РОЗДІЛ V. АДМІНІСТРАТИВНЕ ТА ФІНАНСОВЕ ПРАВО

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THE SUBJECT OF ADMINISTRATIVE LAW: THE QUESTION OF FINDING ITS NEW FORMAT IN THE MODERN UKRAINIAN ADMINISTRATIVE AND LEGAL SCIENCE

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In the article situation of modern domestic administrative and legal doctrine on the object of the branch is analyzed, attention is focused on objectively determined criteria of its modification. In the conditions of the current active state and law-making processes the nature and purpose of administrative law as polystructural, mobile branch of public law significantly altered. This implies a cardinal revision of its object of legal regulation. Based on the analysis of different sources in article transition is differed from domination («management», «punitive» content of the object of administrative law with the priorities of the implementation and protection of the interests of public authorities, identification of administrative law with the law of state government, that was characteristic for the Soviet and post-Soviet stages of branches development) to new understanding of the industry and of its object. In modern conditions administrative law acquires the characteristics of «public service», «support» branch with a priority of the private persons (person, man) in the system of subjects of administrative law, enforcement of implementation and protection of his rights, freedoms and legal interests in the relationship with public administration. For the modern administrative law is characteristic change of the fundamental categorical series, the transition to the mixed legal nature of the method of legal regulation (from the dominance of the mandatory-dispositive beginnings), significant change of the object of legal regulation. In the article existing approaches to the definition of the content of object are analyzed, position about expediency of discharge from the object of an administrative law relations, which are related with administrative proceeding, in the object of a particular branch (e.g., administrative and judicial law) are supported. At the same time, the doctrinal proposal to exclude from the object of administrative law administrative tort relations are critically evaluated with the reasoning of this approach.

Key words: administrative law, doctrine, public relations, approach, object, public administration, public service relations, administrative and tort relations.

Коломоєць Т.О. ПРЕДМЕТ АДМІНІСТРАТИВНОГО ПРАВА: ДО ПИТАННЯ ПОШУКУ ЙОГО НОВОГО ФОРМАТУ В СУЧАСНІЙ УКРАЇНСЬКІЙ АДМІНІСТРАТИВНО-ПРАВОВІЙ НАУЦІ / Запорізький національний університет, Україна

У статті в систематизованому вигляді аналізуються положення сучасної адміністративно-правової доктрини щодо предмета галузі, виділяються базові підходи, формулюються пропозиції щодо пошуку його оптимального сучасного визначення.

Ключові слова: адміністративне право, доктрина, суспільні відносини, підхід, предмет, публічне адміністрування, публічно-сервісні відносини, адміністративно-деліктні відносини.

Коломоец Т.А. ПРЕДМЕТ АДМИНИСТРАТИВНОГО ПРАВА: К ВОПРОСУ ПОИСКА ЕГО НОВОГО ФОРМАТА В СОВРЕМЕННОЙ УКРАИНСКОЙ АДМИНИСТРАТИВНО-ПРАВОВОЙ НАУКЕ / Запорожский национальный университет, Украина

В статье в систематизированном виде анализируются положения современной административно-правовой доктрины относительно предмета отрасли, выделяются базовые подходы, формируются предложения относительно поиска его оптимального современного определения.

Ключевые слова: административное право, доктрина, общественные отношения, подход, предмет, публичное администрирование, публично-сервисные отношения, административно-деликтные отношения.

In the activation of significant public and law-making processes in the Ukraine at the present stage of its development, a rethinking of the essence, purpose of all components of the national legal system, many foreign borrowing, including European, legal institutions, the special attention of the Ukrainian scientific community and the legal legislator focuses on administrative law as polystructural, mobile industry public law passed, in contrast to other industry counterparts, thorny path its formation and development, and in the conditions of modern nation reform process undergoing a fundamental transformation. In the Ukrainian administrative jurisprudence some depth study of the problem of the genesis of administrative law (for example, work I.S. Gritsenko, S.G. Stetsenko, I.B. Usenko, S.V. Kivalov, L.R. Bilya-Tiunova, A.I. Mikolenko, etc.), its periodization, and trends of the modern stages

of its development (the so-called "newest") plays a special role, as it is in this period there is a fundamental rethinking of the essence, purpose, content, administrative law, the transition from gosudarstvotsentristkogo ("gosudarstvotsentrizma", "paternalistic" [1, 10]) destination to chelovekotsentriskomu industry with a focus on personality (powerless subject) as the main subject of the administrative and legal relations, the main purpose of government, which consists in making the conditions for the implementation of rights, freedoms and legitimate interests of the powerless subjects. Administrative law as a branch of the national law are on the verge of major changes, moving away from the traditional to the Soviet and post-soviet periods look at his subject and method of legal regulation, from the dominance of "management", "punitive" component to its subject matter and the transition is not just equivalent to, and more important of his "public service" component, the emphasis on "governance" to "ensure the priority of rights, freedoms of the citizen (and, if necessary, a legal entity)," the relationship of subjects of authority and private individuals, the priority of the rule of law in the administrative legal regulation. This makes it safe to representatives of national legal and administrative sciences (especially expert of the Center for Political and Legal Reforms, Institute of State and Law of the V.M. Koretsky NAS) with references to the works of founderof nation administrative and legal doctrine (especially A.I. Elistratova) substantiate the actual return to the "classic fundamentals of administrative law", according to which the subject of administrative law, as opposed to the right police officer, is, above all, not administrative (management) activities, and the relationship between "the ruling authorities and citizens", which is fully consistent and by industry sector, for «administration» (latin) – "head», «administro» (Latin) – to serve, to "help" that is already in the title is a combination of "management", "service", "service" [2, 54-55; 3, 119-129; 4, 9].

Therefore, the increased interest in science and industry legal community is the subject of the modern nation administrative law as one of the indispensable and fundamental features industry search for the best option to determine which allows to display the results of transformation processes. Objective circumstances cause the reform of the sector, the definition of its role and place in the theoretical and regulatory processes of state building maintenance [1, 10]. It was at this time how to determine V.K. Kolpakov, evident is rethinking and updating the subject of administrative law and of fundamental importance in this respect was played by two theoretical findings in the development of ideas Concept of administrative reform in Ukraine, namely: 1) the administrative branch law cannot develop as a monocentric branch (branch with a single regulatory system-center), and 2) administrative law is the branch polystructural and "perception of Ukrainian administrative law as a system component's object relations arising from the initiative are powerless party," the so-called reordiotsionnyh relations [1, 10]. The pooled analysis of available modern scientific, educational, journalistic sources can confidently say that representatives of the nation legal and administrative sciences agree that the subject of the modern administrative law has changed, but the unity of their views on the language, unfortunately, no. So, for example, V.K. Kolpakov said that the subject of administrative law are matters arising as a result of the power of the executive and administrative activities of the public administration in relation to the execution of administrative responsibilities. The subject is complex, and includes polystructural relations: public administration, administrative services ("service" attitude), public administration responsible for the wrongful acts or omissions, liability social actors (individual and collective) for violation of the public administration procedures and rules [1, 15-16]. T.A. Gurzhiy offers determine the subject of administrative law as governed by the rules of administrative law public relations administrative, service and contract type, arising in the functioning of the public authorities, as well as relations on the application of administrative coercion [5, 24].

E.V. Kurenniy in the subject area includes a set of homogeneous groups of public relations of the regulatory and protective type, which sold the rights, freedoms and responsibilities of the power-management activities and administrative and legal protection [6, 21-22]. This does not include regulatory and power-management relations relate to land and financial resources [6, 21-22]. Writing team academic course on administrative law in Ukraine, edited by A.M. Bandurka proposes to consider the subject of administrative law in the narrow sense as the social relations that arise between the subjects and objects of government [7, 58], and in a broader sense as a system of broad social relations between subjects and objects of government, resulting in power-administrative activities, the provision of administrative services to the public to ensure the rights and freedoms of man and citizen, the normal functioning of the civil society and the state with the ability to legal administrative rules measures of state coercion and administrative responsibility [7, 62-63]. A similar position is held by

V.V. Galunko [8]. The authors of the academic course in administrative law in Ukraine, edited by V.B. Averyanova a piece of the modern administrative law offer include homogeneous social relations arising a) in public management of the economy, socio-cultural, administrative and political spheres, as well as the implementation of executive powers delegated by the state to local governments, community organizations and some other non-state institutions b) in the course of the executive authorities and local self-government, their officials to ensure the realization and protection of the administrative rights and freedoms granted to them, as well as legal entities that provide various administrative (management) services, and c) in the internal organization and activities of the staff of all public bodies, administrations of public enterprises, institutions and organizations, as well as in connection with the state service and service in local government, and d) in connection with the exercise of jurisdiction of the administrative courts and the resumption of the violated rights of citizens and other subjects of administrative law, and e) in the application of administrative coercive measures, including administrative responsibility, respect of individuals and entities [9, 87]. A similar position is held by S.V. Kivalov and L.R. Bila-Tiunova [10, 21]. However, they logically have focused on the fact that the subject of the modern administrative law, administrative relations are not dominant, which ultimately determines the subject of administrative law as public relations, emerging during software executive authorities, local self-realization and protection of human, freedoms and legitimate interests of individuals and legal entities, as well as in public administration and self-government in the environmental, social, humanitarian and administrative and political spheres [9, 89]. S.G. Stetsenko, highlighting the characteristics as the subject of administrative law modern Ukraine – homogeneous character of the relevant social relations, the qualitative difference between public relations, non-subject in the need to incorporate provisions of the concept of administrative law reform in Ukraine, in which substantially changed the scientific view of the subject of the administrative law of Ukraine a departure from the purely "administrative" nature of social relations, which form the subject of industry, proposes to consider it as a public relations arising in the process: a) external organizational management activities of public authorities, b) intra-organizational management of the apparatus of government and administration of state enterprises, institutions, organizations, and c) public service activities of public authorities, and d) the implementation of delegated powers by the local government and community organizations, and e) application of administrative responsibility, e) the implementation of the administrative jurisdiction of the courts [11, 19]. The team of authors of the textbook "Administrative Law" edited Y.P. Bityaka, V.N. Garashcuk, V.V. Zuy are stressing modification subject of an administrative law in its reform of nation active processes, offer it regarded as social relations that arise in order to fulfill and protect the rights of citizens to create normal conditions for the functioning of society and the state. And one of them are: a) related to the activities of the executive power, and b) relating to corporate activities of other government agencies, enterprises, institutions, organizations, and c) with the management of local authorities, and d) the implementation of the non-state actors of delegated authority the executive; e) consideration by the courts of administrative cases [12, 28]. V.V. Konoplev, S.A. Kuznichenko, A.V. Basov, D.V. Eremeev, Y.Y. Basova, S.A. Butkevich, O.A. Baldetsky the subject of administrative law of Ukraine is formed as follows: 1) public relations in the environment of the specific subjects – the executive power, and 2) public relations arising in connection with other state agencies to management (intra) character, and 3) social relations arising in connection with the non-governmental organizations, some managerial functions [13, 10].

A.I. Ostapenko, Z.R. Kisil, M.V. Kovalev, R-V.V. Kisil subject of administrative law is considered as a combination of two groups of public relations managerial – relationships associated with the implementation of public administration, that is, executive and administrative activities (study group), and other relations, in particular in-house, resulting in the activities of other government agencies (auxiliary, additional group) [14, 13]. Thus, one can single out a few of the dominant approaches in the national administrative and legal science on the wording of the subject of administrative law: a) the "management" of overlapping (though with some light of the reform process), regulations, formulated in the so-called Soviet period, development of administrative and legal science on the subject of the industry, and b) "dichotomous" (the term is used, for example, in the works V.B. Averyanova, V.K. Kolpakov, etc.) [2, 54], suggesting a combination of "management" and " not managerial" component, the latter consists of a heterogeneous group relations, which, in turn, are divided into "public service" oriented "service" the legitimate interests of individuals (actors, not empowerment), and the administrative and jurisdictional. For the most part (as evidenced by the doctrinal analysis of the legal provisions) Representatives of the modern national branch of jurisprudence hold

"dichotomous" understanding of the subject matter of administrative law with the updated fundamental categorical near (the transition from the dominance of "governance", "punitive purposes", "content management and jurisdictional", "object of ruling" to "service", "service", "administrative services", "administrative procedures", "public administration", "administrative discretion", "discretionary power", "ensure the priority of rights, freedoms and legitimate interests of citizens", "public service purpose", etc.), a gradual transition to the mixed nature of his legal method of legal regulation (a combination of typical signs of an imperative and discretionary methods of legal regulation), based on the democratization of the relationship between man and the state (actors with vested and not overbearing powers). However, and among them there is no consensus on whether to include the subject of administrative law relations arising in connection with the exercise of jurisdiction of the administrative courts and the restoration of the violated rights of citizens and other subjects of administrative law. The scientists objecting to the inclusion of relevant relationships in the industry as part of the subject, and they might agree that the issue of administrative justice are inextricably linked to the reform of administrative law, as the institution (although, in the doctrine and formulate proposals for consideration should be this group norms as sub, and sometimes the industry, for example, the work of R.S. Melnika)) [15, 297] plays a very important role in ensuring the rule of law in public administration, the creation of an enabling environment for citizens (or rather individuals, entities, not empowerment) of their rights in their relations with the authorities. The basic argument of this position is that the administrative and legal regulation is unacceptable to the social relations that accompany the administration of justice and, therefore, "such communication should form an independent process-based industry" [12, 28]. And even if you turn that relationship into the subject of administrative law, it would be temporary, since it forms the objective conditions for the emergence of independent legal sector [3, 129]. Position is certainly not devoid of logic, and in the context of enhancing the doctrinal studies related to the revision of the essence, purpose of the administrative process, the formation of an updated scientific basis for the preparation of the latest administrative procedure, including codified for the first time in the national legislative process, act, drawing many foreign administrative and procedural legal institutions, the more urgent the need for certainty and as a doctrinal and normative. To date, formed a sufficient legal framework to regulate relations related to the existence of administrative justice. These relations are really quite specific and, by analogy with other processes, it can be isolated in a separate procedural industry. Moreover, that such proposals in recent years have increasingly stated as scientists and legislators and legal practitioners. In this case, the grounds for the formulation of this argument are the results of the historical, legal, comparative legal, theoretical and applied (empirical) research. The need to final resolution of the question of the delimitation of the concepts of modern administrative process and administrative procedures in the context of enhancing the rule-making process in the relevant field of nation relations "requires absolute clarity, certainty, and the presence of existing regulations that define the organizational and functional basis of the existence of administrative justice character of the industry, suggest it may be appropriate as an independent legal sector – administrative and judicial (administrative court, administrative proceedings) law. Although the new, mostly journalistic, legal, sources can even find offers on the need to select a single integrated procedural branch – the judiciary, which would unite the normative basis of all trials, which, unfortunately, is quite controversial, taking into account, although the specifics of each process, the amount of procedural and legal regulation, etc. Supporting the idea of separation of relations arising during the administrative proceedings in independent legal industry, and, accordingly, their isolation from the subject of administrative law, is not likely, at least to date, pursuing them as part of the subject of so-called judiciary.

However, the transformation processes related to the subject of nation administrative law, especially in recent years affected the so-called tortious part. Activation of the rulemaking process in the field of tort litigation in general, the adoption of the new Criminal Procedure Code, the introduction, in this connection, changes to the Criminal Code, in particular the introduction of criminal offenses, significantly enhance scientific debate on whether to consider as part of the subject of administrative law public relations associated with the use of measures of administrative and law enforcement, including bringing to administrative responsibility, cases of administrative offenses. Although the sign of proposals formulated scientists regarding the allocation of appropriate relations as an independent branch (and administrative tort isolation from the system of administrative law), or as part of the criminal law, dominant in the national administrative and legal doctrine cannot, but they can be increasingly found in various sources. For example, O.V. Kuzmenko, exploring the mutual dependence and interdependence of the content of the administrative process and administrative

procedures on the subject of administrative law, notes that the comparative analysis of conceptual positions on the subject of administrative law at the level of modern ideas with the content of the administrative and legal spheres of tort allows a sufficient degree of confidence that their different origins. While clarifying its position, said that the administrative tort relationships in nature are not managerial, respectively, their inclusion in the subject of administrative law is artificial [16, 73]. Indeed common historical aspect of the legal nature of administrative offenses and crimes, respectively administrative and criminal liability – an indisputable fact, but the present today an array of legislative provisions on administrative charges, including and its specificity in the rule-making aspect of the tort, implementation, along with signs of crimes and administrative, criminal misconduct, which led to a modification of the administrative variety of offenses with the peculiarities of their composition, the specific procedural aspects of administrative responsibility with enough active participation of non-judicial entities, entities of public administration, it is unlikely do unambiguously in today exclude administrative tort relationship of the subject of administrative law. Analysis of the available variety of sources does not give grounds to talk about the formation of the administrative and tort law as a separate branch of law, with all the features of the industry in the Ukrainian administrative and legal doctrine is justified, usually subsector its nature (for example, the work of R.S. Melnik, V.K. Kolpakov, etc.), though there are those in which the administrative and tort law is analyzed in an institutional context), and especially the need for dispersal of its content between existing industries (eg, criminal, criminal, civil and etc.), without proper reasoning such action.

So, summing up the results of an analysis of existing modern variety of sources on the subject of nation administrative law, it should be noted that this is one of the controversial issues among soviet scientists. Reform process, the most affected the sphere of public administration, the need to influence and for modification of administrative law in general, and in particular to its subject matter. Taking into account polystructural, mobility industry administrative law in general, it should be noted that its subject is specific enough (this doctrinal position is supported by the overwhelming majority of nation scientists). Fundamental change in the destination field, the basic model of the relationship of subject relationships, priority rights, freedoms and legitimate interests of non-state actors in the service that serves the purpose of public administration entities, modifications fundamental (basic) terminology series, the transition to a mixed imperative-discretionary nature of the method of legal regulation, influenced by piece of the modern administrative law, which can be defined as: public relations, which are formed in the process of public administration (government management of the economy, socio-cultural, administrative and political spheres, as well as the implementation of executive powers delegated to the government by the local authorities, voluntary organizations and other non-governmental institutions) in the executive bodies and bodies of local self-government, their officials to ensure the realization and protection of the administrative rights, freedoms and legitimate interests of individuals, providing them with administrative services in the corporate activities of all government units and administrations public enterprises, institutions and organizations, as well as due to the passage of the public service, the relationship in the application of administrative coercive measures, including administrative sanctions/

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ВИДИ АДМІНІСТРАТИВНОЇ ПРАВОСУБ'ЄКТНОСТІ ГРОМАДСЬКИХ ОБ'ЄДНАНЬ

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У статті здійснюється аналіз теоретичних положень щодо виділення видів правосуб'єктності, робиться висновок, що адміністративна правосуб'єктність є галузевим різновидом правосуб'єктності, здійснюється класифікаційний розподіл адміністративної правосуб'єктності громадських об'єднань та наводиться характеристика виділених видів.

Ключові слова: правосуб'єктність, адміністративна правосуб'єктність, громадські об'єднання, види, критерії.

Вихляев М.Ю. ВИДЫ АДМИНИСТРАТИВНОЙ ПРАВОСУБЪЕКТНОСТИ ОБЩЕСТВЕННЫХ ОБЪЕДИНЕНИЙ / Запорожский национальный университет, Украина

В статье осуществляется анализ теоретических положений о выделении видов правосубъектности, делается вывод, что административная правосубъектность является отраслевой разновидностью правосубъектности, осуществляется классификационное распределение административной правосубъектности общественных объединений и приводится характеристика выделенных видов.

Ключевые слова: правосубъектность, административная правосубъектность, общественные объединения, виды, критерии.

Vikhliaiev M.U. TYPES OF ADMINISTRATIVE LEGAL PERSONALITY OF PUBLIC ASSOCIATIONS / Zaporizhzhya national university, Ukraine