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ADVANCES IN THE DOCTRINE OF ADMINISTRATIVE LAW IN UKRAINE

Abstract. *The article delves into a comprehensive analysis of the principal phases in the establishment and evolution of the Ukrainian administrative law doctrine. Noteworthy attention is accorded to the issues associated with the functionality of this legal domain, especially in the aspect of ensuring the legal underpinnings of administrative relations between the state and society. This is particularly pertinent to the Soviet-era administrative law, which served as a legal instrument for the command-administrative system's regulatory framework. Within the scope of this study, the authors elucidate the distinctive shifts in the administrative legislative framework that transpired as a consequence of reforms in the socio-political and economic sectors of societal life. The culmination of this research accentuates the delineation of the cardinal characteristics of domestic administrative law at its current developmental juncture, accompanied by suggestions aimed at augmenting its efficacy to duly actualize public interest in the process of public administration.*

Keywords: *Administrative law, administration, social governance, police, executive authority, administrative reform.*

Introduction. The history of administrative law in Ukraine is both intricate and instructive. It encapsulates all the circumstances under which this particular branch of law evolved and found its representation in the legal system of the state within the territories of the Russian Empire, the Soviet Union, and Ukraine. Presently, administrative law stands as one of the leading and fundamental branches of domestic law. Therefore, studying the accumulated experience and comprehending the entire history of its formation and development offers opportunities to identify optimal pathways for enhancing the system of legal norms essential for the effective regulation of societal relations in the realm of public administration.

The aim of the article is to explore the evolution of administrative law in Ukraine throughout various periods of Ukrainian statehood and facilitate conclusive recommendations on the future endeavors in this field.

It is essential to note that significant contributions to the advancement of administrative law science and its processes have been made by eminent Ukrainian scholars such as Bytiak Yu. P. [1], Bevzenko V. M. [2], Berlach A. I. [3], Kolpakov V. K. [4], Komzyuk A. T., Yarmaki Kh. P., Luchenko D. V., Kolomoiets T. O. [5], and others.

Presentation of the main research material. The emergence, establishment, and functioning of legal norms, which collectively constitute the system of administrative law, are directly linked to administration. In a broad sense, administration represents an organizing influence on technical, biological, and social systems, aimed at ensuring their coherence and achieving pertinent objectives. Management is an inherent attribute of societal life, facilitating the orderly coordination of relationships among individuals, exerting a coordinating impact on the social realm – otherwise known as social administration. Social administration emerges when societal relationships reach an appropriate level of development; it becomes an objective necessity and is a consequence of the elevation of both the material and spiritual culture of society's members [6]. Operating in the societal domain, this type of management organizes individuals into specific collectives and acts as a regulator of managerial interactions between the subject and object during the execution of the

function of social administration. It possesses an authoritative nature, as it relies on the subordination of the managed object to the will of the managing subject.

Analyzing the prerequisites for the development of administrative law, it is pivotal to note that police activity profoundly influenced its formation. The etymology of the term «police» traces back to the Greek word «polis,» which translates to «city-state.» Hence, in a broader context, police activity must be regarded as the administration of all matters of state, essentially signifying the operation of a police state. The existence of such a state spans the period from the mid-17th century to the early 19th century [7]. Distinctive features of a police state include governmental guardianship, administrative bodies' intervention in every facet of societal activity, the alignment of the economy with state interests, a comprehensive bureaucratic state apparatus, and the application of police law to address contemporary state objectives.

The French scholar N. Delamar first defined the concept and subject of police law in his «Treatise on Police» (1722). In this systematic and practical manual, the essence of police activity and its intervention spheres in societal life were delineated, covering customs, religion, nutrition, service personnel, public health, road construction, public order, science, arts, and trade. The state was deemed to be obligated to foster benevolence and amenities. The academic works of the German scholar J. Justi exerted a significant influence on the evolution of police law [8]. While examining the state's role in promoting civil prosperity, Justi not only focused on administrative institutions but also on legislation. In this context, all laws should be congruent with the administrative model and evolve concurrently with life's changes. Given the societal practices of his era, J. Justi refrained from distinguishing between the functions of the police and judiciary bodies, viewing them as two integral components of a whole. He also believed that police laws should be harmonized with financial ones.

In the perspective of the founders of the police state, state institutions were afforded the unbridled right to intrude into the private lives of citizens, with the objective of fulfilling their duties. This reasoning provided the foundation for the application of state coercion,

both for ensuring public order and for establishing conditions of peace and security for its citizens. Within the conceptual framework of police law, the terms «welfare» and «amenity» held primary significance. «Welfare» was comprehensively elucidated to encompass safety in general, public order, state security, and legal order within the state's territories.

During this epoch, philosophical-legal thought propounded a principle according to which the sovereign ruler possessed the discretion to act autonomously. However, this discretion could be curtailed with the aim of achieving the common good. Coercion was envisioned primarily to safeguard public order and civic safety [9]. This distinguished the «welfare police» from the «security police.» Such rationales bore conceptual significance. As the «welfare» domain, where coercive measures failed to meet their objectives, gradually fell outside the jurisdiction of the police, its functions became more narrowly defined, primarily focusing on ensuring safety and upholding public order.

Consequently, during the 18th and early 19th centuries, terms like «welfare police» and «security police» became predominant within the lexicon of police law. The welfare police undertook administrative actions concerning the advancement of both private and state economies, as well as the intellectual and physical development of citizens. The security police, on the other hand, was entrusted with the responsibility of preserving public order within the state and ensuring the safety of its inhabitants.

Over time, with the disintegration of the police state, the police's previously vast powers began to wane. By the onset of the 20th century, a gradual shift in perception emerged, leading to the conception of the police as an organized force with coercive powers operating across all facets of state administration, fundamentally rooted in administrative enforcement.

The gradual transition from a police state to a rule-of-law state, characteristic of Western Europe in the latter half of the 19th century, engendered the formulation of novel administrative perspectives both in practice and theory. According to this newly established doctrine, governance was carried out based on laws and subordinate normative acts, respecting the rights and freedoms of citizens, and taking into

account state interests. A catalyst for the emergence of administrative law, as it is understood today, was the adoption of the Declaration of the Rights of Man and Citizen in 1789 [10].

Distinctive features of this period included the establishment of new settlements, rapid population concentration in urban areas, economic advancement, and consequently, the institution of new legislation and a shift in its application approaches. Of significance was the initiation of a process that curtailed the boundless rights of administration by granting citizens the right to judicial recourse in case of grievances against state institutions and their officials. Administrative law began to play a pivotal role in shaping the concept of a rule-of-law state, gradually evolving as a tool to limit the discretionary powers of administrative entities.

In Ukraine, the formation of administrative law must be correlated with the societal realization of the necessity for legal regulation of administrative relations within the state's territory. In this context, our nation does not diverge significantly from other countries globally. During the times of Kyivan Rus and the Galician-Volhynian Principality, the precursors to administrative law, to a certain extent, can be considered as norms that regulated the procedure for establishing and collecting taxes, delineated military service, governed trade, and were encapsulated in princely statutes, treaties with other states, and customary law.

During the Lithuanian-Polish era in Ukrainian territories, the primary sources of law were the Lithuanian Statutes. The principal regulatory principles of societal relations in these normative acts were the uniformity of rights for all citizens, their inviolability, and the limitation of judicial and administrative pressures on individuals and legal entities. For that time, these were rather progressive legal documents reflecting the legal relations of a feudal state. In these statutes, law was perceived as a singular entity, without being subdivided into its various branches, though a budding tendency was evident towards the separation of norms characteristic of administrative law. These norms encompassed regulations related to military service, craftsmanship, and stipulations concerning appointments to positions.

During the Cossack era in Ukraine, traditional law was influenced by the Lithuanian Statutes and Magdeburg Law. These formed the

basis for codified legal projects. Among these was the «Rights by Which the Little Russian People are Judged,» which contained provisions about military service, magistrates, courts, officials, trade, merchant contracts, and more, highlighting the predominance of administrative law norms. With parts of Ukraine transitioning under the jurisdiction of the Russian Empire, completed by the first half of the 19th century, the Magdeburg Law and the Lithuanian Statutes ceased to apply, eliminating Ukraine's legal autonomy in the process. Concurrently, in Ukrainian territories within the Austro-Hungarian Empire, a centralization policy prevailed, governed by the empire's legislation.

Despite the negative repercussions stemming from Ukraine's partitioning, this era also harbored positive moments concerning the evolution of administrative law. A rational organization of state administration emerged during this period. In the Russian Empire, Peter the Great implemented a state apparatus reform, the main tenets of which were articulated in the «Military Statute» and the «General Regulation.» Under the reign of Catherine II, regulatory legal acts were ratified, which at the legislative level, constituted a coherent and internally consistent police law, later transmuted into administrative law. These regulatory acts included the «Welfare or Police Statute,» the «Statute for the Prevention and Termination of Crimes» (which saw three iterations and was operative until 1917), and was analogous to the Code of the Russian Federation and Ukraine concerning administrative offenses.

Similar legislative processes took place in the Austro-Hungarian Empire. In this state, police law was created, followed by the development of administrative law which encompassed a considerable array of societal relations. Fundamental normative acts underpinning these sectors were: Maria Theresa's decree «On the Regulation of Manufacturing Production», and Joseph II's decrees «On the Limitation of Local Provincial Governance» and «On the Executive Power of the Government». Overall, it's worth noting that both the police and administrative laws of that time were relatively conservative.

The formation of Ukrainian administrative law during the Soviet era began with the establishment of the State Academy of Sciences in Kyiv on May 5, 1918. Within its structure, a department of social sciences was established, comprising nine chairs, including those

of state, international, and administrative law. A significant milestone in the development of Ukrainian administrative law was the adoption of the Administrative Code of the Ukrainian SSR in 1927, which became operative from February 1, 1928. Despite its codified nature, this regulatory act did not cover all of the administrative legislation and was of a departmental nature.

The subsequent evolution of administrative law in Ukraine wasn't productive. The cause of such stagnation was rooted in the well-known doctrine about the gradual extinction of state institutions. This was based on the perceived lack of need for constitutional regulation of legal relations in the context of constructing a communist society. Consequently, repressions against scholar-administrativists began and persisted from 1932 to 1941. During this period, administrative law primarily addressed specific issues of an administrative-legal nature, with the entirety of the work mainly focusing on studying the peculiarities of local government bodies' organization.

The period from 1965 to the 1980s of the 20th century can be described as more fruitful in the evolution of Ukrainian administrative law. During this time, numerous laws and subordinate normative acts related to state construction and governance were adopted. Predominant themes during this era were the improvement of functional governance, the redistribution of governance spheres, and the regulation of relations between different tiers of management entities. The Institute of State and Law of the Academy of Sciences of Ukraine played a pivotal role in this regard.

Current trends in the evolution of Ukrainian administrative law are influenced by political, juridical, social, economic, cultural, and other factors. These are directly linked with the primary directions of substantive modernization of the domestic administrative-legal doctrine, which lays the foundation for improving existing and shaping new institutes of administrative law, enhancing the effectiveness of law enforcement practices. Throughout the administrative reform, scholars have analyzed the reform process of Ukrainian administrative law in various ways. In the early stages of reform, some suggested that there shouldn't be a haste in aligning administrative law with European standards influenced by market relations [11]. Such a viewpoint deserves consideration only in the context that a certain degree

of conservatism should be present when addressing issues in administrative law. The experiences of the past must be taken into account in the construction of a modern system of administrative law. It's also essential to ensure that any change in the principles of administrative law construction retains its national character.

The regulation of societal relations in public administration is not only a purely theoretical-legal issue but also an organizational one. It's vital to address the retraining of participants in these relations, namely politicians, civil servants, prosecutors, the judicial corps, representatives of self-governing structures with authoritative powers. Collectively, this represents a socio-political challenge. In practice, there has been an ambiguous situation concerning the pace and direction of the administrative reform's implementation [12]. The state-political elite, specifically the bureaucracy, continually oscillates between proclaiming administrative reform, including that of administrative law, and restraining it. Therefore, it's reasonable to argue for the necessity of distinguishing political power from administrative.

The implementation of the proclaimed administrative reform in Ukraine necessitates a reconsideration of the role and significance of Ukraine's administrative law. The ideology of executive power must shift from the state's dominance over its citizens to serving the interests of society. This implies the embodiment of a new legal regulation regime in relations between the state, its institutions, officials, and citizens, particularly introducing administrative service regimes. In such circumstances, the primary task for administrative science at the doctrinal level is the redefinition of the subject of administrative law.

During Soviet times, the subject of administrative law was defined as relations arising, changing, and ceasing in the sphere of state administration. This meant that it encompassed homogeneous societal relations of an administrative, state nature. In essence, the term «state administration» was embedded in the political and ideological constructs of the Soviet state. On such a foundation, the theory of paternalism – guardianship, integral to the construction of state power, developed and became dominant. As a result, a caste-based system became foundational in the relationships between subjects of state management [13].

Conclusions. With the transformations that have occurred in the social and economic spheres during the years of independence and the development of a democratic society, there arises a need for new theoretical-legal foundations concerning understanding the law, commencing with the development of ideas about the subject of legal regulation. The majority of scholars conclude that administrative law is a multi-structured branch of law. It encompasses not just administrative relations but also those arising during the administration of justice in the form of administrative litigation and relations of administrative responsibility. An essential component of the subject of legal regulation involves relations initiated by entities not endowed with authoritative powers when they approach public administration bodies. This viewpoint has been termed the theory of reordination in academic circles.

The scientific achievements of administrative law scholars have facilitated a revision of the concept of administrative law, which has become more extensive and has transcended the boundaries of state administration. Most scholarly works have underpinned the formation of new approaches to understanding the subject of administrative law as relations in the realm of public administration. In conclusion, it's essential to note that, in the context of implementing administrative reforms, it's crucial to comprehend that Ukraine's administrative law should serve as the foundation for the effective organization and activity of public authorities, aiming to ensure an adequate level of protection of public interests. Its evolution must be undertaken, taking into account the principle of parity of individual and state interests, consistent with the democratic principles enshrined in the Constitution of Ukraine and the norms of international law.

The fundamental characteristics of Ukraine's administrative law at its current development stage should be: 1) establishing and consolidating the principles of a legal state, namely: the supremacy of law, the equality of citizens before the law, the equal rights and duties of citizens and representatives of power in their mutual relations, among others; 2) constructing national administrative law, considering international law norms; 3) reducing administrative pressure on individuals by representatives of authoritative structures; 4) ensuring judicial oversight over the activities of entities endowed with

authoritative powers; 5) implementing European administrative law standards into the practices of public administration.

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М. І. Бєлікова

Еволюція доктрини адміністративного права в Україні

Анотація. *У статті розпочато ретельне дослідження складних етапів становлення та подальшої еволюції української доктрини адміністративного права. Цей аналіз, заснований на ретельному академічному дослідженні, має на меті пролити світло на важливу грань української*

юриспруденції та її тісний взаємозв'язок із ширшими суспільними структурами та парадигмами врядування.

Центральним у цьому дослідженні є акцент на багатогранних викликах і тонкощах, пов'язаних із функціонуванням адміністративного права, особливо в його ролі фундаментальної основи, що регулює адміністративні відносини між державним апаратом і громадянами. Щоб по-справжньому осягнути глибину і широту цих відносин, необхідно заглибитися в історичні хитросплетіння радянського адміністративного права. За часів радянського союзу адміністративне право відігравало ключову роль, слугуючи не просто правовим інструментом, а наріжним каменем, на якому ґрунтувалася всеохоплююча командно-адміністративна система. Ця система, що характеризувалася ієрархічною структурою «зверху вниз», впливала на соціально-політичну структуру суспільства, диктуючи динаміку взаємодії між владою і керованими.

У межах цього дослідження автор проводить ретельний аналіз помітних зрушень і трансформацій, яких зазнала адміністративна законодавча база. Ці зміни не були ізольованими, а були каталізатором всеохоплюючих реформ, які охопили соціально-політичну та економічну сфери суспільного життя. Україна радянських часів і період після здобуття незалежності стала свідком бурхливих змін, кожна з яких залишила незгладимий відбиток на ландшафті адміністративного права.

Результатом цього обширного дослідження стали цінні висновки, які підкреслюють основні характеристики, що визначають сучасне українське адміністративне право. Це сучасне втілення, хоча й закорінене в історичних прецедентах, демонструє еволюційні риси, які резонують із сучасними викликами та прагненнями у сфері врядування. Дослідження не обмежується лише визначенням цих характеристик. У пошуках практичних висновків у дослідженні сформульовано перспективні пропозиції, спрямовані на підвищення ефективності адміністративного права. На думку автора, такі вдосконалення необхідні для того, щоб адміністративне право виконувало своє призначення: забезпечувало збалансовану та ефективну реалізацію публічного інтересу в багатогранній сфері державного управління.

Насамкінець, ця стаття є не просто академічним дослідженням, а чітким закликом до перегляду та оновлення принципів адміністративного права, приведення їх у відповідність до мінливих потреб і прагнень сучасного українського суспільства.

Ключові слова: *адміністративне право, адміністрування, соціальне управління, поліція, виконавча влада, адміністративна реформа.*