. For example, in the case of a soldier's complaint with the actions of an official (commander, chief), in accordance with the requirements of the Charter of the internal service of the Armed Forces of Ukraine [32]. Moreover, inactivity, which is an unlawful act, may be a legal fact that leads to the onset of administrative-legal relations. Illegal actions are offenses, misdemeanors, which entail the use of coercive measures. It should be emphasized that, given the special nature of legal relations in the field of defense of the state, they are protected not only by the norms of military-administrative law, for example, with regard to bringing to disciplinary liability in accordance with the disciplinary statute of the Armed Forces of Ukraine [33]. Given the increased public danger of violations in the field of defense, they are also protected by the rules of criminal law, depending on the severity of the offense.

Administrative-legal relations in the field of state defense will arise not only in case of people's activities, but also in case of the occurrence of events that are not related to the activities of people. Events are phenomena that do not depend on the will of people, but they have legal implications and entail certain consequences. In connection with various events, specific administrative-legal relations in the field of state defense will arise. Such events in the field of defense may include events that, in the accordance with national and international law, are acts of armed aggression – the use by another state or group of states of armed forces against Ukraine. Acts of Armed aggression against Ukraine are: invasion or attack of armed forces of another state or group of states on the territory of Ukraine, as well as occupation or annexation of part of territory of Ukraine; a blockade of ports, coast or airspace, violations of communications by Ukraine with the armed forces of another state or group of states; attack of armed forces of another state or group of states on military land, naval or air forces or civilian sea or air fleets of Ukraine; sending or sending on

behalf of another state armed groups of regular or irregular forces that commit acts of armed force against Ukraine and others [29].

Thus, military-administrative relations (administrative-legal relations in the field of defense) are regulated by administrative-legal norms legal relations that arise, develop and cease between the subjects of defense in the process of implementing the administrative-legal rules governing the sphere of public defense of the state.

In the opinion of military lawyers, military-administrative relations arise: 1) in connection with the implementation of the functions entrusted to them by the military authorities; 2) in connection with the exercise by citizens of the duties and rights granted to them by military law (for example, on the appointment of pensions to members of families of military personnel) [4, p. 18].

We cannot agree not at all with this approach, which, in our opinion, is narrowed and does not take into account modern trends in the development of administrative law and administrative-legal relations in general, as well as the development of social relations in the field of defense in a democratic society which are characterized by the expansion of the range of subjects of defense, the presence of democratic civilian control over the security and defense. After all, the state's functions of providing defense are reliant not only on the bodies of military management and military command, but also on other bodies of public administration within the limits of powers determined by the legislation. Institutions of civil society, civil society as a whole, realizing their constitutional powers in the field of defense play in modern conditions an important role in ensuring the defense of the state, defense reform [34, p. 71-76]. In our opinion, in today's conditions, taking into account the above-mentioned tendencies, the military-administrative relations arise: 1) in connection with the implementation by all bodies of public state administration of the tasks entrusted to them with respect to the implementation of the state's defensive function; 2) in connection with the implementation by legal entities (public and private law) of their rights and obligations in the field of state defense; 3) in connection with the realization by individuals (citizens, foreigners, persons without citizenship) of their rights and responsibilities in the field of state defense.

Among the features of military-administrative legal relations are also allocated: a) their construction on the basis of subordination and a higher degree of centralization of management; b) the undisputed subordination of the lower to higher, subordinate bosses; c) full unanimity, based on the norms of the law; d) reasonable initiative in the performance of tasks assigned to the bodies of military management and military command, military officers within the limits of powers determined by the legislation [14, p. 18]. For example, the President of Ukraine, as the Supreme Commander-in-Chief of the Armed Forces of Ukraine, for the implementation of the powers specified in the Constitution and laws of Ukraine, in the field of defense issues decrees and orders, and as Supreme Commander-in-Chief of the Armed Forces of Ukraine issues orders and directives on defense matters. Since the announcement of the Decree of the President of Ukraine on the announcement of the mobilization or the Presidential Decree on the introduction of a martial law approved by the Verkhovna Rada of Ukraine issued by the Supreme Commander-in-Chief of the Armed Forces of Ukraine, orders and directives on defense will be binding for the

performance not only by military management and military command bodies, but also by all bodies of state power and local self-government, all subjects of administrative legal relations in the field of defense. In the conditions of the legal regime of martial law, the orders of the military management and military command, orders and instructions of military administrations will be binding on all subjects of legal relations concerning the question of the provision of defense, the implementation of the measures of the legal regime of the martial law, in the corresponding area to which their powers are extended [35]. In the process of public administration of state defense, military-administrative relations, as a form of administrative-legal relations, will arise between different subjects of administrative and legal defense.

All administrative-legal relations that arise between subjects of public relations in the sphere of state defense can be divided into two main groups: 1) administrative relations in the field of defense that arise in peacetime, in the context of preparation for the defense of the state; 2) administrative relations in the field of defense that arise during wartime, in a special period, the legal regime of martial law, the actual conduct of war, hostilities. The peculiarity of administrative legal relations in the field of defense in the conditions of a martial law is that, firstly, the rights of the subjects of administrative and legal support of defense, provided by the Constitution and laws of Ukraine, by the Decree of the President of Ukraine approved by the Verkhovna Rada of Ukraine on the introduction of martial law may be limited; and secondly, the subjects providing defense, military management and military command bodies will act according to special norms (procedures) of the envisaged norms of the military-administrative legislation in the exercise of their authority to withstand armed aggression.

Conclusion

The development of public relations in the field of state defense leads to the formation of a separate group of qualitatively homogeneous administrative-legal relations that can be called military-administrative legal relations. Military-administrative relations arise: 1) in connection with the implementation by all bodies of public state administration of the tasks entrusted to them for the implementation of the defense function of the state; 2) in connection with the implementation by legal entities (public and private law) of their rights and obligations in the field of state defense; 3) in connection with the realization by individuals (citizens, foreigners, persons without citizenship) of their rights and responsibilities in the field of state defense.

Military-administrative relations (administrative-legal relations in the field of defense) are legal relationship regulated by administrative-legal norms that arise, develop and stop between the subjects providing defense in the process of implementation of administrative and legal norms governing the sphere of public administration.

Such elements as the subject of military-administrative legal relations; object of military-administrative legal relations; legal facts on the basis of which military-administrative relations arise, belong to the structure of military-administrative legal relations.

Among the subjects of military-administrative legal relations, the following groups can be singled out: 1) the Ukrainian state and bodies of public state administration (state bodies); 2) local self-government bodies; 3) civil society institutions: associations of citizens, volunteer organizations, religious organizations, other non-governmental organizations, citizens of Ukraine.

The fact that administrative relations arise in the sphere of defense, namely behavior, material values, intangible goods, etc., should be understood as the object of military-administrative legal relations. Such objects include the protection of human rights and freedoms, state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from military threats.

Further development of military-administrative legal relations is connected with the development of public relations in the sphere of defense of the state, the main groups of social relations, which are regulated by the norms of administrative law, the tendencies of development of the system of modern administrative law and the formation on this basis of the Military Administrative Law as a separate sub-branch of the Special Administrative Law.

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Melnyk Ya.Ya.,
Candidate of Juridical Sciences, Doctoral Student,
Legislation Institute of the Verkhovna Rada of Ukraine

Savenkova V.H.,
Master of Laws,
Lecturer at Department of Legal Science,
PHEI «Financial and Legal College»
Graduate of Postgraduate Studies,
Department of Financial Law, Faculty of Law,
Taras Shevchenko National University of Kyiv,
Kyiv

THE ANTHROPOLOGICAL DIMENSION OF ADMINISTRATIVE LAW AND JUSTICE AS A SECURITY CONCEPT OF THEIR DEVELOPMENT

Summary

The article considers issues related to the doctrinal analysis of the development of the science of administrative law and procedure, court practice. Based on the conducted analysis of the state of doctrinal works and court practice, it is concluded that the situation is anthropological-crisis. It is proved that in order to overcome crisis state in administrative law and court practice, anthropological approach and its tools should be used in doctrinal studies. It is due to this that it becomes possible not only to find out the real causes of conflicts and collisions in the law and identify

the causes of violations of rights, freedoms, and interests but also to develop an appropriate methodology to overcome the problems in the law. At the same time, it is an anthropological approach that allows evaluating the real state of the problem, and in combination with security aspect – determining and forecasting (predicting) vulnerable states of administrative law and justice. Finally, the authors conclude that the study of administrative law and procedure with the anthropology of law in modern conditions is not only possible but also overarching and necessary.

Introduction

Analysis of new laws, which have got its expression in connection with the modernization of administrative law and administrative justice by virtue of the Agreements aimed at bringing the legislation of Ukraine closer to the EU legislation, requires a balanced, coherent, and detailed approach.

In such a way, there is a clear need for a scientific explanation of the real state of administrative law and justice. However, not all the doctrinal and sectoral tools in modern conditions are acceptable for answering such important questions for evaluation and analysis as: finding out the origins, achievements, and prospects of the development of administrative law and justice.

The qualitative and full-fledged provision of the result in terms of clarifying the state of administrative law and justice becomes possible due to the use of such a universal methodological and legal tool that, by its doctrinal characteristics, would be able to identify the actual problems of administrative law and justice, as well as the possibility of their qualitative elimination.

Scientists in the field of administrative law noted that the administrative science at the doctrinal level faces a question of profound rethinking of both the subject-matter of administrative law and its connection with international standards. And what seems interesting in the development trend, today there is not only the expansion of administrative and legal regulation but also the transformation of methods used in the field of administrative law. For example, an attention is paid to «dualism» of administrative law that is traditionally noted by scientists in the field of administrative law. Indeed, today, without adequate legislative regulation, it may prove to be a significant barrier to effective administrative activity [27, p. 243].

In addition to this, more attention should be paid to the methodological concepts and developments under the prism of general theoretical jurisprudence.

So, Yu. M. Obotrotov, to the concept of the general theoretical jurisprudence as a science on the brink of a fleeting world of the contemporary postmodern age, quite rightly notes that today the theoretical jurisprudence also constantly replenishes its categorical framework and tools. Indeed, it more often than all legal sciences uses the principle of legalization to include research in other fields of human knowledge in its research area. Therefore, along with hermeneutics and synergetics, the scientist finds place and anthropology and its legalization [26, p. 202].

In such circumstances, the position of O. L. Kopylenko and O. V. Zaichuk is quite justified, who accurately point out that indeed, modern research should be based on understanding the issues of the formation and development of scientific views on lawmaking. This is related to the fact that only on the basis of a retrospective analysis in the context of the evolution of legal scientific thought, it is possible to determine

the initial idea of this legal phenomenon, its genesis, study the peculiarities of its development, reveal the essence of the phenomenon, and substantiate the theoretical and methodological potential [26, p. 798]. However, sharing their opinion, it becomes obviously necessary to carry out such a retrospective analysis not only in the context of lawmaking. It becomes possible and methodologically the only correct way and in any other modern variation (including in relation to administrative law and justice), the formation of this or that sectoral concept on the way to overcome modern globalization, transformation, adaptation, and unifying challenges.

Therefore, the introduction of certain foundations (principles) by virtue of the abovementioned circumstances is important. In particular, V. V. Zavalniuk rightly comes to the conclusion on this issue that in many concepts of the world countries the principles of decent living, freedom, equality of rights are fixed based on the anthropological principle of law. The scholar also advocates the position that the principle is clearly manifested in such theoretical and legal directions as neopositivism, the theory of restored natural law, Neo-Kantianism, the intersubjective direction, the phenomenological-hermeneutic philosophy of law [12, p. 27].

A. P. Kravchenko finds that the anthropological principle actually determines the realization of law in the full sense and promotes the humanization of the existing law and order [15, p. 5]. Yu.Yu. Shturtsev notes that the development of the anthropology of law leads to the need to analyse the empirical and theoretical state of this scientific discipline. Determination of the ratio of empirical and theoretical in law anthropology will allow more objectively assessing the significance and identifying the features of this discipline, the nature of the conclusions derived therefrom [37, p. 196].

Developing the anthropological foundations of law, it is appropriate to point out the opinion of S. I. Maksymov that the connection of law with anthropological foundations, due to its multifunctionality, manifests itself in different ways. Where, according to the scholar, the law belongs to social institutions, then the rule of law is a compensator for the lack of instinct-based orientation, that is, the absence of a complete and frozen behavioural program; and also adds that sometimes the law... serves *to curb aggressive impulses and primitive instincts*. That is, in this case, it is no longer a compensator of insufficiency, but a limiter of the excessiveness of some instincts (italics added – *Ya. M.*) [17, p. 152].

The thesis by S. I. Maksymov also becomes relevant that the analysis of anthropological foundations of law allows us to see that at the present stage of development of society, possibilities of technological interference in human nature can reach the same *level of danger* as interference in the natural environment, that is, can *threaten the existence of mankind or the way of human existence that has emerged* (italics added – *Ya. M.*). … If the classical (Kantian) anthropology came from the maxim: «the proper assumes the possible» (that is, the proper is limited by the possible), then modern anthropology – from the fact that we should not do all that we can (that is, the possible should be limited by the proper) [17, p. 154].

It also seems obvious that the use of such a sphere of human knowledge as the anthropology of law and the legal instruments (methods, principles, conditions, etc.) in it predetermine the genesis of the scientific potential, which is characterized by the elucidation of the sequence of origin of one or another problem in law from the beginning (the state of its manifestation) to the end (the state of its origin) and vice

versa.[*] After all, it is functionally endowed with the ability not only of critical analysis (separation) and synthesis (connection), analytical (logical analysis of terms) and synthetic (beyond logical considerations – imperial experience) judgments but essentially – the ability to hold *a particular problem under doctrinal control*.

So it seems that the achievement of this result will be possible due to the very anthropological approach, or rather the study of administrative law and justice under the prism of one of the facets of legal anthropology. Therefore, it is in this way that it will be possible to assess the real state and predict the prospects of the law-enforcement process, the movement of legal matter, to find out «possibility» and «reality» in the current legislation, and in fact all of this is subject to administrative law and legal proceedings in the turbulence of globalization and transformation processes of law, its matters, properties, and functions.

The anthropological approach in law as a basic concept of identification of reasons of doctrinal problems of administrative law and justice

In the legal encyclopaedia, legal anthropology is explained by the fact that it is defined namely as a sphere of legal knowledge and a system of theoretical approaches aimed at highlighting human relations with *legal reality*. The thesis is also supplemented there that legal anthropology studies not only systems and approaches to various cultures and societies but also those oriented to the aspect of *the arrangement of conflicts among people and provision of social control* [39, p. 34].

Thus, «legal reality» and «conflict resolution» constitute the anthropological dimension of administrative law and justice and, therefore, the research should proceed through the prism of at least the identification, assessment and, if possible, recommendations to overcome (eliminate) the conflict (legal (juridical), procedural, and actually doctrinal).

Analysing the state of development of the doctrine of administrative law and procedure, it should be pointed out that its development indicates a certain imbalance and domination over other sectoral developments. Actually, doctrinal developments lack the close connection with the general theoretical jurisprudence.

In confirmation of this, worthy attention is the work by O. L. Kopylenko and O. V. Zaichuk that one of the indicators of the development of legal science is the defence of thesis works. Monitoring of indicators of defended theses for obtaining a scientific degree of a doctor and a candidate of sciences makes it possible to draw certain conclusions regarding the growth of the indicators of defended theses. For example, in the specialty 12.00.07 («Administrative Law and Process, Financial Law, Information Law»), «... *(a)* for the degree of Candidate of Legal Sciences – 1421 works (85.68% of the total number of defended theses); *(b)* for the degree of Doctor of Legal Sciences – 113 works (27.43% of the total number of defended theses).» Therefore, in the specialty 12.00.07, there is the largest number of defended theses for 2000–2012 [26, p. 777, 775, 776]. However, in the following years, the

[*]*Note*: Anthropology – the science of the origin of human, the origin of races, the formation of its physical structure, in general, it explains the human nature. It is believed that its founder was J. Rousseau. He considered the problems between nature and civilization. His statement: «The whole earth is covered with nations of which we know only the names, and yet we pretend to judge mankind!» *See*: [2, p. 28]. Here, from a legal point of view, in order to realize the complexity of legal reality and law, it is appropriate to add a thesis by E. Spektorskyi «…It seems to lawyers that they know with what reality they are dealing, only until they are asked about it…» *See*: [10, p. 5].

situation has not changed, so (a) in 2013, most of the topics were approved by the specialty 12.00.07, namely – 318 topics (20.8% of the total number of topics). The least of them was approved by the specialty 12.00.12 – Philosophy of Law – 24 topics (1.6% of the total number of topics) [29, p. 4]; (b) in 2015, most of the topics were approved by the specialty 12.00.07 – 252 topics (20.61% of the total number of topics) [30, p. 4]; etc.

Eventually, from 2012 to 2017 the situation is almost unchanged. In particular, the biggest number of topics were approved by the specialty 12.00.07 – 252 topics (20.79% of the total number of topics) and 12.00.09 (Criminal Process and Criminalistics; Forensic Examination; Operational and Search Activities) – 203 topics (16.75% of the total number of topics) [16].

Proceeding from this, it is probably necessary to think a little about the status of the transitional period in the country (as *«transitional justice»*). Today, it really reflects the transition from a democratic to a totalitarian, police state, or vice versa?

Because, given the presented statistical data, scientific interest in the jurisprudence is not obviously concentrated (focused) on «philosophy of law» or «civil law, labour law, social security law» but is evidently covered by administrative aspect (administration from lat. «administratio» – management, control [38, p. 59]).

Given the above, it is also appropriate to follow the opinion of O. L. Kolylenko and O. V. Zaichuk who significantly draw attention to the fact that the analysis of author's abstracts (their total volume for all branches of law), on the contrary, indicates that the choice of thesis research areas does not fully reflect the needs of modern theoretical and legal development of new theories, concepts of state and law development that would correspond to modern realities [26, p. 781].

At the same time, despite such an opinion, one cannot but point out that in general theoretical jurisprudence (the theory of law and state), nevertheless, there are new approaches to solving the pressing issues of the theory of law. In particular, attention to the anthropological approach increases. Among researchers whose scientific developments are one way or another aimed at identifying and overcoming problems in law, it is possible to distinguish the scientific works of various legal schools, as well as approaches to anthropological problems.

In particular, one cannot but mentions the creative contribution of V. V. Zavalniuk («Principle of the anthropology of law in theoretical and legal studies of the present» (scientific article), 2012, Odesa; and others), S.I. Maksymov («Anthropological fundamentals of law» (scientific article), 2012, Kharkiv; etc.), O. L. Kopylenko and O. V. Zaichuk («Relevant theoretical issues of legal science» (a part of the chapter of the scientific publication), 2013, Kyiv), N.I. Satokhina («Understanding in the exercise of right: hermeneutic approach» (Ph.D. thesis), 2010, Kharkiv), Yu. Yu. Shturtsev («Anthropology of law as a form of scientific activities» (scientific article), 2006–2007), Ye. Bulyhin («To the problem of objectivity of law» (Argentina), scientific article, 2005), Barak Aharon («Judicial Discretion» (USA), monograph, 1991) etc.

In addition, it is entirely justified to draw attention to one of the works already carried out on the issues of legal proceedings in the context of general theoretical jurisprudence, the latest scientific paper by S. V. Shevchuk («Ensuring the unity of judicial practice in terms of the existence of specialized jurisprudence», a part of the

chapter of the scientific publication, 2013, Kyiv); as well as the works of Ye. H. Lukianova («Theory of procedural law» (monograph, RF), 2003. For example, the work of S. V. Shevchuk is characterized by problematic issues focused on overcoming dichotomy in law enforcement practice, the need for developing common approaches, and accentuation of attention on relevant instruments; and the scientific work of Ye. H. Lukianova significantly relates to the theoretical basic tools of procedural law.

Separately one should highlight the creative work of V. S. Bihun, which was conducted in the field of the philosophy of justice («Philosophy of justice: idea and implementation» (monograph), 2011). The scientific work is characterized as the first domestic attempt to understand the problems of justice from a philosophical and legal point of view. At the same time, it should be noted that the researcher, while considering the anthropological aspect of justice, focuses primarily on issues of justice and the rule of law, which are extremely important since they determine the positive point of reference for the meaning of justice. However, there are no issues that would be associated with the other side of the legal reality – the reverse derivative (additional), faces of anthropology of law on «conflict resolution», their state, complications in the administration of justice, or the characteristics of ways to overcome them [5, p. 36-41, 86].

The same can be said with respect to other researchers in legal anthropology. After all, they consider the problems of law somewhat «externally», creating the illusion of «flowing round» of real problems and, therefore, their overcoming. It seems to be primarily associated with the fact that the «conflict states» are not given due consideration and, moreover, in the context of administrative justice. Preferably, researchers seem to «sidestep» these issues. Instead, both in theory and in practice, «problems» and «conflicts» are more than sufficient and manifested.

True, one cannot but point out the thorough and essentially fundamental research in the aspect of the anthropology of the «legal conflict» – scientific work by S. V. Bobrovnyk («Compromise and conflict in law: anthropological and communicative approach» (monograph), 2011). Although the scholar has proved the issue of the decline of legal means of overcoming the legal conflict, it is also grounded that the legal conflicts within positivism from the standpoint of etatism and normativism are after all associated with the knowledge and theory of the process of implementing the rules of law in practice, etc. [6, p. 331, 332]. On the other hand, it is obvious that due to the purpose of the study, the problems that are directly related to administrative legal proceedings in the anthropological dimension and those of this particular area of conflicts and problem as well have not been considered.

A significant influence on the further development of legal anthropology was made by H. V. Nastavna's paper («Anthropological and communicative approach to the study of law: nature, content, functional purpose», PhD thesis, scientific supervisor – S. V. Bobrovnyk, 2018). However, based on the analysis of the research results, unfortunately, the lack of a prism of research should be noted specifically over the problems of procedural conflicts, which is explained by a broad approach to problems in terms of «communications» [25, p. 4-6]. However, to be fair, it should be pointed out that the researcher finds the importance of integrating legal thinking for the application of anthropological and communicative methodological approach to

the knowledge of the law, because this also occupies the appropriate place in the applied aspect [25, p. 9] in relation to administrative justice.

Instead, some works were still carried out at the junction of general theoretical jurisprudence and legal proceedings or administrative legal proceedings. Their quantitative and qualitative nature is rather fragmentary in relation to anthropological meaning. In particular, it is necessary to point out creative contribution at the level of the doctoral thesis by H. P. Tymchenko («Principles of civil and administrative legal proceedings in Ukraine: problems of theory and practice», 2012, defended by 3 specialties).

Rather close to the anthropological dimension of administrative law and proceduralism are scientific studies that were aimed at the security aspect. It is thought that this is related to the fact that when we speak about such a verge of legal matter (its anthropological essence) as «reality» and «overcoming conflicts» then it becomes apparent that the phenomenon of security exists and manifests itself as a certain state of security, predictability, etc., which conceptually cannot be recognized without finding out the nature of the legal conflict and its overcoming, without analysing and assessing the vulnerable state of legal matter in one or another legal area.

In particular, the creative contribution of O. O. Bryhnits «Legal groundwork for Ukraine's financial security» (doctoral thesis, Irpin, 2017) should be mentioned. The researcher finds out that financial security of the state should be considered as «a state, in which the proper functioning of all parties in financial legal relations in the state is ensured, characterized by resistance to any real or potential, external and internal negative influences, and is able to ensure the effective functioning of the national financial system, as well as its sustained development…» [7, p. 6] So, there is the criterion of «resistance to any negative challenges».

When analysing security laws, one cannot but pay attention to *the function of court control* (Article 9 of the Law of Ukraine «On National Security», 2018) where the very phenomenon of «control» determines the state of security. From here it follows that the function of controlling the status of the doctrine of administrative law and justice (including administrative and judicial practice) is an important part of the formation of a qualitative concept of security. The latter cannot be comprehended without the anthropological measure of law, without assessing the state of the anthropological crisis as a real source of searching for real problems in administrative law and justice.

In turn, we (Ya. Melnyk) support the idea that security phenomenon manifests itself rather as a principle (basis) [18, p. 19-28], and also as a regime [19, p. 78-83], as a right (both in the procedural meaning and in the material sense of manifested good) [20, p. 97-107], which determine a special type of legal relations – security legal relations [21, p. 20-25]. Such a regime is characterized by a certain system of security guarantees [22, p. 68-73], factors of complications in legal regulation [23, p. 120-132]. Following this, for example, in the legal proceedings, the position is maintained that a judicial security policy should be developed [24, p. 32–39].

At the same time, on the approaches to the research of the anthropological dimension of administrative law and justice, it is worth listening to O. L. Kopylenko and O. V. Zaichuk stating that *the efficiency criterion* of the methodological basis of research in the field of lawmaking is precisely its applied value, that is, the methods

used should enable not only to identify problems, to reveal their essence, but also to find out the causes of differences, to facilitate the search for solutions to problem issues. And in essence, they can bring results that are *adequate to the modern legal reality* [26, p. 808]. It is «adequacy», in this sense, that is a manifestation of «legal reality». Moreover, as it seems, in agreeing with the position of scientists, it should be added that the anthropological character and the basis (principles), methods, which should be taken into account and used as the basis for those researches aimed at overcoming problems, conflicts, and contradictions in legal consciousness, law enforcement, regulation, etc. can be traced here.

As to the administration of justice in the anthropological section, it is worth noting the following.

So, P. M. Rabinovych notes the importance of the anthropological aspect of the «judicial conflict» that arises precisely in the context of judicial law-making and formation and distinguishes this state as «needs-oriented understanding of the law».

The scholar quite accurately draws attention to the final result of the question of the law on judicial lawmaking in the context of the decisions of the ECHR. He, first of all, asks: «what is right» in the modern period? In his opinion, first of all, one should pay attention to the fact that today one of the most promising ways to find an answer to a given question is to study the practice of the European Court of Human Rights on the application of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms [31, p. 238]. And therefore, on the basis of this, the scholar proposes to recognize the Court as the bearer of *the needs-oriented understanding of law* [31, p. 239]. Also, the scholar comes to the conclusion that with the European understanding of law, the right – objectively determined by biological and social factors concrete and real opportunities to meet the needs (interests) of the subjects of society, fairly balanced with the abilities to meet the needs (interests) of other subjects and the whole society. If one takes into account the decisive conceptual (socio-philosophical) approach, on which the interpretation of the phenomenon of law is based, then such understanding of the law can be considered an *instrumental-need*. And since it is about human needs, then it is fundamentally *anthropological* [31, p. 242].

Quite a significant fact of the expression of anthropological problems is the state of the domestic legal proceedings, which manifests in the statistical data arising from the court practice of the European Court of Human Rights (hereinafter – ECHR).

Thus, O. Ovcharenko, while worrying about the research on transitive justice, points out that the statistics of the ECHR concerning directly appeals of Ukrainians for the protection of their rights is characterized by a steady tendency to increase. After all, year by year, the ECHR issues a growing number of decisions on the merits against Ukraine. For example: in 2002 – 1 decision; in 2003 – 8 decisions; in 2004 – 14 decisions; in 2005 – 120 decisions; in 2010 – 109 decisions; in 2011 – 105 decisions; in 2012 – 71 decisions; and in 2013 – 69 decisions [41; 3, p. 121]. Moreover, with regard to the latter, it should be considered that from 2013 onwards an armed conflict continues in Ukraine.

Indicative of legal proceedings are the data that the investigator points out that the total number of violations of the Convention by Ukraine is 477 – this is exactly the acknowledged by the ECHR violations of the right of a person to a fair trial,

enshrined in paragraph 1, Article 6 of the Convention [41; 3, p. 121]. According to the statistics of the ECHR, violations concern such rights in relation to justice as: exceeding reasonable time limits for consideration of cases by courts, the right to a fair trial in terms of executing a court decision, namely with regard to payment of arrears of wages, pensions, etc. [34; 35; 3, p. 122].

In this regard, let us focus on the following statistical data. In particular, O. Ovcharenko, relying on the data of the judge of the ECHR from Ukraine, Anna Yudkivska, gives the facts of the ECHR, which testify that in 2011–2013, Ukraine made the top five in terms of the number of citizens' complaints. *For example*, in 2012 Ukrainians filed about 10 thousand complaints, in 2013 there were 13284 applications under consideration by the ECHR, representing 13.3% of the total number of applications in the Court (which is almost 100 thousand) [1; 3, p. 122]. There in January 2013, for 211 decisions, the compensation amounted to 1.1 million euros (equivalent to 11.7 million hryvnias), which should be paid from the State Budget [14; 3, p. 122].

Under these circumstances, the legal doctrine states that administrative courts should use as benchmarks the administrative standards and standards of justice defined at the international level. Otherwise, the relevant analytical work will not meet the established requirements and, therefore, the court decision may be revised by the relevant international judicial instances [27, p. 253]. Given the abovementioned statistical data, their consequences are obvious.

From here, one should ask the following questions: Is the issue of legal security, procedural, financial security of Ukraine monitored in such circumstances? Do its financial stability and capacity increase? Of course not. But the option to protect the rights and the development of a law-governed state «without justice» is not acceptable.

It is also evident that the problems with the protection of social rights in Ukraine have a slightly different aspect of manifestation, as situations are not limited to statistical data of cases of human rights' violations in Ukraine and their statement in the ECHR.

For example, from the viewpoint of «financial security» and «security of social rights», Yu.H. Barabash's concern should be given. Thus, considering the issue of the phenomenon of «defenceless rights» against the background of the decisions taken by the Constitutional Court of Ukraine (decisions № 20-рп/2011 of December 26, 2011, and № 3-рп/2012 of January 25, 2012) [32; 33], the scholar notes that in 2010–2011, under the influence of a variety of circumstances, there was a radical change in the doctrinal approaches of the Court on the issue of guaranteeing social rights. In these decisions, the Court firstly preferred the principle of *«financial security»* (more precisely, «the balance of the state budget»), in contrast to the impossibility of revision of the system of guarantees of social rights, *denying* in the latter (rights) the character of absolute (italics added – *Ya. M.*) [4]. By the way, the protection of social rights, which was analysed by Yu.H. Barabash, just concerns the administrative justice. But in addition to this, the analysed Decision deals with not only law-making, law enforcement, or understanding of law, but more systematic detection of problems, problems of different levels of administrative justice and administrative law, constitutionalism, and in fact – different vectors and orientation towards the

stabilization of law and order, etc. Essentially, the existing problems indicate an additional, supposedly two-dimensional world of the law, where the problem of public and private law, substantive and procedural law remains unresolved.

It is no wonder that under similar circumstances S. V. Shevchuk expresses a certain concern.

The scholar sees the systematic nature of problems with participation/or because of judicial law-making during the protection of civil rights by a court.

For example, the scientist-practitioner pays attention to the need to ensure the unity of judicial practice. The unity of judicial practice is defined by him as one of the main values of the legal system, to which all must be incarnated. After all, confidence in «legal future» *forms a state of legal security* (italics added – *Ya. M.*) since, under these conditions, the subjects of the law have the conviction that the judicial system protects people from the state's arbitrariness, in a qualified manner and fairly solves conflicts in the private sphere. Also, as the scholar-practitioner notes, the constant adoption of opposing decisions on similar issues transforms the appeal to a court into a kind of «lottery», undermining confidence in judges and faith in justice, which in turn threatens the foundations of statehood. Therefore, the position of the scholar that the requirements of the principle of legal certainty are not only that the provisions of the laws and regulations are clear and understandable not only to the subjects of law enforcement and all other participants in the legal process, but also are applied equally in similar situations [26, p. 559].

However, in all of the above cases, it should be noted that in essence, in manifested states, threatening facts, it is obviously about a certain process. This process is one way or another connected with the phenomenon of «law-making». And in essence – the process of law-making in a specific sector-legal field (as the theory of law, the theory of administrative law and justice, as well as the security aspect of both the faces and meaning in the above cases).

On this issue, the thought of T. O. Didych should be noted, who, studying the theoretical and methodological foundations of law-making, sees it necessary to allocate certain *«factors»* in such a way. These factors he proposes *to understand* as «…a complex of conditions for the life of society, the content of which is a real relationship between its actors who generate and define the content of the objective necessity of changing their legal regulation, determine the formation of law, identify its content, the process of implementation, effectiveness, as well as the content and nature of law-making acts…»; its sign is procedurality. Moreover, procedurality, as a sign, is given by the researcher in a broad term, namely, the content of which is «…the sequence of law formation determined by the time limits and periodization in separate stages (phases), reflecting the dynamics of the factors of law-making, the sequence of their identification, analysis, understanding, drafting of legal norms, providing them with an appropriate form of consolidation, spread on social relations, and so on…» [11, p. 8]. On the other hand, in our opinion, it is appropriate to specify also the narrower content of the signs of law-making – this is the formation of the law in administrative and judicial practice (administrative justice).

At the same time, such a sign of law-making as «effectiveness», highlighted by T. O. Didych, also deserves attention due to the fact that it manifests itself in «…the ability to form new rules of law, to amend or abrogate existing ones, which is

potentially aimed at achieving the relevant legal result…» [11, p. 9]. Therefore, we believe that it has not only anthropological meaning, but also an axiological deep sense precisely for the development of the administrative and administrative procedural form; it is also important for doctrinal achievements in this area. After all, in essence, the procedure for the defence of thesis research (as a process for the establishment of doctrinal concepts) is in one way or another covered in a large part by the legal regulation of administrative law. In the anthropological sense, «effectiveness» for both science and practice is a condition for overcoming the problem, resolving the crisis, etc., because it is covered by the idea of achieving the foundations of law, the status of legislation, practice, as well as characterize the quality of the very legal matter of administrative law and justice in a broad sense.

Financial security as a concept of the effectiveness of European adaptation processes of law-making in financial law

The essence of systemic reforms taking place in Ukraine today is the affirmation of European values in all spheres of public life.

Section III of the Association Agreement between Ukraine and the EU as of 27.06.2014, specifically Articles 14 and 24, clearly defines the parties' obligations in the security sector, where: *(a)* within the framework of cooperation in the field of justice, freedom, and *security*, the Parties attach particular importance to the establishment of the rule of law and the strengthening of institutions of all levels in the field of general administration and law enforcement and judicial authorities in particular. And cooperation is aimed, in particular, at strengthening the judiciary, increasing its effectiveness, ensuring its independence and impartiality, and fighting corruption. Cooperation in the field of justice, freedom, and security should take place on the basis of the principle of respect for human rights and fundamental freedoms; *(b)* the parties agreed on the further development of *judicial* cooperation in civil and criminal cases, making full use of relevant international and bilateral documents and based on *the principles of legal certainty and the right to a fair trial*.

Thus, Ukraine's integration into the economy of the European Union and the positioning of our country as a worthy competitive producer require the observance of national interests. Ukraine's integration into the EU has important economic benefits for Ukraine, namely: macroeconomic stability, increased productivity of the economy, increased trade volumes between Ukraine and the EU, ensuring the free movement of production factors within the EU, guaranteed protection of workers' and consumers' rights [40, p. 227]. On the basis of this, there is a problem in determining the differences between the need to integrate the Ukrainian economy into the European Union economy and to ensure the protection of the internal market and national security.

The new Law of Ukraine «On National Security» was adopted, according to which «integration of Ukraine into the European political, economic, security, legal space, membership in the European Union and the North Atlantic Treaty Organization, the development of equal, mutually beneficial relations with other states are defined as fundamental national interests of Ukraine [28].

In our opinion, the main criterion for ensuring the national security of the state is the level of development of its economy. The stable level of development of the

state's economy provides a basis for national interests. The issue of financial and economic security is very controversial and relevant, there are several approaches to the interpretation of economic security as an integral part of national security, for example, «...the protection of the vital interests of the individual, society, state in the economic sphere from internal and external threats…» The second approach reveals the essence of economic security as a «state of the economy», that is, economic security is the state of the economy and institutions of power, which guarantees the protection of national interests, the social orientation of politics, and sufficient defence potential even under adverse conditions of the development of internal and external processes. The third approach to determining the essence of economic security interprets economic security as a combination or set of conditions and factors that provide a certain level of economic development of the country. The fourth approach defines economic security as «...the qualitative state of the aggregate of the main factors of social production in conjunction with the state's ability to ensure their effective protection in the national interest and to implement an economic strategy that is adequate to the challenges of its changing economic space in order to achieve a stable, sustainable development and self-improvement of the entire society» [13].

At the present stage of the national state-building process in Ukraine, the need to give a real value to the generally recognized world's democratic values and ideals is growing naturally and systematically. However, building Ukraine as a democratic, social, and law-bound state will be effective and fruitful only if the theoretical provision of relevant state-building and law-making processes and phenomena is properly provided. One of them is the financial security of Ukraine, which plays a special role in the national security system, on the level of which the realization of national interests and the stable development of the state depend. Problems of legal provision of financial security of the state are not completely resolved, as shown by the statistical data of international organizations, where in many world rankings Ukraine occupies the last places [8].

In the scientific literature, there is a variety of approaches to defining the concept of «financial security», its interconnection and interdependence with the concept of national security. Some scholars consider financial security as the basis of the national one, while others represent financial security as the main component of the national security system of the country.

The concept of «financial security of the state» was not properly reflected in jurisprudence, because domestic scholars and practitioners paid only fragmentary attention to it. The studies conducted in this area did not clearly formulate a balanced and consistent approach to the disclosure of the basic components of this problem. The recent events are a direct consequence of the slow realization of the state's own financial and legal interests, while the issue of legal groundwork for its financial security has become a key factor in ensuring Ukraine's existence and its successful confrontation with new threats. The problem of legal support for the financial security of the state arose even at the beginning of the formation of our statehood but has never been as relevant as at present [9].

Summing up the opinions of scholars, one can say that the financial security of the state includes: budget security, debt security, tax security, monetary security,

currency exchange rate security, the financial security of the banking system, investment security, etc.

Scholars propose to consider the financial security of the state in the narrow and broad sense. We are inclined to believe that financial security is best disclosed through a narrow definition, namely, the financial security of the state is a state in which the proper functioning of all subjects of financial legal relations in a state characterized by resistance to any real or potential external and internal negative influences that can ensure the effective functioning of the national financial system, as well as its development.

The legal groundwork for Ukraine's financial security is based on a certain mechanism supported by the system of organizational and legal measures of influence aimed at preventing, minimizing, and eliminating threats to the financial security of our state.

In our opinion, in the modern realities of the development of society, the system of state security plays a key role. The negative processes taking place today in Ukraine determine the urgency of financial security of the state as a key factor in the development of society. And the legal support for financial security is determined through the activities of the state apparatus side by side with society.

To date, the domestic economy has not yet succeeded in creating a national effective economic system that would be able to ensure the progressive development of the state, to strengthen the levers of the country's external and internal policies. However, today it is possible to talk about positive changes in the process of ensuring the financial security of the state. In this context, it should be noted that a thorough analysis of the European experience in shaping and providing the country's economic security undeniably indicates the need to improve domestic legislation and strategic provision of Ukraine's economic security mechanism.

At the same time, there is the adoption of the Law of Ukraine «On the National Bureau of Financial Security of Ukraine» (Draft Law of Ukraine on 19.03.2018, which was recognized as urgent by the President of Ukraine).

The purpose of the draft law is to create the organizational and legal framework for the activities of the National Bureau of Financial Security of Ukraine, the main goal of which is to ensure the financial security of the state by building new risk-oriented methods of criminal analysis of the system of timely detection and elimination of systemic threats in the field of public finances, prevention of their occurrence in the future [28-a].

The new Law proposes to establish the National Bureau of Financial Security of Ukraine as the state law enforcement agency, which on the basis of criminal analysis and risk analysis relies on the elimination of threats to the financial security of the state, including by preventing, detecting, terminating, investigating, and disclosing criminal offenses in the sphere of economic activity that are directly related to its jurisdiction, which directly or indirectly cause damage to public finances and prevent their commission in the future [28-a].

Therefore, it can be stated that the threats to the financial and economic security of Ukraine, unfortunately, have become *permanent* in nature: they provoke the crisis phenomena of the economy, raise issues of proper or inadequate provision of national security, and so on. Therefore, the task of all subjects of state power is to create a

reliable and effective system of blocking and preventing crisis phenomena. At present in Ukraine, the role of issues of ensuring national security is growing; the foundations of civil society and the new law-bound state of the European level are being laid. This is all confirmed by the desire to adopt new laws and regulations that will ensure the financial and economic security of Ukraine of a new level.

Conclusions

Based on the foregoing, we can draw the following conclusions: *(a)* the doctrine of administrative law and procedure requires new approaches and a reassessment of the validity of established approaches; *(b)* the origins of administrative law and procedure in modern conditions should be considered through the prism of the anthropological dimension of law. It is its principles and methodological tools that provide an opportunity to find out the completeness, real state, real causes, conditions, factors, and complications in the legal regulation of administrative legal relations, as well as legal relations that arise in administrative justice; *(c)* the state of financial security depends not only on the development of legal doctrines, or the statutory consolidation of national security, or the sectoral concept of administrative law, financial law, but rather depends on the state of administrative, criminal, and civil procedural legislation, the state of coherence and the ability of domestic courts to apply standards of the European law.

Within the framework of the development prospects, it seems to be noted that only by following the European integration requirements it is possible to develop uniform and stable administrative standards since because of their dual nature one way or another they should be based on fundamental European values.

The doctrine of administrative law and procedure should rather reorient to develop a security concept of the law. This is determined not only by globalization processes but also by the instability in the transition period of law and the state of the system of law itself, by the strengthening of vulnerable states of law and order, etc. Therefore, for this purpose, it is more appropriate to give doctrinal attention to such legal phenomena as a «threat» (the legal facts that create them), «conflicts» in procedural and substantial terms, and so on. Actually – to develop a single universal security concept that would be characterized by clear methodological and doctrinal instruments, which would provide a real opportunity to quickly overcome legal risks or to minimize them. The achievement of this result is impossible without taking into account theoretical (anthropological surveys) and intersectoral (joint) studies, and all in order to go beyond the formalized approach to administrative law and justice.

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ROLE AND PLACE OF ADMINISTRATIVE LAW AND ADMINISTRATIVE PROCEDURE LAW IN THE NATIONAL SYSTEM OF LAW

Nehodchenko O.V.,
Doctor of Juridical Sciences, Professor, Rector,
Dnipropetrovsk University of Humanities

Korniienko M.V.,
Doctor of Juridical Sciences, Professor, Vice Rector,
Dnipropetrovsk University of Humanities

Blinova H.O.,
Candidate of Juridical Sciences, Associate Professor,
Head of Department of Civil Law Disciplines,
Dnipropetrovsk University of Humanities
Dnipro

THE THEORETICAL AND LEGAL FRAMEWORK OF INFORMATION PROVISION FOR ADMINISTRATIVE LEGAL PROCEEDINGS IN UKRAINE

Summary

The article is devoted to the analysis of scientific concepts and the legal framework of the concept of information support for administrative legal proceedings. Features and peculiarities of information provision for administrative legal proceedings are studied; its differences from information support for the administrative court are stressed. The author's definitions of the concept of information support for the administrative procedure and information support for the administrative court are proposed. Three stages of formation of national legislation regulating information provision of administrative legal proceedings are singled out. The system of laws and regulations, which provisions consolidate legal fundamentals of information support for administrative legal proceedings, is clarified. Prospective directions for the development of scientific inquiry in the field of information support for administrative legal proceedings and its legal regulation are revealed.

Introduction

Modern legal proceedings in Ukraine are impossible without quality information provision. The current state of legal proceedings, as stated in the Strategy for the reform of the Judiciary, Legal Proceedings, and Related Legal Institutes for 2015–2020, approved by the Decree of the President of Ukraine on 20.05.2015

№ 276/2015, has insufficient level of unity and consistency of court practice, as well as insufficient level of use of opportunities of modern information systems (e-justice). The evolution of domestic legislation regulating information relations in the field of legal proceedings takes place in stages and depends on many factors, the main of which are the development of information technology, legal reforms, and the implementation of international law.

The legal basis of information provision in general was considered in the works of such legal scholars as: L. V. Balabanov, Ye. Yu. Barash, Ye. D. Bondarenko, I. O. Iierusalymov, R. A. Kaliuzhnyi, O. V. Kostenko, V. V. Lusher, P. V. Makushev, S. M. Petrenko, A. V. Chernoivanenko, V. V. Halunko, O. K. Yudin, and others. The issue of information provision of legal proceedings was investigated by O. V. Bryntsev, O. I. Korchynskyi, Ye. I. Ovchynnykov, V. B. Pchelin, I. O. Turkina, and others. A small number of scholars who investigated namely the issue of information provision of legal proceedings testify to the complexity of this problem and the need to intensify scientific research in this area. Significant volumes of relations in the field of information provision of legal proceedings led only to a fragmentary study of their legal regulation. Recent changes in the procedural law have significantly increased the number of legal rules governing the information provision of administrative legal proceedings and introduced new unexplored and completely unformed legal institutions. The abovementioned determines the relevance of the submitted scientific article.

According to O. V. Bryntsev, e-justice is one of the elements of e-democracy, which is being implemented in order to ensure accessibility, accountability, the effectiveness of feedback, inclusiveness, transparency in the activities of state authorities. Judiciary is a key component of democracy, so it is fairly considered that e-justice is the most important front of e-democracy [4]. For the effective functioning of the state and all state mechanisms, information provision of administrative legal proceedings of Ukraine is of key importance. As V. B. Pchelin notes, the proper functioning of administrative legal proceedings of Ukraine, within which the consideration and resolution of public-law disputes related to the protection and restoration of violated, unrecognized, disputed rights, freedoms, and interests of individuals and legal entities take place, may be only in the case of its effective information support [41, p. 121]. The content and scope of information relations arising in the field of administrative legal proceedings with each stage of development of domestic information and procedural legislation are increasingly specified. At the same time, the growth of the circle of such relations, the increase of the types of information used within the administrative legal proceedings, and the growing importance of information support for administrative legal proceedings are observed. The current legal community of Ukraine is looking for ways to optimize the work of the entire judicial system in general and administrative legal proceedings in particular.

The volume of cases handled by administrative courts remains significant every year. Thus, in 2016, 215 319 administrative cases were received for consideration by local administrative courts, and 76 184 cases – by administrative courts of appeals [17]. In 2017, 121 692 cases were submitted for consideration to the local

administrative courts and 73 496 cases – to the administrative courts of appeal [5]. Accordingly, the amount of information used to resolve such a circle of cases invariably grows; the need for optimization of information databases, their integration, and improving the efficiency of the search for the necessary information increases.

Scientific and theoretical foundations of information support for administrative legal proceedings in Ukraine

One of the most important characteristics of the state, which significantly affects all processes of the socio-economic development of society, is the level of information provision of the system of state power, as I. M. Oliichenko emphasizes. Many years of experience in improving public administration confirms that information provision should be considered as one of the strategic directions for improving the efficiency of its activities at all levels: state, branch, regional, international [20]. P. V. Makushev emphasizes that information provision of each civil service is an important element of its functioning [16, p. 73]. As V. V. Lusher notes, the science of administrative law widely uses this term: «administrative legal support», «the mechanism of administrative legal support», «ensuring rights and freedoms of citizens», «ensuring public safety», etc. [14, p. 338].

In the dictionaries, the term «provision» is interpreted in similar terms, but they have certain differences. Thus, in the new explanatory dictionary of the Ukrainian language, it is considered in two meanings: 1) the provision or creation of material resources; 2) guaranteeing something [18, p. 684]. In the great explanatory dictionary, the term «provision» is explained through the verb «to provide», which is used in several meanings: «to create reliable conditions for the implementation of something»; «to guarantee something»; «to defend, to protect someone, anything from danger» [46, p. 19]. The above interpretation of the concept of «provision» allows considering it as an activity, a system of measures aimed at improving something specific. So, one can agree with the conclusion of V.B. Pchelin that the category of «provision» is denoted by a long process aimed at guaranteeing the functioning of the relevant institution, maintaining it in good condition in order to fulfil its tasks [41, p. 22].

The term «provision» can be used in various areas of legal regulation and have some peculiarities depending on it. However, for the purpose of studying the issues of information provision of administrative legal proceedings, the results of the search of scientists are important in terms of approaches to the content of the concept of information provision. So, R. A. Kaliuzhnyi, investigating information provision of a management system, proposes to understand it as a combination of all the information used, specific means and methods of its processing, as well as the activities of specialists on the efficient use of data, information, knowledge in the management of a particular system [9]. Studying the information provision of management, S.M. Petrenko believes that it is a set of implemented decisions on the volumes of information, its qualitative and quantitative composition, location, and forms of organization, the purpose is timely provision of necessary and sufficient information for the adoption of managerial decisions that ensure the effective

operation of both the enterprise as a whole and its structural subdivisions [21, p. 20]. O.K. Yudin and V.M. Bohush, studying the provision of information security, define it as a set of measures designed to achieve the state of protection of the needs of individuals, society, and the state in information [50, p. 52].

Directly informational support as an independent concept, L. V. Balabanova proposes to understand as a set of actions to provide the necessary management information in the specified place on the basis of certain procedures with a given periodicity [1, p. 9]; A. V. Chernoivanenko – as a system for managing the totality of representations, concepts, data, and as activities related to means of collecting, registering, transmitting, storing, processing, and presenting information [48]; H. A. Tytorenko – as the most important element of information systems and information technology, designed to display information that characterizes the state of the controlled object and which is the basis for the adoption of management decisions, and includes a set of unified system of indicators, flows of information – options for document management; systems of classification and coding of economic information, unified documentation system, and various information arrays (files) stored in a computer and technical carriers and having different degrees of organization [7]; Ye. D. Bondarenko – as a process to meet the needs for information based on the use of special means and methods for its acquisition, processing, accumulation, and output in easy-to-use form, and the structure of this provision includes an information fund and special techniques and methods of information provision, i.e., this phenomenon simultaneously represents, firstly, a certain organizational activity of obtaining, processing, accumulation, and output of information, secondly, methods and techniques of its implementation, and thirdly, certain material objects – information fund [3]; I. O. Iierusalymov defines it as an act, as well as storage, performance of something that serves as a guarantee of one or another process [8, p. 12].

Investigating the information support of the state criminal-executive service, Ye. Yu. Barash defines its main features, namely: in its essence, it acts as a process of processing, obtaining, storing, and using management information about various aspects of the functioning of the service; by a periodicity it represents an uninterrupted process of processing and using information; by the nature of existence it is a part of the management of the service; by the form of implementation, it is carried out using means and methods inherent in this type; by the consequences of the implementation of information provision, it is associated with the formation of certain information funds, documents, regulatory framework; for the purpose of functioning, it is aimed at ensuring the proper functioning of the system, for example, an automated control system; for the main purpose as an instrument of effective management, it finds its implementation in the analysis, planning, and preparation of effective managerial decisions [2, p. 35-36]. Studying the information provision of the state executive service, P.V. Makushev defines it as a part of managerial activity in the analysis, planning, and preparation of management decisions, which is an uninterrupted process of processing and using information on the state of the functioning of the state executive service system, which is carried out with the help of information tools and methods, leads to the formation of information funds, and aims

to ensure the proper functioning of the system of the state executive service of Ukraine [15, p. 335]. O. V. Kostenko determined the features inherent in information provision in more detail, taking into account its content, methods of implementation, goal, purpose [13, p. 116].

Taking into account features of administrative legal proceedings, the most modern definition of its information provision is formulated by V. B. Pchelin. Thus, this scholar proposes to understand the information support of administrative legal proceedings of Ukraine as the set of measures based on the requirements of the current national legislation on the operation (collection, fixation, analysis, storage, dissemination, etc.) of information that is implemented in the framework of the performance of its functions by authorized subjects and due to the functioning of automated systems and aimed at ensuring the proper functioning of administrative courts for the consideration and resolution of public-law disputes [43, p. 24]. In our view, the term of operating information is not traditional in the field of law and its use in this area needs a deeper justification. Therefore, in our opinion, in the proposed by V. B. Pchelin definition, the term «operation» is proposed to be replaced by the term «circulation». In the current legislation of Ukraine, the term «circulation», which can be applied to information, is defined in the Law of Ukraine «On Electronic Document Circulation». So in Article 9 of this law, electronic document flow is defined as a set of processes for creating, processing, sending, transmitting, receiving, storing, using, and destroying electronic documents that are performed using integrity checking and, if necessary, confirming the fact of receipt of such documents. Thus, in the opinion of the legislator, the information circulation includes its processing. At the same time, an electronic document, under Art. 5 of this law, is a document, the information in which is recorded in the form of electronic data, including the mandatory details of the document [30]. Although the concept of an electronic document is somewhat narrower than the concept of information, in general, we believe that the concept of electronic document circulation characterizes the content of the concept of information circulation.

Information provision of administrative legal proceedings is carried out in the course of activities of authorized entities, as well as through the operation of the relevant automated systems.

V. B. Pchelin stresses that the judges as the main subjects of cognition in the administrative process, the State Judicial Administration of Ukraine, and the courts are the main subjects that carry out the information provision of administrative legal proceedings [43, p. 24]. At the same time, according to Art. 147 «System of Ensuring the Functioning of the Judiciary» of the Law of Ukraine «On the Judiciary and Status of Judges» in Ukraine there is a unified system of ensuring the functioning of the judiciary – courts, bodies of the judiciary, other state bodies and institutions of the system of justice. This system includes: the Supreme Council of Justice, the High Qualifications Commission of Judges of Ukraine, the State Judicial Administration of Ukraine, and the National School of Judges of Ukraine, other bodies of state authority and local self-government bodies are involved in the organizational support of the activities of courts in the cases and in accordance with the procedure established by this and other laws [40]. According to Articles 152 and 155 of the Law of Ukraine

«On the Judiciary and Status of Judges», the State Judicial Administration of Ukraine and the court apparatus have the basic authority regarding the information provision of administrative justice in the system of bodies for ensuring the functioning of the judiciary.

Information support for administrative legal proceedings is provided through the functioning of the relevant information systems. At present, such systems are the Unified State Register of Court Decisions, the Register of Electronic Addresses of State Authorities, their Officials and Officers, the Automated System of Court Documents, the Single Judicial Information and Telecommunication System [28; 34; 49]. According to Article 18 of the CALP, the Single Judicial Information and Telecommunication System operates in courts, which was created for the fulfilment of such tasks as: registration of documents coming to court; determination of a judge for the consideration of a case; exchange of documents electronically between courts, as well as between the court and the participants in the trial; fixing the trial and participation of participants in the trial in a court session in a video conferencing mode. However, the adoption of the provision on this system still requires time and certain measures. Thus, the State Judicial Administration of Ukraine has elaborated a Plan of Measures for the Implementation of the Law of Ukraine on 03.10.2017 № 2147-VIII «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts» [33; 6]. Consequently, as V.B. Pchelin emphasizes, the corresponding automated information systems serve as important constituent elements of the information provision of administrative legal proceedings, because precisely due to their functioning: the subjective factor is eliminated; tasks on information provision are carried out continuously and promptly; everyone, except for cases provided by law, is provided with the necessary information on administrative legal proceedings and other related data in this area [41, p. 120]. It is through the information support for administrative legal proceedings that the principles of its publicity, openness, and transparency are implemented.

Legal fundamentals of information provision of administrative legal proceedings in Ukraine and the stages of their formation

Under the legal principles of information provision of administrative legal proceedings, V.B. Pchelin proposes to understand the totality of legal acts of various legal force, which, taking into account their hierarchical links, carry out statutory regulation of the activities of authorized entities and the functioning of automated information systems with the operation of information in order to ensure proper activities of administrative courts for the consideration and resolution of public-law disputes [41, p. 124].

The current state of legal regulation of information provision of administrative legal proceedings preceded the long period of development of domestic administrative-procedural and information legislation. The general principles of information provision of administrative legal proceedings are determined by the following laws of Ukraine: «On Personal Data Protection» on June 1, 2010; «On Court Fees» on July 8, 2011; «On Appeal of Citizens» on October 2, 1996;

«On State Secrets» on January 21, 1994; «On Electronic Documents and Electronic Document Circulation» as of May 22, 2003; «On Electronic Digital Signature» on May 22, 2003; «On Information» dated October 2, 1992; «On Access to Public Information» on January 13, 2011; «On Information Protection in Information and Telecommunication Systems» dated July 5, 1994; etc. Special laws and regulations detail the order of information provision of administrative legal proceedings.

The stages of formation of the legal regulation of information provision of administrative legal proceedings, determined by us, are based on large-scale structural changes that have led to global processes in the field of information provision of administrative legal proceedings.

We associate the first stage of the formation of legislation regulating the information provision of administrative legal proceedings with the adoption of the Code of Administrative Legal Proceedings of Ukraine (hereinafter referred to as CALP) on July 6, 2005. Thus, the first edition of the CALP identified such important components of the information provision of administrative legal proceedings as the principles of transparency and openness of the administrative process (Article 12), the principles of recording the court session by technical means (Article 41), reproduction and printing of the technical record of the court session (Article 44); types of procedural information and its carriers.

The second stage of the formation of legal norms regulating information provision of administrative legal proceedings is connected with the introduction of an automated system of document circulation in administrative courts. The Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Introduction of Automated System of Document Circulation in Administrative Courts» on June 5, 2009, No. 1475-VI supplemented the CALP by Art. 15-1 «Automated System of Court Documents». By the Order of the State Judicial Administration of Ukraine as of 03.12.2009 № 129, the provision «On Automated System of Document Circulation in Administrative Courts» [24] was approved, which expired pursuant to the Decision of the Council of Judges of Ukraine as of 26.11.2010 No. 30, which introduced the Regulation on the Automated System of Document Circulation of the Court [49].

The second stage in the formation of information provision of administrative legal proceedings is also characterized by a fragmentary development of certain rules regulating the information provision of certain categories of administrative cases. One of such legal acts, which caused changes in this area, is the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Elections of the President of Ukraine» as of August 21, 2009, № 1616-VI, which identified the features of the use of procedural information under the proceedings in cases related to the election of the President of Ukraine [26]. The Law of Ukraine «On Alienation of Land Plots and Other Immovable Property Located Thereon, Which are in Private Property, for Public Needs or Social Necessity» on November 17, 2009, № 1559-VI, supplemented the CALP by Article 183-1 «Peculiarities of the Proceedings in Administrative Cases Concerning the Compulsory Alienation of a Land Plot, Other Objects», this article defines a circle of procedural information characteristic for this category [25]. Also, at this stage, there was an extension of the circle of legal norms

regulating the information provision of certain stages and types of proceedings in administrative legal proceedings (Article 174, Article 183-2 of the CALP), the circle of information used in administrative legal proceedings was expanded, etc.

At this stage, the formation of the legal regulation of the information provision of administrative legal proceedings also introduces changes to Art. 12 «Publicity and Openness of Administrative Process» regarding the recording of the trial by technical means [44].

The third stage of the formation of the legislation regulating information provision of administrative legal proceedings began on November 22, 2017, with the signing of the Law of Ukraine «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts». This stage is characterized by the introduction of the electronic justice system at all stages of the process and the transition to the Single Judicial Information and Telecommunication System, the creation of the possibility of remote participation in the trial, the presentation of various documents, familiarization with the case. The specified system provides for the exchange of documents in electronic form between courts, between the court and participants in the trial, as well as recording the trial and participation of participants in the court proceedings in a court session in a video conferencing mode.

In accordance with the said law, the system of organization of legal proceedings in Ukraine undergoes certain changes, namely: obligatory registration of procedural documents in the system on the day they are received; committing any actions in electronic form using an electronic digital signature; automatic determination by the system of a judge or panel of judges for consideration of a particular case in accordance with the procedure established by the Codes; storage of case materials in electronic form; preservation of the right of the parties to the case to apply to the court in paper form and receive the relevant documents after the introduction of the system; obligation to broadcast a court session in a video conferencing mode via the Internet; functioning of the Unified State Register of Executive Documents [45]. The information provided indicates the phased development of the legal norms that are in the CALP and regulate the information relations in the administrative legal proceedings.

Conclusions

The conditional stages of the formation of the legal regulation of the information provision of administrative legal proceedings determined by us were based on events of key importance for the formation of the information support system of administrative legal proceedings and were accompanied by secondary fragmentary changes that concerned only information provision of certain types of administrative cases.

When investigating the information support of administrative proceedings, it is necessary to distinguish it from the information support of the administrative court. In our view, the information support of the administrative court is a part of the administrative activity for the analysis, planning, and preparation of management decisions, which is an uninterrupted process of processing and using information on the state of functioning of the court apparatus and work of judges, which is carried

out with the help of information tools and methods, leads to the formation of information funds, and is aimed at ensuring the proper functioning of the administrative court. At the same time, as information provision of administrative legal proceedings of Ukraine, this is, based on the requirements of the current national legislation, a set of measures related to the circulation of procedural information, which are implemented in the framework of their functions by authorized agents and through the functioning of automated systems and aimed at ensuring the proper functioning of administrative courts on consideration and resolution of public-law disputes.

At the current stage of development of domestic legislation, the legal regulation of information provision of administrative legal proceedings is carried out in accordance with the following laws and regulations: Laws of Ukraine «On the Judiciary and Status of Judges», «On Amendments to Certain Legislative Acts of Ukraine on the Introduction of Automated System of Documentation in Administrative Courts»; «On Access to Court Decisions», «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Justice of Ukraine, and other legislative acts», the Code of Administrative Legal Proceedings of Ukraine, as well as the Regulation «On Automated System of Documentation of the Court», the Procedure for the Management of the Single State Register of Court Decisions, the Regulation on the Single Database of Electronic Addresses, Fax Numbers (Telefaxes) of the Authorities. Some aspects of the information provision of administrative legal proceedings of Ukraine are regulated at the level of subordinate legislation adopted by the State Judicial Administration of Ukraine, which approve the Typical Job Instructions for Employees of the Administration of the Local General Court; Instruction on the Procedure for Working with Technical Means of Recording Court Proceedings (Court Sessions); Instruction on Case Management in Administrative Courts, etc.

The nearest changes in the system of information provision of the administrative process in accordance with the Action Plan on the implementation of the Law of Ukraine as of 03.10.2017 № 2147-VIII «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts» is the introduction of the Unified State Register of Executive Documents and the Single Judicial Information and Telecommunication System [33; 6].

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Petrova I.A.,
Doctor of Juridical Sciences, Professor,
Chief Research Associate, Hon. Prof. M.S. Bokarius
Kharkiv Research Institute of Forensic Examinations

Shulzhenko A.V.,
Postgraduate Student at the Department of Criminal Legal Disciplines,
Kharkiv National University of Internal Affairs
Kharkiv

SIMILARITIES AND DIFFERENCES OF FORENSIC EXPERT ACTIVITY IN ADMINISTRATIVE AND CRIMINAL PROCEDURES

Summary

Forensic expert activity is a special type of activity, the need for which emerges along with the need for expert knowledge. Neither a judge nor any other persons, who are involved in administrative or criminal procedures, have this kind of expert knowledge. By virtue of the knowledge that is converted by forensic experts in the source of evidence, important issues of a case are resolved that would be impossible without forensic expertise. In legal science there is an idea that expert activity, due to its specificity, is much wider than expert procedure regardless of the fact whether it is carried out in administrative or criminal procedures.

M. H. Shcherbakovskyi, in one of his papers, notes that depending on what aspect of the forensic activity an emphasis is laid on, a forensic inquiry is understood as:

– the institute of evidence and procedural laws;

– the system of procedural relations;

– the form of expert knowledge use;

– the procedure of investigating and drawing up a procedural document upon its completion – an expert report [1].

Indeed, the institute evidence law acts both in administrative and criminal procedures, and the conclusion of forensic expert's report is considered as evidence (the source of evidence) on the principles of competitiveness. In the first and second procedures, forensic experts are guided by the same regulatory framework: the Constitution of Ukraine, laws, by-laws, international treaties, etc. For example, in accordance with the Constitution of Ukraine the principle of the rule of law is recognized and in force. Art. 8 of the Constitution contains the provision that the Constitution of Ukraine has supreme legal force, laws and other regulatory legal acts are adopted on the ground of the Constitution of Ukraine and must comply with it [2].

Initiation of legal action to protect the constitutional rights and freedoms of a person and a citizen is directly guaranteed on the basis of the Constitution of Ukraine. In accordance with Art. 9 of the Fundamental Law, the international treaties in force, the consent to their binding is agreed by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine [2].

The task of administrative procedure is to solve individual administrative cases, which are disputes about the legitimacy of bringing to administrative responsibility as well as disputes in various branches of legislation such as budget, customs, tax law, etc. Expertise significantly expands the evidence-based possibilities of subjects of administrative and tortious as well as administrative and judicial procedures and also makes it possible to use unlimited opportunities of the modern science during the trial [3, p. 7].

The Code of Administrative Procedure of Ukraine (hereinafter referred to as CAPU) doesn't have the definition of the term «forensic expertise», but the terminology has been developed by scholars in research on forensic expertise issues in administrative procedure. Some scholars define the forensic expertise in CAPU as a special research of certain actual facts of an administrative case which is conducted on the basis of decision of administrative court by a special subject (a person) which has expert knowledge in science, art, technology, profession etc. that leads to appearance of a new source of evidence – expert conclusion [4, p. 58].

Others define the forensic expertise in administrative proceeding as one that deals with an issue on the ground of expert knowledge and skills, which occur during a proceeding and judicial examination of administrative cases [5, p. 48].

One of the differences between the expert examinations in administrative and criminal proceedings is that in the first case it is scheduled and carried out less often. The reason for this is the administrative process itself, which concerns management sphere. Most often the legal acts, decisions of the subjects of authoritative powers are disputed. Moreover, an expert study is often not binding. In criminal proceedings, six grounds for the mandatory schedule of an expert examination, which are often appointed by a court, investigation bodies or at a request of the defense, are legally

determined. In administrative procedure, an expert examination can be scheduled exclusively by a court (Art. 102 of CAPU) which decides on the application of a party to a case or suo motu to schedule an expert examination in the case, but it can be also conducted on the request of trial participants (Art.104 of the CAPU), when a party to a case has the right to present an expert report, which is drawn up on its request, to the court [6].

Scheduling and carrying out expert examination is an procedural action, and in the case when an expert report is provided to judicial inquiry by a party as evidence together with other, the procedural action is represented exclusively by court's decision on the report. In criminal proceedings, conducting an examination is impossible outside the procedure, in addition, schedule of an expert examination is not only a procedural act, but it is also referred to investigative (search) actions. Simultaneous schedule and performance of an expert examination is possible not only at the stage of pre-trial investigation but also during the trial. A court conclusively evaluates an expert report, as evidence, both in administrative and in criminal proceedings.

As noted above, the schedule and conduct of forensic expertise are arranged by the Code of Administrative Procedure of Ukraine and the Criminal Procedure Code of Ukraine. However, procedural activity that is associated with the schedule and conduct of expert examinations, having common features, has its own significant differences.

A common thing, besides the abovementioned legal framework, is the legislation of Ukraine which regulates activities of forensic experts as follows: the Law of Ukraine «On Forensic Examination», «Instruction on Conducting Forensic Examination», «Procedure of Certification and Official Registration of Forensic Examinations Procedure», «Some Issues of Provision of Paid Services by Research Institutions on Forensic Examination of the Ministry of Justice», «On Approval of the Instructions on Procedure and Amount of Reimbursement and Compensation to Individuals Invited by Inquiry Agencies, Pretrial Investigation Agencies, Procuracy, Courts or Authorities that Oversee Cases of Administrative Violations, and Payments to Governmental Research Institutions on Forensic Examination for Expert and Specialized Services Provided by their Employees» approved by the cabinet of Ministers of Ukraine, and a set of multi-agency orders.

The common features include the existence of department specialized forensic expert institutions which are entrusted to conduct an examination as follows: specialized research institutes of the Ministry of Justice of Ukraine and the Ministry of Healthcare, expert services of the Ministry of Internal Affairs, Security Service of Ukraine etc. Moreover, forensic examinations, which are often arranged in criminal proceedings and sometimes in administrative proceedings, can be carried out exclusively by forensic experts who are employees of such institutions. At the same time, the law provides for the possibility of carrying out forensic expert activity on a business basis, on the ground of a special authorization as well as one-time agreements, by citizens who have the qualification of a forensic expert, which is often used in administrative proceedings.

Requirements for persons who obtain qualification of forensic expert are the same as for employees of state specialized expert institutions, employees of

enterprises and citizens – they must have university degree in a relevant subject area, complete a special training and attestation for obtainment qualification of forensic expert. There are distinctions in the attestation process, as attestation of employees of state specialized forensic institutions is carried out in the establishments where they work, while attestation of persons among citizens and employees of enterprises is carried out by the Ministry of Justice of Ukraine or by the Healthcare Ministry.

There are also distinctions in the formulation of concepts «expert», «expert report», «assessment of expert report», which are indicated in the relevant codes. It should be noted that a forensic activity is rarely represented in administrative procedure but covers two different types of proceedings – public-law disputes and proceedings for the consideration of administrative offenses.

Therefore, Art. 68 of CAPU defines the expert as a person who has special knowledge necessary to clarify the relevant circumstances of a case [6]. The Code of Ukraine on Administrative Offenses does not provide the definition for expert.

At the same time, the Criminal Procedure Code of Ukraine defines the expert as a person who have scientific, technical or other special knowledge, has the right, in accordance with the Law of Ukraine «On Forensic Examination», to conduct an examination and who is entrusted to investigate objects, phenomena and processes that contain information about the circumstances of the commission of a criminal offense and to give an opinion on questions arising during criminal proceedings and relating to the sphere of his knowledge [7]. The CPC of Ukraine also has restrictions on the possibility to involve persons, as an expert, who have official or other dependence on the parties to criminal proceedings or a victim. So, such persons must announce their recusal on legal grounds

In both cases, the term «expert» is used instead of «forensic expert». Definitely, in procedural law it is referred to a person who has specific knowledge. However, in practice, the forensic experts are involved, and information about them is contained in the current Register of Certified Forensic Experts – persons who are allowed to conduct forensic studies and draw up authorized expert report.

«Forensic expert» has narrower meaning than a term «expert» as his activities are exercise of justice needs, judicial proceedings. This is a trial participant who is empowered with particular powers and obligations. Taking into account this fact, both CAPU and CPC of Ukraine shall indicate it (on the basis of analogy – there is existing function of a forensic expert and not an expert in general, as the forensic expert acts depending on justice needs).

According to the standards of CAPU, an expert can be appointed by court or involved by participant of a trial. In other words, each party can involve own expert in order to conduct special investigations that is a trusted person whose opinion is a bona fide. But this kind of a person can act only for the benefits of interested party, and due to this fact there are doubts about his impartiality and reliability of the report. However, this provision is more democratic than in CPC of Ukraine, as Arts. 69 and 243 of CPC (the procedure for expert involvement) indicate that an expert acts by order which is provided by a court and has impersonal nature. An interested person petitions for investigating judge to carry out an expert examination, but such request doesn’t include surname of forensic expert, who will carry out an examination.

This situation can be considered in two ways: on the one hand, acting under the same principle when cases are automatically distributed, taking into account workload of employees in court, files are sent to the expert bodies. The «blind» method prevents to impact immediately on the situation. It has advantages and disadvantages: such person is not under the influence as it is secret who will be entrusted with the examination performance, but if an expert is not enough experienced there is a chance that he will make mistake of reporting on the case, and supplementary expert examination will take up time.

The rights of experts are other distinction. CAPU interprets the rights of experts as follows. The expert has the right [6]:

1) To study case files which are very important, because due to poor actual knowledge about the subject of investigation it will be difficult for an expert, and sometimes it is impossible, to be up to speed on what is a matter of the investigation.

2) To submit a petition for additional files and samples, if the examination is scheduled by the court. The expert uses this right in the case when it is impossible to carry out the investigation without particular files.

Paragraphs 3-6 copy the Law of Ukraine «On Forensic Examination» and repeat the right of expert in criminal procedure as follows:

3) To present facts found out in the course of performing expert examination in the report, which have importance for a case and are beyond doubts in regard to expert initiation that can be limited differently in the CPC of Ukraine. The expert in administrative procedure has more freedom of action in this aspect that permits him to indicate personal comments in the report towards facts which are not taken into account by the court and which, in his opinion, have importance to solve a case on the merits.

4) To be present during performing legal proceedings that concern subject and object of investigation as well as expert initiation, as an expert upon his own initiative decides it is necessary to carry out comprehensive and impartial examination to answer questions which are raised by court.

5) To file a request for interrogation of case's participants and witnesses for the purposes of expert examination performance – an opportunity to realize expert initiation to the full extent due to which an expert, acting dynamically and crossing the line of formalistic performance of court order, determines the extent of relevant information which is required for proper implementation of his responsibilities.

6)To use other rights provided by the Law of Ukraine «On Expert Examination». These rights can be: to file complaints about the actions of the person in whose proceedings the case is, if these actions violate the rights of a forensic expert, as well as to receive remuneration for conduct of forensic examination, if its performance is not an official task, etc. [6]. The legislator has added this provision in order that an expert doesn't cross the line of a neutral party of other participant of a proceeding, standing up for neither the defense nor the prosecution.

Securing protection is implemented for forensic experts on the basis of the Law of Ukraine «On the Protection of Persons Involved in Criminal Proceedings» [8]. The law stipulates the protection of life, health and different, equal to others, kinds of protection for participants of legal proceedings, including the expert participating in proceedings, in

order to minimize the impact on him and his professional activities on the part of interested party. Among the security measures, the law defines as follows as:

– close protection, housing and property protection;

– provision of special personal protective equipment and danger notification;

– use of technical means of control and listening of telephone and other negotiations, visual observation;

– change of documents and appearance;

– change of place of work or study;

– resettlement to another place of residence;

– placement in a preschool educational institution or institution of social protection for the public;

– confidentiality of personal data;

– private trial or other measures that would ensure the safety of the participant of court proceedings [8].

An expert can file a relevant application to an investigator or court in order to ensure his security. By virtue of the same request, he may cancel the security measures he was provided with. The law also stipulates that an expert may refuse to give his expert opinion if the materials submitted to him are insufficient to perform his duties. In this case, it is not about eliminating the disadvantage of the situation, but about the lack of initiative, inactivity of the expert, which is justified by the provisions of the code.

The issue of implementing an expert initiative is relevant regardless of the specific character of the process and as a result it remains open to academic discussion in domestic and foreign science. The expert initiative is manifested during the proceeding at any stage of expert examination: in the form of a request for the provision of materials that are lacking for the examination, as well as for the conditions of storage, transportation and exploitation of the objects submitted for examination, for the participation in procedural actions for the opportunity to raise questions about the circumstances relevant to the subject of forensic examination, as well as the possibility to involve other experts in the study. During the examination, the expert initiative may be manifested through the selection of the most rational way of conducting the research as well as violation of the limits of questions which are raises by the court in order to substantiate new facts that are important for the resolution of criminal or administrative proceedings [9]. We fully agree with this provision.

There are also differences related to the issue or examination time. The CAPU has a point of the possibility to schedule a forensic examination during the preparation of an administrative case for consideration that is regulated by para. 2 p. 8 of Art. 180 of CAPU. The schedule of an examination is also among the means of providing evidence (it is indicated in Art. 115 of the CAPU), which is implemented on the basis of application submitted to court in full or in part [6].

The CPC of Ukraine in accordance with Art. 93, evidence gathering is carried out by the parties to the criminal proceedings by conducting investigative actions, one of which is the schedule of examination, after the criminal proceedings have been undertaken within the framework of investigation. The indictment, which is sent to court, includes not only collected evidence of guilty, including the findings of

forensic examination, but also the amount of expenses for the involvement of an expert (Article 291, para. 2, p.8). However, this fact does not prevent the examination by a court order during a trial at the request of one of the parties provided by Art. 332 of the CPC of Ukraine. That's a problem, if the reports presented as evidence contradict each other, and the interrogation of experts has not eliminated these contradictions, or the ground is the provision of Art. 509 of CPC, according to which there is a need for a psychiatric examination as a result of inadequate conduct of the defendant, although the notion of inadequacy causes doubts as there is no definition of adequacy as such in the literature on procedural issues, and there is no description of the inadequacy criteria and the subjects who assess the adequacy [7].

There are also differences in the subject of inquiry. In administrative proceedings, subjects are documents, actions of entities of authoritative power, public persons, people, vehicles, and in criminal proceedings such objects are anything except legal matters. So, it may be concluded that the range of objects in criminal proceedings is wider, and in administrative proceedings each object has specific, distinctive properties, because it solves managerial issues.

There are differences between the procedural provisions also in relation to the expert's report as evidence. In the administrative procedure, the expert's report is an independent procedural form to verify available evidence and obtain new one, and the main purpose of the examination is a qualitative assessment of facts by an expert taking into account the requirements of law [10, p. 145-146].

Assessment of the expert's conclusion as evidence is stipulated by Art. 108 of CAPU, according to which the expert's report is accepted by the court together with other evidence and does not have a predetermined force. Generally, evidence is assessed in accordance with Art. 90 of CAPU: the court considers the evidence which is provided by the parties, in its internal conviction, on the basis of their direct, comprehensive, complete and impartial investigation [6]. In reference to expert report, the court evaluates it from the standpoint of belonging, admissibility, authenticity and sufficiency, in accordance with the general principles of law of evidence.

The expert report is interpreted as appropriate if it permits to establish or confirm facts under consideration in the proceedings. The examination establishes or denies facts that are the subject of consideration. An assessment of expert's report in a criminal proceeding, in the context of belonging, is determined by the presence of connections and determinations of the facts that are established by him in relation to the subject of ultimate fact or its individual elements. In order to recognize the expert reports reliable, it is necessary that it be based on the results of the study of objects collected in accordance with adherence to the relevant procedural requirements [11, p. 377].

Forensic examination is considered eligible if it has appropriate procedural form and there are no doubts about its compliance with the current laws, whether particular evidence is a means for establishment of facts which are subjected to be proved. Furthermore, the general proof rules are observed, namely, the completeness and accuracy of collected and synthesized information. Recently, proof from the contrary has become popular among scholars. Features of incompetent proof are most often presented in the scientific literature on the issues of evidence of law: they are

received with violation of human rights and freedoms, as a result of not clarifying the rights of the parties to the process; violation of restrictions established for certain categories of persons [12, p. 57].

The report of forensic expert is considered to be reliable if it corresponds with its content and its source is credible because of its reliance. The findings of forensic examination are considered sufficient if it fully reflects the fact that is being investigated. The sufficiency of evidence fully reflects the fact that is being investigated in qualitative, not only quantitative, terms.

The court is a subject that evaluates evidence in an administrative procedure. The subjects of evaluation of evidence in criminal proceedings are not only investigating judge and court, but also a prosecutor, an investigator, a lawyer, but the final assessment of the evidence, including the expert opinion, takes place in the deliberation room.

The evaluation of evidence in criminal proceedings is regulated by Art. 94 of the CPC of Ukraine according to which an investigator, a prosecutor, an investigating judge, a court, on the basis of a comprehensive, complete and impartial investigation of the circumstances of the criminal proceedings, assess each submitted evidence by internal conviction in relation to belonging, admissibility, authenticity, and the set of evidence collected in terms of sufficiency and interconnection [7], which is in common with the provisions of the CAPU.

Scholars interpret the evaluation of evidence in different ways. Bielkin A. R. defines it as a logical process for the establishment of existence and character of links between evidence and the determination of role, significance, sufficiency and ways of evidence use in order to ascertain the truth [13, p. 190]. Kovalenko Ye. H. determines the evaluation of evidence as the mental activity of a person (investigating officer, investigator, prosecutor, judge) which is aimed at examining facts to establish the truth in the case and which is carried out in certain logical forms in accordance with the law and legal consciousness to their beliefs, based on a comprehensive, complete and an impartial analysis of all circumstances of the case in aggregate. It is also aimed at establishing the authenticity and belonging, admissibility and sufficiency of evidence, their relationship and significance for solving issues that constitute the ultimate fact [14, p. 191]. This definition is quite exact as it fully reflects the content of proof and dealing with the evidence of relevant actors.

Scholar-criminalists note that the expert opinion assessment is carried out in the criminal procedural dimension both as formal and as content one. The formal assessment consists in verifying the correspondence of the number of raised questions, their compliance with the procedure, the sufficiency of materials provided for the study, the content of the proceedings used by the expert to formulate a conclusion. In turn, the content evaluation includes analysis of methods, tools and methods of investigation, completeness and validity of the investigation, correctness, logic and the absence of contradictions [15, p. 351-352].

Another scientific position is connected with the fact that the expert's opinion may be evaluated by the initiator of the schedule of an expert study, and in addition all those who are familiar with the materials of criminal proceedings, while statements, petitions and protests concerning an expert opinion contribute to the establishment of the truth in the proceedings [16, p. 345].

If we compare this provision with administrative proceedings, there is a significant difference when familiarizing with the expert's conclusion of the parties. If the forensic examination was conducted before the trial began, then as a proof, it together with a copy of the statement of claim is presented to the other party, and all comments on it are not left too late, before the final decision is made. That is, the other party is given time to express its opinion about the provided evidence, to challenge it or to agree with it.

In addition to the above-mentioned differences, it is also possible to specify forensic examinations in these two procedures. If the legislator determines the obligatory types of forensic examinations in Art. 242 of the CPC of Ukraine, they are as follows: determining the causes of death – forensic examination of the corpse is applied; determining definite bodily injury – forensic medical examination of the degree of bodily injuries – living persons, as well as forensic examination of the mechanism of infliction of bodily harm; determining the mental condition of a suspected person – forensic psychiatric examination – outpatient or in hospital depending on the fact whether such person was registered with a psychiatrist; when determining the age of a person – forensic medical examination of living persons, as well as psychological examination; establishing the sexual maturity of a victim – forensic medical examination; determining the amount of tangible damage – commodity examination [7].

The types of examinations in administrative procedure are determined more complex. Among certain types of expert examinations in administrative procedure are forensic-economic, construction and technical, fire and technical, handwriting, forensic, medical and social, commodity, examination of land evaluation, art examinations, etc. The Unified State Register of Judicial Decisions denotes an annual increase of the number of performed forensic examinations in the administrative proceedings. Forensic economic examination is among the leaders in administrative procedure, which is a form of implementation of finance and economic control, and is also very important to justify the reliance of managerial decisions that are adopted by enterprises [17, p. 150-156].

Economic examination is defined by scholars as the study of certain problems that arise in the process of economic activity of the entity and require qualified actions of expert (experts) to achieve a specific goal and to solve peculiar tasks related to financial and tax accounting, financial and economic activity and finance and credit operations, as well as to prevent significant threats and risks from this kind of subject [18, p. 508]. We believe that we should agree with this definition.

Accounting and tax accounting are types of economic examination; financial and economic activity; financial and credit operations. Examination accounting and tax accounting investigates patterns of generation and illustration of information in the accounting and tax accounting, and among its objectives is not only the determination of the reasonableness of amount of commodity stocks and supplies, funds and securities, but also accounting and payment of salaries and other disbursements to undertakings, the compliance statutory acts of tax liabilities and other issues. Forensic-economic examination is also related to the study of accounting records, reports of materially liable persons, time recording sheets, labour agreements, contracts and is carried out in order to resolve issues related to tax legislation,

business record. The examination helps to determine the main economic indicators of economic and finance activities: liquidity, financial solvency and profitability. The forensic examination of finance and credit operations determines a documentary validity of the execution of bank operations on accounts opening, movement on accounts, as well as the recording of transactions of the allowance, use and repayment of loans, accounting of banks and their financial activities, etc. The forensic examination of financial and economic activity determines the financial and economic indicators of enterprises, including solvency, financial stability, profitability, intensity of used working assets, justification of the target spending of budget funds, justification of calculations of lost profit, etc.

The commodity examination is other leader among examinations in administrative proceedings. Compared to commodity examination which is conducted within the framework of criminal proceedings and determines the losses that are caused by criminal acts, commodity examination in administrative procedure determines the belonging of goods to the classification categories, qualitative changes of consumer goods and the reasons for such changes, establishes the way of their production, indicates the conformity with packing and transportation and also solves other essential issues related to consumer goods and goods turnover.

Among forensic examinations which are often scheduled in administrative proceeding is examination of land evaluation. Its essence consists in conducting monetary valuation of land plots, monetary valuation of rights to land plots, determination of conformity of the performed assessment of land plot or rights to it with the requirements of statutory legal acts on valuation of property, methodology, methods, and evaluation procedures. In order to conduct expert examination, it is necessary to provide constitutive and technical documentation on land management to the land plot with the indication of its address, cadastral number, designation purpose, land size and other important information. When analyzing materials from the Unified State Register of Judicial Decisions, attention is drawn to the fact that the title of this examination is incorrectly stated in court documents: in general, it is registered by judges as a land-valuation, technical, and sometimes without a title.

In the administrative proceeding, there are cases of schedule of construction examinations aimed at determining the amount of tangible damage in proceedings for debt recovery and compensation for pecuniary damage. The objectives of construction examination are determination of an actual, restorative and residual value of buildings and constructions for different periods of time, checking the compliance of developed estimates and design-estimate documentation with the requirements of regulatory documents, checking the quality of the performed operations, etc. The objects of construction examination are buildings of various purposes, engineering equipment and outfit, technical certificates of BTI (Bureau of Technical Inventory) for buildings, structures, inventory files, as well as state acts for the right to private ownership of land, construction contracts, cost estimates, estimates, acts of rendered services, etc.

Also fire and technical examination is carried out in administrative proceedings, in the framework of which it is investigated fire certificates, plans of buildings, premises, areas, electric circuits of external and internal power supply, technological regulations of production, process flow scheme, etc. Diversities of such studies

include examinations: on establishment of facts of non-compliance (violation) of the regulations of fire safety; on establishment of technical cause (mechanism) of fire breakout; fire-fighting operations.

There are handwriting examinations that are often scheduled in administrative legal proceedings, which study handwritten letter, digital records, and signatures.

All the above mentioned types of forensic examinations are the most common in the administrative procedure and satisfy the needs of administrative legal proceeding for the use of special knowledge for solving the issues specified in Art. 5 of the CAPU concerning:

1) recognition of unlawfulness and invalid nature of regulatory act or its particular provisions;

2) recognition of unlawfulness and abolishment of individual act or its particular provisions;

3) recognition of the actions of power entity as unlawful and negative covenant;

4) recognition of the passivity power entity as illegal and positive undertaking;

5) establishment of the presence or lack of competence (authority) of power entity.

Legal examination is important for administrative procedure as it related to the establishment of compliance with the current legislation, purpose and means, certain mechanism for the implementation of act being appealed, the list of documents submitted for the relevant actions, as well as the sufficiency of subject powers for their execution [19, p. 11].

Among the new types of forensic examinations in administrative procedure, it is also determined psychological examination, which becomes more widespread. It can act as proof of the following: whether a certain person can be a subject of an administrative infraction, what is the form of his guilt and which motives of behaviour were fundamental. In most cases, psychological examination is carried out during administrative proceedings, and the information which is subjected to be analyzed by an expert contains testimonies of offenders, witnesses, victims to the circumstances of committed actions. Psychological examination is carried out in several stages. At the first stage, experts investigate the available evidence, in future they can apply for the submission of documents, which would more fully characterize the personality of examinee, than an experimental psychological investigation is carried out and, based on its results, the expert opinion is formed, which is announced in court. It is difficult to solve issues with several examinees: it is not clear how to conduct study – either simultaneously or sequentially [20, p. 11].

In accordance with the current legislation, as well as any other evidence, the court evaluates the examination on the basis of inner convictions, in concordance with case files. As a special feature of administrative proceedings in the schedule and execution of forensic examinations, it is necessary to mention the division of examinations into additional, repeated, commission and complex (Arts. 9-11 of the CAPU), which exists also in criminal procedural law, but procedural requirements for which are not indicated at the legislative level, in the CPC of Ukraine.

Particular attention should be given to novels associated with amendments to the CAPU, which cover issues of legal regulation of court costs in administrative proceedings. Thus, the articles of the CAJU determine the types of court costs, the

procedure and terms of their reimbursement, disposition of funds, etc. Art. 132 of the CAPU states that the court costs consist of court fees and expenses related to the consideration of a case. The amount of court fee, the procedure for its payment, reimbursement and fee waiver shall be consolidated by law. Costs related to the case consideration are expenses:

– on professional legal assistance;

– of parties and their representatives connected with their arrival at the court;

– associated with the involvement of witnesses, specialists, translators, experts and expert examinations;

– related to the disclosure of evidence, the examination of evidence over their location, the provision of evidence;

– connected with other procedural actions or preparation for consideration of the case [6].

When scheduling an expert examination or involving an expert, the law provides advance payment of legal expenses. Thus, the court may oblige the participant, who filed an application for the schedule of an expert examination, involvement of an expert, provision, disclosure or study of evidence at their location, advance (in advance), to cover the costs associated with a particular procedural act. If several parties have filed a motion, the necessary amount of money shall be paid, in equal shares, by relevant participants of the case in advance, and in cases where the relevant procedural action is carried out on the initiative of the court – by the participant (participants) of the case, who is obliged by the court (Art. 136 of CAPU) [6].

The article also specifies the consequences late payment of court costs – in the case of non-payment of particular sums in advance in specified by court term, a court can reject the request for schedule of examination, involvement of an expert, provision, disclosure or study of evidence at their location and make a decision on the basis of other evidence provided by the case participants or cancel the previously approved decision on the schedule of an expert examination, the provision, disclosure or study of evidence at their location. A court reviewing the merits of the case may redistribute the expenses, specified in this article, paid by the party to the case in advance, in accordance with the rules on distribution of court costs established by this Code [6].

Article 137 of the CAPU determines the volume of expenses related to the involvement of experts and performing of expert examinations, the procedure for their payment and the consequences of late payment. Thus, an expert receives a reward for executed activities (rendered services) related to the case, if it is not a part of his official duties. In cases where the amount of expenses for the work (services) of an expert or performance of expert examination was not previously paid by the participants of the case (in advance), the court recovers these amounts in favor of an expert or expert institution from a party, which is determined by the court in accordance with the rules on the apportionment of court costs that are consolidated by this Code.

It is determined at the legislative level that expenses for the preparation of an expert report upon the request of a party, carrying out examination, involvement of an expert is established by the court on the basis of contracts, accounts and other evidence. However, it should be noted that the form, structure and content of these

contracts and accounts remain the gap. The definition of the requirements in the article regarding the balance of costs with complexity, extent of work and time for its implementation, which states that the volume of expenses for the payment of works (services) of the expert involved by a party must commensurate with the complexity of work (services), its volume and time spent to perform work (services) doesn't not eliminate gaps, as well as the following provisions of this article:

– in case of non-compliance with the requirements for commensurability of expenses, the court may, at the request of the other party, reduce the volume of costs for the payment of works (services) of a specialist, translator or expert, which are subjected to the distribution between the parties.

– obligation to prove the incommensurability of costs is laid upon the party claiming a reduction in costs, which are is subject to be distributed between the parties [6].

According to para. 9 of Art. 139 of the CAPU in deciding on the distribution of court costs, the court takes into account:

– whether these expenses are connected with consideration of a case;

– whether the volume of these costs are reasonable and proportional to the subject of a dispute, case significance for the parties, including whether the result of case solution may influence image of a party or whether a case sparkles a public interest;

– party's behaviour during conducting a trial that leads to delaying of case consideration, in particular, submission of clearly unfounded claims and requests by a party, fact-free assertion or denial of certain facts by the party, which are important for the case, etc.;

– actions of a party in relation to the pre-trial settlement of a dispute (in cases where pre-trial dispute resolution is mandatory according to the law) and the dispute settlement by peaceful means during the consideration of a case, the stage of case consideration in which such actions were performed [6].

The article also identifies the grounds for distribution of court costs as follows:

– in case of claim satisfaction of a party that is not a subject of authority, all court costs that are subjected to compensation or payment in accordance with the provisions of this Code are covered at the expense of budget allocations of the subject of authority acting as the defendant in a case, or if its official was the defendant in the case;

– in case of claim satisfaction of the subject of authority, the defendant covers exclusively court expenses of the subject of authority connected with the involvement of witnesses and execution of examinations;

– in case of partial satisfaction of a claim, the court costs are covered by both parties proportionally with the amount of satisfied claims. At the same time, the court does not include the expenses of the subject of authoritative powers for the legal support of a lawyer and payment of court fees in court costs, which are subject to the distribution between the parties;

– in partial satisfaction of the claim, when court costs are distributed between both parties in proportion to the amount of satisfied claims, the court may oblige the party, which is charged with the greater amount of court costs, to pay the spread to the other party. In this case, the parties are released from the obligation to pay each other part of the court costs;

– in case of refusal to satisfy the claims of a plaintiff released from payment of court costs, or to decline to consider the claim or close the proceedings on the case, the court costs incurred by the defendant are compensated at the expense of funds that are provided by the State Budget of Ukraine in accordance with the procedure established by the Cabinet of Ministers of Ukraine;

– if the party, in whose favor the decision is made, is released from payment of legal costs, the court fees are paid by the other party in favor of the persons them incurred in proportion to the part of the claim that is satisfied or rejected, while the other part is paid by virtue of the funds provided by the State Budget of Ukraine, in the procedure established by the Cabinet of Ministers of Ukraine. If both parties are exempted from court costs, they are compensated by the state in accordance with the procedure established by the Cabinet of Ministers of Ukraine;

– in the case of abuse of the procedural rights by a party or its representative, or if the dispute arose as a result of the incorrect actions of the party, the court has the right to impose such costs on the party in full or in part regardless of the results of dispute resolution;

– in the case of proceedings termination or declining to consider the claim without consideration as a result of unreasonable actions of the plaintiff, the defendant has the right to file claim for compensation of expenses that are incurred by him in connection with the case consideration [6].

If a court of appeal or court of cassation, without returning the administrative case for a new trial, will change the court decision or adopt a new one, it consequently changes the distribution of court costs.

The requirements for the amount of expenses, which a party has paid or should pay in connection with the consideration of the case, is established by the court on the basis of evidence provided by the parties (contracts, accounts, etc.), as the regulation of Art. 139 of CAPU indicates. It is also noted that such evidence is submitted before the end of legal debate in the case or within five days after approval of court decision if a party has made a corresponding application before the end of the court debate in the case. In the context of the lack of a relevant application or failure to submit appropriate evidence within deadline, the application remains unconisdered.

The peculiarities of the decision on court costs are тщеув in Art. 143 of the CAPU, which states that a court resolves the issue on court costs in a decision, ruling or order. At the same time, participants of a case, witnesses, experts, specialists, and interpreters may appeal a court decision on costs, if it concerns their interests. However, if a party, for good reason, can not submit evidence that verify the amount of legal expenses incurred by it, the court may, on the basisis of application of such party submitted before the end of legal debates in the case, decide the issue of legal costs after the decision for essence of complaints.

A specific feature is that, in order to resolve the issue of court costs, the court appoints a court session which is held not later than fifteen days from the day of the decision on the merits of the claims, or makes an additional decision if a party can not, for good reason, submit proofs of the amount of legal expenses incurred by it until the end of legal debate. In the case of adoption of a decision on termination of proceedings on the case, keeping a claim without consideration or approval of the decision on the claim satisfaction in connection with its acknowledgment, the court

decides on the distribution of court costs not later than ten days from the day of the adoption of relevant court decision, if a party to a case provided an appropriate application and evidence verifying the amount of court costs [6].

Conclusions

Forensic activities remain a necessary part in establishing the truth in a case and obtaining evidence during administrative proceedings. The specific nature of forensic examination in this area is related to a range of issues that are solved by administrative proceedings – from the consideration of misconduct to public-law disputes with the subjects of authoritative power. CAPU does not provide the term «forensic examination», but on the basis of above mentioned it is clear that forensic examination in administrative procedure involves the use of special knowledge while the proceedings, during of which there is a new source of evidence – the expert's opinion.

Comparing forensic expert activity that takes place in administrative procedure, with the same in criminal procedure, it is necessary to note a significant difference not only in the execution of procedural provisions of the appointment and conducting of forensic examinations, evaluation of expert's opinion, but also in the diversity of issues that are investigated by experts. Of course, administrative proceedings differ from criminal ones, but the main details related to forensic expert activity should be reduced to one standard in order to improve the regulatory framework that determines procedural activity.

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ADMINISTRATIVE LAW AND ADMINISTRATIVE PROCEDURE LAW: INSTITUTIONAL DIMENSION

Kolomoiets T.O.,
Doctor of Juridical Sciences, Professor,
Corresponding Member of National Academy of Legal Sciences of Ukraine,
Dean of Law Faculty,
Zaporizhzhia National University
Zaporizhzhia

RESTRICTIONS ON THE RECEPTION OF GIFTS BY PUBLIC SERVANTS AS A MEANS OF CORRUPTION PREVENTION (IN TERMS OF THE IMPLEMENTATION OF FUNCTIONAL PURPOSE OF ADMINISTRATIVE LAW)

Summary

The paper analyses the problems of the influence of modification of functional purpose of administrative law on the relations regulation directly relating to gifts' reception by public servants. These relations have always been and will continue to be the subject of regulation of administrative law, shift of the priorities of the functional purpose of the latter one affects the regulation of «gift relations in the public service». The research illustrates key challenges, connected with the regulation of gift relations in the public service, in the format «question-answer», emphasizes essential changes of that sort of regulation. The author focuses on the priority-oriented consolidation of the basic models of «gift relations» in the legislation of countries across the globe, identifies peculiarities and substantiates the conclusion of the most effective modern model of «mixed» content which combines the fundamentals of prohibition and restriction as means of administrative legal influence. It is formulated the proposals for a procedural aspect of «gift relations» and the main priorities of its adjustment with the focus on achievement of modern branch legal science. The author identifies a control as an effective instrument of the rule of law and legitimacy in the sphere of «gift relations» in the public service and the main priorities of use of its resource in the modern conditions of state building and law building. It is outlined the bases of consolidation of modified protective function of administrative law in the field of public and service relations, in particular, their «gift» varieties. The author substantiates the expediency to use the recourse of «restrictions on gifts reception by public servants» as an effective mean to prevent corruption in its different manifestations in the field of public service.

Introduction

Increasingly, more attention of the interested community is concentrated on those issues that are traditionally considered as the subject of regulation of administrative law under the conditions of a radical reconsideration of the functional purpose of administrative law, the formulation of the provisions of the latest domestic administrative-legal science, the development and adoption of numerous acts of administrative law, the practice formation of its application with the focus on ensuring and harmonizing with the realities of modern period of the development of the state. In addition, a heightened interest is associated with the fact that even in the context of functional purpose of corresponding branch of law these issues need the further use of all armoury of instruments of branch legal regulation which has been developed for a long time. However, there is an emphasis on the modification of their resource in accordance with the requirements of real time.

Restrictions in public service law, which are considered as an effective instrument to prevent corruption in the public field, hold pride of place among that sort of issues. One of varieties of such restrictions is the restriction on gifts reception by public servants. Despite the fact that restrictions issue, in general, and specified variety, in particular, were investigated by legal scholars in the context of restrictions in public service law, topicality of the issues of public service law as a sub-branch of administrative law, issues of administrative legal regulation of corruption prevention in all its manifestations in the public service and, as consequence, there is a lot of research papers (for example, contributions of Berdnikova K., Nastiuk V., Bielievtseva V., Kolpakov V., Liutikov P. and others), and fundamentals of «gift relations in the public service» are regularized by many normative legal acts (for example, arts. 23, 24 of Law of Ukraine «On Corruption Prevention», the Decree of the Cabinet of Ministers of Ukraine «On the Procedure of the Assignation of Gifts Received as Gift to the State, the Autonomous Republic Crimea, Local Community, State or Municipal Institution or Organization approved» dated 16.11.2011 № 1195, Recommendations on Prevention and Settlement of Conflict of Interests Approved by the Decision of National Agency on Corruption Prevention of Ukraine dated 29.09.2017 № 839 etc.) and there is a practice of its appliance, unfortunately, it takes place insufficiently effective use of a resource of appropriate restriction, the prevalence of cases of non-compliance with the requirements of the law, and, consequently, the manifestations of corruption in the public service. Taking into account the change of guides in the functional purpose of modern administrative law, it is worth noting that the updated regulated and updated protection influence of administrative law (as a manifestation of two main (basic) functions of administrative law) should concentrate on the relations directly related to the restrictions on gifts reception by public servants. However, it is necessary to keep in mind those national best practices which have been successful in the process of practical application for a long time along with the novels of legal branch influence conditioned, in particular, by borrowed achievements of foreign branch legal science, rulemaking and law enforcement. It is possible to hope for an effective resolution of the issue connected with the use of the source of restriction on gifts reception by public servants to prevent corruption in all its manifestations in Ukrainian public service only due to the combination of positive doctrinal, rulemaking and law enforcement experience and

priorities of the modern development of branch legal science. All these things in aggregate actualize the significance of this paper and the formulation of its goal, which is to analyze the current topical issues of resource use of the above mentioned restriction in public service law and to formulate specific proposals for their solution by using armoury of administrative-legal regulation in the conditions of functional modification of the latter.

Basic material

Coverage of the material should be presented in the format «questions-answers» with respect to several key outstanding issues. In particular, should relations, connected with gifts for public servants, be subjected to legal regulation in general as, traditionally, public-service (in its all manifestations) relations are accompanied by gifts exchange expressing respect, gratitude, the desire to maintain relations? Why should norms of administrative law regulate appropriate «gift relations», but not other branches of law?

Actually, as the analysis of historical sources shown, public-service relations had been accompanied by gifts change among «servants» since ancient times («presents», «gifts», «bribes», etc.). Today, «gift relations» are widespread in diplomatic relations, although they do not lose the importance at the level of all diversity of public-service relations, when a public servant receives a gift as a manifestation of respect for him for a professional, conscientious service, or when a public servant unlawfully enriched himself in a covert form using «gift relations». The relevant relations must be subjected to legal regulation emphasizing the fact that the subjects of granting and, above all, the subjects of gifts receiving are persons with a specific legal status, functional purpose. A public servant, the name itself confirms it, is empowered to represent, realize and protect public interests, so nothing should influence «purity» of his professional official activities. «Gift relations», as kind of public-service relations, should be subjected to the detailed legal regulation in order to eliminate all prerequisites for influencing the public service, public servants. Thus, for example, it is possible to mention a number of normative legal acts which had regulated this kind of social relations in past historical periods (Decrees «On Bribes and Promises Prohibition», «On Prohibition to Bring Gifts for Governor of Guberniia and Other Officials», «On Prohibition to Accept Presents by Chiefs from the Society» etc. [1, p. 10; 2]). Today, there are several basic approaches regulating this issue in the legislation of countries of the world. Predominantly, the issues of «gifts for public servants» are regularised by: a) individual articles, section of anti-corruption laws (for example, in Ukraine, Brazil); b) laws directly related to prevent and eliminate a conflict of interests in the public service (for example, Canada, Georgia); c) by-laws with detailed regulations of fundamentals on the types of gifts, the grounds for reception, the rules of conduction with them (for example, the USA). In addition, an individual by-law regulates the relations of reception of so-called «official gifts» (by official representatives of the state during official events, etc.) and this practice is typical for most countries of the world (Russia, the USA, Ukraine, Singapore, etc.). A gift for a public servant is not an encouragement for his conscientious activity or an incentive, an end in itself of his career, but only a possible symbolic expression of

respect, regard him, in view of this, established comprehension of its role should be consolidated at the level of legal regulation. Moreover, to eliminate the prerequisites for unlawful use of a gift as a means of influence on a public servant, «purity» of his official activities as well as a means of illegal enrichment of the public servant himself owing to gifts, there should be a detailed legal regulation of the model of «gift relations in the public service», the rules of dealing with them in different situations and the bases of legal liability for violation of the relevant legal regulations. Under such conditions, it is possible to achieve certainty, transparency of public-service relations and eliminate any threats of «a gift for the public service».

Traditionally, «gifts relations» are considered as a kind of public-service relations, thanks to which, the norms of administrative law have to regulate them. Analysis of the experience of countries of the world shows that the model of «gift relations» is predominantly defined in most norms of administrative law (for example, Code of Conduct for the Senior Government Officers at the Federal Executive Branch of Brazil, Law of Georgia «On the Conflict of Interests and Corruption in Public Service», Law of Japan «On Ethics of Public Servants» and suchlike). However, the grounds for a liability for breach of «gift rules» by public servants are regulated by both administrative and criminal (and sometimes only by the latter) law (for example, China, Denmark, Norway, Germany). Nevertheless, in the aspect of regulation of the principles of «gift relations in the public service» in terms of their basic model, official concepts, rules of conduct with gifts, including their different kinds, a leading role should belong to the norms of a branch, which is intended to determine the principles of public-service relations. For this very reason, the norms of administrative law should regulate «gift relations in the public service».

What should be a model of «gift relations in the public service» and what administrative-legal regulation may be considered as the most effective for the regulation of relevant relations? Repetitively, it has already been noted in branch legal science that countries of the world have several basic models of «gift relations in the public service» [3; 4; 5]. It, above all, is prohibitive and restrictive models. However, they occur quite rarely in their classical comprehension, as a rule, there is either a base model with the national specificity of its normative regulation or a peculiar combination of elements of base models, once again with the national specifics of their normative regulation. For example, in Germany and Spain, public servants do not have the right to accept gifts at all and at the same time they must declare all the gifts (as well as from relatives) in order to ensure that there are no any violations of «gift prohibition» with regard to gifts directly associated with their professional service activities [6, p. 20]. China has introduced a common prohibition on gifts for public servants, with the exception of books, and in Canada it is not allowed to accept any gifts if their value can be determined by money equivalent. However, the prohibitive model is consolidated with certain adjustments. In particular, in France, servants are not entitled to accept gifts if they are provided with the aim to «influence their official activities», in Singapore – «with the obvious purpose to achieve a positive attitude on the part of a servant» [7, p. 248]. Majority of countries of the world have statutory restrictive model of «gift relations». For example, in the UK persons, who hold a post for the purpose, are allowed to receive

gifts which don't exceed 140 pounds sterling, in the USA – fifty dollars for servants, and two hundred and five hundred for senators and congressmen, in Georgia – three hundred lari, in Brazil – one hundred reais and suchlike. In addition, the restrictive model of «gift relations in the public service» uses the criteria for determining «gift source» («from one person», «during one official event», «from one source», etc.), «the time period of gift reception» («within one year», «in the period less than 12 months», etc.), as well as gift characteristics by using appraisal concepts (for example, in Ukraine, it is «within the framework of generally accepted notions of hospitality», in Spain – «...the framework of the common traditions of communication, the manifestation of courtesy», in Brazil – «signs of respect», in Canada – «...adoptable courtesy and hospitality»). It is also possible to find out some other criteria for detailing the model, namely: in Brazil – a gift should not be aimed at encouraging (rewarding) a particular official [8, p. 177] even at the time when he does not resolve issues related to his professional official activities directly. As a rule, restrictive model of «gift relations» involves a simultaneous establishment of several criteria as regard to a gift for a public servant (for example, in Ukraine – three, in Brazil – four, in Georgia – six), the absence, at least, one of them predetermines the prerequisites for recognition of specific «gift relations» as such that are subjected to prohibitive regulatory model. For this reason, it is a safe bet that actually, there is no restrictive model of «gift relations in the public service» in the «pure form». It is proved by detailed analysis of the legislative provisions of the countries which establish restrictions on gifts reception by public servants. These provisions are either before enumeration of the restrictions criteria or after them fix the provisions that all gifts that do not meet the specified characteristics are prohibited for public servants. Therefore, for example, art. 23 of the Law of Ukraine «On Corruption Prevention», which has a title «Restrictions on gifts receiving», fixes the restrictions in the second part, and the first part consolidates a general prohibition on gifts reception by public servants which are directly connected with their professional service activities or which are presented by persons, who are professionally connected with servants. Thus, in fact, there is a combination of prohibitive and restrictive models of «gift relations in the public service». And this practice is quite widespread in countries of the world. Moreover, so-called «mixed» character of the model is also confirmed by the fact that the same article of the Law of Ukraine consolidates the permission for gifts reception by public servants from relatives and those which are received as publicly available services, prizes, bonuses, winnings, discounts for goods, etc.

Consequently, we observe simultaneous use of several means– prohibition, restriction, permission, for branch regulation of corresponding relations. Which of them is most effective depends on how thoroughly the provisions are formulated, how absolutely variants of the behaviour of individuals are defined, how the use of appraisal concepts for eliminating the grounds for a variable interpretation in the process of law enforcement is minimized, as well as it depends on the effectiveness of sanctions provided for violation of the relevant provisions (compliance of their nature and degree of act harmfulness, educational, preventive and punitive effect). It is hardly possible to introduce a total prohibition taking into account the specificity of public-service relations in all their diversity, subjective content, and mixed one

(prohibitive – restrictive) is quite potential, moreover it has shown a positive performance in many countries of the world for a long time of existence, however due to securing clear, transparent, particular list of restrictive criteria for gifts reception by public servants as well as simultaneous implementation of binding declaring of all gifts received by them, specification of rules of conduct with different kinds of gifts (as an example, it is chosen Standards of Ethical Conduct for Employees of the Executive Branch, Codified in 5 C.F.R.), reinforcement of legal liability for violation of «gift rules in the public service».

Is it worth considering the conduct with the gifts of public servants as a component of administrative-legal regulation? Should the modern priorities of administrative and legal regulation of procedural relations in general and in regards to this sphere be taken into account? It is certainly yes. Attention should be given to the issue of sequence of the implementation of obligatory actions of a public servant in the case of reception (identification, receipt) of a gift, their fixation as much as to the definition of what should be considered as a gift in general. Degree of detail of normative consolidation of these provisions of procedural content influences their compliance, the control over their implementation, the timeliness and the adequacy of reaction in cases of violations of legal requirements. The experience of countries of the world shows that there is a diversity of approaches of the legislator in resolving this issue – from excessively detailed approach (as it has already been noted, in the USA there are Ethical Standards that regularise conduct rules with various kinds of gifts of public servants in different life situations) with the regulation of all rules in a unified normative act, and up to the definition of the principles of conduct with gifts in the articles of a specialized legislative act on the prevention and resolution of conflicts of interest (for example, in Georgia), simultaneous regulation at the level of the articles of anticorruption law and a number of by-laws (for example, in Ukraine), and certain sub-legal acts (for example, individual Memos in Kazakhstan). Excessive sublegislative regulation of conduct rules with gifts of various types of public servants with the focus on a certain peculiarity of their public activities, existence of possible exceptions from general rules is not seem reasonably under the conditions of ensuring absolute certainty of procedural relations, the sequence of actions of all subjects, the specifics of their consolidation, strengthening the principles of public control over the compliance with established legal provisions, as it essentially complicates law enforcement. Unfortunately, there are rather common cases when by-law normative act on certain public servants stipulates exceptions to the mandatory «gift prohibition». It is fully justified to systematize all procedural and legal norms in the field of public service and separate, along with other procedures, in a unified procedural-systematized legal act of the provisions specifically devoted to conduct of public servants with gifts (distribution by type of gifts, grounds for their reception (detection) with an algorithm of necessary actions, control increase over compliance with relevant provisions). It is also important to identify the bases of use of control means over adhering to conduct rules with gifts of public servants in a unified classified procedural act. In this aspect, it is important to consolidate the obligation of the latter to declare all received gifts, in particular from their relatives, with the indication of their possible cost and source. This practice has already been in

many countries of the world for a long time and has proven to be an effective means to prevent corruption practices in the public sphere. For example, in France, Latvia, gifts declaring is obligatory for all public servants, in Poland – for those who hold an elective post at the local level and appointive public office [6, p. 15], in Georgia, a declaration must have the data on a person who received the gift, a person who gave this gift, the nature of relationship between the abovementioned persons, the type of gift, its market value (art. 15 of Law of Georgia «On the Conflict of Interests and Corruption in Public Service»). There shouldn't be any exceptions on gifts declaring by public servants. It deserves respect the experience of those countries of the world which regularise conduct rules with different types of gifts in details, for example: a) gifts on the occasion of «momentous» (important) events in the life of a public servant (although they are presented by persons with whom the public servant is in the service relationship and which are generally subjected to «gift prohibition», but they take place in the real life of servants and such regulation (with a clear indication of the list of such events) eliminates the veil of «gift relations in the public service»). This approach is enshrined in the US, Ukrainian legislation (however, this is only in relation to servants of the State Fiscal Service of Ukraine), b) «indirect gifts», that is, those which are provided to a public servant through his close relatives either on his instructions or consent to other persons, institutions. It is interesting in this aspect is the experience of those countries, which legislatively regulated restrictions on gifts reception by relatives of public servants with their simultaneous introduction of their obligation to declare all received (discovered) gifts. For example, in Georgia, art. 5 of the abovementioned Law clearly fixes that total price of gifts received by each member of the family (in addition, art. 4 of the same Law fixes the definition of family members, who should be understood as spouses, minors, stepchildren, as well as persons who permanently reside with a public servant) during the reporting period must not exceed one thousand lari, and gifts which are received simultaneously – five hundred lari, if these gifts are not received from one source [9].

The handling rules with gifts by public servants require detailed regulation as it helps to determine whether this gift is forbidden or restricted and at the same time to answer the question whether the public servant adheres to the legal principles of «gift relations in the public service». Specification of the content of provisions, clarity, logic, determinacy of the latter and their systematization in a single act (as the priorities of the modern procedural rulemaking) is the key to effective use of the restrictions resource (and sometimes prohibitions, mixed models) in respect to gift reception as a means of corruption prevention in the public service. And conversely, generalized approach of the legislator to the settlement of this issue, the overload of the provisions by evaluation concepts, the contradictory of the provisions' content create preconditions for unlawful acts related to the use of gift resource. For the majority of countries of the world, it is typical to regulate the handling rules of public servants with gifts in the case of direct contact with a donor person, which is quite justified in view of the popularity of such relationships. However, it should not forget about so-called «uncontrolled» relations (delivery of a gift by mail, its finding in an office premises, near the residence etc.) which, in fact, veil «gift relations in the public service». Without exaggerating the role and significance of any of the varieties

of «gift relations», it is necessary to specify the legal principles of each of them consolidated the sequence of obligatory actions of a servant, time limits, their specifics of fixation, etc. Even non-standard situations should be identified when, for example, a public servant has no a real opportunity to forgo a gift (during a formal event, taking into account the specifics of the national traditions of gift exchange, out of courtesy etc.). For example, Brazilian legislation stipulates that received gifts, in the case of their non-compliance with the attributes of permission, as follows: taken out courtesy or in virtue of a diplomatic protocol, must be transferred to the state treasury or donated to «involuntary charity» [8, p. 177]. The legislation of Russia consolidates the distinction between gifts given to a public servant during official events as gifts to the state, and the gifts given to this person for their use during official events. At the same time, handling rules for these types of gifts differ significantly [10, p. 93]. In Singapore, Lithuania, the grounds for a possible reacquire of gifts received by public servants during exercising their professional duties are provided, although with observance of strict, regulatory requirements for approving this procedure with special state commissions [7, p. 246]. It is the non-compliance with procedural principles of «gift relations» should be considered as an integral part of the grounds for resolving the issue of non-observance of «gift rules» as a whole and bringing a public servant to legal liability.

Who should exercise control over the compliance with «gift rules» by public servants? Like any other kinds of public-service relations, these relations may be a subject of state (on the part of direct chief, entities of public service management, specially authorized actors of corruption prevention, etc.) as well as public (different institutions) control. Furthermore, the control can be over a direct «signal» regarding the compliance with «gift rules» by a public servant that can come from any person, including the public servant himself, if he has questions about the interpretation and application of the provisions of the law. The control can be carried out indirectly, in the process of solving other issues related to the public service (for example, during the annual evaluation of the performance of the person's official activity).

Under present conditions of the reconsideration of the functional purpose of administrative law, attention is drawn to the fact that its tortious component, connected with the protective function, should change due to the reconsideration of administrative offenses as grounds for administrative liability, administrative penalties as a reaction to commitment of the appropriate unlawful acts, simplification of the procedure of bringing guilty persons to responsibility. Are those response action to the violation of «gift rules in the public service», which are in force in the legislation of the countries of the world, quite effective? Is it advisable in Ukraine to borrow the experience of those countries which stipulate criminal liability for the violation of the appropriate rules?

The role of administrative law should involve not only determination of the principles of regulation of «gift relations in the public service», but also principles of responsibility for violation of «gift rules». Indeed, most countries of the world consolidate criminal liability for public servants for the violation of the «gift rules», it also causes by the fact that they do not have a distinction between the two types of legal responsibility that are traditional for domestic legal science and legislation.

Corresponding violations are considered as misdemeanor offense due to which the application of measures of criminal responsibility is stipulated. Taking into account the domestic practice to settle this issue, it should be noted that administrative liability is stipulated precisely for violation of restrictions on gifts reception by public servants, and criminal liability is for violation of the general prohibition on gifts directly related to professional activities and those, which are received from persons who are on professional terms with a public servant. Therefore, focusing on the principles of administrative-tort relations on the «gift rules» it can be argued that, in general, the grounds for administrative liability, in the case of detailed procedural aspects of «gift relations», are fully justified and response measures to violations of «gift rules» are adequate (especially that the practice of fines introduction for violation of the «gift rules» is fairly widespread in countries of the world).

Conclusions

Restrictions on gifts reception by public servants definitely can be considered as an effective measure to prevent corruption in its various manifestations in the field of public-service relations. Taking into account a significant role of the rules of administrative law in the regulation of «gift relations» in the public service, it is seemed expedient to use the developments of the newest administrative-legal science in relation to the modification of the functional purpose of the relevant branch of law as to the regulation of relations connected with the implementation of basic model of «gift relations» as to procedural relations, which are directly related to the handling rules of public servants with different kinds of gifts in different situations, and as to liability relations for violations of «gift orders». Distribution of the sphere of regulatory influence by combining the resource of prohibition and restrictions on gifts reception by public servants, the specification of legal principles of «gift relations» with the systematization of procedural rules in a single regulatory legal act with the highest degree of certainty, transparency, simplicity of such instructions, expansion of control principles, including public, in compliance with the «gift rules» and preventive and educational reaction of the state to their violation in the form of administrative liability measures, will promote the maximum use of the resource of this measure of corruption preventing in all its manifestations in the field of public service in order to achieve a positive result in the context of current conditions of state building and law-making.

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Kravtsova T.M.,
Doctor of Juridical Sciences, Professor,
Professor at the Department of Justice,
Sumy National Agrarian University

Petrova N.O.,
Senior Instructor at the Department of International Relations,
Postgraduate Student at the Department of Justice
Sumy National Agrarian University
Sumy

SCIENTIFIC AND PRACTICAL ANALYSIS OF ADMINISTRATIVE JURISDICTION IN THE LIGHT OF ADOPTION OF THE NEW CODE OF ADMINISTRATIVE PROCEDURE OF UKRAINE

Summary

The article illustrates the results of scientific and practical analysis of the institute of administrative jurisdiction under the new rules of administrative legal proceedings of Ukraine. The investigation and clarification of the essence and content of the subject-matter, instance, and territorial jurisdiction (original jurisdiction) of administrative courts of Ukraine in the light of the adoption of the new Code of Administrative Procedure of Ukraine were carried out. In particular, it analysed individual cases which are subject to the jurisdiction of administrative courts. The scope of powers of a competent court of each court branch for the consideration and resolution of administrative cases in the first, in appellate and cassation instances is considered and determined. The new general rules of territorial jurisdiction were studied, in particular, the peculiarities of jurisdiction at the choice of a plaintiff, at the place of residence or the location of a defendant, exclusive jurisdiction were considered. The research was conducted taking into account changes that were introduced into administrative procedural legislation in the context of judicial legal reform in Ukraine.

Now, Ukraine is in a difficult but necessary process of reforming all social spheres, in particular, system improvement and qualitative transformation in the judicial field. Ratified Association Agreement between the European Union and the European Atomic Energy Community and their Member States (hereinafter referred to as «Agreement»), Ukraine undertook a commitment towards the actual implementation of international obligations at the domestic level, as well as the inclusion of international legal norms in the national legal system [1, p. 227]. According to Art. 14 of the Agreement, Ukraine shall strengthen cooperation in the field of justice, freedom and security: strengthening the judiciary, improving its efficiency, guaranteeing its independence and impartiality, combating corruption on the basis of the principle of respect for human rights and fundamental freedoms in order to ensure the rule of law [2]. Adoption of a number of legal acts, in particular, Justice Sector Reform Strategy 2015–2020 [3], the Law of Ukraine «On the Judiciary and Status of Judges» dated June 2, 2016, № 1402-VIII

(hereinafter the Law № 1402-VIII) [4], the Law of Ukraine «On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other Legislative Acts» № 2147-VIII dated October 3, 2017 [5] made significant amendments in administrative procedure too. In particular, the study of new subject-matter, instance and territorial jurisdiction of administrative courts deserves considerable attention, and the research of its essence is particularly topical in the context of judicial and legal reform. Judicial reform is one of the most urgent reforms that should be implemented as soon as possible. Its result lays in guaranteeing an effective administration of justice in Ukraine, free access to it, impartial and fair settlement of legal disputes on the basis of the rule of law.

The study of individual issues of administrative jurisdiction was carried out by well-known researchers such as V. Averianov, V. Bevzenko, Yu. Bytiak, V. Zui, T. Kolomoiets, V. Kolpakov, R. Kuibida, A. Osadchyi, O. Panchenko, O. Paseniuk, Yu. Pedko, D. Prytyka, M. Smokovych, M. Tsurkan, V. Stefaniuk, V. Shyshkin, and others. But along with this, taking into account the diversity and depth of conducted researches as well as the significant changes that were made in the administrative procedure legislation in the process of judicial system reform, the essence and content of subject-matter, instance, and territorial jurisdiction (original jurisdiction) of administrative courts of Ukraine need additional research and clarification.

Essence and content of the subject-matter jurisdiction of administrative courts in Ukraine

The jurisdiction of administrative cases is determined due to a set of legal features (properties) of a case on the basis of which the law determines a court that have the right and obligation to consider such case and resolve it. In addition, the jurisdiction of a case is determined by the following criteria which characterize the types of jurisdiction of cases as follows: 1. Subject of a trial – issue of law; 2. Subjective membership of the parties of a dispute; 3. Instance structure of the judicial system; 4. Territory which is covered by the court activities.

In accordance with these criteria for the division of competences of different courts, it is distinguished the following types of administrative jurisdiction: a) subject-matter; b) subjective; c) instance; d) territorial.

Considering the first criterion of administrative jurisdiction – issue of law (subject-matter administrative jurisdiction), it should be noted that this dispute is directly related to public-legal relations.

That is, subject-matter administrative jurisdiction is one of the main elements, which makes the distinction between administrative legal proceeding and other types of legal proceeding (civil, commercial, criminal, constitutional). The law indicates which categories of cases are subject to administration of this type of court.

Therefore, Art. 19 of the Code of Administrative Procedure of Ukraine (hereinafter referred to as CAPU) specifies the categories of administrative cases that fall into the competence of administrative courts in public-law disputes, the consideration of which, in turn, relates to the jurisdiction of administrative courts.

At the same time, in accordance with p. 2 para. 1 of Art. 4 of CAPU, public legal dispute is a dispute in which:

− even if one of party carries out governmental administrative functions, including for the performance of delegated powers, and a dispute arose in connection with the execution or non-execution by such party of specified functions; or

− even if one of party provides administrative services on the basis of legislation that authorizes or obliges to provide such services exclusively to the subject of authoritative powers, and a dispute arose in connection with the provision or non-provision by such party of specified services; or

− even if one party is the subject of an election process or referendum process, and a dispute arose in connection with the violation of its rights in such process by the party of subject of authoritative powers or other person [6].

At the same time, Article 19 of CAPU specifies and provides a list of public legal disputes submitted to administrative court for resolution.

Thus, disputes between natural or legal persons with the subject of authoritative powers regarding the appeal of its decisions, actions or inactivity, except for cases when the law establishes a different procedure for court proceedings for the consideration of such disputes, are resolved within the ambit of administrative proceedings.

Therefore, it is logical to include issues regarding the legitimacy (except the constitutionality) of bye-laws of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the ARC to the jurisdiction of administrative courts, as well as the legality and compliance with the legal acts of higher legal force of legal acts of ministries, other central executive bodies, the Council of Ministers of the ARC, local state administrations, local self-government bodies, and other bodies of authoritative power. [7].

In addition, the jurisdiction of administrative courts may be established by law, in particular Art. 23 of the Law of Ukraine dated January 13, 2011, № 2939-VI «On Access to Public Information» [8], Art. 28 of the Law of Ukraine dated March 22, 2012 № 4572-VI «On Public Associations» [9], p. 2, Article 74 of the Law of Ukraine dated June 2, 2016, № 1404-VIII «On Enforcement Proceedings» [10], etc.

For example, administrative courts also consider cases in the field of national assistance to economic entities, as it is indicated in p. 3 of Art. 14, Art. 17 of the Law of Ukraine «On State Aid to Undertakings», № 1555-VII dated July 1, 2014, which came into force on 02.08.2017 [11].

Despite the fact that significant changes have recently been made to the CAPU, in practice many questions arise as to the delimitation of the jurisdiction of certain categories of disputes between courts of different competence.

Thus, there are difficulties in determining the jurisdiction of disputes regarding the acceptance of citizens for the public service, its implementation, and dismissal from the public service. In our opinion, the content of such disputes is disclosed through the definition of public service (para. 17 p. 1. Art. 4 of the CAPU), which is an activity in state political positions, in state collegial bodies, professional activity of judges, prosecutors, military service, alternative (non-military) service, other civil service, executive support service in state bodies, service in the ARC authorities, local self-government bodies. That is why such disputes are public-law, not related to labour ones and governed by the norms of administrative law.

Disputes arising due to with conclusion, execution, termination, cancellation or recognition of administrative agreements as invalid are also settled within the framework of administrative proceedings.

In accordance with para. 16 p. 1 Art. 4 of CAPU, an administrative agreement is defined as a joint legal act of the subjects of authoritative powers or a legal act with the participation of a subject of authority and other person, which is based on their consent, has the form of a contract, agreement, protocol, memorandum, etc., defines mutual rights and duties of its participants in the field of public law and is concluded in accordance with of the law.

CAPU also gets into specifics fields and purpose of conclusion of an administrative contract, which serves: a) to distinguish the competences or determine the procedure for interaction between the subjects of authoritative powers; b) to delegate governmental functions; c) to redistribute or combine budget funds in cases specified by law; d) instead of issuing an individual act; e) to regulate issues of providing administrative services [6].

Currently, according to some research, there is a lack of a category of cases in administrative courts procedure over disputes arising in connection with the conclusion, execution, termination, cancellation or recognition of administrative agreements as invalid. Thus, at this stage of development of public relations, it makes sense to speak only about the presence of certain signs of administrative agreements in relations between governmental and non-governmental organizations regarding administrative and legal regulation in the field of transport and communication, in the field of construction and housing and municipal services, in the field of environmental protection, in the field of social policy, in the field of healthcare, education and science, culture, youth policy, physical culture and sports. So, we can speak about the presence of the principles of contractual relations of public administration in the social and humanitarian and cultural activities of the state, and consequently define an administrative contract as a form of public administration [12, p. 62-63]. Normative and legal acts in legal relations related to the electoral process or referendum process are Laws of Ukraine «On Elections of the President of Ukraine» dated March 18, 2004 № 1630-IV [13], «On Elections of People's Deputies of Ukraine» dated November 17, 2011 № 4061-VI [14], «On All-Ukrainian Referendum» dated November 6, 2012 № 5475-VI [15] and other normative-legal acts that determined the stages (the beginning, passing and end) of the electoral process and the referendum process. Art. 99 of the Law of Ukraine «On Elections of the President of Ukraine» establishes that decisions, actions or inactivity of election commissions, members of these commissions, executive authorities, the ARC authorities, local self-government bodies, mass media, enterprises, institutions, organizations, their officials, creative media workers, candidates for the post of President of Ukraine, their trustees, parties – subjects of the election process, their officials and authorized persons, official observers who violate election legislation can be challenged in pretrial manner in the procedure that is specified by CAPU [13].

Some disputes in the field of legal relations related to the electoral process or referendum process can be categorized as disputes with the subject of authoritative powers regarding the appeal of its decisions, actions or inaction. At the same time,

disputes, in particular regarding the appeal of decisions, actions or inactivity of election commissions or referendum commissions that arose outside the stages of election process and referendum process or are not related to the electoral process or referendum process, do not belong to disputes related to the electoral process or referendum process, that is why the definition of the jurisdiction of such disputes and their consideration are carried out in the general order.

Disputes concerning legal relations related to the electoral process or referendum process can include disputes over: 1) appeals of decisions, actions or inactivity of election commissions, referendum commissions, members of these commissions (Article 273 of CAPU); 2) clarification of the list of voters (Article 274 of the CAPU); 3) appeals of decisions, actions or inactivity of executive bodies, local self-government bodies, mass media, news agencies, enterprises, institutions, organizations, their officials and officers, creative media workers and news agencies that violate election and referendum law (Article 275 of the CAPU); 4) appeals against actions or inaction of candidates, their trustees, a party (bloc), local party's organization, their officials and authorized persons, initiative referendum groups, other parties of initiation of a referendum, official observers from the subjects of the electoral process (Article 276 of CAPU); 5) the election of the President of Ukraine (Article 277 of CAPU).

P. 2. Art. 19 of CAPU determines cases in public-law disputes which are not subject to the jurisdiction of administrative courts.

According to para. 5 of the Resolution of the Plenum of the Supreme Administrative Court of Ukraine № 8 dated May 20, 2013 «On Issues of the Jurisdiction of Administrative Courts», public-law disputes concerning the constitutionality of laws, international treaties, by-laws of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the ARC belong to the jurisdiction of the Constitutional Court of Ukraine [16].

In accordance with para. 1 p. 2 of Art. 19, para. 1 Art. 264 of CAPU, the jurisdiction of administrative courts involves the issue of the legitimacy (except constitutionality) of the resolutions and ordinances of the Cabinet of Ministers of Ukraine, resolutions of the Verkhovna Rada of the ARC, as well as the legitimacy and compliance with the legal acts of higher legal force of the normative legal acts of ministries and other central executive authorities, Council of Ministers of the ARC, local state administrations, local self-government authorities, other subjects of power.

The jurisdiction of administrative courts does not cover cases that must be settled in the framework of criminal procedure (they must be decided according to the norms of the Criminal Procedure Code of Ukraine) and concerning imposition of administrative penalties (they should be decided according to the norms of the Code of Ukraine on Administrative Offenses). At the same time, in accordance with CAPU, a public-legal dispute is not any public-legal dispute, but only one that emerges from exercising by the subject of authoritative powers of its authoritative management functions. Agencies of inquiry, investigation and public prosecution service verifying crime report and its solution perform non-government management functions, but power procedural functions.

Therefore, taking into account the provisions of CAPU, such disputes do not arise from the exercise of authoritative management functions by the subjects of authoritative powers, and therefore they do not belong to the jurisdiction of administrative courts [17] and do not fall within the definition of cases belonging to para. 1 p. 1 Art. 19 of CAPU connected with disputes of natural or juridical persons with a subject of authority to appeal its decisions, actions or inactivity.

The competence of administrative courts does not apply to cases concerning relations, which according to the law, statute (regulation) of a public association, self-regulatory organization are attributed to its internal activity or exclusive competence, except cases in disputes specified in paragraphs 9, 10, part 1 of these articles (so, such exceptions are disputes concerning the appeal of decisions of attestation, competition, medical and social expert commissions and other similar bodies whose decisions are mandatory for state authorities, bodies of local self-government, others, and disputes concerning the formation of team of the state bodies, local authorities, election, appointment, dismissal of their officials).

In accordance with para. 3 Art. 19 of CAPU, administrative courts do not consider claims that are derived from requirements in a private-law dispute and declared with them, if this dispute is subject to consideration in order of other, than administrative, proceeding and is under consideration of a relevant court. Para. 23 Art. 4 of CAPУ defines a derivative claim as a demand, the satisfaction of which depends on satisfaction of another claim (main requirement).

Taking into account the abovementioned, it may be concluded that the subject-matter jurisdiction is a fundamental in determining the jurisdiction of a dispute. Therefore, when answering a question which court (with general jurisdiction, administrative or economic) will consider a dispute, the content of the violated right should be taken into account.

Instance jurisdiction of administrative courts in the context of judicial and legal reform in Ukraine

In the modern conditions, significant changes touched the instance jurisdiction for which amended CAPU has a separate paragraph 2, arts. 22–24. Only one article was previously devoted to the definition of the instance jurisdiction, and it was defined as an instance of original jurisdiction in administrative cases. The essence of full jurisdiction was investigated by researchers in various aspects. Full jurisdiction is understood as an institution of administrative procedure law, the rules of which, depending on the set of features and properties of an administrative case, the jurisdiction of a court and other criteria determine in which administrative court and in which composition of this court it should be considered in the first, appeal or cassation instance [18, p. 19]. Another researcher defines the essence of instance original jurisdiction as a correlation of cases and courts on the basis of such mark as a place of court in the competence hierarchy, that is, he delimits the competence of administrative courts of different levels (first, appeal and cassation instances) [19, p. 29].

The purpose of the instance original jurisdiction is to determine equal opportunities for appealing judicial decisions for each administrative case, in another words to prognosticate the same number of courts that a person’s right to appeal and

review of the court judgment is not unreasonably restricted, and the original jurisdiction of several interconnected requirements – to ensure the unification of several requirements, which should be considered within the framework of administrative procedure in one proceeding. (20, pp. 250–251).

Thus, judicial authority is a judicial body as a whole or its structural unit, which performs a certain procedural function in the administration of justice. Courts vary in terms of procedural powers towards disputes resolution. It is distinguished the court of first instance, the court of appeal, the court of cassation.

The courts of first instance perform the function of considering and deciding a case on the merits. Courts of appeal review cases in appellate order, court of cassation – in cassation order. Each following court is a court with more powers in relation to the court that previously ruled. For example, the court of appeal is superior to the trial court. The court of cassation is superior to the court of appeal.

As a result of the judicial system reform the legislation, in particular p. 3 Art. 17 of the Law № 1402-VIII, established three-level judicial system of Ukraine consisting of local, appellate courts and the Supreme Court [4]. For the consideration of certain categories of cases in the judicial system there are higher specialized courts as the Supreme Court on Intellectual Property, the Supreme Anticorruption Court, they exercise their powers as trial courts and appellate courts for a consideration of certain categories of cases.

Local courts are trial courts dealing with and settling cases on the merits. According to Art. 21 of the Law No. 1402-VIII, local courts of general jurisdiction are district courts which are formed in one or several regions or districts in cities, or in a city, or in a district (districts) and city (cities). Local administrative courts are district administrative courts, as well as other courts, defined by procedural law, that is, CAPU [4].

Art. 22 of CAPU established rules of the instance jurisdiction of administrative cases, which constitute an algorithm for determining the competent court for a consideration and resolution of a particular administrative case. Thus, according to p. 1 Art. 22 of CAPU, trial courts include local administrative courts (local general courts as administrative courts and district administrative courts) that decide administrative cases, except cases specified in parts 2–4 of this article [6].

In addition to local administrative courts, the courts of first instance in administrative procedure include Kyiv Administrative Court of Appeal, Administrative Court of Appeal and Supreme Court which deal with separate cases.

According to p. 2 Art. 22 of CAPU, Kyiv Administrative Court of Appeal as a trial court deals with cases concerning appeals against decisions, actions and inactivity of the Central Election Commission (peculiarities of proceedings in such cases – Article 273 of CAPU) (except for those which are specified in part four of this article), actions of candidates for the post of President of Ukraine, their trustees (peculiarities of proceedings in such cases – Article 277 of CAPU). In accordance with p. 3 Art. 22 of CAPU, as courts of first instance, administrative courts of appeal deal with cases over claims for a condemnation proceeding on grounds of public necessity of a land plot, other objects of real estate, which are located on it. (The peculiarities of proceedings in such cases, Article 267 of CAPU).

Cases concerning the establishment of election results or an all-Ukrainian referendum (peculiarities of proceedings in such cases, Article 273 of CAPU) by the Central Election Commission, cases of the claim for early termination of the powers of a people's deputy of Ukraine (peculiarities of proceedings in such cases, Article 285 of CAPU), as well cases concerning the appeal of acts, actions or inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice, the High Qualifications Commission of Judges of Ukraine, Qualifications and Disciplinary Commission of Public Prosecutors (peculiarities of proceedings in such cases, Article 266 of CAPU) is carried out by the Supreme Court of Ukraine as a trial court in considering these cases.

Courts of appeal act as courts of second instance, and in cases specified by procedural law, as courts of first instance, for consideration of civil, criminal, economic, administrative cases, as well as cases of administrative offenses.

According to art. 26 of the Law, courts of appeal for the consideration of cases of administrative offenses are courts of appeal that are formed in appeal districts. And courts of appeal for a consideration of administrative cases are administrative courts of appeal that are formed in the respective appeal districts.

The main task of a court of appeal is to verify the legality and validity of the decision of the court of first instance within the framework of the arguments of the appeal petition and claims made in the court of first instance.

Thus, in accordance with p. 1 Art. 23 of CAPU, administrative courts of appeal reconsider court decisions of local administrative courts (local courts of general jurisdiction as administrative courts and district administrative courts), which are within their territorial jurisdiction, in appeal proceedings as courts of appeal.

The Supreme Court of Ukraine, which is the superior court in the judicial system of our state too, has a special status in the system of legal proceedings. As a rule, the Supreme Court carries out justice as a court of cassation, that is, it reconsiders court decisions of local courts and administrative courts of appeal in cassation procedure as cassation court (according to Art. 24 of the CAPU), and in cases specified by procedural law as the court of the first (Art. 22 CAPU) or appeal instance, in accordance with the procedure established by the procedural law.

According to p. 2 Art. 23 of CAPU, in cases determined by the CAPU, the Supreme Court reconsiders judicial decisions of an administrative court of appeal as a court of second instance in appeal order. That is, the Supreme Court reconsiders decisions of appeal courts in appeal procedure, which they have adopted as courts of first instance that is in p. 2 Art. 292 of CAPU. It is referred to cases of complaints for condemnation proceeding on grounds of public necessity of the land plot, other objects of real estate, which are located on it (p. 3 Art. 22 of the CAPU).

In accordance with p. 3 Art. 23, in cases determined by CAPU (p. 4, Art. 22 of CA3U), the Grand Chamber of the Supreme Court reconsiders judgments, in appeal procedure as court of appeals, in cases considered by the Supreme Court as a court of first instance.

Consequently, rules of instance jurisdiction are an algorithm for determining a competent court for a consideration and resolution of a particular administrative case. Determination of instance jurisdiction gives the answer to the questions, which courts

are dealing with cases in the first instance and which in appeal and cassation instances. CAPU establishes which of the procedural actions has the right to conduct this court, that is outlines its functions. Thus, the instance jurisdiction determines the scope of powers of each branch of the unified judicial system of Ukraine: local courts, courts of appeal and the Supreme Court.

New rules of territorial jurisdiction (original jurisdiction) of administrative cases in Ukraine

The territorial jurisdiction divides the competence for reviewing and resolving administrative cases for claims between courts of one level, depending on the territory to which their powers apply. It personifies courts for a consideration of cases, determines which particular court may consider a particular case at first instance.

It is determined that territorial original jurisdiction establishes the correlation of cases and courts on the basis of such peculiarity as the place of hearing of the case, that is, it specifies which administrative court may consider a particular administrative case at the first instance [19, p. 39]. The main purpose of territorial original jurisdiction is to establish a distinction between the competences of administrative courts of the same level depending on the place of consideration of administrative cases [20, p. 250].

The territorial jurisdiction of administrative cases is established by the rules of Article 25 of CAPU where original jurisdiction of cases is at the choice of a plaintiff. Thus, according to the aforementioned article, lawsuits concerning the appeal of individual acts, as well as actions or inactivity of the subjects of authority that were adopted (committed, admitted) in relation to a particular natural or legal person (their associations), are made at the choice of the plaintiff to the administrative court:

– either at the place of residence of a plaintiff (in relation to whome individual appealed acts were performed, actions were taken, or there was inactivity on the part of subjects of authoritative powers;

– or at the location of the defendant, except for cases determined by CAPU. (For example, administrative cases with exclusive jurisdiction, Art. 27 of CAPU).

In accordance with p. 1 of Art. 26 of CAPU, in the case if defendant is a natural entity, the claim shall be submitted to the relevant court at the place of official registration. That is, it is necessary to indicate information about the registration of a natural person, the definition of which is contained in para. 11 Art. 3 of the Law of Ukraine «On Freedom of Movement and Free Choice of Place of Residence in Ukraine» № 1382-IV dated December 1, 2003, (last edition), according to which registration is information entering in the register of the territorial community, documents which are filled with information about the place of residence / location of the person with the indication of the residence address / location area, with the subsequent submission of the relevant information to the Unified State Demographic Register in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

In the case of filing a claim to juridical persons, such actions are brought to an administrative court at the location of legal entities – defendants, according to the

data of the Unified State Register of Legal Entities, individuals – entrepreneurs and public formations.

According to Art. 93 of the Civil Code of Ukraine dated 16.01.2003 № 435-IV, a location of legal entity is the actual place of business or office location, from which the daily management of the legal entity activity is conducted (there are mainly executives) and the administration and accounting are carried out.

Law of Ukraine «On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations» dated 15.05. № 755-IV of 2003 stipulates that information concerning the location of a legal entity is entered into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, on the basis of information which is provided by legal entities to the state registrar (for example, during the state registration of a legal entity). That is, information on the location of a legal entity is used by the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations.

CAPU also established the rules of exclusive original jurisdiction. The exclusive territorial jurisdiction determines which court will consider a case in certain non-typical cases, which are directly provided in Art. 27 of CAPU. Thus, p. 1 Art. 27 of CAPU defined categories of administrative cases in which a plaintiff must make a claim exclusively to the district administrative court, whose territorial jurisdiction extends to the city of Kyiv.

For example, since 02.08.2017, three years after the publication of the Law of Ukraine «On State Aid to Undertakings», the provisions of p. 1 Art. 27 of CAPU were put into effect in relation to the original jurisdiction of cases in disputes concerning appeals against decisions in the field of state aid to economic entities and administrative cases on the suit of the Antimonopoly Committee of Ukraine in the area of state aid to economic entities. So, the consideration of these cases is carried out by the district administrative court, the territorial jurisdiction of which extends to the city of Kyiv.

In addition, p. 3 Art. 27 of CAPU provides special rules of territorial jurisdiction of certain categories of administrative cases, it is consolidated in Chapter 11 of Section II of CAPU:

– cases concerning the appeal of decisions, actions or inactivity of election commissions, referendum commissions, members of these commissions whose territorial jurisdiction is appealed to the Supreme Court, the Kyiv Administrative Court of Appeal (p. 3 Art. 273 of CAPU), the district administrative court at the location of the relevant commission (p. 4 Art. 273 of CAPU), the local court of general jurisdiction as an administrative court at the location of the relevant commission (p. 5 Art. 273 of CAPU);

– cases concerning the specification of voters' list are considered by the local court of general jurisdiction as an administrative court at the location of the relevant commission (p. 2 Art. 274 of CAPU);

– cases concerning appeal against decisions, actions or inactivity of executive authorities, bodies of local self-government, mass media, news agencies, enterprises, institutions, organizations, their officials, creative media workers and news agencies that violate election and referendum law: – a claim concerning the appeal of

decisions, actions or inactivity of executive authorities, local self-government bodies, their officials and officers is submitted to the district court at the location, – a claim concerning actions or inactivity of the mass media, news agencies, enterprises, institutions, organizations, their officials and officers, creative media workers and news agencies violating election and referendum law is submitted to a local general court as an administrative court at their location (p. 3 Art. 275 of CAPU);

– cases concerning the appeal of actions or inactivity of candidates, their trustees, party (bloc), local organization, their officials and authorized persons, initiative referendum groups, other subjects of referendum's initiation, official observers from the subjects of the election process, – a claim is submitted to the local general court as an administrative court at the location of the territorial election commission, which registered a candidate (p. 4 Art. 276 of CAPU);

– cases related to the election of the President of Ukraine: – actions of candidates for the post of President of Ukraine, their trustees are appealed in the Kyiv Administrative Court of Appeal (p. 7 Art. 277 of CAPU); – decisions, actions or inaction of the district election commission and its members may to be appealed to the administrative court at the location of the district election commission (p. 8 Art. 277 of CAPU), – decisions, actions or inactivity of the district election commission or a member of such commission may be appealed to the district administrative court at the location of district election commission (p. 9 art. 277 of CAPU);

– cases of administrative lawsuits concerning the elimination of obstacles and the prohibition to interfere in exercising the right to freedom of peaceful assembly are considered by the administrative court at the venue of these events (p. 1 Art. 281 of CAPU);

– cases concerning the secured provisions of defense's needs are considered exclusively by the district administrative courts at the location of the defendant (p. 2 Art. 282 of CAPU) [6].

The rule of territorial original jurisdiction of administrative cases for their review in an appeal procedure is fixed in Art.23 of CAPU. In accordance with it, the judicial decision of the local administrative courts is reviewed by an administrative court of appeal, the territorial jurisdiction of which covers a relevant local administrative court. The territorial jurisdiction of administrative courts of appeal is established by the Decree of the President of Ukraine «On Establishment of Local Administrative Courts, Approval of their Network» as revised 29.12.2017.

Within the framework of judicial reform, the President of Ukraine issued the Decree «On Liquidation of Administrative Courts of Appeal and Formation of Administrative Courts of Appeal in Appellate Districts» № 455/2017 dated 29.12.2017 concerning the reorganization and liquidation of administrative courts of appeal. Therefore, 9 administrative courts of appeals were liquidated, and 8 administrative courts of appeal were established in appellate districts. Now, for example, the Second Administrative Court of Appeal in appellate district was established on a territorial basis, which includes Poltava, Sumy and Kharkiv regions, with its location in Kharkiv [21].

Consequently, the powers of administrative courts are limited not only by the extent of their powers, but also by the territory in which such powers can be

exercised. Such a delimitation of the competence of the judicial authorities is called territorial jurisdiction or original jurisdiction.

In general, the rules of territorial jurisdiction are less strict than the rules of subject-matter jurisdiction. It is considered that the level of the court is proper, but as a result of non-compliance with the rules of territorial jurisdiction, additional inconveniences may be created, but they do not influence a content of decision objectively.

Conclusion:

Taking into account the abovementioned, it may be concluded that the changes in the CAPU, in particular, the institute of administrative jurisdiction, are aimed at adhering to the modern principles of the doctrine of administrative law and judicial doctrine. In fact, the doctrine of administrative law in Ukraine provides a new understanding of «publicity», which is characterized by service to mankind, a return to basic human values, the recognition and consolidation of natural human and civil rights.

CAPU significantly specified and extended the list of cases which are subjected to the jurisdiction of administrative courts, and the division of the subject-matter jurisdiction of administrative courts is carried out. There is a distinctive cross from the subjective principle of delimitation of administrative jurisdiction to subject-matter.

It should be noted that the list of terms was expanded in CAPU, and their definition were specified, which improves and facilitates administrative court procedure. A separate novel of updated CAPU is that a court can itself send to another court an administrative case which is not under jurisdiction territorially, which facilitates access to justice, promotes greater openness of the court and public's confidence in justice as a whole.

In such a manner, the ways of the implementation of administrative legal proceedings are established in law: well-timed and effective protection of the rights, freedoms and interests of individuals, rights and interests of legal entities from violations on the part of the subjects of authoritative powers. Although, we note that in practice many questions arise regarding the interpretation and application of the updated rules of CAPU, and it requires the further individual detailed research.

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Leheza Ye.O.,
Doctor of Juridical Sciences, Associate Professor,
Professor at the Department of Administrative and Customs Law,
University of Customs and Finance,
Dnipro

ADMINISTRATIVE AND LEGAL COMPONENT OF THE CONCEPT OF PROVISION OF PUBLIC SERVICES IN UKRAINE (ACCORDING TO THE RESULTS OF SOCIOLOGICAL SURVEY)

Summary

The paper defines the main theoretical aspects of the concept of public services in Ukraine. It is substantiated the expediency of the development of a unified concept of public services as a basic document for the modern domestic rule-making process aimed at developing modern legislation on public services, which is perfect in content and effective in application, and also for the elaboration of its scientific basis – the provisions of modern national administrative-legal science.

It is developed a version of the Concept of public services, its content is covered. The proposed version contains three sections: Section I «General provisions» defines the main conceptual framework, raises problems, establishes purpose, tasks, terms of implementation of the Concept of public services; Section II «Ways and methods of problems solving, terms of implementation of the Concept of public services in Ukraine» specifies particular measures that must be taken to achieve the goal and

solve the problems. These measures are conditionally divided into three groups: educational measures (the process of preparation of the standards for legal education), scientific measures (research), law-making measures (statutory acts regulating the activities of actors, procedures, guarantees). Section III «Expected results of implementation of the Concept of public services in Ukraine» proposes the main results predicted to be achieved by virtue of three abovementioned directions (groups of measures) for the implementation of the Concept's provisions.

Key words: responsibility, electronic public service, control, public services, provision of public services, public services system, appeals against decisions, acts or inactivity of public authorities for the provision of public services.

Problem statement is to build a democratic Ukraine of European standard and it should not be based solely on discussing the problems, but it requires radical changes in the legal field, where a person, his/her rights and freedoms must become a priority.

Adoption of the Concept of public services in Ukraine should contribute to the formation, improvement and further development of the system of provision of public services on the basis of clearly defined legal principles. It will enable to meet the needs of citizens-consumers of public services and will ensure the protection of their rights and interests which are guaranteed by the Constitution of Ukraine and other regulatory acts.

The current state of the provision of public services in Ukraine is characterized by a large number of shortcomings and problems despite the fact that the state must guarantee the right of every consumer to an impartial and fair decision concerning a case solution within a reasonable time.

Now, issues of public services in Ukraine require a thorough research. So, feedback is important – thoughts, reactions, assessments of citizens about the essence of reforms and, in particular, their effectiveness.

Analysis of the latest researches and papers on research topic

The issues of legal regulation of services as a legal category are the focus of scholars, and their various aspects were studied in scientific papers of such scholars as V. B. Averianov, K. K. Afanasiev, V. T. Bilous, I. P. Holosnichenko, N. L. Huberska, S. L. Dembitska, S. V. Kivalov, I. V. Kovbas, I. B. Koliushko, T. O. Kolomoiets [3; 4], V. K. Kolpakov, A. T. Komziuk, S. F. Konstantinov, R. S. Melnyk, S. H. Stetsenko, V. P. Tymoshchuk [2] and others.

It also should be noted that for the first time, only thesis research of Bukhanevych O.M. is defended at the level of doctoral dissertation «Theoretical and legal and praxeological principles of provision of administrative services in Ukraine» (2016) [1], in which the theoretical foundations and practice of legal regulation of administrative services provision in Ukraine are comprehensively disclosed.

The purpose of the paper is to propose the concept of the provision of public services in Ukraine on the basis of a comprehensive analysis of available scientific and regulatory sources.

Presentation of the main material. The study of citizens' opinion concerning this issue was carried out by the method of questionnaire survey by applying a non-

random method of respondents' selection (residents of Dnipropetrovsk, Zaporizhzhia, Kyiv, Lviv, Odesa and Kharkiv region) – a sample of population of 18 years old is available. In total, 450 respondents were interviewed.

The list of the main shortcomings in the system of provision of public services was sufficiently detailed. In opinion of the respondents, the main problem is in obliging citizens to collect certificates and other documents– more than half of respondents expressed this opinion – 44.7%. The list of problems also involves (in descending degree) the attitude to citizens as to requesters, disrespect for them – 34,2%; burdensome bureaucratic procedure for obtaining public services – 32.9%; demand of certificates and other documents from citizens, submission of which is not required by the legislation – 31.3%; unreasonably long or even indefinite term of provision of certain services – 27,7%; unreasonable requirement for citizens to receive related paid services – 25.8%; unjustified partition (cutting) of one service for several paid services and improper professional training of officers providing services, especially it touches psychological aspects of communication with citizens – 23,1%. These are the eight main complaints of citizens against the system of public services. Attention is also paid to the imperfection of the current legislation which not only complicates a control over the system, but also improperly regulates the procedure for the provision of services. Citizens negatively responded about the necessity to appeal to several bodies for resolving issues. It should be noted that there were also such respondents who pointed to the territorial «dispersion» of different authorities and their units, and it creates additional difficulties in finding the necessary structure and promotes the unjustified introduction of new types of services.

Regarding the types of feedback that must be used by the authorities in order to improve the quality of public services, the largest number of responses was in favor of the book of complaints and proposals, which should be placed in an accessible place for visitors – 44.7% of respondents (as it was in Soviet times), or the use of hotline – 44% of respondents consider this type of communication as one of the most successful and effective, while 25.8% think that, if it is necessary, citizens can appeal to the public reception office as a body that will provide feedback. The role of modern information channels in establishing feedback, as well as the role of the mass media, is small (it was noted by almost 22%), but it still needs attention.

The aspect as a reduction of the number of documents required for the reception of a service occupies a significant place among the measures for improving the quality of public services – 80.4% of respondents emphasize the need to solve this problem as the system of providing services in our country, especially in respect of the execution of any document, is characterized by excessive bureaucratization. In this context, the process of using electronic document circulation and its establishing into the work of the authorities under the principle of «one-stop shop» plays an important role – almost half of respondents (44%) pay attention to the necessity of introducing such forms of work. Emphasis is also placed on the introduction of new modern forms of work through the Internet – 32.9%; increase of responsibility of civil servants for poor-quality of service provision – 28.7%; improvement of the technical quality during providing services – 27.7%.

Among 63.9% of respondents who needed certain services, 17.3% were dealing with registration, 14.9% were receiving permits, and 10.9% were receiving licenses

and other services. 49.6% of respondents answered open question regarding names of institutions which were being visited by citizens during the year. The units subordinated to the Ministry of Justice of Ukraine (state registrars, notaries) are leaders in terms of appeals – 2.8% indicated this structure; the same number of visitors was recorded in the housing and municipal bodies. City councils and district executive committees are second in terms of visitors – 2.1%, land resources management services are third – 1.8%. Those respondents who have applied for public services but have not indicated the name of a structure may not remember it, or, which is most likely, do not want or are afraid to indicate it. It should be noted that some of the interviewees pointed agencies that are not related to the procedure of providing public services, such as city hospitals, public educational institutions, etc. Thus, there is a problem as the lack of the necessary amount of information about the structures which provide public services, and which provide services. It can be assumed that those respondents who answered that they absolutely know nothing about providing population with public services for by executive authorities and local self-government bodies gave such answers to the questions. We even indicate that at the front of a questionnaire there was information note, which stated that public services did not include control activities (controlling, auditing, inspections, etc.), economic, educational and medical services.

Frequency of appeals of citizens to the authorities varies from 2 to 4 times – 34.9%, that is, a one-time visit to the government does not mean that an issue will be solved, and most likely, problems may be settled only through a long-term visiting of agencies. 18.7% were able to resolve their issues by visiting the necessary agency at once. 4.3% indicated that they appealed to the necessary bodies 5 – 10 times, but these were the respondents who pointed to several authorities.

Those 63.9% of respondents, who were appealing to the authorities during the year, assessed some of the components of the work of executive bodies' representatives. Thus, the respondents showed the highest level of satisfaction with the availability of paper documents and forms – 16.4%; the competence of employees – 14.2% and the schedule of the authority – 10.9%. Respondents who are partially satisfied with the competence of employees – 28.7%; general condition of the premises – 24%; informative content of boards at the entrance to the premises and the presence of other indicators – 21,3%; affability and kindness of the workers – 20.9%. 21.8% of respondents are dissatisfied with the conditions for access and movement of handicapped persons, arrangement of places for waiting and filling of documents – 21.8%, informative content of boards at the entrance to the premises and availability of other indicators – 21.6%, convenience of services payment – 17.6%. If we use the data that represents the sum of the indicators of the scale «satisfied», «partially satisfied» and «partially dissatisfied», «dissatisfied», the leaders of high appraisal are such indicators as competence of workers – 42.9%, the availability of paper documents and forms – 36.2%, informative content of boards at the entrance to the premises – 27.7%; the leaders of the negative assessment are the conditions for access and movement of handicapped persons – 46.2%, convenience of services payment – 29.8%; the speed of service delivery – 22.9%; arrangement of places for waiting and filling of documents – 22,2%.

Respondents were not satisfied with the quality of providing public service – 51.5% were partially satisfied for various reasons: additional payments were made (18.2%), additional documents were required (17.3%), term of services provision was violated (16%). Rather more than tenth of the respondents (11.8%) indicated that they were quite satisfied, as they received a qualitative service on time.

Among the difficulties which were faced by citizens when applying for a public service, the following is dominated: long queues to the authorities – 36.2%; time expenditures – 32,7%; non-awareness about the required list of documents – 22.7%; the presence of a large number of agencies that must be visited to receive a service – 20.9%; inconvenient premises in which citizens wait for a personal reception – 22.0%; inquiry telephone wasn't answering a call for a long time during the working day or the connection was missing and the uncomfortable reception schedules of citizens gave the same number – 20,7%. These are the seven main comments of respondents, which need to be resolved by the authorities at both the state and local levels.

Among 61.6% of public services receivers, 12.2% of the respondents did not need additional resources and additional actions in solving a problem. Among those who were forced to take other opportunities for a positive solution for their case, 27.1% incurred unjustified additional financial expenses, 23.1% engaged influential connections, 22.7% of respondents claimed that they solved the issue with the help of a bribe, 20.4% used additional information.

When asked about possible solutions to problems which were faced by citizens during receiving public services, 23.1% answered that they were using influential connections, 18.9% complained to higher authorities, and 34% solved problems with the help of bribe (where 22.4% – in cash equivalent or in the form of gifts, and 11.6% – in the form of certain services). Those 18.9% of citizens who complained to highest authorities show that not always complaints help to solve problems. Thus, 9.3% of the respondents indicated that their complaint was rather satisfied, 2.1% rather were not satisfied with the complaint, and 4.9% of the citizens were not satisfy with the complaint at all. Only 2.6% of the respondents were satisfied.

Consequently, all above-mentioned allows us to make the main conclusion. The quality of public services is a set of characteristics of a public service that determines its ability to meet established or expected customer's needs. Unfortunately, Ukrainian system of public services has significant disadvantages. First, the population does not have the necessary, reliable and, in general, complete information about this process (procedure). Second, citizens do not use all possibilities to receive services in case of such need (for example, all possibilities of the Internet – from search of the necessary information on the web-site to online consulting and answers receipt to e-mail). Communication is carried out according to old methods, through personal contacts at the reception, less often – through telephone counselling, via the Internet. Hence, a large number of citizens' complaints, time expenditure, rudeness and disrespect. The problem of burdensome bureaucratic order of reception of public services, extortion of certificates and other documents from citizens play not last role. In this area, such type of activity as document circulation will significantly improve the quality of provision of public services. It will, first of all, save time on receiving a service, allow avoiding excessive bureaucracy, and solve the problem of material costs both

on the part of ordinary citizen and the state. Meanwhile, those respondents, who were receiving public services during the year, remain dissatisfied with the quality of this process and try to solve their issues not only by lawful methods, but also with the use of additional options – from connections to bribes.

So, highlighted the results of the sociological research on the provision of public services, we will outline the main theoretical provisions of the concept of public services in Ukraine.

Operation of this Concept covers public relations related to the provision of public services in Ukraine.

The terms that are used in this Concept have such definition as follows:

a public service is an activity of the public administration bodies, which is regulated by public-law rules relatively satisfaction of the public interest in considering the application of a natural or legal person for the issuance of an administrative act (decision, permission, license, certificate, act, authorization document, registration, etc.), aimed at ensuring his/her rights and legal interests and / or performing of statutory obligations by a person through financing with the use of public funds;

the system of public services is a set of elements and the connection between them, which is regulated by public-law norms in the activities of public administration bodies relatively satisfaction of the public interest in considering the application of a natural or legal person for the issuance of an administrative act (decision, permit, license, certificate, act, certificate, registration, etc.), aimed at ensuring his/her rights and legitimate interests and / or performing of statutory obligations by a person through financing with the use of public funds;

a procedure for the provision of public services is the procedure of the activities of public administration, which is regulated by administrative and legal norms, in considering the application of a natural or legal person regarding the implementation of a decision of the authorized body aimed at ensuring its rights and legitimate interests and / or the fulfillment of person's duties specified by the law;

unified state portal of public services is a nationwide automated information system that enables the subjects of the application to receive public services virtually (in electronic form);

electronic public service is a governmental activity of an entity of public administration that is authorized to provide public services, which is implemented through information and communication technologies using an electronic digital signature without direct interaction with the subject of appeal (physical or legal entity) aimed at the acquisition, change or termination of the rights, duties and / or the satisfaction of the legitimate interests of natural or legal persons in accordance with the law, which leads to a certain result that manifests itself in the form of issuance of an administrative act (permission, license, certificate, registration, etc.);

the control of the provision of public services is a form of guarantee of ensuring of the legality of public services in Ukraine, which is regulated by the legislation implementing in the activities of subjects of administrative law, including citizens or their associations in relation to the control over the realization of the provisions of regulatory acts, powers and observance of rights, freedoms and legitimate interests of

the subjects of application (physical or legal person) by the subjects of public administration;

appeal against decisions, actions or inaction of the public administration bodies of public services provision is a form of guarantee of assurance of the legality of public services in Ukraine, which is implemented through a normatively regulated procedure for the execution of procedural actions that ensure legal and objective consideration of cases in administrative and / or judicial procedures on appeal against decisions, actions or inactivity of executive bodies and local self-government bodies, their officials and officers regarding the consideration of an application of a natural or legal person on issuance of an administrative act (decision, act or decree on reception of permission, license, registration certificate, identification document, certificate, etc.);

the responsibility of public servants for the provision of public services is a form of guarantee of security of the legality of public services in Ukraine, which is regulated by the legislation, implemented in the activities of the relevant subjects of public administration or court in relation to prosecution for not providing public services or failure to perform the relevant duties by employees / officials of the subjects of public administration;

subject of application is an individual, a legal entity that applies for public services;

subject of the provision of a public service is an executive body, another state body, the authority of the Autonomous Republic of Crimea, a local self-government body, and its officials authorized to provide public services in accordance with regulatory acts;

center for public services provision is an ongoing subdivision of a local state administration or a local self-government body, which provides public services by virtue of an administrator through interaction with various entities of the public administration for the provision of public services;

quality of the provision of public services is a degree of compliance with the criteria that should be approved at the level of the legislative body in the form of standards for the provision of public services, and violation of which should lead to legal liability of employees of public administration body;

availability of public services is a guarantee of equal conditions for all subjects of appeals (physical or legal person) to receive public service in the specified manner;

standards for the provision of public services by public administration bodies are general rules on order of procedure for the acceptance, registration, consideration of applications for public services, rendering of decisions during public administration, deadlines for proceedings, as well as the procedure for charging fees and grounds for liability of authorities, etc.

Ways and methods of problems solution, implementation terms of the Concept of provision of public services in Ukraine

Problems, which are covered by the Concept of public services in Ukraine

An effective, well-organized institute of public services is a key factor of the development of a civil society in democratically developed countries. For this reason

the EU way which was chosen by Ukraine requires pivotal changes and reform of the existing system for the provision of public services.

After the issue of Decree of the President of Ukraine «On Measures for the Implementation of Administrative Reform Concept in Ukraine» dated June 22, 1998 № 810/98, the building of a service, democratic state is the main task, which involves meeting the needs of natural and legal entities, promoting and ensuring the realization of their rights, freedoms and legitimate interests. One of the «tools» of state in this activity is public services which take one of the main positions in activities of entities of public administration.

The basic doctrine of public services is the concept of state's service to a man and citizen. Now public management of this sphere of social relations creates the necessity to elaborate an effective system for the provision of public services which will guarantee law enforcement for needs satisfaction of subjects of appeals (natural or legal person) for certain services with compliance of quality standards and principles of public services performance.

Despite some improvements in the provision of certain types of public services over recent years, it should be noted that the modern mechanism of public services provision by subjects of public administration has significant shortages that shows a clear need for its refinement, that is the development of new approaches, their approbation both lawmaking and law-enforcement activities of relevant subjects.

An available system of provision of public systems in Ukraine is characterized by the ambiguity as at legislative as sub-legislative levels, non-transparency, and lack of proper regulation, closed nature for consumers (natural or legal persons), so it needs immediate reforming. For this reason, it is necessary to adopt the Concept of public services provision in Ukraine.

To provide public services, it is essential to resolve problems as follows:

– the lack of legislative consolidation of the concept of public services,

system of public services, types of public services, the mechanism of providing public services;

– the lack of register of public services at the legislative level, which

would indicate all types of public services;

– the lack of definition of the concept and types of administrative

charge for public services at the legislative level;

– the problem of decentralization of the provision of public services;

– the uncertainty of mechanism for procedure regulation of the provision of public services;

– the problem of legal regulation of public relations in terms of providing public services in an appropriate electronic form;

– the lack of proper regulation of the issue of fee / free-of-charge basis for public services;

– the problem of legislative definition of the powers of the subjects providing public services, which manifests itself in duplication of functions of executive authorities and local self-government;

– the lack of proper regulation of guarantees types for law enforcement of public services in Ukraine in regulatory legal acts;

– insufficient legislative consolidation of the concept and types of control in the sphere of public services provision;

– the lack of resolution of the issue regarding the procedure for formation, distribution and use of budget funds by various entities of public administration on the provision of public services at the legislative level;

– the problem of elaborating of the issues on criteria and standards for the provision of public services at the legislative;

– the problem of creation of appropriate material, financial and organizational conditions for the provision of public services by subjects of public administration.

Purpose and tasks of the Concept of public services in Ukraine

The purpose of the Concept is to organize purposeful activities of subjects of public administration in order to elaborate an effective system and mechanism for public services provision in Ukraine.

The task of the Concept is to define doctrinal directions for the further development of the system of public services provision.

Ways and methods of problems' solution, implementation terms of the Concept of public services in Ukraine

In order to achieve the goal and solve the tasks envisaged by this Concept, it is necessary to ensure the implementation of complex measures regarding:

1) adoption of the laws as follows: Administrative and Procedure Code of Ukraine, «On Public Services»; «On List of Public Services and Payment (Administrative Fee) for their Provision»; «On Electronic Trust Services»; «On Local Self-Government Bodies in Ukraine»; «On Public Control» etc.

2) creation of the list of public services provided by the subjects of public administration through developing clear criteria for their grouping (by subject, type, fee, etc.);

3) functional extension of local self-government bodies on provision of public services with the purpose of decentralization process for the latter;

4) introduction of public services provision under the principle of «single window system», «single office» for entities of appeal (consumers) in order to visit only one body where the majority of public services would be provided and, consequently, the introduction of an effective mechanism for the protection of human and civil rights and freedoms in practice;

5) development and implementation of criteria for quality assessment of providing public services in the activities of public administration entities;

6) delineation of the powers of entities of public administration for the provision of public services to improve the quality of public services provision; elimination of duplication of functions, corresponding collisions in law enforcement activities, etc.;

7) provision of public administration entities with highly qualified specialists, who are called to implement state policy in public services in order to exercise the

rights, freedoms and legitimate interests of natural and legal entities (consumers), taking into account modern approaches and models of human resources management;

8) establishment of centres for public services provision by delegating the functions of subjects of public administration for the purpose of providing the most popular public services (registration of real estate; drawing-up and issuance or exchange of Ukrainian passport for travelling abroad, etc.) only in these centers;

9) termination of the law-enforcement activities of intermediary subjects in providing public services;

10) examination of an issue and decision on a possibility to delegate certain functions of subjects of public administration on public services provision to private economic entities;

11) creation of appropriate material, financial and organizational conditions for the provision of public services by entities of public administration;

12) elaboration of an effective guarantees system for ensuring lawfulness of public services in Ukraine regarding the provision of public services (control over the provision of public services; appeals against decisions, actions or inactivity of public administration bodies on public services, liability of public servants for the provision of public services);

13) development of specific measures for the introduction of electronic document flow, electronic signature, protection of communication channels for the provision of public services;

14) creation of a unified electronic database («public services register») regarding the provision of public services by competent authorities.

To resolve the problems impeding the development of public services in electronic forms, it is necessary:

1. to integrate official web-sites of public administration bodies, allied services with information systems of public services entities providing a single authorization and use of a personal account for users of public services;

2. to approve a list of public services in electronic form, focusing on the services that are typically used by consumers (natural or legal persons), by virtue of statistical data and sociological research, which is a prerequisite for a successful service and democratic state;

3. to develop a Unified State Portal of Public Services at the legislative level as a single mechanism for providing public services in the electronic form and eliminate other web-sites which render services;

4. to ensure the availability and openness of public services in electronic form, in particular: to provide public services using mobile means and services; to inform citizens about the benefits and procedure for the provision of public services in electronic form in public places; to perform a periodic TV and radio broadcasting of short information programmes towards the provision of public services in electronic form;

5. to develop and adopt regulatory legal acts which will improve the regulation mechanism of public services in electronic form.

Concept Execution Deadline: 2017–2020.

Expected results of the Concept of public services provision in Ukraine

The Concept implementation will permit to achieve the following results in the future:

1) to create favourable conditions for the provision of public services to appeal entities;

2) to improve the level of legal consciousness of consumers during public services receiving;

3) to provide information openness and activity transparency of entities of public services administration;

4) to reduce the level of corruption risks in the process of providing public services;

5) to improve the quality of providing public services;

6) to reduce the financial and time expenses of entities of appeals when receiving public services;

7) to improve the level of consumers awareness (individuals or legal entities) of public services;

8) to ensure the effectiveness of guarantees implementation for ensuring the lawfulness of public services in the activities of public administration entities in providing public services;

9) to advance the efficiency of public administration as a result of procedures simplification, reduction of administrative expenditure, application of modern methods for public administration in public services provision etc.

Conclusions

It was elaborated the Concept of public services in Ukraine which consists of three main sections (section I «General provisions», section II «Ways and methods of problems solution, implementation terms of the Concept of public services provision in Ukraine», section III «Expected results of the Concept of provision of public services in Ukraine»); three main priorities of its implementation are identified – doctrinal, education and normative, the practical implementation of which will contribute to the formation of a new modern scientific basis for rulemaking and law enforcement regarding the maximum use of public services resource.

It was proposed the directions for improvement of the provision of public services:

1) reconsideration and reduction of public services in a single register, which would contain the name of public service, the subject of public administration that provides a public service, the regulatory framework for the provision of a particular type of service, a list of documents for receiving a service, a form of payment, etc.;

2) the provision of public services complex to individuals and legal entities in so-called «single offices» for the purpose of constructing a service state, that is, providing quality services to particular consumers with the minimum percent of attendance of the subject of public administration;

3) balanced division of powers of public administration entities in the provision of public services taking into account the principle of legality, the rule of law, etc.,

upon condition of simultaneous adherence to quality criteria for provision of public services;

4) decentralization of the provision of public services, which envisages that majority of the abovementioned services should be performed at the level of local self-government bodies and responsible «single centres», «single offices»;

5) the development, adoption and implementation of the criteria for quality assessment of public services in the law-enforcement activity of public administration subjects;

6) provision of public administration entities and established public service centers, such as centers for provision of administrative services, with highly skilled experts, whose aim is to implement public policy in providing public services in order to realize the rights, freedoms and legitimate interests of entities of appeal taking into account modern approaches and models of public administration;

7) examination and adoption of a decision on the possibility to delegate certain functions of subjects of public administration on public services provision to certain private economic entities in order to ensure competitiveness and improve the quality of services;

8) creation of control mechanism in providing public services as one of the guarantees of ensuring legality in the process of protecting the rights and freedoms of man and citizen;

9) draft and adoption of regulatory and legal acts on the mechanism for interaction and coordination of public administration subject in the process of providing public services;

10) termination of the law-enforcement activities of intermediary entity in providing public services that will lead to the reduction of services charges and promote credence to executive and local self-government bodies;

11) introduction of a pilot project for the creation of mobile centres for the provision of public services in remote settlements. In case of its positive implementation, consider the expediency of functioning of such centers in other settlements, where it is not possible to organize a full-bodied center for providing public services;

12) development and implementation of the mechanism for providing public services exclusively in electronic form taking into account modern information and telecommunication technologies, electronic signature, ID-cards, etc.;

13) creation of appropriate material, financial and organizational conditions for activities of subjects of public administration for the provision of public services.

The implementation of the above directions will promote the creation of an effective system of public services that will guarantee the protection of human and citizen rights and freedoms, which in turn will contribute to the formation of a service-oriented, democratic state.

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Rudoi K.M.,
Candidate of Juridical Sciences, Associate Professor,
Professor at the Department of Administrative Law and Procedure,
Odessa State University of Internal Affairs

Shpak M.O.,
Second Year Cadet of Faculty № 2,
Odessa State University of Internal Affairs,
Odessa

JURISDICTIONAL AND NON-JURISDICTIONAL PROCEEDINGS IN ADMINISTRATIVE PROCEDURE

Summary

The article analyses the main concepts of administrative procedure. The specific features of jurisdictional and non-jurisdictional proceedings are investigated by the virtue of the general approaches of theory of administrative procedure law to the classification of administrative proceedings. The paper considers the main concepts of administrative procedure in order to define types and special aspects of jurisdictional and non-jurisdictional proceedings. It is characterized the common and distinct features of administrative proceedings of jurisdictional and non-jurisdictional nature. The main elements of the structure of administrative procedure in general and administrative proceedings in particular are noted. The article analyses scientific approaches to the definition of jurisdictional and non-jurisdictional activity in order to substantiate the classification of administrative proceedings. It is pointed out the main and additional stages of administrative

proceedings, the stages of jurisdictional and non– jurisdictional proceedings are emphasized.

Introduction. General theory of law defines the terms of legal process as a procedure for activity of competent public authorities, which is regulated by procedural standards, manifesting in the system of their procedural actions on preparation, adoption and registration of legal decisions of a general and individual nature. One of the types of legal procedure, along with a criminal procedure, civil, economic etc., is administrative one. Since the Soviet times, N.H. Salishcheva has distinguished the terms «administrative procedure» and «administrative proceeding» defining administrative procedure as a narrower concept in comparison with proceeding, and has equated its content to the concepts «civil procedure» and «criminal procedure». Today, there are several approaches to the comprehension of the content of administrative procedure.

Thus, the first approach considers administrative procedure in a narrow and broad sense. In a narrow sense, administrative procedure is understood as a rule of exclusively jurisdictional activity, which has kind of a «negative nature». In other words, administrative procedure is comprehended as a way which is regulated by the rules of administrative law to settle public disputes in the sphere of public administration.

A broad approach is related to the understanding of administrative procedure as an order of the activity of public administration bodies regarding the adoption of regulatory acts and the application of legal rules in the sphere of public administration, as well as the order of administrative courts activity. Thus, administrative procedure mediates not only the jurisdictional – «negative» – activity, but also «positive» – day-to-day activities of public administration bodies in solving various issues in the legal form (issuance of licenses, registration of business entities, etc.), as well as execution of justice by administrative courts [1, p. 13-14].

The second approach considers administrative procedure in three concepts: jurisdictional, judicial and managerial.

Within the framework of a jurisdictional concept, administrative procedure is considered as the activity, which is regulated by the law, in resolving disputes between the parties of administrative legal relations that are not connected by the official subordination, as well as activities concerning the application of administrative enforcement.

Jurisdictional representation of the content of administrative procedure has the following features:

– administrative procedure is the activity applying measures of administrative enforcement. In fact, controversies arise in the course of managerial cases;

– administrative procedure covers exclusively non-official sphere of administrative relations, in reality, official and non-official conflicts and the way of their solution may be the same in their nature and content;

– legal procedure exists only where there is a conflict over the law. However, in Ukrainian jurisprudence there is a tendency for the generation of such types of legal

coercion as legislative, budget, economic, etc., which are characterized by features confirming their managerial nature.

The judicial concept of administrative procedure was based on the statement that any procedural activity is the exclusive prerogative of judicial authorities. As well as the followers of jurisdictional concept, they build their conception of administrative procedure based on the analogy with two «traditional» types of legal procedure: criminal and civil. However, if the first sees such analogy in a «conflict» nature of legal cases that are subjected to procedural resolution and the second acts on the basis of an idea of their mandatory judicial jurisdiction.

The managerial concept of administrative procedure lies in the fact that administrative procedure shouldn't and can't be limited by the role of organizational and legal «regulator» of juridical conflicts. A special procedural form is typical for a whole law enforcement activity of public authorities, and not only for its separate aspects, which are directly related to the application of coercive measures. Thus, the limits of the functioning of administrative procedure, besides jurisdictional sphere, cover the whole diversity of managerial cases. Administrative procedure, according to this concept, is an activity of the subjects of authoritative powers which implement a statutory order for the application of correspondent substantive rules of law.

In accordance with the third approach, the term of administrative procedure is connected with a scholarly discussion of the interpretations of administrative process, which researchers still have been continuing to «adjust» to the artificially developed model, to any ideal example of understanding of the administrative process in a «narrow» and «broad» sense of the executive and administrative activities of public authorities, and all researches focus on the classification and determination of the position of administrative proceedings in administrative process and their typological groups [2, p. 63-66].

General characteristic of jurisdictional and non-jurisdictional proceedings

The common features of jurisdictional and non-jurisdictional proceedings:

− administrative proceedings are aimed at identifying and realizing tangible relations;

− they are staged: procedural actions performed in a certain sequence, in addition, any further action can't begin earlier until the previous one ends;

− concern resolution of a certain juridical case;

− administrative proceeding of jurisdictional and non-jurisdictional nature are characterized by the regularities, similar to other branch forms of procedural law, which are connected it with substantive sphere;

− they are regulated by procedural rules;

− all procedural mechanisms, peculiar to administrative procedure, are internal, special mechanisms of legal system;

− procedural actions are filled out by virtue of individual legally valid acts;

− they are regulated by procedural time frames [3, p. 62-63].

Among the mentioned features staging has a central importance. It is typical not only for process but also for proceeding. Due to this fact there is a need to draw line between the categories «process» and «proceeding». The structure of administrative

process includes jurisdictional and non-jurisdictional proceedings, and some scholars determine the term of administrative procedure which is interpreted as statutory rules, order and conditions (sample) of performance of procedural actions towards consideration and solution of a particular administrative case in the public sphere.

According to N.H. Salishcheva administrative proceeding covers all aspects of the state apparatus activities, from preparation and issuance of governance acts to material and technical actions. It embraces a wide range of social relations in the sphere of public administration and can be divided into three types due to its content:

− proceeding connected with tasks execution of internal organization of executive office;

− proceeding which mediates relations of the state apparatus with other government bodies, establishments, enterprises that are not a part of its system;

− proceeding in cases connected with the relations between citizens or non-governmental organizations and executive authorities.

The difference between process and proceeding lies in the fact that the latter is regulated by means of the organizational rules which compose a certain group of rules of substantive administrative law [4, p. 9].

Important organic elements characterizing administrative proceeding are stages, phases, procedural actions.

The stage is considered as a relatively independent part of consecutive procedural actions, which along with the general tasks, has unique targets and peculiarities that relate process participants, their rights and obligations, duration of procedural actions and nature of procedural documents which are executed [5; 171].

Procedural stage is relatively individual, time separated and logically linked set of procedural actions aimed at achieving a certain goal and solving the corresponding tasks of a particular administrative proceeding which is characterized by a range of subjects and enshrined in procedural acts [6, p. 192].

The following stages of administrative proceeding can be determined:

– stage of case analysis in the course of which the legal assessment of gathered information is given, the materials of the case are fully and thoroughly investigated in order to establish an objective truth, a concrete decision is made;

– stage of appealing or protesting of case decision that has a non-binding nature;

– stage of judgment execution in the course of which activities on administrative case are logically finished [7, p. 65].

Every stage of administrative proceeding or administrative procedure can have own phases and actions. Thus, at the phase of proceeding breach in a case of administrative infraction, it is identified the phase of termination of an offense and the application of appropriate measures ensuring proceeding in the case, for example, administrative detention.

Stages exist in any administrative proceeding. Each kind of administrative proceedings has its own, which does not duplicate in other types. Stages of some types of proceedings are fixed in a statutory order, and others are not fixed and constitute a specific result of generalization of the current rules in a particular sphere [8, p. 331].

For example, proceedings for the issuance of regulatory acts of governance consist of five stages:

– identification of the purpose of issuance of a regulatory act (at this stage, information about the state of affairs is gathered, situations that require a regulatory adjustment are found);

– preparation of a draft act (executors are determined, it is agreed the draft (it is vised), its creation, the terms of development etc.);

– bring a draft up for the discussion by a governing body (the draft is evaluated by the governing body, and an ideal decision is approved);

– decision-making on a draft (the draft is considered as adopted or not adopted);

– publication of the act (informing officials of it). [9, p. 32]

In the proceeding for establishment, re-organization and liquidation of organizational structures in the sphere of public administration, the following stages are distinguished:

– collection and initial study of information about the need for organizational changes;

– substantiation of changes;

– selection and analysis of the rules to be applied;

– consideration of a case by the competent authority;

– making a decision [10, p. 98].

In the proceeding for completing institutional structures in the sphere of public administration, there are the following stages:

– study of information;

– harmonization of employment agreement terms;

– implementation of the necessary organizational measures;

– choice of rules which should be applied;

– consideration of the case;

– making a decision.

The obligatory stages of this proceeding include: a) administrative investigation and distribution of materials under jurisdiction: b) consideration of a case by the competent authority (official) and the resolution adoption; non-binding: c) appeal and protest against the resolutions, their review; d) absolute execution of case-related decision [11, p. 171].

Non-jurisdictional proceedings

Before discussing the essence of non-jurisdictional proceeding, it is necessary to determine the approach to the basic notion of non-jurisdiction activity and the availability of the grounds for its perception from the procedural point of view.

On the basis of the purpose of non-jurisdiction proceedings, namely the satisfaction of the legitimate interests of natural and legal entities, and taking into account their tasks, in particular the resolution of individual cases, it is possible to distinguish a number of features, this type of proceedings is corresponded to. It will permit them to reflect them fully in defining the notion of administrative non-jurisdictional proceedings.

Non-jurisdictional activities (or activities of non-jurisdictional nature) arise in the course of executive and administrative activities of state bodies and is aimed at solving cases of a positive nature [12, p. 503]. An address to the scientific achievements of scholars makes it possible to outline the distinction between jurisdictional and non-jurisdictional activity.

S. Aleksieiev defined a jurisdiction as the activities of the competent bodies authorized to consider legal cases (of specific life situations in relation to which the law is applied) and to make binding decisions [13, p. 116]. However, that sort of the definition does not give grounds for differentiating these activities. The most precise definition of administrative jurisdiction is given in the textbook on administrative law prepared by the authors' team in 2004 under the general editorship of V. Averianov. According to their point of view, administrative jurisdiction includes activities which resolve, in a legally-authoritative nature, a legal case, carry out legal protection of violated or disputed interests, and decide on the application of a corresponding legal sanction, renewal of a violated right [14, p. 492].

The scientific best practices on administrative law in relation to the definition of administrative jurisdiction can be conditionally divided into two large groups: those that justify so-called broad approach and those that adhere to a «narrow» meaning of administrative jurisdiction. «Broad» approach is similar to the understanding of a jurisdiction expressed by S. Aleksieiev. That is, administrative jurisdiction covers all government and administrative activities of the competent authorities relatively resolution of legal disputes (issues) of individual significance that arise in law.

Compared to administrative jurisdiction, legal protection is not carried out in the process of administrative non-jurisdiction, and authoritative decision is not connected with the application of a legal sanction or implementation of law enforcement activities. At the same time, such decision, although related to the solution of individual cases, but its subject does not concern an offense or dispute over issue of law. Taking into account one direction of non-jurisdiction activity, it is appropriate to raise the issue of the possibility of its consideration as such that is carried out through the implementation of a set of certain actions and procedures, that is, in procedural form.

V. Kolpakov describes administrative proceeding as a special type of administrative activity in solving a certain category of cases based on the general and special procedural rules. [16, p. 337-338]. From the procedural point of view, it is defined the essence of administrative proceeding as a part of administrative process, which unites a group of entire procedural relations, for consideration and resolution of which a certain procedure is established which leads to the registration of obtained results in the relevant documents. N. Salishcheva stressed on the coverage of the whole activities of the state apparatus by administrative proceedings, from the preparation and issuance of governance acts and to material and technical actions. The scholar identified three types of administrative proceedings depending on their content:

a) proceeding related to the implementation of the tasks of internal organization of the management apparatus;

b) proceeding that mediates the relationship of the state body with other government bodies, institutions, enterprises that are not a part of its system;

c) proceeding in cases related to the relations between citizens or non-governmental organizations and executive and administrative bodies [17, p. 19].

Actually, the highlighted proceedings are procedural forms of different directions – internal and external – of administrative (management) activities. For this reason, it is expedient to accept the author's conclusions as such that have a general nature.

On the basis of refined theoretical foundations relatively the essence of administrative proceeding, it is possible to identify its features:

a) it is a homogeneous group of organizational-administrative and procedural actions;

b) these actions are carried out in order to implement separate material administrative-legal norms and are task-oriented;

c) it is a part of administrative process;

d) administrative proceeding is completed by the execution of a procedural act.

Taking into account the distinction between jurisdictional and non-jurisdictional activities as well as the marked features of administrative proceeding, one can formulate the concept of administrative non-jurisdictional proceeding. This is a procedural form of the implementation of homogeneous, organizational-administrative and procedural actions, which do not relate to legal protection or the resolution of issue of law, aimed at making a legally-authoritative decision and are committed in connection with the resolution of an individual administrative case [18, p. 32-34].

The major part of proceedings, which constitute the structure of administrative process, is aimed at solving cases concerning so-called positive, namely non-jurisdictional, nature arising in the course of executive and administrative activities of state bodies. The scope of these proceedings is much broader in comparison with jurisdictional proceedings. This is due to the specifics of management activity in the various spheres of society, the diversity and specialization of government bodies, their powers.

Non-jurisdictional proceedings include the following types of proceedings:

- for preparation and adoption of regulatory legal acts;
- for preparation and adoption of individual regulatory legal acts;
- for conclusion of administrative agreements;
- for consideration of citizens' proposals and applications;
- registration and permissive;
- institution;
- for implementation of supervisory and control powers;
- executive;
- for office management;
- for privatization of state and public property;
- for land, ecological, financial-budget, tax and some other matters [19, p. 75].

Jurisdictional proceedings

During solving a legal case, implementing a legal protection of violated or challenged interests a legally-authoritative decision is made regarding the application

of the corresponding legal sanction, renewal of violated right. This activity is called «administrative jurisdiction», which is typical for administrative procedure.

Therefore, some of proceedings in the structure of administrative process are characterized as jurisdictional and administrative proceedings. They include:

− proceedings in cases of administrative offenses;

− proceedings for consideration of citizens' complaints;

− disciplinary proceedings against civil servants, etc.

Proceedings relatively the application of administrative coercive measures, in particular administrative caution and administrative termination, hold an intermediate position between the non-jurisdictional and jurisdictional proceedings [20, p. 256].

The following features are typical for administrative-jurisdictional activity.

1. The existence of a legal dispute (or offense). Consideration and resolution of legal cases caused by positive circumstances are not covered by jurisdictional activities. Jurisdiction arises only when it is necessary to resolve an issue of law or in connection with the violation of existing legal rules. As for administrative jurisdiction, such disputes arise between the parties of public relations, which are regulated by administrative-legal rules, obtaining the nature of administrative-legal disputes.

2. Administrative-jurisdictional activity due to its social significance requires a proper procedural and legal regulation. Establishment and proof of events and facts, their legal assessment is carried out within the framework of a special procedural form, which is important and obligatory for the jurisdiction. Administrative jurisdiction differs significantly from other types of jurisdictional activities existing within the framework of criminal and civil proceedings. It is a less detailed procedural activity.

Consideration of administrative legal disputes is carried out on the basis of the relevant regulatory legal acts, which establish the procedure for consideration of complaints about unlawful actions or passivity of bodies and officials, which violate the rights and legitimate interests of citizens. As for administrative torts, the procedural order for consideration of such cases is fixed in the procedural part of the Code of Ukraine on Administrative Offences.

3. Administrative-jurisdictional, as other types of jurisdictional activity, stipulates a competitive nature in considering cases. It means that the parties to an administrative-legal dispute, which are guilty of commission of an administrative offense, are not passive observers of solving a case by the jurisdictional bodies. They are endowed with sufficiently broad procedural rights and it enables them to defend their interests actively, present evidence, make a petition, and deny presented evidence of the commission of an administrative offense. In addition, administrative-jurisdictional bodies, their officials are obliged to facilitate the implementation of these procedural rights.

4. Binding nature to make a decision in the form of a legal act is an important feature of jurisdictional activity. As a way to resolve legal conflicts, jurisdiction includes a binding nature for a final decision – an act of application of the rules of law to a particular case. Jurisdictional act of a particular administrative case means, in fact, the resolution of a legal dispute [21, p. 103].

If it concerns an offense, then such an act may provide legal sanctions, and their application is one of decision options made by administrative and jurisdictional authorities. Other options may include, for example, the decision of proceedings termination or the application of influence measures to a minor.

As it is known, a proceeding in an administrative case is considered complete, when the decision on it is fulfilled in full extent. In this case, the legislator provides a relevant guarantee of the reality of decisions adopted by the administrative-jurisdictional body. In particular, the judgment on an administrative offense is a mandatory for state and public bodies, enterprises, institutions, organizations, officials and citizens.

5. Variety of subjects of administrative jurisdiction. First of all, it is due to the possibility to appeal against actions and decisions of bodies and officials which violate the rights of citizens. That is, any supreme authority is obliged to consider such appeal and to make a corresponding decision.

At the same time, the peculiarities of offenses in various branches of management lead to the availability of a significant number of bodies (officials) authorized to consider them and decide on merits. In the vast majority of cases, the consideration of cases of administrative offenses is entrusted to bodies whose the main task, along with the exercise of jurisdictional functions, is the exercise of executive and regulatory powers in various branches of public administration.

Administrative-jurisdictional functions are also carried out by the bodies which are specially established for the consideration of cases of administrative offenses. These are administrative commissions under the mayor's office of raion, city, and district city councils.

6. Courts hold a special place in the system of administrative and jurisdictional bodies. It is necessary to keep in mind in that the court proceedings on administrative violations cannot be recognized as a separate, independent form of justice, as the court applies measures of administrative responsibility under the same rules as the executive authorities and according to the same law – the Code of Ukraine on Administrative Offences. In this case, the court carries out administrative jurisdiction «by analogy» with the administrative procedure for prosecution for administrative offenses. With that in mind, the court, when deciding cases on administrative offenses, acts as a body of administrative jurisdiction, and not as an administrative justice body [22, p. 65-68].

Consequently, jurisdictional proceedings consist in the consideration of administrative-legal disputes, cases of administrative violations (and in relation to civil servants – disciplinary offenses) in the statutory administrative-procedural form established by specially authorized bodies (officials) which have the right to consider such disputes and impose administrative penalties.

At the same time, an understanding of the place and role of a citizen as a participant of these proceedings is important for the general characteristic of administrative proceedings of any kind. The possibilities of a citizen to participate in administrative proceedings as a party and to act as the subject of administrative process are determined by the content of his administrative-procedural status.

In general, it is possible to distinguish the following outstanding characteristics of jurisdictional proceedings:

– they arise in order to resolve a dispute over issue of law arising from the rules of administrative law or with the application of measures of administrative coercion;

– they take place both in the activity of courts (consideration of cases of administrative offenses, cases concerning appeal of decisions, actions or inactivity of the subjects of power authorities) and in the activities of public administration bodies (consideration of cases of administrative offenses, licensing, accreditation, attestation, other cases of a positive nature);

– a representative of the state (court or public administration body) is the obligatory subject of jurisdiction proceedings;

– the result of the proceedings is the decision due to which a legal conflict is settled or measures of administrative coercion are applied (not applied) [23, p. 96].

Based on the above types of jurisdictional administrative proceedings, we will consider the essence of the main ones.

1. Proceedings in cases of administrative violations are the procedure for the activities of bodies (officials) regulated by the law to bring offenders to administrative liability. The importance of jurisdictional proceedings related to administrative offenses is explained, at least, by the following fact: administrative offences rank first in number among other types of offenses.

2. Proceedings in administrative courts are a trial concerning the appeal of decisions, actions or inactivity of the subjects of authoritative powers. This type of proceedings takes place in the activity of administrative courts – relatively new type of legal proceedings of Ukraine. The activity of administrative courts in resolving cases of administrative jurisdiction is regulated by the rules of the Code of Administrative Judicial Procedure of Ukraine.

3. Disciplinary proceedings are cases consideration, which is regulated by administrative law, concerning persons who have committed disciplinary misconducts and aimed at establishing objective truth and bringing the perpetrators to disciplinary responsibility.

4. Proceedings for the complaints of citizens are cases consideration, which are regulated by administrative legislation, on the renewal of rights and protection of legitimate interests of citizens violated by actions (inactivity), decisions of bodies of public administration, enterprises, institutions, organizations, groups of citizens, officials.

Conclusions

Thus, the activity of public administration bodies always requires the consideration and resolution of issues of managerial or jurisdictional nature in relation to specific individuals or legal entities. These activities are called administrative cases. To resolve an administrative case, it is necessary to apply the substantive administrative law to a particular individual case or a particular life situation. The administrative-legal norms are applied with the observance of certain statutory procedures (rules). These rules are enshrined in regulatory legal acts as administrative procedural rules – mandatory rules governing the procedure for

resolving administrative cases of various categories. Joined in the institutes, they form administrative procedural law. The resolution of various administrative cases based on administrative procedural rules is called administrative procedural activity, which is carried out by the executive and regulatory bodies and their officials. The complex of administrative procedural actions (activities) within a specific administrative case is called administrative proceeding. In the theory of administrative procedural law, administrative proceedings are classified into jurisdictional and non-jurisdiction, which depends on the definition of their place in administrative process, criteria of classification, correlation of such concepts as process, procedure and proceedings. A contemporary scientific thought doesn't have a single approach to this issue, as the definition of the concept of administrative proceedings depends on what content is put into the concept of administrative process by scholars and supporters of what concept they are. The aforementioned issue requires, first of all, a theoretical substantiation of the notion of administrative jurisdictional and non-jurisdictional proceedings. Taking into account the distinction between jurisdictional and non-jurisdictional activity as well as the distinctive features of administrative proceedings, it is possible to formulate the concept of administrative non-jurisdictional proceedings. This is a procedural form of implementation of homogeneous organizational-administrative and procedural actions, which do not relate to legal protection or the resolution of an issue in law, aimed at making a legally-authoritative decision and are committed in connection with the resolution of an individual administrative case. In turn, jurisdictional proceedings consist in considering administrative-legal disputes, cases of administrative offenses (and cases of disciplinary offenses in relation to civil servants), in the statutory administrative-procedural form, by specially authorized bodies (officials) who have the right to consider such disputes and impose administrative penalties.

On the basis of a defined concept, a further scientific search can be carried out in order to distinguish the types of administrative non-jurisdictional proceedings, which may be in a significant quantity taking into account the diverse nature of management activity. In the future, it is advisable to pay attention to the problem of unification of procedural actions and acts adopted in the process of implementing various types of administrative non-jurisdiction proceedings.

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FUNCTIONAL PURPOSE OF MODERN ADMINISTRATIVE LAW AND ADMINISTRATIVE PROCEDURE LAW

Makushev P.V.,
Doctor of Juridical Sciences, Professor,
Dean of Faculty of Law
Dnipropetrovsk University of Humanities

Khridochkin A.V.,
Candidate of Historical Sciences, Associate Professor,
Senior Lecturer at Department of General Legal Disciplines
Dnipropetrovsk University of Humanities

Mykhailenko D.O.,
Candidate of Juridical Sciences, Associate Professor,
Senior Lecturer at Department of Criminal Legal Disciplines
Dnipropetrovsk University of Humanities
Dnipro

FEATURES OF THE ADMINISTRATIVE AND LEGAL STATUS OF SUBJECTS OF SPECIAL COMPETENCE IN RELATION TO PUBLIC ADMINISTRATION IN THE FIELD OF INTELLECTUAL PROPERTY IN UKRAINE

Summary

Relevant issues of the administrative and legal status of subjects of special competence in relation to public administration in the field of intellectual property are considered. A circle of specified subjects in the system of subjects of public administration is determined. The role of subjects of special competence in the fulfilment of tasks of public administration in the sphere of intellectual property is identified. Classification of subjects of special competence regarding public administration in this field is presented. Features of the administrative and legal status of each group of subjects of special competence in relation to public administration in the field of intellectual property are analysed. Specifics of the influence of these subjects on legal relations arising in the sphere of intellectual property are characterised. Conclusions are drawn about the place of subjects of special competence in relation to public administration in the field of intellectual property among other subjects. Proposals on the necessity to improve current domestic legislation in the sphere of intellectual property are formulated.

Introduction

The efficiency of the fulfilment of tasks of public administration in the field of intellectual property depends on many factors, among which a special place belongs to the presence of a modern system of its subjects, as well as the efficiency of preparation and advanced training of relevant specialists and information and analytical support for their activity. The process of formation of such a system is still far from completion. However, at the same time, one can agree with the statement that the foundations of the legislative provision of the activity of this system have already been laid down, which creates the space for the gradual development of other important components of it. First of all, it concerns the determination of features of the administrative and legal status of subjects of public administration in the field of intellectual property.

Issues of the administrative and legal status of public administration bodies have repeatedly become the subject of research by many specialists in the sphere of administrative law, in particular: V. B. Averianov, O. V. Anpilohov, O. M. Bandurka, V. M. Bevzenko, Yu. P. Bitiak, I. L. Borodin, V. M. Harashchuk, I. P. Holosnichenko, Ye. V. Dodin, S. V. Kivalov, L. V. Koval, T. O. Kolomoiets, V. K. Kolpakov, V. T. Komziuk, O. R. Mykhailenko, N. R. Nyzhnyk, M. P. Orzykh, I. M. Pakhomov, O. P. Riabchenko, V. M. Selivanov, S. V. Taranushych, Yu. S. Shemshuchenko, and others. However, issues of determination of the administrative and legal status remain today relevant in relation to a number of unresolved theoretical and practical issues in this sphere. And despite the intensity and a wide range of research devoted to various aspects of these problems, many issues in this field are still controversial. Meanwhile, the strength of the foundation for the innovative development model, its modernization, increase of competitiveness in the world socio-economic system depend on the resolution of the problem of creating an effective system of subjects of public administration in the field of intellectual property in Ukraine, with a clear definition of their administrative-legal status. And on this, in turn, – the prospects of creating jobs in new industries that are the face of the world economy of the XXI century – a knowledge-based economy.

A special place in the system of subjects of public administration in the sphere of intellectual property is occupied by state authorities with special powers in this field. Therefore, execution of mostly the same function of public administration is laid upon subjects of special (functional) competence, which includes authorities performing executive, supervisory, regulatory, and registration-authorization functions. These authorities provide for the implementation of state policy in a certain sphere, conduct management on issues of common interest to all or many sectors of the economy. Subjects of special competence in relation to public administration in the field of intellectual property should include those who, along with the performance of their main functions, also take part in public administration in the specified field. This group of subjects, depending on the peculiarities of their administrative-legal status, is divided into law-enforcement, regulatory, and judicial agencies.

Administrative-legal status of law enforcement authorities – subjects of public administration in the field of intellectual property

Law enforcement authorities, which should include only those specifically created by the state to carry out any main law enforcement function under a clearly established law procedure, are endowed with important powers regarding public administration in the field of intellectual property. It is precisely this line of activity for the law enforcement authority to be the principal (main or priority) activity. Thus, based on the above, the system of law enforcement authorities of Ukraine may have the following form: Security Service of Ukraine, prosecution authorities, internal affairs bodies of Ukraine, State Fiscal Service of Ukraine, Department of State Guard of Ukraine, State Penitentiary Service of Ukraine, National Guard of Ukraine, and state border guard authorities. The analysis of the statutory enactments, which secure the legal status of these state law enforcement institutions, namely their tasks, functions, and powers, testifies that some of them (the Security Service of Ukraine, the bodies of the Prosecutor's Office of Ukraine, the bodies of internal affairs of Ukraine) are subjects of public administration in the sphere of intellectual property. The most important difference between their activities in relation to public administration in the field of intellectual property from the activities of other actors operating in this area is that it is associated not only with the organization of the protection of rights to intellectual property objects but with its active form – security.

In accordance with the Law of Ukraine «On the Security Service of Ukraine» [1], the security service participates in the development and implementation of measures to ensure the protection of state secrets (in particular, regarding secret inventions and utility models as objects of intellectual property, since in accordance with the Law of Ukraine «On Protection of Rights to Inventions and Utility Models» a secret invention or a secret utility model are objects containing information classified as state secrets), assistance in preserving commercial secrets (in the manner prescribed by the law of the SSU, assists enterprises, institutions, organizations, and entrepreneurs in preserving their commercial secrets, the disclosure of which may harm the vital interests of Ukraine, is responsible for the state policy on holographic protection of goods and documents, and carries out state control and coordination of activities in this area). In addition, while analysing the powers of the SSU, we also note that, although the counteraction to the intellectual property offenses does not fall within its direct competence, the SSU must provide assistance through available forces and means, including technical, to the National Police bodies, other law enforcement agencies in the fight against offenses, including violations in the field of intellectual property.

Important functions of the subject of public administration in the field of intellectual property are carried out by the of Public Prosecutor General's Office of Ukraine. According to Art. 1 of the Law of Ukraine «On Prosecutor's Office», the prosecutor's office, in the manner prescribed by this law, exercises the functions established by the Constitution of Ukraine in order to protect the rights and freedoms of man, the general interests of society and the state [2]. In addition, Art. 2 of the Law of Ukraine «On Prosecutor's Office» establishes its main functions: maintenance of a state prosecution in court; representation of the interests of a citizen or state in court

in cases specified by law; supervision over the observance of laws by the bodies conducting operative search activity, inquiry, pre-trial investigation; supervising the observance of laws during the execution of judicial decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens. Due to the fact that the illegal reproduction, replication, and distribution, including through the implementation of import-export operations, intellectual property objects violate, as a rule, the rights and legitimate interests of citizens, in accordance with Art. 23 of the above-mentioned law, the representation by the prosecutor of the interests of a citizen or a state in court is to carry out procedural and other actions aimed at protecting the interests of a citizen or a state. A significant role in stopping the illicit circulation of goods containing objects of intellectual property is played by the interaction between the departments of the customs service and the prosecutor's office of Ukraine.

In the realization of the tasks of public administration in the field of intellectual property, the Ministry of Internal Affairs of Ukraine (hereinafter – the MIA of Ukraine) and its structural divisions play an important role. In accordance with the Regulation approved by the Cabinet of Ministers of Ukraine, the Ministry of Internal Affairs of Ukraine is the central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine. In particular, the MIA of Ukraine participates in the formation and maintenance of a scientific and scientific-technical policy of the state in the sphere of protection of public relations related to the protection and security of human rights and freedoms, public security and order, crime prevention, etc. [3]. At the same time, units of the National Police of Ukraine, in particular, the Department of Economic Protection of the National Police of Ukraine (hereinafter – the DEPNPU) and the Department of Cyber Police of the National Police of Ukraine (the DCNPU), play a leading role in preventing offenses in the field of intellectual property.

DEPNPU was formed according to the order of the National Police of Ukraine [4]. Among the functions of the DEPNPU, the use of anti-crime measures in state authorities, property rights, intellectual property, related to counterfeiting, and also the provision of compensation for losses caused by these crimes, are separately identified. Similar tasks and functions are assigned to all the administrations (departments) of the DEPNPU at the local level. Thus, counteraction to crimes in the field of intellectual property is one of the main functions of the DEPNPU but this does not affect the structure and specialization of its employees since the current structure of the DEPNPU does not provide for separate departments for combating crimes in the field of intellectual property, which usually significantly reduces the effectiveness of activities in this area. In practice, operational cases concerning crimes in the field of intellectual property are transferred for the development to one of the employees of departments of economic protection at the local level, however, as specialists note, there are few such cases for today.

Another division of the National Police of Ukraine, which directly deals with counteracting crimes against intellectual property, is the DCNPU. It was created in accordance with the order of the National Police of Ukraine [5]. The DCNPU includes the Office for the Prevention of Crimes in the Sphere of Intellectual Property

and Economic Activities (OPCSIPEA), which is managed by the Deputy Head of the DCNPU – the head of the OPCSIPEA. The OPCSIPEA's structure includes three departments: counteraction to crimes in the sphere of electronic commerce, counteraction to crimes in the sphere of circulation of illegal content and telecommunications, and counteraction to crimes in the sphere of payment systems. Accordingly, the counteraction to crimes against intellectual property related to the use of computer technologies is a priority task of the DCNPU. Information reports, presented on the official site of the DCNPU, confirm the effectiveness of the measures applied in the field of counteraction to crimes against intellectual property. Thus, according to the report of the DCNPU as of April 30, 2016, the detection of the clandestine manufacture of counterfeit copies of household chemicals, trademarks as Ariel, Tide, Head & Shoulders, Fairy, and Vanish was revealed in Lutsk. And the investigative police unit in the Rivne region opened a criminal proceeding under Art. 229 of the Criminal Code of Ukraine, within the framework of which there were established persons involved in the organization of the said criminal offense, the workers who were engaged in the packaging of counterfeit, as well as customers, who subsequently realized this counterfeit to citizens [6]. Of course, the creation of a special department in the structure of the National Police of Ukraine to counteract crimes against intellectual property on the Internet should be considered positive and very relevant, however, it should also be noted that the activities of these units are more related to the stoppage of crimes in the specified area since the specifics of the latter is such that they are most often manifested by the consequences. Public coverage of the positive experience of countering cybercrimes related to the violation of intellectual property rights certainly has a certain preventive effect on persons who are prone to commit crimes in the field of intellectual property, but at the same time, in our opinion, the staff of the DCNPU should conduct purposeful development and carry out measures for the prevention of cybercrime against intellectual property, committed with the help of computer technologies.

The Ministry regularly conducts such operational and preventive measures as the operation «Intelligence», operation «Pirates», etc., on the development of intellectual property market subjects, during which one of the priority areas of work is defined as counteraction to the sales and the manufacture of counterfeit products using signs for goods and services of well-known Ukrainian and foreign manufacturers, as well as the fight against Internet piracy [7, p. 135].

Thus, public administration activities in the field of intellectual property are one of the functions of the SSU, the Prosecutor's Office, and the bodies of internal affairs within their competence as defined by law. That is, law enforcement agencies of Ukraine act as one of the subjects of public administration in the field of intellectual property. The necessity of attracting the latter to the mechanism of public administration of the mentioned sphere is explained by the widespread occurrence of cases of illegal, even criminal, violation of intellectual property rights, which requires the presence of a power mechanism for the prevention and stoppage of such violations.

Administrative-legal status of regulatory authorities – subjects of public administration in the field of intellectual property

The main difference between the subjects of public administration that are a part of the group of regulatory actors from law enforcement bodies is that their defining function is the control function, which, as noted above, already belongs to secondary law enforcement functions. At the same time, the law-enforcement nature of the control function is connected primarily with the fact that the regulatory bodies, acting as an integral part of the state apparatus, act in the name of and on behalf of the state and exercise control over the observance of legality in one or another field of state activity. An essential feature of the activities of the controlling bodies and, in particular, those bodies operating in the field of public administration in the sphere of intellectual property is the fact that the scope of control activity and authority of the latter extends to objects regardless of their departmental subordination. That is, regardless of who owns, uses, or disposes of intellectual property rights, it can become subject to control by the controlling authority. Their number is quite significant, and the following can be attributed to the list of controlling agencies that carry out public administration in the field of intellectual property: the Antimonopoly Committee of Ukraine, the State Fiscal Service of Ukraine (hereinafter – SFSU), the State Service of Ukraine for Food Safety and Consumer Protection (hereinafter – SSUFSCP), Ukrainian Institute for Plant Variety Examination, State Service of Ukraine for Geodesy, Cartography and Cadastre (hereinafter – SSUGCC), Ministry of Health of Ukraine, Ministry of Culture of Ukraine, Ukrainian State Film Agency, Ministry of Ecology and Natural Resources of Ukraine, as well as State Property Fund of Ukraine (hereinafter – SPFU).

In particular, the Antimonopoly Committee of Ukraine has a significant influence on the activities of economic entities. Acting as a central executive body with a special status [8], it protects the interests of business entities from unfair competition related to the unlawful use of intellectual property objects in relation to the misuse of commercial designations, the unlawful use of goods by another manufacturer, and copying the appearance of the product. The Antimonopoly Committee of Ukraine exercises state control over the compliance with legislation on protection against unfair competition. In accordance with the Law of Ukraine «On Protection Against Unfair Competition», unfair competition is a way of violating the right of intellectual property, which is any action in a competition that is contrary to trade and other honest practices in economic activity [9]. The actions that are recognized as unfair competition and violate the right of intellectual property are: unlawful use of the business reputation of the business entity (use of the name, commercial (corporate) name, trademark (mark for goods and services), promotional materials, the registration of packaging of goods and periodicals, other marks without the permission (consent) of an entity that has previously started using them or similar marks in economic activities that led or may result in confusion with the activity of this entity), creation of obstacles to business entities in the process of competition (introduction into economic circulation under its mark of goods of another manufacturer by changing or removing the marks of the manufacturer without the permission of the authorized person, reproducing the appearance of the product of

another entity and introducing it into economic circulation without a single indication of the manufacturer of a copy that may lead to confusion with the activity of another entity), and the achievement of unlawful competitive advantages and improper collection, disclosure, and use of commercial secrets.

Measures on public administration in the field of intellectual property in the process of foreign economic activity and prevention of movement across the customs border of Ukraine of counterfeit is used by the State Fiscal Service of Ukraine (SFSU) – an authority that implements state tax policy, state policy in the field of state customs affairs, state policy on administering a unified contribution for compulsory state social insurance, state policy in the field of combating offenses in the application of tax, customs legislation, as well as legislation on issues of payment of unified contribution. In the machinery of the SFSU, the aforementioned function is assigned to the Office for Organisation of Customs Control and Registration of the Customs Department, which includes the Division for the Protection of Intellectual Property Rights and Export Control. The SFSU, in accordance with its functions, ensures the keeping of the customs register of intellectual property, which, based on statements of owners of property rights to intellectual property, includes already more than 1.5 thousand objects. According to the European Union, 25 million products are falsified annually. With the development of technologies, counterfeits are being improved, therefore, the issue arises about setting up continuous training of customs officers, improving control facilities, and creating special units at the customs border to counteract counterfeit goods.

Countering offenses in the field of intellectual property is also a part of the functions of the State Fiscal Service of Ukraine (SFSU). In accordance with the Resolution of the Cabinet of Ministers of Ukraine on May 21, 2014, № 432, the main tasks of the SFSU include the adoption of measures to protect intellectual property rights in the process of foreign economic activity, preventing the movement of counterfeit goods through the customs border of Ukraine [10]. In particular, for import into the customs territory of Ukraine or export outside this territory of goods intended for industrial or other business activities, with violation of the intellectual property rights protected by law (Part 1 of Article 476 of the Customs Code of Ukraine), as well as in case of import into the customs territory of Ukraine or the export of counterfeit goods from this territory.

The list of grounds for suspending the customs clearance of goods, in respect of which the right-holder has not been filed an application to promote the protection of his/her property rights to the intellectual property, on the initiative of the body of incomes and fees, the Cabinet of Ministers of Ukraine, included: submission to the customs authority or to the State Customs Service of a statement of a person who, according to the law, owns property rights to an object of intellectual property rights not included in the customs register of objects of intellectual property rights or a person acting on his/her behalf within the limits of the given powers; received information on violation of intellectual property rights from law enforcement and controlling agencies, customs authorities of Ukraine and other countries, international organizations, whose competence includes protection of intellectual property rights; declaring a product with a trademark that is different from the trademark available in

the customs register only by some elements and is similar to it in such a way that they can be confused [11]. Thus, the activities of the SFSU in the area of countering the violation of intellectual property rights are aimed primarily at preventing the said offenses in the foreign economic activity of our country and stopping the movement of goods that were manufactured in violation of intellectual property rights through the customs border. In case of detection of violations of intellectual property rights in other spheres, the SFSU submits relevant materials to the law enforcement agencies as appropriate.

The next subject of public administration in the field of intellectual property of a special competence is the State Service of Ukraine for Food Safety and Consumer Protection (hereinafter – SSUFSCP), which is the central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Agrarian Policy and Food and which implements state policy, including in the field of protection of plant variety rights through the implementation of state supervision (control) in this area. The SSUFSCP, in accordance with the tasks entrusted to it, generalizes the practice of applying legislation on matters within its competence, develops proposals for the improvement of legislative instruments, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, laws and regulations of ministries and, in the prescribed manner, submits them to the Minister, who ensures the formation of state policy in the relevant field. In particular, in the field of plant variety rights protection, the SSUFSCP organizes and conducts state supervision (control) of: compliance with the requirements of the legislation on the protection of rights to plant varieties in the field of production, use, storage, sale, and reproduction of planting material of plant varieties; preservation of plant varieties, registration of licensing agreements for their use and payment of royalties; conducting primary seed growing by owners of proprietary rights of intellectual property and supporters of plant varieties; acquisition of rights to plant varieties and their registration; import of planting material (seeds) of unregistered plant varieties in Ukraine; the observance of the personal non-property right of authorship to the variety, the property right of the holder of the variety, the right of prior use and the right to renew the rights to a variety, the right to spread the variety in Ukraine, the rights of the author of the variety in the event of the owner’s refusal from the property right to the variety, the order of removal from Ukraine of the planting material (seeds) of plant varieties containing an object of intellectual property, requirements of an agreement between the employer and the author of the variety for the payment of fair remuneration [12].

Effective public administration in the field of the protection of plant variety rights is impossible without the availability of appropriate examination facilities (due to the fact that crop production (along with animal husbandry) is traditionally considered as a leading branch of agriculture since the products of this industry form the basis for ensuring food security of the state), a leading role among which is played by the Ukrainian Institute for Plant Variety Examination, established in June 2002 through the reorganization of the State Centre for Certification, Identification, and Quality of Plant Varieties of the State Commission for Testing and Protection of Plant Varieties of the Ministry of Agrarian Policy and Food of Ukraine. The Institute is the basic

research institution of the state system of protection of rights to plant varieties, which priority research areas are the implementation of projects in the field of protection of rights to plant varieties and conduct of state scientific and technical expertise of plant varieties as objects of intellectual property.

Separate powers regarding the public administration in the field of intellectual property are entrusted to the State Service of Ukraine for Geodesy, Cartography and Cadastre (SSUGCC), which, in accordance with the tasks entrusted to it: coordinates the activities related to the establishment, standardization, accounting, registration, use, and preservation of geographical names; organizes an appropriate examination of geographical names; provides for the creation and maintenance of the State Register of Geographical Names, controls the use and preservation of geographical names; defines stable geographic features on the territory of Ukraine; carries out in the established manner the definition of the boundaries of geographical areas, which are associated with special properties, certain qualities, and other characteristics of goods, and provides relevant conclusions [13].

Among the wide range of tasks entrusted to the Ministry of Health of Ukraine, it carries out the formation of state policy in the field of protection of intellectual property and access to medicines [14]. This ministry is also a specially authorized body for the definition and control of special properties, certain qualities, and other characteristics of goods in relation to food, food raw materials, and mineral waters.

As the subject of public administration in the field of intellectual property of special competence, the Ministry of Culture of Ukraine (MCU) is responsible for the formation of state policy in the field of cinematography, culture, and arts, cultural heritage protection, export, import, and return of cultural property, state language policy, restoration and preservation of national memory, and also a specially authorized body for the determination and control of special properties, certain qualities, and other characteristics of products of folk artistic crafts. Although until recently, economic growth has been associated with technological and innovative development in technical fields (industrial society), with Ukraine's choice of the transition to the information society (post-industrial society), the sphere of culture goes to a qualitatively new level of development and communications. The provision of cultural services is increasingly turning into a «cultural industry» in which various goods and services are created and distributed. Culture encourages creativity and innovation. In this context, the important task of the Ministry of Culture should be the activation and strengthening of unique local traditions and customs, encouraging the process of revival and development of traditional Ukrainian folk crafts.

The Ministry of Culture exercises separate powers regarding public administration in the sphere of intellectual property through the Ukrainian State Film Agency subordinate to it. This body issues national certificates for the right to distribute and display films and, in carrying out this activity, takes measures to protect intellectual property rights, implement copyright and related rights.

The State Property Fund of Ukraine (SPFU), the central executive body with a special status, implements state policy in the field of privatization, lease, use, and alienation of state property, and the management of state-owned property [15]. In the field of appraisal of property rights to objects of intellectual property right, the SPFU

organizes training of appraisers, in particular, approves requirements to heads of entities of appraisal activity and appraisers, approves the composition and procedure of the examination committee for the training of appraisers in the direction «Estimation of integral property complexes of shares, securities, property rights and non-property assets, including assessment of rights to intellectual property objects», organizes their work, approves training programs and examinations.

Ministry of Ecology and Natural Resources of Ukraine, acting as the subject of public administration in the field of intellectual property of a special competence, is the main body in the system of central executive authorities in the formation and implementation of state policy in the field of environmental protection, environmental and, within its competence, biological, genetic, and radiation safety, waste management, including radioactive, pesticides, and agrochemicals.

Administrative-legal status of judicial authorities – subjects of public administration in the field of intellectual property

The judicial branch is endowed with its own powers on public administration in the field of intellectual property, and as a result of its reformation, there were principal changes. The fact is that over the last years, the idea of deepening the specialization of courts in intellectual property disputes was actively discussed in Ukraine, and in this regard two main points of view were formed: to create a separate specialized court [16 and others] or to introduce appropriate chambers as a part of local and appellate courts [17 and others]. In the end, the first concept won, and on September 29, 2017, the President of Ukraine based on Part 6 of Art. 19 and Part 5 of Art. 153 of the Law of Ukraine «On the Judiciary and Status of Judges» signed the Decree «On Establishment of Intellectual Property High Court» [18], and the next day, the State Judicial Administration, in agreement with the Supreme Council of Justice, by its order determined the number of judges in a new court – twenty-one posts. According to domestic experts, the very formation of a separate abovementioned court will contribute to solving the problem of delimitation of the jurisdiction of courts in the consideration of cases on issues of intellectual property and, accordingly, will ensure the application of the same and correct judicial practice in resolving relevant disputes. Also, the creation of this court will be aimed at building an effective intellectual property rights protection system taking into account international standards and, in addition, will improve the investment attractiveness of our state.

Until recently, around ninety specialized courts were operating in the world. This trend is related, first of all, to the development of public relations in the field of intellectual property, as well as the entry of countries in which such courts exist, to the World Trade Organization (WTO) (although accession to it and the accession to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) do not oblige countries to set up relevant specialized courts, and many states make such decisions on their own initiative). The names of specialized courts on intellectual property are different in different countries of the world. For example, in Germany, this court is called the Federal Patent Court, while in Japan – the Intellectual Property High Court. However, the title is not the only aspect that distinguishes specialized

courts in this area. First of all, it is about jurisdictional differences. Thus, intellectual property courts in Austria, the United Kingdom, Ireland, and Switzerland are based on the use of standards of the civil process, while there is a combination of standards of administrative and civil processes in Germany, and only administrative in Sweden [19, p. 159-160].

The norms regarding the jurisdiction of the High Intellectual Property Court contain the newly revised Commercial Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine). In accordance with paragraph 2 of Art. 20 of the CPC of Ukraine, the newly formed court will consider the case at first instance: in disputes concerning the rights to an invention, utility model, industrial design, trademark (mark for goods and services), commercial name, and other intellectual property rights, including the right of prior use; in disputes concerning registration, record of intellectual property rights, invalidation, extension of validity, previous cessation of patents, certificates, other acts that certify or on the basis of which such rights arise, or violate such rights or related legitimate interests; recognition of a trademark as well-known; in disputes concerning the authors' rights and related rights, including disputes over collective management of proprietary rights of the author and related rights; in disputes regarding the conclusion, modification, termination, and execution of an agreement on the disposal of intellectual property rights, commercial concessions; in disputes arising out of relations associated with the protection against unfair competition in relation to: the misuse of marks or goods of another manufacturer; copying the appearance of the product; collection, disclosure, and use of commercial secrets; appeal against decisions of the Antimonopoly Committee of Ukraine on issues specified by this item.

Also, the High Intellectual Property Court will include the Appeals Chamber on Intellectual Property, which, according to paragraph 3 of Art. 25 of the CPC of Ukraine will review the decisions made by this court on appeal. Consequently, consideration of cases on intellectual property issues will be carried out in accordance with the rules of commercial court proceedings. At the same time, this will happen with certain peculiarities, in particular: the parties to the relevant disputes will be not only business entities (legal entities and individual entrepreneurs) but also ordinary individuals; state authorities and local self-government bodies will also take part in disputes concerning the invalidation of acts of such bodies that violate intellectual property rights; collective consideration of cases is being introduced.

The Concept of the High Intellectual Property Court, however, contains a number of problematic issues. The first is the territorial remoteness of the High Intellectual Property Court since it will be located exclusively in the city of Kyiv, which naturally will cause the problem of access to this court by the majority of ordinary citizens of Ukraine. Secondly, there is a lack of ex parte proceedings in the CPC of Ukraine. In particular, the issue of the procedural mechanism of recognition of a trademark as well-known, which in any circumstances cannot be actionable, is not solved. The third problem is the problem of the professionalism of future judges – the Specialized Intellectual Property Court should unite people with both experience in this area and the corresponding special education (special knowledge). However, the legislator has for some reason decided that persons who may not have either the first one or the

other can work in the High Specialized Court. This applies, first of all, to judges who have only a requirement for three years' service as a judge. In this case, such experience in the field of intellectual property or consideration of other disputes does not matter. And finally, fourthly, the negative aspect seems to be the lack of a specialist (advisor) in the court process, who has special knowledge of the practice of applying intellectual property law, as the new version of the CPC of Ukraine makes participation of a specialist in the process limited only by court assistance in the use of technical means. In this regard, according to a part of the scientists, it is expedient to introduce such a specialist, who could be involved in court in order to assist in establishing the actual circumstances of the case, providing oral advice or explanations.

Consequently, today the formation and start of work of the High Intellectual Property Court contain many unresolved issues of both procedural and organizational nature, which deepens the already complex task of the functioning of such a judicial branch in the judicial system of Ukraine.

Conclusions

The system of subjects of public administration in the field of intellectual property is based on the generally acknowledged theory of state administration of their division into bodies of general, sectoral, and special competence. The basis of this classification is the scope and nature of competences in relation to objects of intellectual property, subjects of intellectual property rights, and functions of their public administration. Subjects whose competence includes the exercise of all functions related to public administration in the field of intellectual property in one or another volume, regardless of the type of the object of intellectual property and the subjects of their use, are bodies of general competence. They, along with sectoral and special actors, solve other issues of socio-economic development of the state.

The bodies of special competence ensure implementation of the state policy in one or several spheres by providing administrative services, state supervision (control), a generalization of the practice of application of legislation, development of proposals for the improvement of legislative acts. Executive authorities and their officials, as well as in a number of cases other entities, which are endowed with state powers that allow the latter to exercise regulatory influence on social relations, as well as the participants in these relations with the aim of organizing the lawful possession, use, and disposal of intellectual property rights, should be considered as subjects of special competence regarding public administration in the field of intellectual property. And the determination of their administrative and legal status will allow creating a reliable system of legal protection of the results of the intellectual creative activity.

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Ternushchak M.M.,
Candidate of Juridical Sciences, Doctoral Student,
State Research Institute of Ministry of International Affairs of Ukraine
Kyiv

PUBLIC ADMINISTRATION IN THE PARADIGM OF ADMINISTRATIVE AND LEGAL CYCLE

Summary

The article examines a place, influence and significance of the category of «public administration» in the context of studying of juridical disciplines of administrative and legal cycle.

It determines a number of prerequisites for clarifying a legal nature, in particular, a subject of the legal regulation of administrative law and administrative procedure through the influence of the category «public administration». The first section includes the procedural changes in the framework of system update of regulatory and legal base, first of all legislative one, in relation to the functional introduction of new institutes of administrative and legal cycle (the institutes of «administrative justice», «administrative services») and implementation of the results

of performed administrative reform. The second section of preconditions includes theoretical and category changes in relation to the update of conceptual framework that are a logical result of the fundamental scientific achievements of the leading research-methodological legal administrative schools.

The author's definitions for «public administration» and «public management» are formulated as well as their correlation under the principle «from the general to the special» where public administration is the general concept and public administration is the special one.

It is established that the category «public interest» is a system and forming component and actually, the basic one in interpreting «public administration». On the one hand, it is considered as a quintessence for the continuous implementation of public international and constitutional rights, such as: the right to form a governance (electoral law), to public service, to social security, and on the other hand as the activities of public bodies in the area of observance of the principles of legality, the rule of law, publicity, inevitability of punishment.

The range of problems under consideration is evaluated in the articles published in the professional periodicals of Ukraine, in the papers of international and All-Ukrainian conferences as well as in academic programs of disciplines «administrative law», «administrative procedure».

Introduction

Now, theoretical and legal category of «public administration» is increasingly applied in academic and scientific disciplinary use of administrative-legal cycle that greatly modifies, typical for the second half of the twentieth century, the Soviet conceptual identification (association) of administrative legal disciplines with the category «governance».

At first glance, the relevant amendments, that is the change and update of the framework of categories and concepts of disciplines of administrative cycle in terms of the categories «state management» and «public administration», caused by banal borrowings of the foreign terminology. However, it is not quite so and partially corresponds to reality.

Taking into account the peculiarities of English translation, the terms «державне управління» and «публічне адміністрування» are translated as «public administration». However, knowing and referring to the specifics of English translation and the different uses of words, in accordance with a content and situation caused by the interpretation of the same terms, the appropriate translation will be implemented in different ways, for this reason «державне управління» also should be considered as «governance» or «state control» in English use. In this relation, English variants of the translation of «адміністративні органи» are the most controversial and ambiguous on application of related concepts-terms. In addition, from the position of English interpretation the term «адміністративні органи» can be rendered as «administrative bodies», «administrative authorities», «administrative agencies», «government», «state administrations». That is, in the English language, the same term depending on a situation and lexical meaning will be expressed

differently, that is, a number of one-type terms are used that is quite common and widely used, especially in legal and economic practices.

Therefore, it is clear that there is the foreign lexical influence on the transformation of governance into public administration in the case of a change of the obsolete categories base of administrative-legal cycle and in terms of the theoretical use of terminological legal vocabulary based on the foundations and principles of the concept of «governance» or «public administration». But, in our opinion, this influence should be considered as a groundless or secondary, in other words, as narrow one.

According to our opinion, one of the answers relatively establishment of the primary factor for substitution of the terms «governance» for «public administration», advantages of the application of «public administration» in the theoretical dimension of the sciences of legal and administrative direction, can be obtained if there is a particular definition of «public administration» established through analyzing specific characteristic features of this procedural activity, which, according to our position, is the most optimal approach.

Meaning of the category of «public administration»

The analysis of foreign literature regarding the category of «public administration» actually testifies about the similarity of scientific positions regarding the content, purpose and classification approaches.

Thus, Singh H. and Sachdeva P. indicate that the term «administration» derives from Latin «administere», which means the care of people or affairs management. In opinion of scholars, administration can be defined as «group activities which include cooperation and coordination with the purpose to achieve desired goals or tasks».

In general, the term «administration» includes at least four different meaning depending on the context of use:

the first, as a discipline: the name of a field of study or discipline that was lectured in colleges and universities;

the second, as places, type of work (profession), especially it touches the process of knowledge obtaining and training, in fact human resources training;

the third, as a process, namely the total number of measures taken to implement public policy or policy for the provision of public services or goods;

the fourth, in the synonymous meaning of the categories «executive» or «government» [1].

In the general sense, the term «public administration» refers, above all, to the general management of society as a whole. Therefore, in the general sense, administration's activity is directed at shared benefit of the public through the implementation of public administration [2].

Other scholars, in particular Morenikeji A. and Oluwafemi J., consider public administration as the government activity on the formulation and adherence to state policy at the federal, state and local levels, as well as the implementation of executive and operational functions. At the same time, they emphasize the fact that public administration forms government activity for people. Due to the efficient and

effective public administration, the government provides high-quality administrative services for a citizen [3].

Marume S. B. M. says that public administration should be interpreted through the prism of two main approaches to the meaning of corresponding categories, in particular integrated one which is a comprehensive and covers all actions of the government and managerial approach, which will be more narrow in relation to the integrated and will provide management influence. According to this point of view, public administration covers all measures taken to achieve the goal of state power. In other words, public administration is the complex of managerial, technical, office and personnel activities [4].

In fact, Uchem R. O. and Erunke C. E support almost the same position regarding the separation of public administration interpretation in the integral and managerial approaches, but the scholars consider this category from the position of integral and managerial schools. In particular, they emphasize that public administration is a relatively broad and comprehensive area that does not point to the specific direction and scope of public administration. Public administration, at the moment, crosses the line of governmental activities and ruling circles including other spheres, namely church, market, postal services, transport and international relations, etc. However, for a more detailed understanding of the scope of public administration it is advisable to use the following scientific schools: integral and managerial.

The Integral School interprets public administration is a sum total of all the activities undertaken in fulfillment of public policy. These activities include not only managerial and technical functions but also clerical. The central argument of the integral scholars is that public administration is only concerned with all the activities of government undertaken by one or the entire three branch of government.

In its turn, the Managerial School sees public administration as an area that is specifically concerned with only those persons engaged in the performance of managerial functions in an organization. This implies that only those who plan, programme and manage the activities of an organization are the main focus of public administration. The functions of these people are numerous, and are geared towards the achievement of certain goals. For the first time, these functions were outlined in 1980 using the acronym POSDCORB, meaning: P – Planning, O – Organizing, S – Staffing, D – Directing, CO – Coordinating, R – Reporting B – Budgeting [5].

It also necessary to mention scientific achievements of Pommer E., Edwards G., Raadschelders Jos C. among the number of topical foreign and modern papers devoted to public administration [6; 7; 8].

In general, we think that public administering is the activities of bodies of public administration towards satisfaction of public needs (interest) of natural and legal persons [9, p. 7], and public administration is a complex of state and municipal bodies the activities of which should be aimed at meeting public interest [9, p. 7].

Therefore, in the context of relevant definitions and disclosure of the stated problem, we propose to pay a special attention to the term «public interest», which will act as a system-generating, primary characteristic of the category «public administration» in a particular situation. In our opinion, such a characteristic feature as publicity equally acts as a qualifying one both for «public administration» and

«governance» in terms of the legal nature of administrative legal relationship where an entity of authoritative power always acts as one of the parties (subjects) regardless of a situation and subject.

We support and share the position of R. Melnyk and S. S. Mosondz on the definition of «public interest» as a conscious interest of the whole society, which is a reflection of the economic, social and law-enforcement needs of the population [10, p. 18], and we propose to indicate that public interest in public administration, on the one hand, is the quintessence for an unhampered implementation of public international and constitutional rights such as follows: the right to form power (electoral law), to public service, to social security, and on the other hand is the activities of public bodies in observance of the principles of law, rule of law, transparency, inevitability of punishment, and others.

Consequently, the term «public interest» in the context of the category of «public administration» will obtain basic, as noted, system-forming content and will be a theoretical reflection of the ideal model of state functioning in terms of partner activities of public authorities and citizens, the relationships formed on trust and compliance with laws.

Moreover, public interest, in accordance with the modern theory of «anthropocentrism» in administrative study, is the purpose of the activity of public authority by its bodies. However, depending on a political, economic and social environment, the realization of public interest may not coincide with the democratic principles and foundations in full, above all it touches the application of public coercion, but within the statutory limits, in the case of emergency or other essential conditions (for example, in the context of anti-terrorist operation).

In support of this statement, in 1911, A. Yelistratov wrote that public interest would always be the subject-matter of the relations between a representative of state power and citizens. In this context, an outstanding scholar noted that the public interest takes government for common interest, this, in turn, depends on the level of population's culture. And what government considers as a public weal, in fact, can differ from the interests of a large part of the population. But, in any case, the demands of the ruling government are placed on citizens not as a private interest of individual representatives of power, but for the public good [11].

In turn, the category «state administration», which according to the Soviet legal tradition and heritage, closely correlates with state control over the activities of public bodies like administrative-team cooperation but in essence it is a strict control of one entity over the activities of other in the aspect of functioning of public power, is not relevant taking into account the ephemeral effectiveness of administrative-team system of public administration in comparison with the present not the best state of affairs.

In our opinion, advantages of the concept of «public administration» over the concept of «governance» in relation to the formation of terminology framework of administrative-legal cycle in the modern circumstances is obvious, and fist of all it caused by the political-social European integration process, a course chosen by political officials and expected public desire for shifts and changes in fortunes.

Analysis of theoretical scientific basis which usually has solutions of the problem is no less important aspect in revealing the essence of any issue as well as in developing any subject-matter. Thus, other answer to the expediency of change of administrative terminological categories of «governance» into «public administration» we will get after the analysis of different opinions, subjective points, and ideas of leading scholars in administrative study.

In a textbook «Administrative Law» T. Hurzhii stresses that «administering» is activities of administration on adjustment of subjects' actions (bodies, units, enterprises, institutions, organizations) and, in addition, he divides this term into such subtypes (according to the criterion of interest implementation):

– public administering (implemented for the purpose of realizing public interests);

– private administering (implemented for the purpose of realizing private interests);

– corporate administering (implemented for the purpose of realizing corporate interests) [12, p. 13-14].

In our opinion, the author's (T. Hurzhii) approach to the definition of «administering» is more in line with the category of «management», as *activities on actions adjustment of subordinate subjects* will mean a certain imperative component specific to administrative-team principle, but not a dispositive component specific to partner relationship. Nobody denies that any activity, either in public bodies or at a private enterprise, based on subordination, for example following the conditional construction «authorities-apparatus-staff». At the same time, coercion application is not always a key for discipline and successive team cooperation, more often moral and finance encouragements and others serve as more effective mechanism. Moreover, in practice, the terms as «dependent» and «subordinate» are interpreted by employees in an ambivalent manner, and don't promote harmony keeping in team.

In turn, we completely share the position regarding the division of «administering» into public, private and corporate according to the criterion of interest implementation.

R. Melnyk in a textbook «General administrative law» concludes that «public management» is an activity connected with the internal organization of functioning (reorganization of divisions, transfer of civil servants, implementation of disciplinary liability) of public authorities, and «public administration» is a general concept which cover subjects the main task of which is enforcement of the Constitution and laws [13; 53-54].

We support the abovementioned definitions of «public management» and «public administration», and taking into account the definition of *public management as an internal organization of activity of public subjects* we see it expedient to correlate, partially, similar terms «public administration» and «public management» according to the principle «from the general to the special». In this term, «public administration» acts as the general, and «public management» acts as the special.

In our opinion, *public administration* is a general activity of public authority on satisfaction of public interest (it was mentioned above) regardless of a typology of administrative relations that consists a general subject of administrative law. And the

approach of R. Melnyk specifies *public management* as internal organizational activity of public authority that, in our opinion, provides practical realization of public relations subject of which may be:

the first, processes connected with the beginning, service career and discharge from public service;

the second, implementation of tasks and functions, which are established by staff arrangement of official powers, as well as tasks, duties, instructions of direct and senior leaders of a body where a person works.

There is a quite similar approach of Frederick C. Mosher, who in his own article on «Britannica» encyclopedia resource, says that in our time «public administration» should be compared with the responsibility for determining of policies and development government programs, namely, for planning activities, organization, management, coordination and control over national and government operations [14].

A non-standard but surprisingly relevant analysis of the category «public administration» which has been conducted by T. Kolomoiets, a well-known Ukrainian academic lawyer, sparks interest and draws attention. Thus, a textbook «Administrative law of Ukraine. Academic programme» considers the term «public administration» in the context of double meaning of its certain components. The first is «publicity» that is a set of features of procedural activity of administrative entities, such as: a common, accessible to all, serving all, combines state (national) and self-governing (territorial). The second is «administration» namely, indications of subordination to political power and service to the public interest [15, p. 167].

We believe that performed individual analysis of the components of public administration, and in fact the explanation of the terms of «publicity» and «administration» which was presented in terms of distinguishing typical, characteristic features of the terms, the key place among which, according to our belief, is hold by *community, accessibility, service to the public interest*, comprehensively emphasizes the purpose of public administration.

Domestic scholars D. Pryimachenko and R. Ihonin reffering to I. Vasylenko, Russian scholar, consider public administration as coordinated group actions in state affairs:

firstly, which are connected with the three branches of power – legislative, executive, judicial and their interaction;

secondly, which are important for the formation of state policy and which are a part of the political process;

thirdly, which significantly differ from administration in the private sector;

fourthly, which are closely linked with numerous private groups and individuals working in different companies and communities [16, p. 338].

The corresponding position, in our opinion, is not quite clear and doesn't correlate to the majority of features of public administration.

If we can partially agree with the statement that *coordinated activity in state affairs* indirectly characterizes public administration, however the terms «coordination» and «state affairs» should be referred to a speciality of public management and sphere of social (political) sciences, so the first three features should not be linked to public administration. In the first and second cases, the

interconnection of branches of power and the formation of a state policy in the context of satisfaction of political interest is a subject-matter of state (constitutional) law. In the other two, in particular, the third feature indicates the difference in administration in the private and public sectors, which is obvious, but there is no specification for the essence of the relevant differences.

In respect to the provision of the fourth feature of «public administration» (from the point of view of I. Vasylenko, D. Pryimachenko, R. Ihonin) it touches the fact that coordinated actions within state affairs are closely connected to private actors who work in different companies and communities, we see it actual and such that corresponds to the essence not only the category «public administration» but also to the categories «state management» and «public management».

Place and influence of public administration on the development of legal disciplines in administrative cycle

Covered the core of the terminology structure of «public administration» in administrative science, it is necessary to clarify the category of «administrative-legal cycle», that is, the legal disciplines which, in full or indirect forms, reflect the content, features and essence of public administration in Ukraine in the prospect of a profound analysis of the characteristics of a relevant category and in the context of legal administrative disciplines,.

Thus, primarily, legal disciplines of administrative-legal cycle, which are taught in higher schools (institutions of 1-4 levels of accreditation), as well as of exclusively legal or specialized-legal aspect and broad-profile ones, should involve such classical disciplines as «administrative law» and «administrative procedure». However, taking into account the broad-spectrum updating of the legislative and sublegislative administrative framework, and in fact the categories transformation of the legal basis of the state and municipal sector activities, which is conditioned by a number of social upheavals in terms of change and turn of the political vector of the state development as a whole, there is also a practical need for a clear adjustment, systematization and amendments of educational discipline base, in our case it concerns the disciplines of administrative-legal cycle.

The current legislation, in a specific way, prompts and contributes to academic and research institutes and their structural units (institutions, faculties, departments) that they develop more new courses, including special courses of study, on administrative subject matter. This is especially topical when, as already mentioned, certain essential regulatory changes take place, which, in turn, act as a theoretical precondition that pushes domestic administrative scholars to develop and introduce a new categories base, as well as future newest institutions. Or on the contrary, scientific developments in administrative science can serve as a promotional mechanism for the domestic legislator on regulatory framework development.

For example, the pioneered institute of «administrative services» that was introduced to administrative law and obtained a final statutory-perfect form in 2012 (after approval of the Law of Ukraine «On Administrative Services»), and a certain structural-forming regulatory and theoretical outlines from the middle of the XXI century (2006) [17; 18].

Currently, the instituion of administrative services, without exaggeration, is one of the key priorities of improving the activities of executive and municipal authorities. Specifically, the European model of public administration, which we have previously described as public administration in the context of the fact that the current political leadership of the state is gradually implementing the relevant practice in various spheres of public activity of the executive government and local self-government, is successful in nature, convenient for the public and business. In particular, this is a systematic formation of new centers for the provision of administrative services, the introduction of new IT-services on the electronic web-resources (websites, portals), and improvement of the procedure services provision through the elaboration of new electronic operating systems of document circulation based on the principle of «single window system» and others.

In its turn, regulatory and theoretical-categories changes [19] touched the institute of «civil and municipal service» which automatically evolved into the institute of «public service» after the availability a rule (para. 15 p. 1 Art. 3) in the Code of Administrative Procedure of Ukraine (hereinafter referred to as «the CAPU») according to which public service is activity performed in public political posts, professional activities of judges, public prosecutors, military service, alternative (non-military service), diplomatic service, other civil service, service in power structures of Autonomous Republic of Crimea, local self-government bodies.

Well, in essence, the main innovation of administrative-procedural science in the part of separation of the new institute of administrative law – administrative justice (legal proceedings) that was transformed at the scientific and theoretical level into a separate discipline «administrative legal proceeding», was the fact that in 2004 the Code of Administrative Procedure was adopted and came into force in 2005.

Moreover, depending on the methodological achievements of structural units of higher education institutions and scientific developments of some law schools, the legal relations of administrative justice are objects either of individual disciplines such as «administrative legal proceeding», «administrative procedure» or of a fundamental discipline of administrative-legal cycle «administrative law».

Currently, an active phase of the reform processes concerning the activities of public administration continues in Ukraine. In particular, the adoption of the Law «On Administrative Services» in 2012 was a significant event of legislative and statutory consolidation of the norms that would be applied to minimize the barrier of bureaucratic and corrupt character to receive services from the subjects of authoritative powers. It should be noted that the adoption of this Law has also substantially affected the change of the generally established theoretical positions of certain legal branches.

Therefore, the consequences of these legislative, scientific and academic modifications in the development of new institutes of administrative-legal cycle lead to the introduction on the new disciplines of administrative–legal and procedural focus, which were not taught separately, were introduced to domestic higher education institutions, in particular to their structural units. At the modern stage (the end of the first decade of the XXI century) such disciplines include courses as

follows: «administrative reform», «legal regulation of administrative services provision» and others;

before (in most cases from the beginning of 2005): «administrative legal proceedings», «administrative justice», «actual problems of administrative legal proceedings» and others;

in earlier times (the end of the XX – the beginning of XXI century): «administrative-tort law», «administrative responsibility» and others.

However, in our opinion, the influence of the category of public administration in relation to the disciplines of administrative-legal cycle is reflected to the outmost in the discipline «Legal regulation of public (state) management» the subject-matter of which is provisions of Ukrainian regulatory framework, academic theoretical provisions on administrative law and procedure, which present actual problems of realization of administrative and legal norms, the modern development of branches reform of administrative and legal cycle connected with the change of categories and concepts framework and refresh of administrative legislation. The issues and problems directly touching public administration are studied within a particular discipline, in particular the specific nature of beginning, career and termination of public service; peculiarities of provision of administrative services by executive and local self-government bodies; administrative reform in certain spheres of public management.

It's no good to skip the issue of administrative reform as now Ukraine begins to reform almost all spheres of public administration as well as to initiate reforming of justice system and related legal institutions. We note that a successful implementation of some reforms directly and indirectly depends on a complex approach to introduction of measures of legal and organizational nature, multiagency coordination of the branches of government, impartial public control and totally apolitical nature of the nation's leadership.

In general, administrative reform is a process of adoption of a relevant regulatory framework that will contribute to the formation of an institutional structure of public management which will completely meet public interest, in other words the priority of their activities will be devotion to people and the national interests of the country. In more narrow interpretation, administrative reform is a complex of measures aimed at updating administrative and legal status of reform's actor (administrative or other body) by virtue of optimization of servants' number, improvement of institutional coordination of teamwork of structural subdivisions at the central and regional levels, improvement of electronic, information and financial security of employees, simplification of the procedures for provision of administrative services etc.

At the moment, attention is drawn to the range of branching of areas and spheres of public administration where administrative reform is taking place. In particular, this is a reform of the activity arrangement of public administration bodies components of which include:

− administrative-territorial (decentralization).

In essence, the implementation of the relevant reform will be in the unification of the territorial communities of villages, settlements, and cities in accordance with the principles of polycentric nature, subsidiarity and the procedure prescribed in the

provisions of the Law «On Voluntary Association of Territorial Communities». A gradual unifying of territorial communities will not only contribute to optimization of the territorial organization of local authorities in relation to change of insufficiently capable administrative units by self-reliant ones, which will be able to ensure the expected, proper level of public administration in the field perfectly but also to increase financial income in local budgets. Moreover, the next stage of decentralization should be the process of reorganization of local state administrations and the introduction of prefecture institute with control powers over the observance of the Constitution and laws of Ukraine by local self-government bodies, and the coordination of the activities of territorial bodies of central executive authorities.

− provision of administrative services reform.

The reform is related to the procedural improvement of the provision of administrative services, which was launched in 2012 since the adoption of the Law «On Administrative Services», is actively implemented and practiced in almost all territorial executive authorities and local self-government bodies. Usually, the centers of administrative services, activities of which are divided according to the principles of «front and back office» and «single window» function as separate units or official places in the abovementioned bodies.

− reform of the improvement of administrative and legal support, such as legal, personnel, financial, information, logistical, for the activities of administrative bodies.

In turn, from the beginning of 2013, other public reforms have been implemented in Ukraine, in particular, the reform of judicial system and related legal institutes (advocacy, public prosecution, and penalties system); reform of the system of prevention and counteraction of corruption (anti-corruption); reform of the law enforcement system.

In addition, up to date, taking into account the focuses of administrative reform that have been conducted and are being implemented, the main stage of administrative reform should include:

1. Reform of the institute of administrative justice (2004, Adoption of the CAPU).

2. Establishment of a new institute of administrative law – the institute of administrative services (2011, adoption of the Law «On Administrative Services»).

4. Reform of the institute of public service (2016, adoption of a new Law «On Civil Service»).

5. Reform of the judicial system and related legal institutes (2016, amendment of the Constitution of Ukraine (in relation to justice system)).

6. Administrative-territorial reform (decentralization in the part of voluntary association of territorial communities (2015, the Law «On Voluntary Association of Territorial Communities»)).

Conclusions.

From the middle of the XXI century, the category of «public administration» is actively used by administrative scholars (Kolomoiets T., Kolpakov V., Kuzmenko O.,

Melnyk R., Pryimachenko D.) in connection with the reinterpretation of the doctrinal concepts of the development of administrative-law school (from the theory of «management» to «anthropocentrism»), borrowing of foreign academic and research methodology, in terms of «administrative law» studying, the implementation of best practices of the regulatory provisions of the European and American laws in the domestic legislation and a number of other political and socio-economic factors related to European integration processes.

Now, the need to implement a theoretical category «state management» in the context, above all, of administrative law almost disappears and has lost its sense due to longstanding transformation of categories and concepts framework in relation to the substitution of the category by «administrative administration» and «public management».

Public administration is the activities of public administration bodies in meeting public needs (interests) of individuals and legal entities in various spheres of public administration.

The system-forming component, in fact basic one in interpreting «public administration», will be «public interest», which on the one hand will be considered as the quintessence for the continuous implementation of public international and constitutional rights, such as: the right to form a governance (electoral law), to public service, to social security, and on the other hand as the activities of public bodies in the area of observance of the principles of legality, the rule of law, publicity, inevitability of punishment.

Public administration is, in general, an internal organizational activity of public entities, and in detail it is processes connected with entry, career and termination of public service; performance of the tasks and functions determined by staff arrangement of the official powers of the body where a person works, as well as tasks, orders, instructions of direct and senior leaders; organizational and legal support of functioning of a public body (statutory, personnel, financial, logistic).

The correlation of the categories «public administration» in relation to «public management» meets the principle «from the general to the special» where public administration is the general concept and public administration is the special one.

An obvious influence of the concept «public administration» on the development of legal disciplines of administrative and legal cycle is due to:

– normative changes in the context of the system updating of the regulatory framework, especially of the legislative framework, when it touches the functional introduction of new institutes of administrative legal cycle (institutes of «administrative justice (the CAPU, 2005)», «administrative services (Law of Ukraine «On Administrative Services,));

– theoretical and categories changes in the part of the concepts updating and the thematic content of the disciplines of administrative-legal cycle, in particular, of the legal regulation of state administration, act as the logical accomplishment (result) of the fundamental scientific developments by the leading reseacrh and methodological legal administrative schools.

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Shulzhenko O.V.,
Postgraduate Student at Department of Administrative Law
and Administrative Procedure
Odessa State University of Internal Affairs

Rudoi K.M.,
Candidate of Juridical Sciences, Associate Professor,
Professor at Department of Administrative Law and Administrative Procedure
Odessa State University of Internal Affairs
Odesa

GENERAL PROVISIONS OF ADMINISTRATIVE LEGAL PROCEEDINGS IN UKRAINE

Summary

During the administrative-legal reform, the adaptation of the administrative legislation of Ukraine to the legislation of the European Union, significant changes in the organizational and legal basis of the administrative legal process of Ukraine are taking place. First of all, statutes of Ukrainian legislation, which establish the principles of administrative legal proceedings of Ukraine, are being improved; the

system of administrative courts of Ukraine is being updated. The definition of administrative jurisdiction of administrative courts of Ukraine becomes important, as well as the issue of jurisdiction of administrative cases. As a type of legal process, administrative legal proceedings are based on general and sectoral principles and consist of the main and optional stages that are implemented in a clearly defined sequence and form a specific system. In the administrative legal proceedings, the list of public-law disputes subject to the jurisdiction of administrative courts has been updated. In addition, the new Code of Administrative Legal Proceedings of Ukraine expands the notion of «administrative agreement».

The concept and principles of administrative legal proceedings

Definition of the concept of «administrative legal proceedings» is legally enshrined in Art. 4 of the Code of Administrative Legal Proceedings of Ukraine (hereinafter referred to as the CALP of Ukraine), according to which administrative legal proceedings are the activity of administrative courts for the consideration and resolution of administrative cases in accordance with the procedure established by the CALP of Ukraine.

Administrative legal proceedings are carried out on the relevant principles, namely, Article 2 of the CALP of Ukraine establishes the principles of administrative legal proceedings, which should be understood as the defining ideas under which the regulation of relations arising in the field of administrative legal proceedings takes place. Their specificity is that they establish initial, statutory provisions, which determine the content of justice and serve as a criterion for the legitimacy of the behaviour of participants in legal relationships that arise in the field of justice.

The analysis of the system of principles of administrative legal proceedings allows concluding on the democratic basis of administrative legal proceedings, its proximity to the best models in the world. This is evidenced by the establishment of such a principle as the rule of law (and not the traditional rule by law), which leads the whole system of principles of administrative legal proceedings. The fact is that in democratic states, there is not only a declared but also a long established mechanism for ensuring the rule of law, an important component of which is, in particular, administrative courts.

The rule of law principle. The court is guided by the rule of law, in accordance with which, in particular, a person, his/her rights and freedoms are recognized as the highest values and determine the content and direction of the state's activity. The court applies the rule of law principle, taking into account the court practice of the European Court of Human Rights. Appeal to an administrative court for the protection of human and citizen's rights and freedoms is directly guaranteed by the Constitution of Ukraine. The refusal to consider and resolve an administrative case on the grounds of incompleteness, ambiguity, contradiction or lack of legislation governing the controversial relationship is prohibited.

The equality of all participants in the trial before the law and the court. All participants in the trial are equal before the law and the court. There can be no privileges or restrictions on the rights of participants in the trial on the grounds of

race, colour, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other grounds.

Publicity and openness of legal procedure and its complete fixation by technical means. Consideration of cases in administrative courts is carried out open except for cases determined by the CALP of Ukraine. Any person has the right to be present at an open court hearing. From a person who wishes to be present at a court session, it is prohibited to require any documents other than a document certifying a person. Persons who wish to be present at the court session are allowed to the courtroom before the trial begins and during a break. The court may remove from the courtroom the persons who impede the conduct of the court session, the exercise of rights or the performance of the duties of participants in the trial or judges, violate the order in the courtroom. Persons present in the courtroom, media representatives may hold photographic work, video and audio recordings using the portable video and audio equipment in the courtroom without obtaining special court permission, but taking into account the limitations set by the CALP of Ukraine. Broadcast of the court session is carried out with the permission of the court. If all the participants of the case participate in the court session in the video conference mode, the broadcasting of the court session on the Internet is compulsory. Conducting in the courtroom of photography, video recording, as well as broadcasting of a court session should be carried out without creating obstacles in the conduct of the session and the implementation of procedural rights by the trial participants. No one may be deprived of the right to information on the date, time, and place of consideration of his/her case or restricted in the right to receive verbal or written information on the results of the consideration of the case in court. Any person who is not a party to the case has the right to have access to court decisions in accordance with the procedure established by law. Information on the court hearing the case, parties to a case, and the subject-matter of the claim, the date of receipt of statement of claim (complaint) or any other application or petition in the case, including the person who submitted such an application, the measures taken to secure the claim and/or evidence, the stage of case hearing, the place, date, and time of a court session, the movement of a case from one court to another, is open and subject to urgent publishing on the official web portal of the judiciary of Ukraine in accordance with the procedure established by the Regulation on the Single Judicial Information and Telecommunication System.

Competitiveness of the parties, dispositivity, and official clarification of all circumstances on the case. Consideration and resolution of cases in administrative courts are carried out on the basis of adversariality and the freedom of parties to provide the court with evidence and to bring to the court their strength. The court considers administrative cases only as a statement of claim filed in accordance with the CALP Ukraine, within the limits of the claims. The court may go beyond the claims under the lawsuit if it is necessary for the effective protection of rights, freedoms, interests of the person and citizen, other subjects in the field of public-legal relations from violations by the subjects of power. Every person applying for judicial protection disposes of his/her own requirements at his/her own discretion, except in cases established by the CALP of Ukraine. Such a right is also enjoyed by persons in whose interests the claim is filed, with the exception of those who do not have the

administrative procedural capacity. The court adopts the statutory measures necessary to ascertain all the circumstances of the case, including the discovery and disclosure of evidence on its own initiative.

Binding nature of the judgment. The judicial decision, which ends the consideration of the case in the administrative court, is adopted in the name of Ukraine. Judicial decisions which came into force are obligatory for execution by all state authorities, local self-government bodies, their officials, natural and legal persons and their associations throughout the territory of Ukraine. The obligation of a court decision does not deprive persons who did not take part in the case of the possibility to apply to the court if the decisions passed by the court resolved the issue of their rights, freedoms, interests and/or duties. Failure to comply with administrative court decisions entails both administrative and criminal liability envisaged by law.

Providing right to appeal reconsideration of the case. The basic principles of legal proceedings, in accordance with the Constitution of Ukraine, include the provision of an appeal against a court decision, except in cases established by law. The implementation of this principle was reflected in section III of the CALP of Ukraine, which established a procedural order of reviewing court decisions in administrative courts of appeal.

An appeal is the main way of appealing against court decisions that have not entered into force in a higher court (court of appeal). The court of appeal in administrative cases is an administrative court of appeal, within the territorial jurisdiction of which the local administrative court (local general court as an administrative court or district administrative court), which has made a decision, is located.

Providing the right to cassation appeal of the judgment in the cases determined by the law. The participants in the case, as well as those who did not take part in the case, if the court has decided on their rights, freedoms, interests and/or duties, have the right to cassational appeal of the court decision. Cassation is the verification of the legality of administrative court decisions, which have come into legal force, of the courts of the first and appellate instances.

The court of cassation in administrative cases is the Supreme Court. Cassation appeal of a court decision of a first instance is not allowed without its review on appeal.

Rationality of terms of consideration of the case by the court. The court should set reasonable time limits for conducting procedural actions. The term is reasonable if it provides for sufficient time, taking into account the circumstances of the case, for the execution of a procedural act, and corresponds to the task of administrative legal proceedings.

Inadmissibility of abuse of procedural law. Trial participants and their representatives must exercise procedural rights in good faith. Abuse of procedural rights is not allowed. Taking into account the specific circumstances of the case, the court may declare actions that contradict the task of administrative legal proceedings as abuse of procedural rights, in particular: 1) submission of a complaint to a court decision that is not subject to appeal, is not valid or expired, submission of a petition

(application) for resolving an issue already decided by the court, in the absence of other grounds or new circumstances, a statement of a knowingly unjustified recusation or commission other similar actions aimed at unjustifiably protracting or perverting the consideration of a case or execution of a court decision; 2) filing several claims to one and the same defendant (defendants) with the same subject-matter and for the same reasons, or filing several claims with a similar subject-matter and for similar reasons, or committing other acts whose purpose is to manipulate the automated division of cases between judges; 3) submission of a knowingly unreasonable claim, a claim in the absence of a subject of dispute or in a dispute that is obviously artificial; 4) unreasonable or artificial association of claims under the lawsuit to change the jurisdiction of a case, or knowingly unreasonable involvement of a person as a defendant (co-defendant) for the same purpose; 5) harmonization of conditions for reconciliation aimed at harming the rights of third parties, deliberate failure to notify persons to be involved in the case. If the filing of a complaint, a statement, a petition is considered an abuse of procedural rights, the court, given the circumstances of the case, has the right to leave a claim undecided or to return a complaint, a statement, a petition. The court is required to take measures to prevent the abuse of procedural rights.

The principle of compensation of court costs of individuals and legal entities for benefit of which the judgment is made. Article 94 of the CALP of Ukraine establishes a provision on the distribution of court costs. If a court decision is made in favour of a party that is not a subject of authority, the court shall award all documented court costs against the State Budget of Ukraine (or the corresponding local budget, if the other party was a local self-government body, its civil servant or official). If a court decision is made in favour of the party who is the subject of authority, the court shall award against the other party all the documented court costs incurred by it, related to the involvement of witnesses and the conduct of forensic examinations. If the administrative claim is satisfied partially, the court costs incurred by the plaintiff are awarded against him in accordance with the satisfied claims, and against the defendant – in accordance with the part of the claim that was denied. In cases in which the plaintiff is the subject of authority, and the defendant – a natural or legal person, the court costs incurred by the plaintiff are not charged to the defendant. In case of rejection of the claims under the lawsuit of the plaintiff, released from payment of court costs, as well as dismissing an administrative claim, the court costs incurred by the defendant shall be compensated at the expense of the State Budget of Ukraine. If the court of appeal or cassation instance, without returning the administrative case for a new hearing, changes the court decision or adopts a new one, it accordingly changes the distribution of court costs.

Administrative jurisdiction

Article 19 of the CALP of Ukraine states that the jurisdiction of administrative courts extends to cases in public-law disputes, in particular:

1) disputes of natural or legal persons with the authority on appeal against its decisions (laws and regulations or individual acts), actions or inaction, except when

for the consideration of such disputes the law establishes a different procedure for judicial proceedings;

2) disputes concerning the acceptance of citizens to public service, its passage, dismissal from the public service;

3) disputes between authorities with regard to the implementation of their competence in the field of administration, including delegated powers;

4) disputes arising in relation to the conclusion, performance, termination, cancellation of administrative agreements or their acceptance as inoperative;

5) disputes on the appeal of authority in cases when the right to trial for solving public-law disputes is provided by law to this power entity;

6) disputes concerning legal relations related to the electoral process or referendum process;

7) disputes of natural or legal persons with the manager of public information regarding the appeal of its decisions, actions or inaction in terms of the access to public information;

8) disputes concerning seizure or compulsory acquisition of property for public use or for reasons of social necessity;

9) disputes on the appeal of decisions of attestation, competition commissions, disability determination services, and related agencies, which decisions are compulsory for public authorities, local self-government bodies, other persons;

10) disputes on the composition formation of public authorities, local self-government bodies, election, appointment, dismissal of their officials;

11) disputes of natural or legal persons on the appeal of decisions, actions or inaction of customer in legal relations arising in accordance with the Law of Ukraine «On Features of Purchase of Goods, Works, and Services for the Guaranteed Assurance of Defence Requirements» except for disputes related to the conclusion of a contract with the winner of the negotiated procurement procedure, as well as the modification, termination, and execution of procurement contracts;

12) disputes on the appeal of decisions, actions or inaction of national border control agencies in cases on violations provided for by the Law of Ukraine «On Responsibility of Carriers During International Passenger Transportation».

The jurisdiction of administrative courts does not apply to cases:

1) which are classified in the jurisdiction of the Constitutional Court of Ukraine;

2) which should be solved according to the criminal justice procedure;

3) on the imposition of administrative penalties, except for cases determined by the CALP of Ukraine;

4) on relations which, in accordance with the law, the statute (provision) of a public association, a self-regulatory organization are attributed to its internal activity or exclusive competence.

Administrative courts do not consider claims under the lawsuit that are derived from claims in a private-law dispute and are filed with them if this dispute is subject to consideration in an order other than administrative proceeding and is under consideration by the relevant court.

Administrative jurisdiction is determined by three criteria, which are designated as varieties of jurisdictions of administrative affairs: *subject-matter (patrimonial), territorial (spatial), instance (functional).*

Subject-matter jurisdiction – a set of rules defining the delimitation of the competence of courts of certain units for the consideration of administrative cases in the first instance depending on the subject-matter of a public-law dispute or its parties.

Under the rules of subject-matter jurisdiction, most of the cases in the first instance are considered by the local administrative courts, which include local general courts as administrative courts and district administrative courts. *Local general courts as administrative courts hear:*

1) administrative cases concerning decisions, actions or inaction of authorities in cases of bringing to administrative responsibility;

2) administrative cases related to the electoral process or the referendum process concerning: appeal against decisions, actions or inaction of polling station commissions, polling station commission for referendum, members of these commissions; clarification of the list of voters; appeal against actions or inaction of mass media, news agencies, enterprises, institutions, organizations, their officials and civil servants, creative workers of media and news agencies that violate election and referendum legislation; appeal against actions or inaction of a candidate for deputy of a village, settlement council, candidates for the position of a village, settlement chairman, their trustees;

3) administrative cases related to the residence of foreigners and stateless persons on the territory of Ukraine in relation to: the compulsory return to the country of origin or the third country of foreigners and stateless persons; forced removal of foreigners and stateless persons outside Ukraine; the detention of foreigners or stateless persons for the purpose of their identification and/or enforcement of forced expulsion outside the territory of Ukraine; prolongation of the term of detention of foreigners or stateless persons with the purpose of their identification and/or enforcement of forced expulsion outside the territory of Ukraine; the detention of foreigners or stateless persons to decide on their recognition as refugees or persons who need additional protection in Ukraine; the detention of foreigners or stateless persons in order to ensure their transfer in accordance with the international agreements of Ukraine on readmission;

4) administrative cases regarding decisions, actions or inaction of the state executive or another official of the state executive service regarding the execution of court decisions by them.

District administrative courts are responsible for all administrative cases, except for cases concerning decisions, actions or inaction of authorities in cases on bringing to administrative responsibility.

Instance jurisdiction – a set of rules defining the delimitation of the competence of administrative courts when considering administrative cases in the first, appellate, and cassation instances.

An instance means a court (or its structural subdivision) that performs one or another function related to the consideration of administrative cases and is characterized by a special procedural order for opening proceedings, consideration of

a case, the subject-matter of consideration, the composition of judges, and the final procedural act. *The CALP of Ukraine provides for three instances in administrative legal proceedings: the first, appellate, and cassation.*

Court of the first instance: local administrative courts (local general courts as administrative courts and district administrative courts) solve administrative cases as courts of the first instance, except for cases determined by the CALP Ukraine.

Court of appellate instance: appellate administrative courts review court decisions of local administrative courts (local general courts as administrative courts and district administrative courts) that are within their territorial jurisdiction, on appeal as appellate courts.

Court of cassation instance: the Supreme Court reviews the court decisions of local and appellate administrative courts under cassational procedure as a court of cassation instance.

Territorial jurisdiction (jurisdiction) – a set of rules defining the delimitation of the competence of administrative courts of one level, depending on the place of consideration of administrative cases in the first instance.

There are the following types of territorial jurisdiction:

Jurisdiction of cases by the plaintiff's discretion, that is, administrative cases concerning the appeal of individual acts, as well as actions or inaction of authorities that are accepted (committed, admitted) in relation to a particular physical or legal person (their associations), are resolved by the choice of the plaintiff by an administrative court for the place of residence (staying, location) of this plaintiff or administrative court by the location of the defendant in a manner established by law.

Jurisdiction of cases by the place of residence or the location of the defendant, claims to an individual are filed in court for a registered place of residence or stay in a manner prescribed by law. Claims to legal entities are filed in court by their location according to the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine.

The exclusive jurisdiction, administrative cases on the appeal of laws and regulations of the Cabinet of Ministers of Ukraine, the ministry or another central executive authority, the National Bank of Ukraine or another authority, whose powers extend throughout the territory of Ukraine, except cases specified by this Code, administrative cases on the appeal against decisions of the Antimonopoly Committee of Ukraine on complaints about violations of legislation in the field of public procurement and decisions in the field of state aid to economic entities, administrative cases on the suit of the Antimonopoly Committee of Ukraine in the field of state aid to economic entities, administrative cases, the defendant of which is a diplomatic mission or consular institution of Ukraine, their official or civil servant, as well as administrative cases concerning the cancellation of the registration certificate of a political party, the prohibition (compulsory dissolution, liquidation) of a political party shall be decided by the district administrative court whose territorial jurisdiction extends to the city of Kyiv.

Stages of administrative legal proceedings

Administrative legal proceedings as the activity of administrative courts for the consideration and resolution of administrative cases consist of a series of procedural actions that are carried out not chaotically but in a clearly defined sequence, constitute a certain system. Relatively separate groups of procedural actions are designated as stages of administrative legal proceedings, that is, it is about such a characterization of administrative proceedings, as its stages.

Each of the stages of administrative legal proceedings has its own specific goals and objectives that are unique to it and will contribute to the achievement of the general goals of administrative legal proceedings for solving and resolving an administrative case, the protection of the rights and freedoms of the participants in public legal relations. The presence of such goals is one of the most important criteria for the isolation of a certain set of procedural actions into a separate stage of administrative legal proceedings.

At different stages of administrative legal proceedings, the composition of the members of the administrative process may vary; in addition, a part of their procedural rights and obligations is realized only at certain procedural stages. Each stage of administrative legal proceedings as a sequence of actions is carried out in time. The division of the administrative process into stages is a logical and temporal characteristic of administrative legal proceedings, as well as any kind of legal process. The law establishes specific procedural time limits, within which procedural actions belonging to a certain stage are carried out.

The stage of administrative legal proceedings ends with the execution of the corresponding, prescribed in the law, procedural document (judgement, desicion), which consolidates the results achieved during the implementation of procedural actions at a certain stage.

Thus, the stage of administrative legal proceedings is characterized by its own immediate goals, a range of procedural actions carried out within the established procedural terms, and their participants, as well as by their final decisions and their procedural implementation.

The stage of administrative legal proceedings is a relatively independent set of consistently implemented procedural actions, which, in addition to the general objectives, has its own goals, as well as the features related to the participants in the administrative process, their rights and duties, the terms of the implementation of procedural actions, and the nature of the procedural documents to be drawn up.

The list of stages of administrative legal proceedings is similar to stages of other types of adversary justice. They include:

1) the stage of litigation;
2) the stage of opening proceedings in an administrative case;
3) the stage of preparatory proceedings;
4) the stage of judicial inquiry of an administrative case on the merits;
5) the stage of appellate review of court decisions;
6) the stage of cassation appeal of court decisions;
7) the stage of reviewing court decisions by newly discovered or exceptional circumstances;

8) the stage of application of court decisions in administrative cases to execution.

Proceedings in an administrative case do not necessarily pass all of the above stages – this is ultimately determined by the individuals involved in the case, primarily by the parties. Only the first four of the mentioned stages are obligatory. Other stages of administrative legal proceedings, the proceedings of which depend on the initiative of the abovementioned persons, are optional.

The first stage of administrative legal proceedings is litigation. When considering a case by a court in accordance with the rules of the general litigation, the trial participants shall in writing set out their claims, objections, arguments, explanations, and considerations regarding the subject-matter of the dispute solely in the statements on the merits of the case, as determined by the CALP of Ukraine. Claims on the merits are: statement of claim; statement of defence (defence); reply to defence; exception; pleadings of the third party regarding a claim or a defence. The cause of action, the time, and the order of filing applications on the merits are determined by the CALP of Ukraine or the court in certain cases. Submission of applications on the merits is the right of the parties to a case. Failure to submit a statement of defence by the authority without good reason can be qualified by the court as a confession of action. The court may allow a trial participant to file additional pleadings regarding a separate issue that arose during the trial if it considers it necessary.

The second stage of the opening of proceedings in an administrative case. At this stage, the administrative court finds out the circumstances (the existence of administrative procedural capacity of the person who filed the statement of claim; the presence of the appropriate powers of the representative; the compliance of the statement of claim with the requirements to it; the jurisdiction and amenability of the case to the administrative court, etc.), without which it is impossible to open administrative legal proceedings in a particular administrative case.

The third stage – *the stage of preparatory proceedings.* At this stage, the court takes measures to ensure the full and objective consideration and resolution of the case in one court session for a reasonable time.

The preparation of the case for trial is carried out by a judge of the administrative court, who opened the proceedings in the administrative case. The tasks of preparatory proceedings are:

1) final definition of the subject-matter of the dispute and the nature of the controversial legal relationship, claims under the lawsuit, and the composition of participants in the trial;

2) elucidation of objections against claims;

3) determination of the circumstances of the case, which are subject to the establishment, and the collection of relevant evidence;

4) solution of recusations;

5) determination of the order of proceedings;

6) commitment of other actions in order to ensure the proper, timely, and unhindered trial on the merits.

The preparatory proceedings begin with the opening of proceedings and end with the closing of the preliminary case hearing. The preparatory proceedings shall be held

within sixty days of the opening of the proceedings. In exceptional cases, for the proper preparation of the case for trial on the merits, this period may be extended by no more than thirty days either by a party or by the court on its own motion.

The last mandatory stage is *the stage of judicial review of an administrative case*, which occupies a prominent place in administrative legal proceedings. At this stage, the administrative case is considered and solved on the merits – the evidence is being investigated, the factual background of the case is being established, the rights and obligations of the parties are being clarified, a decision in the case is being made. The purpose of the hearing on the merits is to consider and resolve the dispute on the basis of materials collected in the preparatory proceedings, as well as the distribution of court costs. Procedural actions carried out at the stage of judicial review of an administrative case, are divided into four parts (stages): preparatory, trial on the merits, legal debate, adoption and reading of a court decision.

The first of the optional stages of administrative legal proceedings is *the stage of appeal review of court decisions*. At this stage, court decisions that have not come into force are reviewed in an appeal, both on the facts and on the law.

At *the stage of the cassation appeal of court decisions*, judgements of the court of the first and appellate instances, which came to legal effect on the law, i.e., on the correct application of the rules by courts of the first and appellate instance of the rules of substantive and procedural law, are verified.

A separate stage in administrative legal proceedings is *the stage of reviewing judgements by newly discovered or exceptional circumstances.* At this stage, judicial decisions that are legally valid in connection with the existence of circumstances that could have an influence on the court decision, but were not known and could not be known to the court and to the person applying for the review, when reviewing the administrative case. *The grounds for reviewing a judgement by newly discovered circumstances are:*

1) circumstances essential to the case that were not established by the court and were not known and could not be known to the person submitting the application at the time of case hearing;

2) the establishment by a court sentence or a judgement on the closure of criminal proceedings and the release of a person from criminal responsibility, legally valid, knowingly false testimony, a knowingly wrong expert opinion, knowingly wrong translation, falseness of written, material or electronic evidence that led to the adoption of an illegal decision in this case;

3) the reversal of the judgement, which became the basis for the adoption of a judicial decision that is subject to review.

The grounds for reviewing judgments in connection with exceptional circumstances are:

1) established by the Constitutional Court of Ukraine unconstitutionality (constitutionality) of the law, other legal act or their separate provision applied (not applied) by the court in the decision of the case if the court decision has not yet been executed;

2) the establishment by the court verdict, which has come into legal force, of the guilty of a judge in committing a crime, which resulted in a court decision;

3) the establishment by an international judicial body whose jurisdiction is recognized by Ukraine of violations of Ukraine's international obligations in resolving this case by a court.

When reviewing a court decision by newly discovered or exceptional circumstances, the court cannot go beyond the requirements that were the subject of consideration when adopting a revised judicial decision, to consider other requirements or other grounds of an action.

The final stage of administrative legal proceedings is *the stage of application of court decisions in administrative cases to execution.* At this stage, the court resolves issues that arise in connection with the execution of court decisions. A judicial decision that has come into legal force is obligatory for the trial participants and their successors, as well as for all bodies, enterprises, institutions, and organizations, officials or servants, other individuals, and is subject to enforcement throughout Ukraine, and in cases established by international treaties, the consent to be bound by which is provided by the Verkhovna Rada of Ukraine, or on the principle of reciprocity, – beyond its borders.

The system of administrative courts

In the course of judicial reform, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Amendments to the Constitution of Ukraine (in relation to justice)» and the Law of Ukraine «On the Judiciary and Status of Judges» [3], which entered into force on 30.09.2016, according to which in Ukraine, triangular system of courts was established: local courts, appellate courts, and the Supreme Court. In accordance with the Law of Ukraine «On the High Council of Justice» [4], which came into force on 05.01.2017, the powers of the Supreme Council of Justice were determined, in particular: the submission of an application for the appointment of a judge; the authority to consider a complaint against a decision of the relevant body on bringing a judge to disciplinary liability; making a decision regarding violation of the incompatibility requirements by a judge; the decision to dismiss a judge; granting a consent to the detention of a judge or holding him in detention; making a decision on the temporary suspension of a judge from the administration of justice.

The judicial system in Ukraine is based on the principles of territoriality, specialization, and instance nature. The Supreme Court of Ukraine is the supreme court in the court system [5].

In order to consider certain categories of cases, in accordance with the Law of Ukraine «On the Judiciary and Status of Judges» (restated), higher specialized courts operate in the system of justice. The Supreme Court of Ukraine is the supreme court in the system of the judicial system of Ukraine, which ensures the consistency and unity of judicial practice in the manner established by the procedural law. The Supreme Court of Ukraine exercises justice as a court of cassation instance, and in cases determined by procedural law, – as a court of the first or appellate instance, in accordance with the procedure established by the procedural law; carries out analysis of judicial statistics, generalization of judicial practice; provides conclusions on draft legislation related to the judicial system, legal proceedings, status of judges, execution of court decisions, and other issues related to the functioning of the judicial

system; provides conclusions on the presence or absence of acts in which the President of Ukraine is accused, signs of treason or other crime; at the request of the Verkhovna Rada of Ukraine, makes a written submission regarding the inability of the President of Ukraine to exercise the authority over the state of health; appeals to the Constitutional Court of Ukraine regarding the constitutionality of laws and other legal acts, as well as with regard to the official interpretation of the Constitution of Ukraine; ensures the uniform application of the rules of law by the courts of different specializations in the manner and in accordance with the procedure prescribed by procedural law; carries out other powers, determined by law.

The Supreme Court of Ukraine includes no more than two hundred judges.

The Supreme Court includes the following: the Grand Chamber of the Supreme Court; Cassation Administrative Court; Cassation Commercial Court; Cassation Criminal Court; Cassation Civil Court.

The cassation administrative court includes judges of the relevant specialization and the chambers of administrative courts are formed. *In the Cassation Administrative Court, separate chambers are required for the consideration of cases concerning:*

1) taxes, fees, and other obligatory payments;

2) protection of social affairs;

3) the election process and referendum, as well as the protection of political rights of citizens.

Other chambers in the cassation administrative court may be established by the decision of judges of the cassation court.

Appellate administrative courts review court decisions of local administrative courts (local general courts as administrative courts and district administrative courts) that are within their territorial jurisdiction, on appeal as appellate courts. The review of court decisions is carried out by a three-judge panel. Administrative cases, which are sued to the Kyiv Appellate Administrative Court as a court of the first instance, are considered and resolved by a panel of three judges. The Supreme Court acts as a court of the first instance in certain cases determined by the CALP of Ukraine [2], as well as reviews judgements of local and appellate administrative courts under cassational procedure as a court of cassation. In the system of administrative courts, nine administrative courts of appeal were formed: Vinnytsia, Dnipropetrovsk, Donetsk, Zhytomyr, Kyiv, Lviv, Odesa, Sevastopol, and Kharkiv. The powers of appellate administrative courts extend:

– Vinnytsia Administrative Court of Appeal – Vinnytsia, Khmelnytskyi, Chernivtsi regions;

– Dnipropetrovsk Administrative Court of Appeal – Dnipropetrovsk, Zaporizhzhia, Kirovohrad regions;

– Donetsk Administrative Court of Appeal – Donetsk, Luhansk regions;

– Zhytomyr Administrative Court of Appeal – Volyn, Zhytomyr, Rivne regions;

– Kyiv Administrative Court of Appeal – Kyiv, Cherkasy, Chernihiv regions and the city of Kyiv;

– Lviv Administrative Court of Appeal – Zakarpattia, Ivano-Frankivsk, Lviv, Ternopil regions;

– Odesa Administrative Court of Appeal – Mykolaiv, Odesa, Kherson regions;

– Sevastopol Administrative Court of Appeal – the Autonomous Republic of Crimea, the city of Sevastopol;

– Kharkiv Administrative Court of Appeal – Poltava, Sumy, Kharkiv regions.

Local administrative courts are local general courts, as administrative courts and district courts. The latter are formed in the districts in accordance with the decree of the President of Ukraine.

Local administrative courts act as courts of the first instance. In a local general court, as an administrative court, a judge who examines a case individually acts as a court. In district courts, administrative cases are considered and resolved by a three-judge panel. Local general courts as administrative courts consider [2]: 1) administrative cases in which one of the parties is an authority or official of local self-government, an official or a civil servant of a local self-government body, except those who fall under the jurisdiction of district administrative courts; 2) all administrative cases concerning decisions, actions or inaction of authorities in cases on bringing to administrative responsibility; 3) all administrative cases concerning disputes of individuals with the authorities over the calculation, award, re-calculation, implementation, provision, receipt of pension payments, social benefits for disabled citizens, payments for compulsory state social insurance, payments and benefits to persons born in time of war, others social benefits, surcharges, social services, assistance, protection, allowances. District administrative courts consider the administrative cases, in which one of the parties is a state authority, another state body, the authority of the Autonomous Republic of Crimea, the regional council, Kyiv or Sevastopol City Council, their official or civil servant, in addition to cases concerning their decisions, actions or inaction in cases of administrative misconduct and cases that are liable to the local general courts as administrative courts. Since January 1, 2005, in the system of administrative courts, 27 district administrative courts have been formed in accordance with the territorial division into regions, the Autonomous Republic of Crimea, cities of Kyiv and Sevastopol. Administrative courts of appeal are established in appellate circuits in accordance with the decree of the President of Ukraine.

Conclusions

Ukraine's orientation towards the construction of a legal, democratic state and accession to the European Union envisages the existence of an effective mechanism for the protection of human rights and freedoms, one of the elements of which is the effective and responsible system of judicial protection of individuals and legal entities from violations of their rights and legitimate interests by public authorities in the field of public legal relations. Creation of a system of administrative courts was defined as the direction of both judicial-legal and administrative-legal reforms, as well as provided by the provisions of the Constitution. According to Article 55 of the Constitution of Ukraine, the rights and freedoms of man and citizen are protected by a court. Everyone is guaranteed the right to appeal in court against decisions, actions or inaction of state authorities, local self-government bodies, officials and civil servants. It is administrative legal proceedings that are a way of implementing this

constitutional right of citizens to appeal against unlawful actions and judgements of state authorities. The fulfilment of tasks of administrative legal proceedings and its effectiveness directly depend on the proper use of the rules of substantive and procedural law in cases by courts. This requires knowledge of their content, place in the system of law, orientation, their relationship with other norms and legal principles, which are reflected in the specified rules. Administrative legal proceedings are the activity of administrative courts for the consideration and resolution of administrative cases, i.e. public-law disputes in which at least one party is a subject of public administration. Such disputes arise as a result of violations of the rights, freedoms, and legitimate interests of individuals and legal entities by state authorities. In order to provide an effective mechanism for protecting the rights, freedoms, and legitimate interests of a person from violations by the public administration bodies in Ukraine, the legislator «updated» the system of administrative courts in Ukraine that is in the process of formation.

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