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ADMINISTRATIVE RELATIONS: THE CONCEPT AND TYPES

АДМІНІСТРАТИВНО-ПРАВОВІ ВІДНОСИНИ: ПОНЯТТЯ ТА ВИДИ

Kolpakov V.K.,
Doctor of Law, Professor
Head of the Department of Constitutional and Administrative Law
Law Institute National Aviation University

This article examines the transformation of administrative relations and their transformation into a relationship of interaction between state and citizen. Reveal their contents, analyzes the structure and species.

Key words: administrative and legal relations, state administration, the subject of administrative law, administrative commitments relations, public administration

У статті досліджується трансформація адміністративно-правових відносин, їх перетворення у відносини взаємодії держави і громадянина. Розкривається їх зміст, аналізуються структура та види.

Ключові слова: адміністративно-правові відносини, державне управління, предмет адміністративного права, відносини адміністративних зобов'язань, публічна адміністрація.

В статье исследуется трансформация административно-правовых отношений, их превращения в отношения взаимодействия государства и гражданина. Раскрывается их содержание, анализируются структура и виды.

Ключевые слова: административно-правовые отношения, государственное управление, предмет административного права, отношения административных обязательств, публичная администрация.

Relationships among the most fundamental categories of administrative law. It is in the relationship it exists, acts and lives. They are the main object of scientific understanding on the formation of administrative law doctrine, the empirical basis for the withdrawal and the formulation of the theoretical core area – the subject of administrative law.

The concept of administrative relations has undergone a sea change and overcome the inertia of Soviet stereotypes, there was a qualitatively new factor, in harmonizing cooperation between public authorities and man.

Professor V.B. Aver'yanov on this occasion said that the key issue of administrative reform is the introduction of a new type of relationship with the authorities. Relationships that provide everyone the real observance and protection of human rights and freedoms in their activities [1, p. 140].

In the Soviet period, administrative and legal relations are identified with the sphere of public administration or executive and administrative activities. Such an approach, with some interpretations stored up to 90 years of the last century. Anyway, Y. Kozlov in 1995 subject to administrative law determines the relations that arise, change and terminate in public administration [2, p. 18]. Under the influence of this relationship begins to develop an understanding of the concept of Ukrainian administrative law.

At the first stage of knowledge of administrative and legal relations are based on tradition of Soviet law school. According to them, they are homogeneous and have state-management orientation.

In that aspect can be considered the most prominent position of Professor L. Smith. He once wrote that the subject of administrative law is the social relations that arise in making the government [3, p. 6]. The second phase of reflection administrative legal relations is characterized by the accumulation of relevant knowledge is in a fundamental change in the social and economic spheres. On their grounds for forming new social relations in content. As a result, there is an urgent need for their legal support. In turn, the legal interpretation of the new laws of social development leads to a new understanding of the role of law and relations between state and citizen. The new thinking when the State is in center of account and paternalism that make up the ideology of «traditional» Soviet administrative law, joining other marginalized doctrines. Thus, the objective circumstances forcing the reform of administrative law. They need to define its place and find a role in theoretical and normative processes of state service in the formation of law. After a while it becomes clear that the solution of the problems is impossible without rethinking the actual content of the administrative and legal development and updating of the subject of the legal industry.

Essential to update these concepts had two theoretical conclusions that have been made in the development of ideas Concept of administrative reform in Ukraine. First, it is concluded that the administrative law cannot develop as a monocentric industry, i.e. how such industry that has only systems forming a normative center, and secondly, the conclusion that administrative law is politically structural.

No less significant role played by perception Ukrainian administrative law as an important component of its system-object relations arising from the initiative of the parties was subject. They were introduced into the national administrative and legal theory called reordinated relations. Based on these achievements notion of administrative legal relations becomes wider and goes beyond government. This is primarily evidenced by their coverage in the academic literature. For example, in the textbook of Professor T. Kolomoets they served as public relations, regulated by rules of administrative law, subjects which have rights and responsibilities in the area of human rights, freedoms and lawful interests of individuals and legal entities, as well as in public (state and self) management of the social administrative, economic and political development and public order [4, p. 43-44].

In scientific sources carefully examined trends in administrative law, theoretically justified a new structure of his subject. The result is administrative law raises public-sector regulation, which ensures the functioning of public administration.

Thus, the second stage of the knowledge of administrative law is clear that. First, it regulates relations not only government but also other management relations. Their combination creates a relationship of public administration. Second, in addition to management, to include administrative and legal relations arising in the administration of justice in the form of administrative proceedings. This relationship of government agencies responsible for unlawful acts. Thirdly, in the field of administrative law relationships are liable for violation of the rules – the relationship of administrative responsibility. Fourth, the proportion of independent administrative legal relations arise that relations initiated by entities that do not have power, when they are addressed to public administration. They are positioned as a relationship reordinated, and then known as «servicing» relationship and, finally, public relations and administrative services.

The third stage – a generalization and systematization of theoretical and empirical data, a systematic approach as a method to study the accumulated material.

The central question at this stage aimed to find out whether or not the aggregate administrative legal relations integrative qualities.

Its fundamental importance due to the fact that the lack of such qualities did the specified set of conglomerate formation and actually questioned their unity and, therefore, the existence of the subject of administrative law in the new format. Having integrative qualities conclusively showed that this combination is a system and has every reason to be regarded as a matter of Law.

In this regard it should be noted that in the Soviet legal doctrine the subject of administrative law is served education system. Integrative nature of the interaction of its components, researchers have argued on the basis of the following characteristics: a) all relationships are the same type of object relationship, and b) all the object relations are relations of power and subordination, and c) all object relations arising from the implementation of government strictly defined structures – public administration.

None of the above integrative features not sought to set new structural components of the subject of modern Ukrainian administrative law. It is not the same type of relationship include administrative services and the relationship of responsibility. Do not them also relationships of power and subordination. Not all of the updated object relations arising from the implementation of the government.

The set of relations that are updated terms are governed by administrative law is transformed into a system, and therefore, the subject area, and other factors. This category of «public administration», «administrative relationship commitment», «public administration».

«Public Administration» is actually takes place, which in the Soviet administrative law ought to category «governance.» Today, scientific understanding and further development of the theory of public administration is one of the main areas of doctrinal renewal of administrative law in Ukraine. An important basis for its transformation into the modern European legal area content.

This movement is not simply a change in terms. The theory of public administration has fundamental differences from the theory of public administration than legal content, and on the ideological nature.

Its formation and recognition puts an end to attempts to adapt the Soviet doctrine of governance to the doctrine of the democratic state. State in which the regulatory recognizes its responsibility to the people, where human rights and their guarantees determine the essence and orientation of the state.

Public administration in the administrative law of the European countries in most cases is defined as a collection of bodies and institutions that implement public authority through the implementation of laws, regulations and other actions in the public interest. This understanding is important for the Ukrainian legal system.

Thus, public administration – a system of organizational and structural entities that are legally acquired powers to implement them in the public interest.

All this makes it necessary to consider the theory of public administration as a methodological basis of administrative law and use it as a basic concept in the formation of administrative legal relations.

Another backbone for the subject of administrative law factor is the category of «administrative relationship commitment.» The essence of this relationship is due to the meaning of the Constitution of Ukraine on State responsibility to the individual, recognizing the primary responsibility of States to affirm and ensure human rights and freedoms, the rule of law limiting the powers and actions of the public administration by the Constitution and laws of Ukraine.

They imply that the formation of public administration undertakes to meet the interests of society and citizens. Among them is the obligation of public nature, the implementation of which requires the use of the public administration authorities. In the course of their relationship emerge, which are called «relations administrative obligations.»

They – the relationship to fulfill administrative obligations of public administration to the community – is the subject of an administrative regulation, or subject to administrative law.

This category – Relationship administrative obligations – combines four types of relations, each of which is part of the subject of administrative law. These relations: a) public administration, and b) the relationship of administrative services, and c) the relationship of public administration responsible for the wrongful acts or omissions, and d) the relationship of responsibility for violation of established procedures and regulations.

A characteristic feature of all the above types of administrative legal relations is that public administration acting in their ruling party that exercises its executive and administrative powers. Authoritativeness in this dimension is understood as having dealt with the right to make laws ruling (binding) decisions in the event of the relevant legal fact.

An important factor regarding systematic relationships governed by administrative law is the public administration. Public Administration – an activity subject to the fulfillment of public administration authority public content. It is through the use of management, administrative services, participation in the relations of subjects of public administration and enforcement for violations of rules established by the public authorities.

Public administration is carried out according to the principles, which are divided into: a) the general principles of public administration, that is common to all types of work, and b) the specific principles of public administration.

Special principles inherent in specific types of administration: public administration, administrative services, establishment and implementation of the public administration responsible for the violation of positive rights of society and the establishment of responsibility by society for violation of the standards of public administration.

Adherence to the principles of public administration regulation provides methods and forms of public administration. In accordance with the principles of the methods and forms of public administration are divided into general and special.

Administrative structure relationship includes subject, object and content. Side (the subject) has the primary role in determining the content of the administrative-legal relations. Administrative and legal relationships are formed, usually in a particular area of social life – public administration in the implementation of public administration public functions. This feature of administrative relationships stems directly from the content of the subject of administrative regulation.

Administrative relationships can occur at the initiative of either party. However, consent or desire other party is not a prerequisite for their occurrence. Administrative relationships may occur against the wishes of the other party. For example, in the case of an appeal to the Ministry last citizen, regardless of his «desire» is obliged to respond to such a request and consider the application of a citizen.

A similar situation arises when the other party is not a citizen, the lowest body or undertaking, institution or organization. It is clear that public administration have the right to produce administrative relationship unilaterally, following public interests and challenges facing them. Thus, the administrative law relations may occur at the initiative of either party without the consent of the other party.

Disputes arising from administrative legal relations between the parties shall be settled in court and out of court, i.e., by direct order of the competent authority.

Subjects (parties) are the administrative legal entities of administrative law, i.e. carriers under administrative law rights and obligations, which are able to exercise these rights, and assigned responsibilities – perform.

The object of administrative relationships is something about which they arise: behavior, tangible assets, intangible assets and others. Contents of administrative relationships are subjective legal rights and obligations. Subjective legal rights – a measure of permissible behavior, and legal responsibilities – a measure of the required behavior (in some cases the duty to refrain from certain actions, and others – to exercise them). Both rights and obligations provided by the relevant rules.

The emergence of administrative legal relations – is, in fact, legal objectification of the general will of the public administration in the real behavior of specific actors. The process of (forming) relationships has consistently carried out three stages: first, the need is determined (feasibility) i the possibility of establishing specific administrative and legal relationship and secondly, creating the appropriate legal structure, that is kind of an abstract model of administrative relationship that is fixed in the administrative legal norms, and thirdly, there is a realization of the relevant legal norms, i, as a result, there are steel legal relationships between addressees of norms in the form of administrative legal relations.

Administrative and legal relations are divided into classification groups using the following criteria: 1) the area of origin, 2) the functions performed, and 3) quantitative composition of participants, and 4) a status characteristics of participants, and 5) the location of the administrative hierarchy, and 6) within the meaning of power.

Classification of administrative legal relations on the sphere origin reflects the structure of the subject of administrative law. In view of the above, they are divided into: a) public relations management, and b) the relationship of administrative services, and c) the relationship of public administration responsible for the wrongful acts or omissions, and d) the relationship of responsibility for violation of established procedures and regulations.

The relationship of public administration to arise in the implementation of public administration management activities. In general, the government – is the work of the subject, which is found in deliberate action on the object to bring it to the desired subject to fortune. Thus, management is characterized by the interaction of subject and object management with managerial influence and feedback. Public administration consists of: a) governance, b) self, c) public administration.

Relationship administrative services arising from appeals individuals, legal persons or other collective vehicle to power on the subject of their appeal rights, freedoms and legitimate interests by making powerful decisions. In the Ukrainian administrative law are positioned as reordinated relations, «service» attitude, public relations services.

Administrative services – the result of the exercise of authority by an authorized entity, according to the law provides legal support conditions of physical, legal persons or other collective rights, freedoms and legitimate interests of their application (permits (licenses), certificates, registration etc.).

Relationships responsibility for public administration wrongful act or omission occurring in two cases: a) due to the presence of a public

law dispute as fair use power public administration, b) in connection with an administrative appeal against the actions of public administration on the use of power .

In the first case, a relationship or a judicial review of administrative proceedings. They are objectified by instituting administrative proceedings where the defendant is the government entity. Such cases are tried in court for administrative justice standards that are set by the Administrative Code of Ukraine (CSSA).

In accordance with the administrative case – is referred to the administrative court of public law disputes in which at least one party is a body of executive authority, local governments and their official or employee, or other entity that provides power management functions on the legislation, including delegated powers. Violated such cases the administrative claim. The plaintiff in an administrative case shall be citizens of Ukraine, foreigners or stateless persons, institutions and organizations (legal entities) government entities. Respondent in an administrative case is an authority, unless otherwise provided by CSSA.

The second case is the relationship of the administrative (non-judicial) appeal. They are objectified by the complaint and implementation of the proceedings. Proceedings on complaints are governed by laws and regulations, including departmental. To carry out such proceedings the competent person of the public administration.

Relations Society of subjects (individual and collective) in violation of public administration order and rules arise in the event of such acts. They are objectified by opening the relevant proceedings installing and using wine to them the following measures: imposing administrative penalties on individuals for administrative violations, disciplinary action against individuals for administrative violations; apply to individuals for administrative violations Measures that are not defined as a legislator Authorities imposed; imposed on legal persons for violations of administrative and legal statutes penalties that are not defined as a legislator Authorities recovery, the use of legal persons for violations of administrative and legal statutes of administrative influence, which is not defined by the legislator as a penalty.

According to the functions performed administrative and legal relations are divided into regulatory and law enforcement. The regulatory relationships are those that relate to the exercise, relatively speaking, «positive» functions of administrative law. These administrative services, organization of work of management, lower management structures satisfying citizens and others. By law relationships are those that relate to the exercise of administrative law enforcement functions. The most familiar type of law enforcement relations – administrative and tort. They arise about bringing to administrative responsibility for offenses.

For quantitative composition of participants allocated bilateral and multilateral relationship. In bilateral relations, the two participating entity. In multi – three or more subjects.

For participants allocated a status properties relationships: 1) between the head of state – the President of Ukraine – and the entire system of executive authorities and other bodies, in addition to executive branches of government, non-government units, other collective entities, individuals, and 2) the relationship between supreme body of executive power – by the Cabinet of Ministers of Ukraine – i rest of the executive branch of government and other agencies, except executive branches of government, non-government units, other collective entities, individuals, and 3) a relationship where mandatory side of the central body of executive power, and 4) relationship where a party is indispensable local authorities, 5) relationship where a party is indispensable, local governments, and 6) the relationship between officials of all the above.

In place of the administrative hierarchy distinguished relations: 1) between subordinate entities, i.e. between parent i subordinate public administration bodies, and 2) between entities not subject to a hierarchical level, for example, the relationship between the ministries, administrations or regional area, etc. and 3) between entities not subject to different hierarchical levels, such as between the state administration of one region and another area of the district state administration, and 4) between public administrations and entities which are not subject to their organization (i.e. organization independent from them) for example, the relationship between the tax authorities of enterprises i, 5) between the administration (management body) of the company i directly managed staff of the enterprise.

For the purposes of power relations distinguished: 1) vertical, 2) horizontal. The vertical relationship is expressed most imperious of administrative and legal nature of the links i regulation in the field of management. This relationship is often called government relations. There is co subordinate between the parties in a legal sense i express legal relationship of one party from the other. The main content of «verticality» is: a) the legal right of one of the related entities will dictate otherwise and b) the obligation to comply with other subjects and performs the following expression.

Horizontal legal relationship recognized by those in which the parties legally equal. They have no legally imperious dictates one hand, binding of the second side.

Thus, obeying the will of the publisher regulation, they enter into contractual relations equal to each other. Substantial restraint contractors administratively (inability to abandon the contract, the existence of liability for failure to contract, etc.). Encouraged to refer to such agreements the term «administrative agreement».

In 2005, the horizontal relationship of administrative agreements has legislative strengthening and definition in the Code of Administrative Procedure of Ukraine. Article 3 CSSA observed that the administrative agreement – an agreement between two or more parties, the contents of which are mutual rights and obligations arising from the government entity functions [5].

Thus, in terms of the independence of Ukraine the transformation of administrative legal relations, the content of which was the establishment of the regime of legal equality between the state, its organs and officials and citizens.

Horizontal relationships characteristic of administrative contracts. In their field they arise as a result of the adoption of the regulation, which refers to the execution of the task by making several subjects each respective agreement. Typically, these acts contain imperatives of: a) determining objectives, and b) the choice of performers, c) establish contractual relationships between performers and d) establish the liability of the parties for refusing to participate in a contractual relationship, and e) evaluation of the parties and the legal recognition of that task done.

Entities are defined as the act entered into a contract in respect of: a) selecting tools needed to effectively address this problem, and b) developing a mechanism to share these tools, c) the role and place of each party in this mechanism, d) adoption of obligations to act within the prescribed limits and consistent pattern e) Responsibility for failure commitments.

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