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“Public Administration” in the Latvian and Ukrainian Administrative and Legal Traditions

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Abstract

Public administration has been studied in this article from the position of administrative and legal science. The implementation of great contribution in the formation of “Public administration” theory by American law schools, which have provided a basis of modern scientific approaches, has been emphasised by the Author. During the analysis of Ukrainian and Latvian scientists’ approaches remarks on understanding of public administration, strong connection between administrative law and public administration has been revealed by the Authors. It has been established that both Latvian and Ukrainian administrative law scientists have similar approaches to understanding public administration. It has been identified as the form of realisation of the executive branch of governmental power. The functioning of public administration in the Republic of Latvia is based on the principles of the rule of law. The Author stresses that Ukraine, during holding on the reform of public administration, applies SIGMA recommendations (Support for Improvement in Governance and Management in Central and Eastern European Countries). The efficiency of the SIGMA programme in Ukraine has been proved, within the framework of which Ukrainian legislation has been brought into line and new laws have been adopted (the Law of Ukraine On Civil Service, the Law of Ukraine On Administrative Procedure). It is concluded that administrative law is one

of the main tools through which public administration is carried out in the Republic of Latvia and Ukraine.

Keywords: public administration, administrative law, SIGMA, principles.

Given the transience of political and social processes, public administration and its institutes are permanently in dynamic development. The stated above encourages scientific community and practitioners around the world to quickly adapt to changes and think about the most optimal relationship between the envisaged rules of law of mechanisms for regulating activities of subjects of public administration and satisfaction of public interest.

Quite obviously public administration cannot be considered as a field of law; however, this institute exists in the limits, determined by the Law. Representatives of American law schools that have made a great contribution in the formation of public administration theory could not be unmentioned. Woodrow Wilson, one of the founders of public administration theory, in 1887 mentioned that public administration is detailed and systematic implementation of public law, and each specific application of its norms is an act of administration [9, 212]. David H. Rosenbloom, Rosemary O'Leary, Joshua Chanin accentuated that administrative law is at the centre of practice of public administration in the USA [3, 51]. Kenneth F. Warren, a scientist-administrator, focused on modernisation of administrative law that necessarily has to be adapted to numerous changes of the 21st century in the sphere of public administration [4, 130–131].

It is difficult to disagree with such scientific approaches to the recognition of the leading role of administrative law in the implementation of public administration. A strong link between administrative law and public administration serves as the basis for implementation of new scientific researches. We have solid grounds for noting that both Latvian and Ukrainian scientists-administrators have similar approaches to the understanding of public administration as American scholars do.

Ukrainian scientists such as R. Melnyk and V. Bevzenko determined that the most meaningful (by the number of legal rules) element of public law is administrative law. Its norms regulate a huge amount of different social relationships which arise, change and cease in the sphere of public administration [2, 47]. The team of authors of the coursebook *Administrative law of Ukraine. Full coursebook*, consisting of V. Halunko, P. Dikhtiiievskiyi, O. Kuzmenko, S. Stetsenko, who under the subject of the administrative law of Ukraine consider social relationships which arise between subjects of public administration and private individual, observe a similar opinion [1, 30].

Views of V. Kolpakov have also been endorsed – it is the legal form in which the actions and decisions of public administration are revealed, presented, made public, acquired legal meaning of actions and decisions of public administration. Thus, administrative and legal science, according to the needs of practice of functioning of an extensive system of public administration, has created classification groups of forms of public administration [7, 47].

Latvian administrative and legal school also claims about existence of the indissoluble link between administrative law and public administration.

In this way *J. Načisčionis* in the book "Administratīvās tiesības" (Eng. Administrative Law), studied the transformation of public administration in accordance the development of administrative law doctrines. Administrative law is an independent branch of public law that ensures the proper daily functioning of state administrative institutions as set out in the relevant sources of law [6, 4–5].

T. Džugleja observes a similar opinion that administrative law determines order, by which the provisions of regulatory legal acts of the legislator are implemented only by complying with the provisions of laws and other sources of law binding on the Republic of Latvia, in the exercise of executive power it is possible to organise relations with the aim of ensuring the development of the State, the whole society and every individual in the State, regulated by the rule of law.

Thus, scientific council highlights the main objects of administrative law, which include:

- 1) effective functioning of public administration (public administration);
- 2) protecting of individuals from illegal activities of the State;
- 3) public participation in the implementation of administrative activities by the public administration [5, 72].

Views of the Latvian authors, *J. Načisčionis*, *U. Skrastiņa* and *V. Tūmalavičius*, have been considered to be sufficiently rational since they claim that public administration is a complex, in fact the most complex public mechanism. Administration is characterised by its subordination to specific goals, determined by the legislator. Since the goals of the society (political) included in the laws keep changing constantly public administration, which is an instrument for achieving these goals, must constantly change along with it. This means that institutional structures of public administration must be constantly established, eliminated, reorganised; new procedures must be established or existing procedures must be amended to achieve the goals set out in constantly changing laws. Therefore, public administration has to be constantly reformed. The key to public administration is "efficiency", but so far it has only been successfully achieved on paper, even when Latvia has all the basic principles of a rule of the law state [8, 87–102].

According to the Latvian State Administration Structure Law in Latvia, state administration or public administration is under the management of the Cabinet and shall perform the administrative functions of executive power (functions of State administration), which functions consist of specific administration tasks and liability for the performance of such tasks [13]. Nevertheless, to achieve a goal of public administration, it is necessary to follow the principles of Latvian State Administration Structure Law. For example, the first principle states that public administration shall be governed by law and rights and shall act within the scope of the competence laid down in laws and regulations. It must be noted that in Latvia, according to the public administration

principles, it may use its powers only in conformity with the meaning and purpose of the authorisation [13].

Another principle is based on human rights approach; thus, indicating that public administration shall observe human rights in its activities. Another principle is more difficult and states that public administration shall act in the public interest. However, the problem is to identify the real public interests and at the same time to protect private interests. The key element is the balance between interests to achieve the goal of public administration idea in total. Besides, if we speak on public interests, the human rights-based approach is vital as well. Therefore, the balance between two interests from the human rights perspective become a more difficult issue.

The next principle is universal as well and states that public administration, individual institutions or officials, in implementing the functions of the administration, shall not have their own interests. The law mentioned before as well illustrate another principle connected to effective organisation of the public administration. It means that the institutional system shall be regularly examined and, if necessary, improved [13]. It must be noted that the Supreme Court of the Republic of Latvia Department of Administrative Cases of the Senate in one judgement says that the discretion of public administration is misused if its exercise is contrary to the rules governing the proper exercise of discretion. It means that if the decision maker has not methodologically correctly made general utility considerations, they have not complied with the specific instructions of the law, but have violated the prohibition of the principles of procedural justice. As Court states, the general considerations of efficiency should also include the principle of effectiveness and other principles mentioned in Latvian State Administration Structure Law.

The Court explains that, for instance, the principle of unity of service, effectiveness means that legal activities from the public administration perspective cannot be formal, but as effective as possible, including the most appropriate.

There are other public administration principles as well in the Latvian State Administration Structure Law, but all of them have common features. All these principles must protect public interests and work to provide effective system of public administration [10].

The development of an effective system of public administration is one of the main factors of the competitiveness of the State and precondition of European integration. If in Latvia the institute of public interests is provided by the law, then Ukraine, as a candidate for membership in the European Union, gradually implements SIGMA recommendations during the reformation of public administration. It should be noted that the Republic of Latvia also used this tool to implement mechanisms of good public administration.

SIGMA – Support for Improvement in Governance and Management in Central and Eastern European Countries – is a joint initiative of the OECD and the European Union. The initiative supports public administration reform efforts in thirteen countries in transition and is principally financed by the European Union's Phare Programme [12].

SIGMA programme helped Ukraine to improve the provision of public services, namely to develop the Law of Ukraine On Public Service and the Law of Ukraine On Administrative Procedure. In June 2018, SIGMA conducted an assessment in Ukraine of the basic level of compliance with the principles of State Administration used by the European Commission as a basis for assessing the reform of State administration in the EU candidates and potential candidate countries [11].

Bearing in mind that the Ukrainian-Latvian legal and administrative tradition supports the view that public administration is the form of the executive branch of State power, it is through administrative law a branch of public law, where public relations are regulated which arise, change and cease in the sphere of public administration.

Conclusions

It has been proposed to define administrative law as the main instrument through which public administration is carried out, thus concluding the following:

- 1) administrative and legal norms are the basis for the emergence of relations in the field of public administration;
- 2) community relations arising during public administration can be characterised as administrative and legal;
- 3) activity of subjects of public administration is carried out in appropriate forms of public administration.

Administrative law is an important component of public administration. At the same time, activities of subjects of public administration and their powers and competence are exercised within the framework of rules established by administrative legislation. Such an organic bond creates legal grounds for subjects of public administration to act in the public interest for the achievement of the common good.

Valsts pārvaldes institūts Latvijas un Ukrainas administratīvajā un tiesiskajā sistēmā

Kopsavilkums

Rakstā ir analizēts valsts pārvaldes institūts un tā kopīgās un atšķirīgās iezīmes Latvijas un Ukrainas kontekstā, veicot zinātnieku viedokļu analīzi un īpaši uzsverot lielo Amerikas Savienoto Valstu zinātnisko ieguldījumu valsts pārvaldes teorijas veidošanā, kas ir pamats mūsdienu zinātniskajām pieejām.

Saskaņā ar Valsts pārvaldes iekārtas likumu Latvijā valsts pārvalde ir organizēta vienotā hierarhiskā sistēmā, un neviena iestāde vai pārvaldes amatpersona nevar atrasties ārpus šīs sistēmas. Valsts pārvaldes darbība Latvijā balstās uz likuma varas principiem. Savukārt Ukrainas pieeja valsts pārvaldes politikas īstenošanai ir atšķirīga, respektīvi, pārvaldes reformas ietvaros Ukraina īsteno SIGMA (*Support for Improvement in Governance*

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and Management) sniegtus ieteikumus, kā rezultātā Ukrainas tiesību aktos ir veiktas jaunas iestrādes un pieņemta virkne jaunu likumu, piemēram, Ukrainas likums "Par civildienestu" un Ukrainas likums "Par administratīvo procesu".

Darba nobeigumā secināts, ka, neraugoties uz valstu tiesību sistēmu atšķirībām, administratīvās tiesības ir viens no galvenajiem instrumentiem, ar kuru starpniecību Latvijas Republikā un Ukrainā tiek realizēta valsts pārvaldes funkcija.

Atslēgvārdi: valsts pārvalde, administratīvās tiesības, SIGMA, principi.

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