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HISTORICAL ASPECTS OF ORIGIN OF ADMINISTRATIVE PROCEEDINGS

ІСТОРИЧНІ АСПЕКТИ ВИНИКНЕННЯ АДМІНІСТРАТИВНИХ ПРОВАДЖЕНЬ

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The article analyzes some aspects of the emergence of administrative law and administrative proceedings. The modern definition of the subject of administrative law includes the fact that this law covers a wide range of social relations that arise in connection with the implementation of the functions of state executive power, the content of which is the management of society. However, in legal science there is no unity in defining the subject of administrative law. Administrative law itself has come a long way and has lasting and long history. Ukrainian lawyers agree that administrative law in its development has gone through three main stages. These stages in the legal literature are called: cameralism (Kameralistik), police law (Policeywissenschaft) and modern administrative law, which limits the free discretion of public administration in its relations with man. From the science-predecessor of administrative law (Kameralistik) stands out such science as police law (Policeywissenschaft), which studied, in essence, the issues of public administration, policy in various spheres of life and which already raises questions about bringing to justice those who committed minor offenses. Thus the principles of conflict administrative proceedings arise. Kameralistik studies the issues of finance, economics, economy, regulation in various fields, i.e. management through administrative law. Thus, we can assume that the science of management, as well as non-conflict proceedings are later separated from this science. The historical development of legal thought has allowed jurists to conclude that the main task of administrative law in the state is to ensure the welfare of citizens, and the administrative activities of public authorities should be governed by laws. The purpose of administrative law is to regulate social relations between the government and the commoner, which arise in the field of public administration. The author cites references to the names of lawyers whose research influenced the formation of administrative law, of whom Otto Mayer stands on top since he assumed that the basis of administrative law is a constitutional state as the basis. His elaboration of administrative principles underlying all administrative law has influenced German doctrine to this day.

Key words: administrative law, administrative proceedings, conflict and non-conflict proceedings, cameralism (Kameralistik), police law (Policeywissenschaft).

У статті проаналізовано деякі аспекти виникнення адміністративного права та адміністративних проваджень. Сучасне визначення предмету адміністративного права включає в себе те, що це право охоплює широкий комплекс суспільних відносин, які виникають у зв'язку з реалізацією функцій державної виконавчої влади, змістом яких є управління суспільством. Разом із тим в юридичній науці немає єдності у визначенні предмета адміністративного права. Адміністративне право пройшло довгий шлях розвитку і має тривалу і давню історію. Українські правники погоджуються, що адміністративне право у своєму розвитку пройшло три основні етапи. Ці етапи в юридичній літературі отримали назви: камералістика (*Kameralistik*), поліцейське право (*Policeywissenschaft*) і сучасне адміністративне право, що обмежує вільний розсуд публічної адміністрації в її відносинах з людиною. З камералістики виокремлюється така наука, як поліцейське право. Поліцейське право розуміється в ній, як управління певними територіями, тобто нова камералістика і поліцейське право вивчали фактично питання державного управління, політики в різних сферах життя. Разом із тим у поліцейському праві вже виникають питання про притягнення до відповідальності осіб, які вчинили незначні правопорушення, тобто виникають засади конфліктних проваджень. Камералістика вивчала питання фінансів, економіки, господарства, регулювання в різних сферах, тобто управління за допомогою адміністративного права. Таким чином, можна припускати, що з цієї науки пізніше виокремлюється наука адміністрування, а також неконфліктні провадження. Історичний розвиток правової думки дозволив правознавцям зробити висновок, що основним завданням адміністративного права в державі є забезпечення добробуту громадян, а адміністративна діяльність публічної влади має бути підзаконною. Метою адміністративного права є впорядкування суспільних відносин між владою та обивателем, які виникають у сфері державного управління. Автор приводить посилання на імена юристів, дослідження яких вплинули на формування адміністративного права, з яких саме Отто Майер припустив, що основою адміністративного права є конституційна держава. Його розробки адміністративних принципів лежать в основі всього адміністративного права і донині впливають на німецьку правову доктрину.

Ключові слова: адміністративне право, адміністративні провадження, конфліктні та неконфліктні провадження, камералістика, поліцейське право.

The relevance of the topic. The issue of the emergence of administrative proceedings in general in the legal system in Ukraine has been little considered in legal science. In most scientific papers and textbooks on administrative law, administrative proceedings are defined as proceedings for the application of certain measures of punishment for persons who have committed offenses. For the analysis of administrative proceedings first of all it is necessary to address to history of origin and development of actually the administrative law that will allow to define its subject and features.

The purpose of the article is to analyze some aspects of the emergence of administrative law and administrative proceedings.

The main material. The modern definition of the subject of administrative law includes the fact that this law covers a wide range of social relations that arise in connection with the implementation of the functions of state executive power, the content of which is the management of society [1].

However, in o jurisprudence there is no unity in defining the subject of administrative law.

Some scholars define it as social relations that arise in order to implement and protect the rights of citizens, creating normal conditions for the functioning of civil society and the state.

The public relations are detailed, to some extent, by V.B. Averyanov [2]. He wrote that the subject of administrative law includes the following groups of social relations, which in principle are homogeneous and are formed:

1) in the course of state public administration in various spheres of the state;

2) exercise of powers by both executive bodies and local self-government bodies, as well as public organizations delegated to them by state authorities;

3) in the course of the activities of executive bodies and local self-government to ensure the implementation and protection of the rights and freedoms of citizens;

4) in the course of providing citizens, as well as legal entities with various administrative services;

5) in the process of internal organizational activity in all state bodies, state enterprises, institutions and organizations;

6) in connection with the admission, passing and termination by citizens of civil service or service in local self-government bodies;

7) in the course of exercising the powers of administrative courts to consider administrative cases and restore the violated rights of citizens and subjects of administrative law;

8) during the application of various measures of administrative coercion.

Some other researchers did not detail these groups of social relations, but also identified five:

- areas of such relations, which are related to:
- activities of executive bodies;
- internal organizational activities of other state bodies, enterprises, institutions, organizations;
- management activities of local governments;
- exercise of delegated powers of executive bodies by other non-state entities;
- administration of justice in the form of administrative proceedings and jurisdiction.

Some researchers believe that the subject of administrative law includes the following categories:

– legal status of citizens (individuals) in the field of public administration;

– legal status of state public administration bodies;

– legal status of non-governmental organizations in the field of management, as well as enterprises, institutions, organizations;

– administrative and legal status of civil servants;

– legal forms and methods of management;

– methods to ensure legality and discipline in public administration;

– administrative process and its types;

– systems of general, branches and inter branches management and regulation of management by norms of administrative law;

– administrative jurisdictional activities [3].

However, to talk now about such a subjects of administrative law, administrative law itself has come a long way and has lasting and long history.

O.V. Kuzmenko notes that administrative law in its development has gone through three main stages. These stages in the legal literature are called: cameralism (or *Kameralistik*), police law (*Policeywissenschaft*) and modern administrative law, which limits the free discretion of public administration in its relations with man [4].

First of all, administrative law, which determined from the very beginning the issue of management of state affairs arose from the very beginning of civilization. This problem included a variety of aspects, but the main ones were to ensure order and peace, providing the necessary things, objects and property of people living in the area, especially in cities, ensuring the construction of roads, canals, drinking water delivery and more.

Some legal researchers believe that the basis of the emergence of administrative law was the science of finance, economics and economics, which originated in Austria and Germany in the 17th century, and was called Kameralistik or "chamberlain". According to some sources, cameralistics came from (German: Kameralistik – management of the palace treasury and property) [5]. According to other sources, it came from the Latin "camera" treasury included a set of economic disciplines and management.

The field of science of chamberlain included issues of administration, i.e. management in various fields. At the same time, the persons in charge of state affairs applied both substantive law and procedural law, and there was no division at that time.

Gradually, Kameralistik began to study the activities not only of the bodies that administered the economy and the existence of the state as a whole, but also of political, police, and other state structures.

It should be noted that the science of Kameralistik began to be taught in the universities of that time, i.e. there was some training of managers.

It began to be taught in the 18th century in European universities, and as V.B. Averyanov notes at that time had already established a school of Kameralistik, represented by M. Osse and G. Brecht [6].

Such a juridical science as police law is separated from Kameralistik studies. Moreover, the police and police law are understood in that time as the management of certain areas of cities and rural areas (from Greek "polis" is city). Thus, the "new" Kameralistik or Police Law studied in essence the issues of public administration, politics in various spheres of life. Simultaneously, in this new Kameralistik, there are already questions about bringing to justice those who have committed minor offenses; and that is when the foundations of conflict proceedings aroused.

Kameralistik studies the issues of finance, economics, economy, regulation in various fields, i.e. management through administrative law. Thus, we can assume that the science of management, as well as non-conflict proceedings are later separated from this science.

It is believed that the science of police law originated in France, where the first treatise on the subject was published. Its author was Nicolas de La Mare (1639-1723), who in 1722 in his work "Traité de la police" (in English: Treatise on the Police) revealed the subject of police law and described the group of relations governed by it [7; 8]. Together with works of Nicolas Delamare from France the woks on rules of policing (*Policeywissenschaft*) and cameralism (*Kameralistik*) were the first fields of study to which German scholarship of administrative law devoted themselves. They have more actively expanded the concept of police law and formulated the concept of welfare, for which the state should take care [9].

However, it should be noted that the emergence of police law has been considered by a number of Ukrainian researchers from different points of view. In particular, in the textbook "Administrative Law of Ukraine. The Academic Course" highlights a number of specific features of police law [6].

Such features include the following:

– police law arose in order to streamline the coercive activities of the police;

– certain rules of police law, as it turned out later, were aimed at restricting the rights and freedoms of citizens in order to establish appropriate law and order;

– norms of police law established for the police mainly rights, and for citizens only responsibilities;

– norms of police law were aimed at forcible organization of life in society, i.e. citizens were determined how they should behave on the street and in everyday life, how they should raise children, i.e. police officers had the right to interfere in all spheres of life. The police were also given great powers of control over the citizens and they took full advantage of this;

Thus, it could be concluded that in the state instead of legal relations there were power relations, which arose and ended on the basis of administrative acts issued by the police.

Some Ukrainian researchers believe that the transition to proper administrative law in Europe began after the revolution in France in 1789. As a result of the above-mentioned revolution, human rights and freedoms were opposed to the omnipotence of the state. The Declaration of Human Rights, which was adopted as a result of revolutionary events, first of all made it impossible to return to absolutism, and secondly formulated certain areas of government and management theory, which was the beginning of the development of administrative law [9].

Thus, from the very beginning of the development of administrative law, it began to develop as a right of administration, which should be based on the requirements of the law, taking into account the interests of the population and it cannot be exercised at the discretion of officials.

At the same time, police law has also evolved and is more inclined to a system of prohibitions and penalties for violations of established norms.

However, after the establishment of constitutional forms of government in almost all European countries and the separation of the executive branch, the scope of police law is significantly expanded. Public administration relations are becoming more complex and police law is no longer able to cover them. This leads to the emergence of a new concept of "right to govern", the authorship of which belongs to Lorenz von Stein (1815–1890) [10; 11].

This right establishes the principles of management, the basis for the application of disciplinary coercion, outlines the legal field of such important institutions of executive power as the government and the army, regulates the activities of civil servants, their rights and responsibilities, liability in case of abuse of power and more.

Administrative law begins to be based on a new professional category – bureaucracy, which was a necessary condition for the effective formation and development of the bourgeois state. Gradually, the bureaucracy becomes the main branch in the system of management and administrative law.

In this connection, the German socialist and philosopher Max Weber (1864–1920) made a notable contribution to the theory of government and was the first to give a systematic analysis of the state bureaucracy [12]. In addition, he is recognized as the author of the theory of bureaucracy in general.

Further development and formation of administrative law as an independent discipline is quite clear in the late XIX early XX century. It should be noted that the work of Otto Mayer (1846–1924), who assumed that the basis of administrative law is a constitutional state was the basis for such development [13; 14]. His elaboration of administrative principles underlying all administrative law has influenced German doctrine to this day [15].

Guided by the understanding of the rule of law state, according to which management is associated with law and judicial control, Mayer developed the concepts and principles of public law [16]. The concepts of subjective public law, public property and state enterprise formulated by him are a significant contribution to the theory of administrative law. It was Otto Mayer in the late XIX century who under the influence of the French administrative-legal doctrine for the first time created a complete system of general administrative-legal doctrine.

Conclusions. The historical development of legal thought has allowed jurists to conclude that the main task of administrative law in the state is to ensure the welfare of citizens, and the administrative activities of public authorities should be governed by laws. The purpose of administrative law is to regulate social relations between the government and the commoner, which arise in the field of public administration. The subject of administrative law determines the social relations that arise between the government and citizens. At the same time, the very structure of state power, as well as the private relations of individuals, are not the subject of administrative law.

In a general sense, administrative law is directly related to the regulation of government administrative activity of the state. Such activities appeared simultaneously with the emergence of public power. In contrast, public administration's systemic legal regulation appears only since the Middle Ages, or rather – in the period of absolutism. At that time, the state regulated in detail the lives of its inhabitants, determined the methods of obtaining funds, established forms of control over public morality, etc. Over time, the forms and methods of such activities, as well as the content of relations between the state and citizens, began to change. These processes are directly related to the formation of administrative law.

From the science-predecessor of administrative law (*Kameralistik*) stands out such science as police law (*Policeywissenschaft*), which studied, in essence, the issues of public administration, policy in various spheres of life and which already raises questions about bringing to justice those who committed minor offenses. Thus the principles of conflict administrative proceedings arise.

Kameralistik studies the issues of regulation in various fields, i.e., management through administrative law. Thus, we can assume that this science later separated the science of administration and non-conflict proceedings of the administrative law.

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