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BACKGROUND PRINCIPLES OF CODIFICATION OF ADMINISTRATIVE LAW NOTES TO SCIENTIFIC DISCUSSION

ВИХІДНІ ЗАСАДИ КОДИФІКАЦІЇ АДМІНІСТРАТИВНОГО ПРАВА: НОТАТКИ ДО НАУКОВОЇ ДИСКУСІЇ

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The article is devoted to the determination of preconditions for codification of administrative law. The author proves the idea that direction and the scope of administrative law codification can be realized only after reformation of the system of administrative law of Ukraine. Opinion about the content of administrative law system and also about possible directions for codification of administrative law norms is expressed.

Key words: administrative law, codification, system, subbranch of law, institution of law.

Статтю присвячено визначенню передумов кодифікації адміністративного права. Автором обґрунтовується думка про те, що визначення напрямків та обсягу кодифікації адміністративного права може бути здійснено лише після реформування системи адміністративного права України. У статті висловлюються погляди на зміст системи адміністративного права та, відповідно, на можливі напрямки кодифікації норм останнього.

Ключові слова: адміністративне право, кодифікація, система, підгалузь права, інститут права.

Статья посвящена определению предпосылок кодификации административного права. Автором обосновывается мысль о том, что определение направлений и объема кодификации административного права может быть осуществлено только после реформирования системы административного права Украины. В статье высказываются взгляды на содержание системы административного права, и, соответственно, на возможные направления кодификации норм последнего.

Ключевые слова: административное право, кодификация, система, подотрасль права, институт права.

The issue of codification of administrative law, which union of its rules, centered in the legal customs, judicial decisions and legal acts of various legal effect within individual codified acts is extremely important and almost necessary for Ukrainian state. This is primarily due to the large number of normative material is preferably in the form of ad hoc, which makes its study and application.

It should be noted that the issue of codification of administrative law (legislation) from time to time quite actively discussed in the pages of scientific papers. Thus, in recent times over issues referred Meanwhile or less worked by such scholars as V.B. Aver'yanov, Y.P. Bytyak, I. Gritsenko, T. Kolomoets, T. Komzyuk, A.M. Shkolyk and others. Analysis of the work these authors shows that they are usually concentrated their attention on finding answers to questions or directions codification of administrative law (legislation) or the codification of the individual institutions, such as the codification of the institute administrative proceedings, institute administrative enforcement or institute administrative process . Note that similar approaches to solve the said problems in general are possible and appropriate. However, while they are somewhat limited because the authors avoid the formation of the concept of codification work, do not define the criteria on which should be ordering rules of administrative law. In other words, proposals for the creation of a code formulated quite often based on common sense, which, in our opinion, may not always, be enough.

Given that the main aim of this paper is to develop the theoretical foundations needed to determine trends and codification of administrative law that, in our opinion, should be made in the light of a critical view of the current system of administrative law.

The system of national administrative law at all times, its existence was not different structural and logical construction, which has been largely due to the large number of administrative law. Quite revealing in connection with the above words appear V. Levitskoho that during the development of administrative law, wrote that this discipline expand to the size of Encyclopedia of Social Sciences, the content of which is such a mass of heterogeneous material, its study is beyond the power of one person [1, p. 15-16]. A similar situation was also characteristic for the Soviet administrative law, which, as rightly put it in 1927, Professor Karaj-spark, started to become synonymous with Soviet law in general [2, p. 22]. In the following days the situation with the scope of the array a complicated administrative law, which was associated with the expansion of social relations that are governed by this branch of law.

In view of the science to the question of how and what the rules of administrative law should be codified. Attempts to solve this problem, taking into account the Administrative Code of the Ukrainian SSR and the legislation on administrative offenses, limited only systematization of rules of administrative responsibility. However, this was only one of the ways codifications of administrative law. As for the others, the consensus on this issue among jurists were observed and expressed about this proposal did not look too convincing and reasonable. For example, it was suggested the possibility of codification of administrative law for certain sub-industries or institutions of administrative law, which attributed, in particular, institute legal status and guarantees the rights and freedoms of citizens and provision of services in public administration and institute procedures to ensure the rights and freedoms of citizens in governance. These institutions, therefore, they should be incorporated within the individual codes [3, p. 153, 154].

Analyzing suggested, we would like to ask a few questions of the authors. The first, regarding the possible names of codified acts. The second, the differences between the abovementioned institutions, which, in our opinion, are identical in content, since the implementation and protection of human rights, including in the form of services, always occurs within a formal procedure that is covered by the Institute of Administrative Procedure.

The presence of such proposals can only be explained by unsystematic approach to the system of administrative law.

The truth is the fact that the vast majority of Ukrainian norms of law – it is the rules of administrative law. It may be difficult to understand just by reviewing existing regulations, but it is quite apparent when viewed through the prism of administrative law relevant content textbooks. Of the public

management of the economy, social life, law enforcement, environmental protection, etc. – these are the areas that fall under the regulatory influence of norms of administrative law.

This state of affairs makes the existence of a considerable number of problems, chief among which is the absence of at least any differentiation of administrative law, especially those that make up the contents of the Special Section of Administrative Law. The existing approach to the division of special areas depending on the government no principal does not matter because it cannot achieve the required level of differentiation of these rules.

As a result, we have thousands of regulations, hundreds of thousands of legal rules that are combined within the concept of «administrative law», the study of which is now not able to have three persons, not to mention one. Given this, and given the content set to discuss the issue, I have a question: what, in fact, which is exactly what these thousands of law shall be subject to codification? On what basis, given that the criteria are selected wake those that have to make the content relevant codes? And that actually codes should wake produced?

In my opinion, the answer to these questions is a prerequisite for starting discussion on codification of administrative law. However, in order to do this, you see, and not just see but actually create a theoretical level, a new system of administrative law that would solve at least two important tasks:

1) to the differentiation of administrative law;

2) withdraw beyond the administrative law the legal entity that is distinct areas of law that have no relation to administrative law.

Speaking about the current state of administrative law, can agree with the opinion expressed in the literature that it has neosocialist view, which is actually a continuation of the Soviet administrative law. The difference between these systems is only in that the former are supplemented by new legal institutions (Institute of Administrative Procedure, institute administrative services, etc.), but such a system of administrative law cannot meet the current needs in the regulation of administrative legal relations.

The result is that the issue of codification of administrative law developed mainly in the direction and with the same scenario that existed in Soviet times. Have we gone much further than our predecessors, when speaking of codification we remember, in fact, the same codes as discussed in Soviet times?

Instead, much less can hear proposals for creation of a new codified act: building codes, vehicle code, social code and more. Why is that? I think this is due to the fact that now, unfortunately, quite actively deny the necessity of forming and develop new areas of Ukrainian law! And the main problem here is that these industries is not space within the existing Ukrainian law, which, like the system of administrative law continues to exist for the Soviet scenario, the main elements of which are:

- Doubts about the need to separate the right to private and public;
- The idea of Soviet scholars on a limited number of areas of law.

All this leads to the fact that we limit ourselves in our conversations and reflections on contemporary Ukrainian codification of administrative law. In this case I'm talking about the fact that representatives of the science of administrative law quite often do not participate in conversations, such as the establishment of building codes because it is believed that the building license has nothing to do with administrative law. Some go even further, saying that no building license or vehicle license, etc. do not exist. And why is not there? Because this area of law are not mentioned in the passports of legal specialty. Sad and funny to hear such reasoning!

To solve these problems, of course, can work independently, but there is an extremely useful European experience in general and German in particular, especially given the European aspirations of Ukraine. Germany is known to be a country with extremely developed democracies, with high social and legal standards, which in most cases are implemented in life is due to administrative law norms. So why do not we at least do not look at the German system of administrative law, which is actually the standard for administrative law in most EU countries, why do not we start talking about the Ukrainian codification of administrative law in the light of developed and adopted by the German codes?

Within the Ukrainian system of administrative law should be allocated general administrative law and administrative law special. Each of these system entities consisting of the structural elements: General Administrative Law – the legal institutions, particularly administrative law – the law of industries.

The main institutions of the General Administrative Law are: Institute principles of administrative law, the institution of subjective public rights of individuals, the institute administrative proceedings, the institution of public property, the institution of enforcement of administrative regulations, the Institute of Public Administration of liability. The most fundamental and important institution of the General Administrative Law is the institution of administrative proceedings because the rules governing the activities of public administration, including the adoption of administrative acts. The significance of the said institute to organize the administrative and legal relations between public administration and private individuals rather well once wrote V. Tymoshchuk. Author rightly pointed out that the administrative procedures provide equality of individuals before the law, as to all cases identical apply the same procedure. Furthermore, the existence of legally prescribed procedure is the starting point for monitoring such court, the legality of the government [4, p. 5]. Given this fact, there are clear and justifiable attempt to separate national parliaments to develop and approve the Administrative Procedure Code of Ukraine.

As for the other institutions of the General Administrative Law, then, in our view, given the limited number of appropriate regulations for their codification is no reason.

The preferred amount of codification work must be carried out within the Special Administrative rights. In my opinion, a special administrative law is a complex multi-system formation, the content of which is quite a significant number of sub-sectors of law, including: administrative and commercial law, police law, public service or employment law, administrative and tort law, social law, administrative and cultural rights, environmental law, municipal law and so on.

Division of Special Administrative rights to sub-maximal extent the structure of administrative law, which, accordingly, must be at the institutions of governance and the institutions and industries law. At the same time, within the sub-license may be allocated norms that govern not only management, but also public-service relationships that develop under current conditions between subjects of public administration and private individuals.

At the same time we must not forget also about Part 2 of Art. 19 of the Constitution of Ukraine [5], which states that the activities of the public administration must be carried out in the manner and to the extent permitted by law. This means that every activity of the public administration must have a clear legal regulation, which will be a group of administrative law norms, incorporated within the above industries Special Administrative rights. Under these conditions, the system Special Administrative rights will always focus on the further development, especially in the differentiation of sub-sectors, which are totally normal positive process that has long been observed in domestic law.

Thus, recognition of the fact that the system of administrative law consists of general administrative law and administrative law particular, the last of which, in turn, differentiated into separate sub-license, will address the issue on potential areas of codification work in administrative and legal regulation of social relations. In other words, we need to talk not only about the codification of administrative law aimed as sometimes we

hear, the development of the Administrative Code, and the creation of separate, so to speak, specialized codes. Number and name of such codes will depend on the number and names of components (sub) Special Administrative rights.

So, make a general conclusion from the above, again emphasize that the codification of administrative law is indeed an extremely important task facing domestic science of administrative law. The existence of huge number of legal rules governing the activities of public administration in these areas naturally requires their integration and unification within the individual (complex) regulations – codes. However, the answer to the question about the number of such codes can be obtained only after ascertaining the current state and perspectives of development of administrative law in Ukraine.

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НОТАТКИ ЩОДО ГЕНЕЗИ РОЗВИТКУ АДМІНІСТРАТИВНОГО ПРОЦЕДУРНОГО ПРАВА

NOTES ON GENESIS OF THE DEVELOPMENT OF THE ADMINISTRATIVE PROCEDURAL LAW

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У статті наводяться результати досліджень стосовно ґенези розвитку адміністративного процедурного права в Україні. Дається перелік теоретичних узагальнень, які характеризують процеси виникнення, становлення та розвитку адміністративного процедурного права в національні правовій системі.

Ключові слова: науки процесуального права, наука адміністративного права, наука адміністративного процедурного права, процедурні норми.

В статье представлены результаты исследований по вопросам генезиса развития административного процедурного права в Украине. Дается перечень теоретических обобщений, которые характеризуют процессы возникновения, становления и развития административного процедурного права в национальной правовой системе.

Ключевые слова: науки процессуального права, наука административного права, наука административного процедурного права, процедурные нормы.

The paper presents the results of studies on the genesis of administrative procedural law in Ukraine. We give a list of theoretical generalizations that characterize the processes of emergence, formation and development of administrative procedural law in the national legal system.

Key words: science procedural law, administrative law science, the science of administrative procedural law procedural rules.

Адміністративне процедурне право як сукупність адміністративно-процедурних норм з'являється на порівняно пізніх етапах розвитку суспільства, хоча поодинокі факти свідчать про існування певних процедур і на ранніх етапах розвитку людства. Сучасне уявлення про адміністративне право як галузь права виникло лише тоді, коли в правовій системі достатнє місце зайняли норми, що закріплюють права особи, процедури діяльності органів державної влади та гарантії захисту від адміністративного свавілля. Саме розвиток адміністративних процедурних норм у країнах світу призвів до перетворення поліцейського права в адміністративне право та виникнення в межах адміністративного права інституту адміністративного процедурного права.

Якщо характеризувати розвиток наукової думки про адміністративну процедуру та адміністративне процедурне право, то слід зазначити, що вона нерозривно пов'язана, по-перше, з розвитком загальнопроцесуальної науки, а по-друге, з розвитком науки адміністративного права в Україні.

Слід зазначити, що дослідження процесів розвитку адміністративного процедурного права носять фрагментарний характер. Лише поодинокі праці представників теорії держави та права і адміністративного права висвітлюють проблематику, пов'язану з ґенезою розвитку адміністративного процедурного права в національній правовій системі. Цікаві думки стосовно розвитку та становлення адміністративного процедурного права висловлювали в своїх працях такі вчені, як О.М. Бандурка [1], Ю.О. Гурджі [2], О.В. Кузьменко [3], В.М. Протасов [4], В.П. Тимощук [5], М.М. Тищенко [1], О.В. Фатхутдінова [6] та інші вчені Росії та України. На жаль, цих праць не достатньо, щоб осягнути всю специфіку та масштабність процесів розвитку адміністративного процедурного права в нашій країні.

Метою статті є висвітлення теоретичних узагальнень, які висвітлюють складний процес виникнення та розвитку адміністративного процедурного права в правовій системі України.

Хочемо зупинитися на результатах проведених досліджень, які допомагають розкрити проблематику, пов'язану з ґенезою розвитку адміністративного процедурного права в національній правовій системі.

По-перше, розвиток та становлення адміністративного процедурного права нерозривно зв'язані з розвитком та становленням адміністративного права як в країнах світу, так і на землях сучасної України.