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CONCERNING THE USAGE OF THE TERM "PUBLIC ADMINISTRATION" IN THE ADMINISTRATIVE LAW

Administrative law is a prerequisite and a means of functioning of public authority in ensuring the human rights. Therefore, modern Ukrainian administrative law should reflect this objective purpose. But the function of this branch of law remains to be substantially deformed. First of all, this is shown in the fact that still, not only in the public consciousness, but also among lawyers, a certain absolutism preserves in two aspects of the social administration of administrative law, namely: a) on the one hand, as «managerial» law, that is, as a means of managing the state's influence on social processes; b) on the other hand – as «punitive» law, which regulates the use of various means of administrative coercion by the state, in particular administrative liability measures.

Thus Ukrainian administrative law needs radical reforms. The decisive direction of this branch of law should be the fundamental change in the role and the appointment of administrative law in the functioning of public authority. This constitutional formula should be ruling in public legal relations: «Human rights and freedoms and their guarantees determine the content and the direction of the state's activities» (Part 2 of Article 3 of the Constitution of Ukraine) [1]. This formula means subordination of the activities of all state institutions to the needs for the realization and protection of human rights, their priorities to other values of a democratic, rule-of-law state.

It is considered that the term «public administration» (contrary to the term «state management») reflects more democratic character of the relations between the citizens and public authorities. Scientists have recently published a significant number of articles, scientific and methodological works, passing the course of a new paradigm of public administration and publicizing the interests of public administration and administrative law in Ukraine on the accession of Ukraine to the European and world educational and scientific space. But nevertheless there is no universally accepted definition of public administration.

In order to refer to the activity of coordinating the work of people, in practice, different terms are used: «ordering», «management», «administration», «governance», etc. «Ordering» – is the most general term. It extends over a wide range of diverse objects, phenomena and processes, for example: technical systems; economic systems; social systems; government systems, etc. «Management» – a definition that is used mainly to characterize the processes of ordering of economic organizations (enterprises). «Administration» – applies to the management of public institutions or to

indicate the processes of managing the activities of the enterprise management apparatus.

In the Ukrainian language, «ordering» is the most common term among those that denote various ways of regulating the influence of social actors on society – in order to regulate it, ensure stability and purposeful development. Its varieties are designated by terms such as state management, administration, governance, management, economic regulation, and others. Some of them prevail in the public sector of social life, others – in private, but in recent decades there has been an interweaving of most of these types of governance in both sectors. So, at first it is necessary to analyze what the change of the name «state management» for «public administration» will mean to us and how public administration should differ from non-public?

The first distinction between public administration that distinguishes it from the state should be its new quality: greater democracy, greater involvement in the management process of the public (the community) and greater consideration of public interests in making managerial decisions. The second, so to speak, «spatial» difference between public administration lies in the fact that, unlike business management, it is carried out in the public sphere. It remains to be seen what we mean by the public sphere and how it relates to the sphere to which «state management» has been used in its traditional forms.

Today, the biased attitude towards the adjective «public», which for a long time dominated the consciousness of Ukrainian social scientists, is almost overcome. The notion of «public sphere», «public sector», «public service», «public services», «public administration», not to mention the previously used terms «public law», «public finances», are becoming increasingly popular. Instead of the cumbersome expression «public authorities and local self-government», the phrase «public authorities» is increasingly used. However, the phenomenon of «public» has not yet become so commonly understood that explanations for it were superfluous. Part of the authors treat «public» and «publicity» narrowly, using for the name of phenomena and processes occurring openly and / or with the participation of the public, and do not take into account that state power is also public in the broad sense of the word, since it belongs to the public (common) rather than private life. Therefore, it is important to emphasize that the term «public sphere» is used in a broad and narrow sense.

«Public sphere of public life» («public sphere» in the broad sense) covers everything that does not belong to the private life of a person. In many textbooks and dictionaries public authority is still treated only as a state. Meanwhile, «public life» of a society is both state and political non-state, and social life; it is all forms of life, concerning the people, the state, the community and is not a private matter of individual citizens.

Public administration covers advisory, organizational and administrative activities and the provision of public services, and its subjects are professionally trained people – public servants who perform specified types of work in government, self-government and public structures. Along with the subsystem of public administration, and in the hierarchical structures – above it,

there is a subsystem of governance: the adoption and implementation of socially meaningful decisions in various areas of public policy.

But rationally, as the conclusion, public administration may be held to cover the organization, powers, duties, and functions of public authorities of all kinds engaged in administration; their relations with one another and with citizens and nongovernmental bodies; legal methods of controlling public administration; and the rights and liabilities of officials. In other words, substantive and procedural provisions relating to central and local governments and review of administrative offences are reckoned constitute the public administration matters of administrative law.

But to judge whether administrative law helps or hinders effective administration or works in such a way as to deny justice to the individual involves an examination of the aims that public administration is supposed to serve, as well as the means that it employs.

Список використаної літератури:

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Ключові слова: публічне адміністрування, державне управління, публічне управління, адміністративне право, предмет адміністративного права.

Ключевые слова: публичное администрирование, государственное управление, публичное управление, административное право, предмет административного права.

Key words: public administration, state management, public management, administrative law, subject of administrative law.

БОДНАРУК ЮРІЙ ВОЛОДИМИРОВИЧ

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РОЗМИВАННЯ КОНСТИТУЦІЙНОЇ ГАРАНТІЇ ФІСКАЛЬНОГО МЕТОДУ ОБМЕЖЕННЯ ПРАВА ВЛАСНОСТІ В ЗАКОННИЙ СПОСІБ ЧЕРЕЗ НЕДОСКОНАЛІСТЬ ВИЗНАЧЕННЯ КАТЕГОРІЇ «ЗБІР» В ПК УКРАЇНИ

Одним із концептуальних здобутків кодифікації податкового законодавства в Україні вважається диференціація понять податку і збору на відміну від комплексної категорії «податку і збору (обов'язкового платежу)» в Законі «Про систему оподаткування». Втім, видається, що проблема є дещо глибшою, дійсні її акценти зміщені і вона залишається досі остаточно невирішеною.