

CORRELATION OF ADMINISTRATIVE DISCRETION WITH THE NOTION AND ESSENCE OF THE PUBLIC ADMINISTRATION MANAGEMENT ACTIVITY

Nataliia A. Baadzhy

Odessa State University of Internal Affairs, Odessa, Ukraine

e-mail: natalysarioglo@gmail.com

Abstract. The article is devoted to the problem of correlation of the notion of administrative discretion with the administrative management activity through understanding the essence of both notions and their interconnection. The problems of the very concept as well as essence of administrative management are raised within the article. It highlights some essential elements of the meaning and nature of administrative discretion along with the grounding its correlation with the administrative management.

Key words: administrative discretion, public administration, state management, activity of public administration, elements of administrative and public activity, state bodies, administrative-legal relations.

The relevance of the problem is difficult overestimate, for in the view of the variety of legal activities of public administration, which directly include the frequent application of the discretionary powers, we should not forget about the legality and adherence to the rule of law while exercising thereof. The right of the public administration to free choice of the decision option or assumptive consequence of the legal regulation is distinctly revealed through the notion of administrative discretion.

Problem statement. Administrative discretion is viable when legal regulation doesn't stipulate a definite option of actions thus entitling the administrative agency to the relevant degree of freedom to decide any particular case in its consideration, meaning it chooses the decision it deems appropriate in the situation; it signifies the availability of free decisions within the limits set by legal regulations. It proceeds from the belief that the essence of the goodwill of the empowered party in social management is to be expressed in possibility of favorable social development, economic relations, solution of social problems, preserving and developing cultural values and providing safety in exercising right and freedoms of individual. [2, P.74]

Therefore, the dynamic character of the activities of executive agencies demands the wider range in regulating the authorized behavior and possible variants of its consequences. With this view we tend to refer to regulations-principles or regulations-objectives (i.e., principles of the State Service stipulated by the Law of Ukraine "On State Service"). Its regulations are not detailed, having the evaluative nature.

Nonetheless, the most important feature of administrative management is the fact that it is strictly regulated by the Law. In the course of carrying out administrative management several types of managerial relationships take place. We can outline two groups of managerial relations: organizational and regulative. We can state that one of the features of administrative management is its exercising within the law, by the law and on the basis of the law and cannot exist without thereof [10].

The other significant feature of administrative management is its essence that according to the general theory of state management includes goals and tasks of administrative management; correlation of the management functions with other functions of administrative activity; cooperation between the bodies of the state power and other agencies i.e. Parliament, courts, Prosecutor's Office, control and supervision bodies; organization of state management and its system; role and mission of a person within the management process, i.e. the role of management personnel, public service.

The form of administrative management is conditioned by the goals that the state puts forward, which in their turn depend on the current political regime. Wherein, these goals precisely correlate with relevant interest in the course of administrative management, either the interests of a particular class or interests of the whole society [13, P. 24].

The classical model of public administration management features the following important aspects: centralization of management; aggregation of resources; serving the general national interests [15].

According to Averyanov V. under state management we understand specific and independent type of state's activity that is carried out by the system of special state bodies – public administration [2, P.80].

H. Atamanchuk regards state management as practical, organizational and regulative influence of the state, based on its authoritative powers, (through the system of its agencies) on social and private life with the goal of its regulation, preserving or transformation [3].

Some researchers interpret this notion as activity of all state bodies in the course of public relations regulation or organization of all spheres of social life. Others say that state management is a specific activity of the state that is expressed through functioning of its state bodies that continuously, gradually and authoritatively and within the legal regulations influence the social system aiming at its improvement according to the interests of the state [15].

Consequently, the essence of state management as an independent activity we should consider as a system of elements of state power of the executive-regulative nature, which carries out functions and tasks of the state in the course of regulating economic, social-cultural and administrative-political spheres.

To be more precise, the public official Deomond Keeling was the first to use the concept of “public administration”, who said it was the search of the best way to use the resources for reaching the priority goals of the state policy [9].

Public administration management is always influenced by the problems proceeding from domestic and foreign policy as well as problems of social life. Public administration management is always exercised within the context of social activities and current social-economic, political and cultural conditions, for public administration management cannot be secluded from the society being carried out by the part of it. [19].

Summarizing the aforementioned we can conclude that public administration management is something more than just a mere collection of general management tools; public administration management reflects the cooperation between political system, state sector, correlation of municipal, governmental and public interests with involvement of the society to the control mechanism of all state powers.

Furthermore, the definition of the concept “public administration management” would be relevant to consider. This concept is often equaled and mixed up with the state government, but the core essence slightly differs. Public administration management is a supervising activity; the word us derived from the Latin «administration» meaning «serving», «assisting», «managing». Public administration management is the prerogative of executive bodies of state power or of the sole state officer. [14]

In the narrow sense public administration management is regarded as professional activity of state officers including all types thereof that are directed on exercising government’s regulations, in terms of interdisciplinary academic sphere based upon theories and concepts of economy, political science, sociology, administrative law and management. In the wide sense under state administration management we should understand the whole integrated system of administrative institutes with its powers hierarchy due to which the responsibility of taken decisions goes from the top to the bottom [18].

According to the encyclopedia Encyclopedia of Public Administration, public administration is a type of management activity of the institutions of public authorities through which the state and civil society provide the system of self-control of all social-public system along with its development in the relevant specified direction [20, P. 489].

M. Minenkostates that within the state sector the “bureaucratic model” has transformed into the “market model” meaning that the emphasis has switched from exercising the work according to the instructions and precise working guidelines to the work that is directed on rendering of quality public services and efficient results, which in its turn has prompted to the transformation of the “state management” into “public administration” and after a while into “public administration management” [12].

V. Martynenko’s idea about public administration management tends toward the form of realization of public management that is exercised by the representative agencies of democratic government through its executive institutions [11, P. 20-21].

K. Kolesnikova regards public administration management as an integral part of public management (governance) with the aim to develop the state basing on the democratic principles using latest effective methods and technologies of management directed on providing the citizens with the world-level standards. [10].

Therefore, public administration management combines the state and public governance, includes the range of institutions and bodies of executive power that exercise government’s decisions.

The more detailed consideration of the public administration management let the researchers outline its essence. Consequently, the elements of the essence of public administration management are:

Goals and if to be more precise it is positive regulation of the relations arising in the sphere of inner organization and functioning of public administration power and in the sphere of its cooperation with the society by means of establishing and providing the realization of all relevant rights and duties of the subjects pertaining to the spheres; maintaining and securing public order on the territory of the state, i.e. concurrence of physical and legal bodies; providing necessary security regime, i.e. the protection condition of the state, society, separate physical and legal bodies from inner and outer threats to their vital interests; special administrative-legal impacts onto social relations; special administrative-legal forms of activity; two types of administrative-public activity: administrative-regulative and administrative-protective [19]

These two approaches towards the essence of state management and administrative public activity first of all reflect the different volume of the essence of the concepts and secondly, indicate the differences in the definitions of these two phenomena. Consequently there is a question arises from the aforementioned: are these two concepts

equal or present two different administrative-legal notions? We think that state management in the classical administrative-legal science as a particular type of exercising the state power is executive-regulative and sub-legislative activity aimed at every-day and direct managing the business, social-cultural and administrative-political building realizing by executive-regulative bodies of the state power or by the bodies of the state government [1, P. 7].

This approach is a narrow translation of the state management. The current drastically changeable processes in Ukraine, changing of the basis of the state structure and state's functioning mechanism, all the restructuring within the state system provided the need to change the "controlling impact of the executive bodies" onto the sphere of the social structure, which in its turn undergoes the transition towards the new condition; all that reflects special vector of the cooperation between subjects and object of governance aimed at harmony and stability during reforming [6, P. 32].

Taking into consideration all the mentioned assumptions it's clever to accept that the former approach to understanding of state management fully corresponds modern realities of the development social relations in realizing the governing impact onto the social processes in the state. Furthermore, we should regard the state management as a regulatory, organizational and law-enforcement and administrative-public activity of the executive bodies including governing agencies within legislative and judicial power, state officials, local governments and their officials, state and municipal institutions and other authorized bodies having the power to act on behalf of the state.

U. Starilov in his research of the state management points out that "state management is based on the principle of organization, i.e. it features the variety of organizational forms, which spectrum provides the focused and stable flawless functioning of the whole management apparatus. Bodies of executive power combine the inner management (forming the structure of managing body, training the qualified staff, i.e. self-organization) with the outer management, i.e. exercising by the definite subject of governance functions of external character and influence onto the governing objects". The researcher exposes the fact that "state management realizes the powers of jurisdictional nature, i.e. provides the administrative (extrajudicial) order of realizing by the executive bodies a so-called forceful management (for example, applying administrative sanctions, warning or restrain measures)" [8, P. 29].

The other elements of the essence of administrative-public activity, apart from those mentioned by the specific authors, are the functions and tasks of the relevant type of authority-public activity. Thus, the system of elements of the essence of administrative-public activity represents a complex of goals, tasks, functions, special administrative-legal methods and forms of activity, authorized agencies and state officials in the state management of the everyday social life that are exercised in the framework of administrative-organizational and administrative-protective legal relations

Accordingly, the essence of state management as a separate type of state activity we shall understand as a system of elements of the state power having executive-authoritative nature and exercises the functions and tasks of the state in the process of regulation of economic, social-cultural and administrative-political spheres [17, P. 652].

The essence of administrative-public activity reveals the fact that it is impossible without exercising administrative discretion. In the life course every person (provided he hasn't got any psychological deviations) permanently evaluates the balance between his real behavior in the social sphere and possible behavior that is necessary, reasonable, useful and meaningful either for himself or for any other person or group of people or the society in the whole. This evaluation course presents the thinking process based on the logic laws (having the rational character) as well as human intuition (irrational character). Consequently, there is a choice between socially useful and positive variant of behavior and socially harmful or socially-deviating behavior. Exactly these two antipodes in the choice of behavior are crucial.

At the same time, within the framework of each of them there are diverse variants of possible human behavior, which, of course, are predetermined by the human motivation for behavioral activity. It seems that the transition from the reality of human being to the possibility of changing it in the social environment due to the motivation for the need for such a change and the mental process that justifies such a change in the person's place in the social environment lies in the sphere of human discretion [5, P. 44-51]

In this regard, in the process of implementing public administration (administrative and public activity) on the basis of law, administrative discretion by a managing body of organizational and regulatory legal relations is inevitably exercised.

Understanding administrative-legal discretion as a motivational and free choice of an official wherein the basis are objective factors of the reality while all this is based on discretionary specifics of powers and activity of the state bodies and the method of legal regulation of public relations give us the possibility to conclude that reaching the goals of administrative-public activity is carried out through the choice on the basis of legal acts proceeding from administrative-legal methods, correct assignation of the goals and functions of the activity, wherein everything is exercised by means of administrative discretion.

In addition, it should be recognized that, although the administrative-legal form of activity of government bodies and their officials is legally determined, its content (namely motivation) is a product of administrative and legal discretion. The stages of administrative discretion offered by the article also emphasize the connection of this phenomenon with the essence of administrative and public activities (public administration).

Administrative public activity (public administration in the broad sense of the word) is characterized by “the scale and universality of public administration” [8; P. 28], it is carried out in the most important spheres of life of the state and society, and applies to both state-owned facilities and non-state-owned facilities, in relation to which “there is state regulation through administrative regulatory and control and oversight procedures” [8, P. 28]

This specific feature of administrative and public activities is expressed in the continuous, constant, systematic and legal activities of authorized bodies of state administration. The cited characteristic of the features of public administration has important qualitative and spatial significance.

This feature shows that administrative and public activity is a very important executive, administrative and by-law activity of managing bodies that affect a very wide area of management objects, which is carried out continuously, constantly, systematically and based on the principle of legality.

In this regard, administrative discretion also arises with the mandatory participation of managing bodies in the process of their continuous, constant and systematic impact on the management object in accordance with the requirements of the law.

It should be recognized that there are no contradictions between administrative discretion and the principle of legality, which D. Boiko has reasonably proved [4, P.4].

This author notes that “discretion, presenting itself as part of the rule of law, characterizes the features of the law enforcement, more precisely, within the framework of a legal procedure, i.e. by the direct instruction of the law or in a situation of lack or ambiguity of the legal act, but within the framework of general legislation.

Therefore, not the rule of law is included in the content of discretion, but discretion can be considered as a feature of the regime of legality in some atypical enforcement situations” [4, P.4].

To summarize the above, the following should be noted. The process of any type of social management is inherently associated with social discretion as a movement from the reality realized by the subject to the realization of diverse opportunities, due to the need to change reality, based on the laws of development of social processes and embodied in the volitional behavior of the subject, based on the chosen variant of the possible. Administrative and legal (administrative) discretion as a type of law enforcement discretion is carried out in the process of administrative and public activity (public administration in the broad sense) of executive bodies, other state bodies, including governing bodies operating within legislative and judicial authorities, state officials, executive bodies and officials of local self-government, state and municipal institutions, other authorized actions on behalf of the state or municipality, organizations and individuals to implement, on the basis of relevant laws and by-laws, in special administrative forms and using special administrative and legal methods of power-public regulation, protection and protection of relations arising in the field of internal organization and functioning of public administrative authority and in the sphere of its external interaction with society.

In the process of carrying out administrative and public activities with the help of administrative discretion, the content of this management activity can be carried out (but not always necessary), which is expressed in the goals, objectives, functions, special administrative and legal methods and forms of activity of authorized bodies and state officials for state management of the affairs of society in administrative-regulatory, administrative-organizational and administrative protective relationship.

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Соотношение административного усмотрения с понятием и сущностью государственного управления

Бааджи Наталья Анатольевна, e-mail: natalysarioglo@gmail.com,
Одесский университет внутренних дел, Одесса, Украина.

Аннотация. Статья посвящена проблеме соотношения понятия административное усмотрение с административно-управленческой деятельностью через понимание сущности обоих понятий и их взаимосвязи. В статье рассматриваются проблемы как самой концепции, так и сущности административного управления. В нем подчеркиваются некоторые существенные элементы значения и характера административного усмотрения, а также обосновывается его связь с административным управлением.

Ключевые слова: административное усмотрение, государственное управление, деятельность государственного управления, элементы административно-общественной деятельности, государственные органы, административно-правовые отношения.