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ЗАГАЛЬНЕ АДМІНІСТРАТИВНЕ ПРАВО

ОСОБЛИВЕ АДМІНІСТРАТИВНЕ ПРАВО

ЗАРУБІЖНЕ АДМІНІСТРАТИВНЕ ПРАВО ТА ПРОЦЕС

ЮРИДИЧНА ПРАКТИКА У СФЕРІ АДМІНІСТРАТИВНОГО ПРАВА ТА ПРОЦЕСУ

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TRUTH OF THE NORM OF ADMINISTRATIVE LAW: ESSENCE AND CONTENT OF THE CATEGORY

The aim *is to determine the content and essence of such a property of the norms of administrative law as their truth on the basis of analyzing the opinions of individual legal scholars.*

Methods. *The validity of the theoretical claims, recommendations for further academic research into the topic, the reliability of the results are ensured by the use of a set of philosophical, general and special scientific methods applied in legal research. The dialectical method of scientific knowledge is used as the main general scientific method.*

Results. *It is noted that the truth of the norm of administrative law is a condition for its effectiveness. It is pointed out that the degree of effectiveness of the administrative-legal norm depends on the completeness and accuracy of reflection in it of the material and spiritual social conditions. The more adequately the rules of the administrative law reflect the combination of social and personal interests, the processes of social development, the higher the effectiveness of administrative-legal norms is.*

Taking into consideration the fact that efficiency is the property of the norm of administrative law, which is based on its truth, the author has assumed that the criterion of such truth will be the degree of effectiveness of the legal norm, and indicators will be specific statistical data, confirming or refuting its effectiveness and, respectively, the truth.

The opinion is expressed that the truth of the norms of administrative law, as a an absolutely evaluative category, does not have to imperatively reflect the interests of a particular citizen. This does not mean that in this case the author refuses the principle of the rule of law or interprets it somehow differently than other authoritative scholars. It is suggested when defining the essence of this category to start from identifying if the norm satisfies the needs of social development.

The author has determined the truth of the administrative-legal norm in terms of the initial data, which reveal the social needs at a certain stage of development of society, namely: the level of development of economic and industrial relations, the state of the natural environment and ecology in general, the state of social and political institutions (family, education and science, medicine, judicial and law enforcement systems, public administration system, etc.), the status of an individual in the society and the level of protection of their rights and interests by the state, mentality, consciousness, worldview of the society, etc.

Conclusions. *Based on the results of the analysis performed, the author proposes to understand the truth of the norm of administrative law as its property, which characterizes the degree of compliance of the norm with the needs of social development, the full reflection in it of the public relations, regulated by administrative law.*

Key words: *administrative-legal norm, property, truth, true, demands of social development.*

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1. Introduction

Recently, on the pages of the national academic legal-administrative literature, quite a lot of attention has been paid to the applied aspects of administrative-legal subject-matter. In particular, the public administration or administrative-legal support in one or another sphere of public relations – medicine, education, economy, entrepreneurship, agriculture, customs, administration of taxes and fees, etc. – has become the subject of dissertations. From time to time, the research has been focused on the problems of forms and methods of public administration (especially as regards control and supervision issues).

At the same time, the doctrine of administrative law tries to substantially modernize the theoretical foundations of this public sector (the so-called general part of administrative law), which form its basis. Among the modern scholarly inquiries of such kind (at the level of the theses for obtaining a scientific degree of a Doctor of Laws (Higher Doctorate)) it is especially worthwhile to mention relevant research by R.S. Melnyk "The system of administrative law of Ukraine" (Melnyk, 2010), O.I. Mykolenko "The place of administrative procedural law in the system of legal knowledge and the system of law of Ukraine" (Mykolenko, 2011), T.O. Matselyk "Subjects of administrative law" (Matselyk, 2014), Yu.V. Pyrozhkova "The theory of functions of administrative law" (Pyrozhkova, 2017), I.V. Bolokan "Implementation of administrative law: problematic issues of theory and practice" (Bolokan, 2017), V.V. Yurovska "Methods of administrative law: theoretical and legal and praxeological aspects" (Yurovska, 2018) and some other studies that analyzed the basic categories of administrative law.

Without understating the importance of highly specialized scholarly inquiries, we will note that the fundamental academic research not only lays the theoretical foundation for applied research papers, but also forms vectors of perspective law-making and directs the law-enforcement practice along the lines of the modern European standards of jurisdictional activity, takes the scientific approach as their basis, etc. Proceeding from the above, we believe that it is reasonable to further deepen the existing theoretical knowledge in the domain of administrative law, entering into a discussion with adherents of different approaches, and, within the limits of an academic dispute, meet the challenges with which the discipline of administrative law is tasked.

It is in the framework of the academic discussion that we would like to consider an issue highly relevant for the administrative-legal doctrine which concerns such a property of the norms of administrative law as their truth. We emphasize that the above-mentioned subject matter is insufficiently studied on the pages of administrative-legal literature, however, several papers by S.V. Shakhov have come to our attention, where the researcher, as can be seen from their content, examines the effectiveness of the norms of administrative law and reveals the essence of the truth of the legal norms within the limits of the issues raised by him (Shakhov, 2016; Shakhov, 2018a; Shakhov, 2018b). As a matter of fact, having got acquainted with the aforementioned works of the author, we came to the conclusion that it is necessary to discuss the question of the truth of the administrative-legal norm, to study the content and essence of this legal category and are ready to enter into an academic dialogue with him in this regard.

The aim is to determine the content and essence of such a property of the norms of administrative law as their truth on the basis of analyzing the opinions of individual legal scholars.

2. A generalized analysis of the category of "truth"

To begin with, we would like to emphasize that we fully share the idea that truth is the most important, permanent substantive characteristic of the administrative-legal norm. For the sake of the research completeness and the correct presentation logic, one should turn to the question of the etymology of the word «truth.» According to the modern Ukrainian dictionaries, "truth" is: 1) the same as veracity; 2) moral ideal, justice; 3) true knowledge that correctly reflects the actual reality in the minds of people; 4) provision, statement, judgment, verified by practice, experience. In turn, the word "true" means: 1) such that corresponds to the truth; right, truthful; 2) valid, authentic, genuine (Busel, 2001).

As can be seen even from the naïve linguistic understanding of these words, the content of the category "truth" holds a philosophical meaning, which is confirmed by a number of philosophical encyclopedic sources. For example, in some of them, it is indicated that truth is a philosophical gnosiological characteristic of thinking in its relation to its subject, and the thought is called true (or truth) if it agrees with the subject (Ivin, 2004). That is why, as S.V. Shakhov rightfully points out, it should be recognized that the interpretation of the word "truth" as a category undoubtedly evaluative in its nature depends on the approach of the researcher both to the subject, the truth of which is being established, and to the criteria of truth, chosen by the author as a certain frame of reference (Shakhov, 2018a).

In the legal sciences, in addition to the aforementioned S.V. Shakhov, truth in the law is also investigated by other scholars, first of all, theorists of law. V.V. Tikhonova rightly argues that the existence of various evaluations of the importance of this problem, interpretations of the category of "truth" in relation to law in general, and the norms of law in particular led to the appearance of three main approaches to understanding this issue. A characteristic feature of the first approach is that most scholars, investigating the attributes, the nature, types of legal norms, leave the problem of their truth beyond the scope of their research. Representatives of the second approach, called differentiated, in particular L.F. Cherdantsev, believe that only some types of legal norms can be considered in

terms of the category of truth: norms which are tasks, goals, principles, definitions, while the attributing norms reflect the interests and will of the law-making body (Cherdantsev, 1973; Tikhonova, 2012).

The third approach, strictly speaking, entails considering the truth as a mandatory characteristic of the norm of law. For example, the detailed justification of this position is given by O.A. Lukasheva, who believes that when deciding on the application of the criterion of truth one must proceed from the whole set of characteristics of the norm, which always expresses an evaluation of the social reality, social relations and situations that are subject to legal effect; the existing and the proper are always dialectically combined in the essence of the norm. However, as the scholar rightly emphasizes, the inclusion of the norm in a normative legal act does not always testify to its truth, since an inaccurate and incomplete knowledge of objective reality is possible, as well as the loss of this property by the norm due to the fact that social relations are developing dynamically (Lukasheva, 1986).

In turn, V.K. Babaev, reflecting on the norm of law as a true judgment, writes that all legal norms, whether they are definitive, regulatory or protective, are true if they meet certain internal and external requirements. The essence of the requirements of the internal nature, which are the main, constitutive ones, cannot be considered in isolation from the intellectual and will content of the legal norm. The intellectual moment, as noted in the legal literature, is an ideal reflection in the legal norm of regulated social relations, the will moment represents the active ("executive") beginning (Alekseev, 1972).

Thereafter, according to V.K. Babaev, the norm of law has to: first, correctly reflect the state of social relations, which is the subject of legal regulation, and secondly, make a correct legal evaluation of them. In terms of the definitive norms, this is manifested in the fact that certain social relations are defined as lawful or unlawful, the attributes are indicated that characterize them as such. In the regulatory norms, legal evaluation is made of the rights and obligations of the participants of the jural relations, their scope and compliance are provided; in protective norms the scope of penalties is determined. External requirements are those that are applied to the publication of legal norms, their formatting, printing. A legal requirement that meets these requirements is true (Babaev, 1976).

V.V. Tikhonova, studying the problem of the truth of the legal norms, believes that its further elaboration involves, first of all, the identification of those conditions that lead to the maximum full and accurate reflection of social realities and demands of social development in the norms, which is the most important condition for the effectiveness of legal regulation and promotes improvement of the legal basis for the organization and functioning of the state structure (Tikhonova, 2012).

By contrast, V.M. Baranov points out that the truth is an objective property of the legal norm, expressing the proven by the practice of socialist construction degree of the aptitude of its content and form in the form of cognitive-evaluative image to adequately reflect the type, form, level or element of the development of progressive human activity (Baranov, 1989). Scientist claims: "That legal norm is true, which harmoniously reflects the activity that has reached the desired degree of maturity. At the same time, the very activity reflected by the legal norm must enjoy the harmony of purpose, motive, means and results. "Reunification" of these two types of harmony will necessarily lead to the cre-

ation of a true legal norm. And, on the contrary, disharmony in any of the above-mentioned constituents will necessarily lead to a "failure" of legal regulation" (Baranov, 1989). However, along with the above-mentioned altogether correct and convincing judgments, V.M. Baranov, in relation to the relationship of interest and the norm of law, argues that the latter is not only a measure of interest, but also a code by which interest is deciphered. The social significance of the legal norm, as the scholar writes, is a function that has given rise to the public interest. Proceeding from this, the theorist of law emphasizes that those legal norms are true, which correctly and fully express the objectively true interests of the state (Baranov, 1989).

In turn, S.V. Shakhov writes that he is convinced in the opposite: "<…> the legal norm is true only when it reflects not the interests of the state, but the interests of the society as a whole and of an individual in particular. Of course, there are cases when the interests of the state or society and the individual do not coincide, but in this case the legal norm should ensure that the interests of the private individual are taken into account" (Shakhov, 2016). As an example, the expert in the field of administrative law points out the relevant provisions of Law of Ukraine "On Alienation of Land Plots and Other Objects of Immovable Property Located on Them in Private Ownership for the Social Needs and on the Grounds of Social Necessity" on November 17, 2009 which provide for the corresponding amounts of compensation in cash or transfer to the ownership of another equivalent land or immovable property that has been alienated for public needs or for reasons of public necessity. Thus, according to S.V. Shakhov, the general rule of the truth of the legal norm, from which there are certainly some exceptions, is a reflection in the legal norm of interests of both society as a whole and an individual in particular (Shakhov, 2016).

In another publication, the expert in the field of administrative law emphasizes that the truth of the norms of administrative law is one of the key conditions for their effectiveness (Shakhov, 2018b).

3. Content of the category of the truth of the administrative legal norms: criteria and indicators

First of all, we would like to emphasize that the above-mentioned reputable scholar should undoubtedly be supported in his claim that the truth of the norms of administrative law is a condition for its effectiveness, because the truth is an independent, separate characteristic of the legal norm that determines its essence. This idea is in a certain way congruent with the point of view of V.M. Baranov, who argues that truth is the determining primary property in relation to the effectiveness of the legal norm. Truth, as the scholar observes, implies finding out how the content of the legal norm meets the needs for progressive social development, how accurately it expresses social relations, universal human, national, personal interests, and, the effectiveness of the legal norm, in turn, makes it possible to establish the degree to which the legal norm fulfills its purpose, define the result of its action. According to V.M. Baranov's interpretation, with which one can generally agree, the effectiveness of the legal norm serves as one of the "indicators" of the degree of truth of the rule of law. At the same time, V.M. Baranov absolutely accurately emphasizes that the true norm of law can be both effective and ineffective. For example, one can hardly speak of the effectiveness of even an undoubtedly true norm, if the authorized person implements it not actively or does not apply it at all (Baranov, 1989).

While sharing the opinion of the renowned scholar, we would like to note that, in fact, the degree of effectiveness of administrative law depends on the completeness and accuracy of reflection in it of the material and spiritual conditions of society. The more adequately the norms of the administrative law reflect the combination of social and personal interests, and the processes of social development, the higher the effectiveness of administrative legal norms is.

However, while in general sharing the idea of the human-centrism in administrative law, we cannot unequivocally agree with the other beliefs of the esteemed author. We would like to emphasize that S.V. Shakhov's view on the subject contains contradictions between the content of truth *per se* and the methods and results of its ascertainment (true/not true). In other words, if one proceeds from the formulation proposed by the scholar, the truth of a norm can be ascertained only if it concerns the interests of the society or a specific person. However, as is known, clearly not all the norms of administrative law based on the essence of their purpose concern the interests of the society or an individual citizen. For example, what truth (in the interpretation of S.V. Shakhov) can one speak about in relation to those norms, which, for instance, only register certain legal facts, while not affecting the so-called operational legal arrangements[1]?

Furthermore, if we try to assess the truth of a specific norm of administrative law, we need to be guided by some indicators and criteria, but unfortunately, S.V. Shakhov does not mention them. However, we will not take upon ourselves the responsibility for the unequivocal answer to this question either, instead we will only try to kindle the interest of the academic community in resolving the issue.

We would like to point out that the word "criterion" in the encyclopaedic literature is defined as the basis for the evaluation, definition or classification of something; measure (Shakhov, 2018b), and an "indicator" means: 1) evidence, proof, an attribute of something; 2) representative data on the results of some work, a process; data about achievements in something. Data that indicates the amount of something; 3) phenomenon or event on the basis of which it is possible to draw conclusions about the course of some process; 4) quantitative characterization of the properties of the product (process) (Shakhov, 2018b). In this context, O.M. Kurakin's view should be supported, according to which, in legal science, the term "criterion" serves as the basis for classification, and is a peculiar focus of evaluation. At the same time, if we consider this term as an attribute, then the category "indicator" should be determined as the absolute or relative value of this attribute, the degree of quality of its condition (Kurakin, 2016).

Proceeding from the above, and also considering the fact that efficiency is the property of the norm of administrative law, which is based on its truth, the criterion (one of them) of such truth will be the degree of effectiveness of the legal norm, and indicators will be specific statistical data, confirming or refuting its effectiveness and, consequently,

[1] As an example, we will give the provision of Article 3 of the Law of Ukraine "On Central Executive Bodies": The Ministry, the other central executive body has a stamp depicting the State Emblem of Ukraine and its name, its own forms, accounts in the bodies of the State Treasury Service of Ukraine. Placards (signboards) depicting the State Emblem of Ukraine and the name of the located bodies are displayed on the houses where the ministries, other central executive bodies are located, and the State Flag of Ukraine is raised (Verkhovna Rada of Ukraine, 2011).

the truth. Interestingly, in part this idea is congruent with the point of view of the Soviet scholar V.K. Babaev, who argued that the criterion of the truth of the legal norms is the enforcement of the rights and law-enforcement practice. At the same time, the true nature of the legal norm is manifested through its effectiveness (Babaev, 1976). A similar view can be found in the works of V.V. Tikhonova (Tikhonova, 2012) and R.O. Halfina (Halfina, 1974).

In addition to all the above-mentioned, it is obvious to us that the truth of the norms of administrative law, as a completely evaluative category, does not imperatively have to reflect the interests of a particular citizen. This does not mean that in this case we reject the principle of the rule of law or treat it somehow differently than other authoritative scholars. It should be emphasized that in this matter it is only necessary to place accents more properly. In particular, we propose, in determining the essence of this category, to rely on the compliance of the norm with the demands of social development. It is commonly known that social development is nothing more than a process which involves, on the one hand, people, social groups, social institutions, and, on the other hand, objective conditions that become the framework of their goals, activities and results. Social development is the process of an evolution of a unified social organism, characterized by irreversibility, purposefulness and consistency (Nekrasova et al., 2009). The objective conditions (demands) of the development of society include the territory, climate, the level of the economy, the state of social institutions (family, education and science, judicial and law enforcement systems, systems of public administration), mentality, consciousness, world outlook, etc.

In turn, it should be noted separately that social needs, as an integral part of human needs, include socio-economic (creating conditions for a competitive environment and business development, respect and protection of the private property institution, state and social concern for those members of society who are unable to realize the principle of self-sufficiency, etc.) as well as moral and spiritual needs (the human need for self-improvement, self-development, justice, etc.) (Silvestrova, 2006).

Thus, it is not unreasonable to determine the truth of the administrative legal norm in terms of such initial data that reveal social needs at a certain stage of the development of society, namely: the developmental level of economic and industrial relations, the state of the environment and ecology in general, the state of social and political institutions (family, education and science, medicine, judicial and law enforcement systems, public administration systems, etc.), the status of an individual in the society and the level of protection of their rights and interests on the part of the state, the mentality, consciousness, world outlook of the society, etc.

4. Conclusions

Thus, in our understanding, the truth of the norm of administrative law is its property, which characterizes the degree of compliance of the norm with the demands of social development, the full reflection in it of public relations, regulated by administrative law.

We would like to emphasize that the author of this publication will consider his task fulfilled if the content of the paper kindles a genuine academic interest in the reader and fosters a desire to enter into a discussion.

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ІСТИННІСТЬ НОРМИ АДМІНІСТРАТИВНОГО ПРАВА: СУТНІСТЬ ТА ЗМІСТ КАТЕГОРІЇ

Павло Лютіков,
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Мета *статті – на підставі аналізу думок окремих правників визначити зміст і сутність такої властивості норм адміністративного права, як їх істинність.*

Методи. *Обґрунтованість теоретичних положень і рекомендацій щодо подальшого наукового розроблення теми, а також достовірність результатів забезпечено використанням сукупності філософських, загально- й спеціально-наукових методів, які використовуються в юридичних дослідженнях. Як основний загальнонауковий метод використано діалектичний метод наукового пізнання.*

Результати. *Визначено, що істинність норми адміністративного права є умовою її ефективності. Зазначено, що ступінь ефективності адміністративно-правової норми залежить від повноти й точності відображення в ній матеріальних і духовних умов життя суспільства. Чим адекватніше відгукується в нормах адміністративного права поєднання громадських та особистих інтересів, процеси розвитку суспільства, тим вищою є ефективність адміністративно-правових норм.*

З огляду на той факт, що ефективність є властивістю норми адміністративного права, в основі якої лежить її істинність, автором зроблено припущення, що критерієм такої істинності слугуватиме ступінь ефективності правової норми, а показниками – конкретні статистичні дані, що підтверджують чи спростовують її ефективність і, відповідно, істинність.

Висловлено думку про те, що істинність норми адміністративного права, як категорія абсолютно оцінна, не зобов'язана в імперативі відображати інтереси конкретного громадянина. Це жодним чином не означає, що в такому разі автор відмовляється від принципу верховенства права або трактує його якось інакше, ніж інші авторитетні вчені. Запропоновано у визначенні сутності цієї категорії відштовхуватися від того, чи відповідає норма потребам суспільного розвитку.

Автор визначив істинність адміністративно-правової норми з позиції вихідних даних, що розкривають суспільні потреби на певному етапі розвитку соціуму, таких як рівень розвитку економічних і виробничих відносин, стан навколишнього природного середовища й екології загалом, стан соціальних і політичних інститутів (сім'ї, освіти й науки, медицини, судової та правоохоронної систем, системи публічного адміністрування тощо), статус окремої людини в суспільстві та рівень захищеності її прав та інтересів із боку держави, ментальність, свідомість, світогляд суспільства тощо.

Висновки. *У результаті проведеного аналізу автором запропоновано розуміти під істинністю норми адміністративного права її властивість, яка характеризує ступінь відповідності норми потребам суспільного розвитку, повноту відображення в ній суспільних відносин, що врегульовані адміністративним правом.*

Ключові слова: адміністративно-правова норма, властивість, істина, істинність, потреби суспільного розвитку.

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ON THE ISSUE OF REGULATORY FRAMEWORK FOR STATE GOVERNANCE AND MANAGEMENT OF ECONOMIC ACTIVITIES IN UKRAINE

The aim *of this article is to consider the regulatory framework of state governance and management of economic activity in Ukraine the notion of relevant framework, the nature of the relations that such framework applies its effectiveness.*

The methods *of formal logic are used: analysis, synthesis, induction, deduction, analogy, generalization. The author analyzes the notion of "legislative" and "framework", based on she synthesizes and generalizes her own vision of the concepts of "legislative framework" and "regulatory framework". Relationship about state governance and management of economic activity is delimited deductively. Conclusions are drawn about the effectiveness of the regulatory framework of the relevant direction of State's activities with applying induction.*

The view expressed that the legislative framework should be included only laws of Ukraine and international agreements ratified by the Verkhovna Rada of Ukraine, the consent of which is binding on the Verkhovna Rada of Ukraine.

Results and conclusions. *It is emphasized on the need to delimit the terms "regulatory framework", "legislative framework", "law framework". The ratio of the latter two concepts can be determined by analogy between the concepts of "system of legislation" and "system of law".*

The author draws attention to the fact that the principle of the definition of the range of relations covered by the regulatory framework for state governance and management of economic activity is the understanding of the subject of such activity – the state, which is endowed with both powers of authority and economic legal personality. At first case, it is state governance, at second – state management. Therefore, the relevant regulatory framework unites sources that determine the rules of conduct for the state – the subject of power and the state – a subject with economic legal personality.

It was also emphasized that the quality of the regulatory framework of state governance and management of economic activity in Ukraine depends on the proper implementation of the state regulatory policy in the field of economic activity, primarily the principles of the relevant policy. They defined by the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity": expediency, adequacy, efficiency, balance, predictability and take into account of public opinion.

The latter may serve as criteria for regulatory acts in the field of economic activity, the discrepancy with them is indicates the poor quality of such legal act and the inexpediency of acceptance. At the same time, the quality of regulatory acts indicates the level of state regulatory policy as a whole, and their application effectiveness of state governance of economic activities.

The author made a conclusion that in order to eradicate the practice of adopting regulatory acts on the same issues, relevant legislation should be primarily incorporated with subsequent codification. Those regulatory acts that management economic, in particular, organizational and economic relations, shall be codified within the Economic Code of Ukraine, those acts that govern administrative relations – in a special law and future Code of Administrative Procedures.

Key words: *legislation, legislative, economic legal personality of the state, powers of the state, principles of state regulatory policy, systematization of legislation.*

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1. Introduction

Development of market relations, active integration processes in which Ukraine is involved, constant legislative changes complicate operation processes of various economic entities, their engagement in various types of economic activities. It is a well-known fact that the proper operation of economic entities of various forms of incorporation and forms of ownership is a guarantee for the development of state economy as a whole. At the same time, the proper economy organization in any state is essential for the successful state activity, satisfaction of citizens' demands, ensuring the social orientation of its development. For the effective operation of any organized system, it requires proper management. An important role in management of such a system as an economy assigned to the state.

In many scientific legal studies we may find the terms "regulatory", "legislative", "law" framework. However, their clear definition was not developed. At the same time, it's commonly believed that such framework is the foundation, the basis for the certain type of activity, which determines its limits, particularly when it comes to the state, its activities and implementation of its functions. This article is devoted to such range of problems.

2. The concepts of "legislative", "regulatory" and "legal" framework

When defining the legislative framework, academics generally indicate it's components instead of giving definition to the concept. I.H. Yanenkova, when analyzing the legislative framework for the operation of enterprises, points out that "it covers both economic laws in its own sense, as well as other regulatory acts governing economic life issues" (Yanenkova, 2012). Legislative framework as a range of regulatory acts (Nahorichna, Konovalov, 2014) or their corpus (Yushyna, 2007) as respective legislation (Bakalinska, 2014) is interpreted also in other studies. When elaborating the new provisions on legal foundations of state regulation of entrepreneurial activity in Ukraine, V.V. Dobrovolska (Dobrovolska, 2007) defines the law framework for state regulation of entrepreneurial activity, pointing out that this concept has no unequivocal definition, being still under development, and analyzes some particular regulations. T.M. Kravtsova in her study states that "laws and regulations ensure the necessary legal regime of provision and protection of public and private interests in the field of economic activity"

(Kravtsova, 2006), however, she neither propose a definition of provision nor specify the type of provision in question, whether legislative or law.

In order to determine the concept of "legislative framework" it is worth referring to the etymology of the concepts that make up this phrase.

The concept of "provision", in particular, means "satisfaction of someone, something in any needs, creating of reliable conditions for the implementation of something, ensuring something" (Slovopediia; Busel, 2005). Therefore, legislative provision can be understood as creating reliable conditions for the implementation of something, ensuring something at the legislative level.

The term "legislative" derives from the noun "legislation", the definition of which enables us to understand what the concept of "legislative" implies.

As it comes from the literature, the notion of "legislation" is possible to apply both in broad and narrow sense. Broad approach means that the notion of legislation covers the acts of legislative bodies and subordinate acts (acts of state administration agencies, etc.). The narrow approach includes the acts of the legislative body and resolutions of the Verkhovna Rada enacting these laws (Skakun, 2000). This position is debatable.

Throughout the textbooks you may also find a view that a broad understanding of legislation undermines the role of law, combining laws and subordinate acts. The broad understanding of legislation is the way to attenuate the law, to substitute it with managerial decisions (Livshits, 1994). Interesting is the position of the Constitutional Court of Ukraine set out in the decision № 12-рп/98 of July 9, 1998 as for the term of "legislation" (Constitutional Court of Ukraine, 1998). According to this decision of the Constitutional Court, the concept of "legislation" covers the laws of Ukraine, international treaties Ukraine in force declared binding by the Verkhovna Rada of Ukraine as well as resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, decrees and resolutions of the Cabinet of Ministers of Ukraine approved within their competence and authorities and pursuant to the Constitution of Ukraine and the laws of Ukraine. Thus, the concept of "legislation" does not cover regulatory acts issued by central executive authorities. That is, in our opinion, not sufficiently justified, since the acts of the highest body of executive power are covered by this concept. However, proceeding from the approach of the theory of administrative law which does not lodge the state administration with the powers to adopt subordinate legal acts, empowering it to concentrate its efforts on executive activities related to application of laws and issue of individual administrative acts of personified nature exclusively (Halunko et al., 2018) it can be argued that such a position of the Constitutional Court actually supports this approach. At the same time, we consider the practical implementation of such an approach in our state to be impossible at its present development stage.

At the same time the judgment of the Constitutional Court of Ukraine on the constitutional application of the Supreme Court of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 69 of the Criminal Code of Ukraine (the case on imposition of reduced sentence) (Constitutional Court of Ukraine, 2004) states that one of the instances of the rule of law is that the law is not limited to legislation as one of its forms only. It also includes other social controllers as well, in particular norms of morality, traditions, customs, etc., legitimated by society

and determined by historically achieved cultural level of society. Therefore, legislation is not the only form of law, thus this concept should not cover the whole range of regulatory controllers existing in society.

Approaches to interpretation of "legislation" concept are integrated into the legal encyclopedia (Shemshuchenko, 1999). It gives several definitions of the concept: 1) the system of laws of Ukraine; 2) in the broad sense, the system of laws and other regulatory acts adopted by the Verkhovna Rada of Ukraine and the highest bodies of executive power – resolutions of the Verkhovna Rada, decrees of the President of Ukraine, resolutions and decrees of the Cabinet of Ministers of Ukraine; 3) in the broadest sense, a system of laws and resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, resolutions, decrees and ordinances of the Cabinet of Ministers of Ukraine, as well as regulatory acts of departments and agencies, local councils and local state administrations.

It stands to mention the separate opinion of M.D. Savenko as to the decision of the Constitutional Court of Ukraine of July 9, 1998 № 12-рп/98, in which he stated that the concept of "legislation" should be restricted to a set of laws adopted by the Verkhovna Rada of Ukraine (Savenko, 1998).

Such interpretation of this term will promote a unified approach to its essence, the certainty of the range of subjects authorized to regulate particular social relations by adopting relevant legislation. After all, pursuant to the Constitution of Ukraine (Article 75), the only body of legislative power in Ukraine is the Parliament – Verkhovna Rada of Ukraine, which adopts laws and declares binding international treaties in force. Thus, legislative framework should be represented only by the laws of Ukraine and international treaties ratified by the Verkhovna Rada of Ukraine, which declared them binding (Verkhovna Rada of Ukraine, 1996).

Therefore, it is required to make a distinction between the terms "regulatory framework" and "legislative framework". At the same time, the latter is a component of the first.

We should also point out that it makes sense to consider also the relationship between the above concepts with the concept of "law framework" when defining the framework for state governance and management of economic activities.

In our opinion, it is possible to determine the interrelation of these concepts by analogy between the concepts of "system of law" and "system of legislation". Ye.V. Petrov aptly pointed out that "the system of law and the system of legislation may coexist in a large number of variations, from complete discrepancy to complete substitution of the system of law by the system of legislation. Both options are typical for the states with undemocratic regime of state power organization and implementation. Existence of law and legislation side-by-side, as well as negation of law beyond the scope of legislation is typical for such regimes. In democratic states, the system of legislation is an integral part of the system of law" (Petrov, 2012). Consequently, legislative framework is one of the elements of regulatory framework – shall be an integral part of law framework.

Then, the regulatory framework for state governance and management of economic activities is represented by the sources of legal regulation of state's implementation of such activities. Identification of such sources for state governance and management of economic activities determines the need to make a distinction between the relations that may arise in such a case.

3. The essence of state management of economic activities

State governance and management of economic activities is performed primarily by the relevant state authorities that exercise their powers within the limits prescribed by the Constitution and subject to compliance with the laws of Ukraine.

In determination of the range of relations covered by the regulatory framework for state governance or management of economic activities, the principal is the issue of understanding the subject of such activity – the state, which possess both powers of authority and economic legal personality.

Implementation of relevant activity by the state as a power entity should understood as state governance of economic activities. It involves the organizational and power activities of state authorities (officials), which implements the functions of state governance of the social relations that originate, change and terminate resulting from engagement in economic activities or implementation of the intention to engage in them by state at large and aimed at performing the economic function of the state.

In the case when the state implements its economic legal personality (state management of economic activities), it exercises state administration in relation to enterprises created on its own or through its participation by means of organization and management of the economic activities of a particular enterprise.

Thus, the essence of the concept of "state governance of economic activities" should base on the concept of state regulation of the economy, since the concept of "economy" means state economy as a whole. While the state management of economic activities actually means organizational and economic relations, in which the government authority acts as a subject of organizational and economic powers, realizing its economic legal personality. Organizational and economic relations that mediate the state management of economic activity at the micro level have their own peculiarities related to the legal regime of property used to establish a business entity, which determines the specifics of state corporate rights.

Due to aforementioned, the regulatory framework for state governance and management of economic activities integrates sources that determine the rules of conduct for a state as a subject of power and a state as a subject with economic legal personality.

It is worth noting that during the Ukraine's membership within the USSR and purely state ownership of the national economy, the issue of regulatory framework for relevant activities of state was by definition treated in a comprehensive way. In this case, it was a question of state regulation of the national economy. After all, each economic entity was in charge of a certain state authority, and "in reality, the management body and its subordinate entities worked in a strong connection, close unity, their activities were a seamless whole – the process of economic activity in a certain part of the socialist economy" (Pronska, 2013). It was not necessary to separate state governance and state management.

4. The issues of effectiveness and improvement of regulatory framework

Effectiveness of regulatory framework for state governance and management of economic activities depends to a large extent on law enforcement practice. Unlike many other states, Ukraine has quite high level of regulatory activity development, however law enforcement practice is still deficient and ineffective (Bakalinska, 2014). As it fol-

lows from the periodicals, "when it comes to the legal support of economy, the loss of the connection between science and legislative practice is worth attention. It needs to be recognized that parliamentary practice, which may be characterized by progressive clannishness and utilitarian approach has technically turned away from science, however science does not display perseverance in advocating its positions as for improving the quality of legislation" (Znamenskyi, 2010). At the same time, law-making even actualized in the form of unsystematic development of economic and legal legislative innovations may confirm or refute many findings of the science of economic law. After all, law-making objectively tends to the actual needs of social interactions, and has certain objective regularities indicating the directions for further economic and legal development (Podtserkovnyi, 2010).Therefore, only choosing one object (for the purpose of study and formulation of proposals – by researcher, for regulation of state relations involving this object – by lawmakers) may show discrepancy or similarity between the views of scientists and lawmakers, but, unfortunately, not their cooperation aimed at creation of effective legal regulation.

Thus, success in development of laws and subordinate regulatory acts is of a direct dependence of rule maker's legal culture, their level of proficiency in rulemaking technique, depth of scientific support, and due consideration of public opinion in this process.

The scholars believe that legal technology will become a panacea for high quality legislation. The legal technique is aimed at the perfect formation of a regulatory act and its contents. It should ensure a high quality of both legislative and subordinate act, that is, its compliance with all content-related criteria and formal legal requirements (Lehin, 2016).

We believe that the quality of regulatory framework for state governance of economic activity depends basically on the proper implementation of the state regulatory policy in the field of economic activity, principles of such policy stipulated by Law of Ukraine "On Principles of State Regulatory Policy in Economic Activity": advisability, adequacy, efficiency, balance, predictability and due regard to state opinion. These principles may serve as criteria for regulatory acts in the field of economic activity, and inconsistency with them indicates the poor quality of particular legal act and inadvisability of its adoption. At the same time, the quality of regulatory acts clearly shows the level of state regulatory policy on the whole, while their application – the effectiveness of state governance of economic activities.

The need to improve the regulatory framework for state governance and management of economic activities, get rid of obsolete norms, eliminate the gaps in current regulatory acts, harmonization for the effective application of legislative acts determines the advisability to systematize legislation in the area in question. We share the opinion of V.P. Plavych that "harmonization of legislation on the principles established by the Constitution, overcoming the conflicts between the Constitution and laws, as well as harmonization of the provisions of national legislation with international law is possible in the most effective way through the systematization of legislation" (Plavych, 2002). Branch division, complexity and diversity of regulating acts constituting the regulatory framework of state governance and management of economic activities do not provide

an opportunity to choose a certain type of its systematization. Therefore, we believe that in order to eradicate the practice of adopting regulatory acts on the same issues, relevant legislation should be primarily incorporated with subsequent codification.

Taking into account the fact that the regulatory framework for state governance and management of economic activities includes regulatory acts of administrative and economic law, which once again justifies the importance of differentiation of relations that arise during state's performance of this activity, they should have different basis for incorporation and codification.

Those regulatory acts that management economic, in particular, organizational and economic relations, shall be codified within the Economic Code of Ukraine, which is open to regulate the procedure on implementation of organizational and economic powers, especially in the state sector of the economy. Those acts that govern administrative relations shall be codified within the framework of the development and adoption of a special law. It would determine the basis for interaction between state authorities, local self-government and private individuals which pursues establishing the economic order in Ukraine, as well as the future Code of Administrative Procedures (Administrative Procedural Code) in a separate section on the procedural issues of such interaction.

Therefore, the main purpose of such systematization is establishing clear and effective regulatory framework for state governance and management of economy aimed at achieving priorities specified in the Strategies and Concepts of our State's Development approved by the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine. As it follows from the scientific works, the world practice has far back proven that legislation can be considered civilized only when it represents a systemic balance of expediency, justice and stability (Znamenskyi, 2010). That is the conditions which can be achieved in compliance with the principles of state regulatory policy in the field of economic activity that allow us to claim that the regulatory framework of state governance and management of economic activities in Ukraine is of high quality and efficiency.

5. Conclusions

Thus, the regulatory framework of state governance and management of economic activity is one of the constituent elements of law framework and includes legislative framework, but not limited to the latter. The ratio of the "legislative framework" and "law framework" can be determined by analogy between the concepts of "system of legislation" and "system of law". To determine the sources of regulatory framework of state governance and management of economic activity, it is necessary to take into account two levels of state activity in economic sphere – macro level (the state implements power – state governance) and micro level (the state implements economic competence – state management). Therefore, the relevant regulatory framework unites sources that determine the rules of conduct for the state – the subject of power and the state – a subject with economic legal personality.

Quality of the regulatory framework of state governance and management of economic activity in Ukraine depends on the proper implementation of the state regulatory policy in the field of economic activity, primarily the principles of the relevant policy. They defined by the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity": expediency, adequacy, efficiency, balance, predictabil-

ity and take into account of public opinion. The latter may serve as criteria for regulatory acts in the field of economic activity, the discrepancy with them is indicates the poor quality of such legal act and the inexpediency of acceptance. At the same time, the quality of regulatory acts indicates the level of state regulatory policy as a whole, and their application effectiveness of state governance of economic activities.

The dispersion of the relevant norms, the variety of normative legal acts predetermines the need for systematization of the relevant acts, which will have an impact on the effectiveness of their application. Proper implementation of the state regulatory policy in the field of economic activity, adherence to the principles of the relevant policy should also contribute to improving the efficiency of the regulatory framework for state governance and management of economic activities.

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ДО ПИТАННЯ НОРМАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ДЕРЖАВНОГО УПРАВЛІННЯ ГОСПОДАРСЬКОЮ ДІЯЛЬНІСТЮ В УКРАЇНІ

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***Мета** статті – розглянути питання нормативно-правового забезпечення державного управління господарською діяльністю в Україні, а саме поняття відповідного забезпечення, сутність відносин, яких стосується це забезпечення, і його ефективність.*
*Використовуються **методи** формальної логіки (аналіз, синтез, індукція, дедукція, аналогія, узагальнення). Для визначення поняття «законодавче забезпечення» автор аналізує поняття «законодавчий» та «забезпечення», на підставі чого синтезує й узагальнює власне розуміння термінів «законодавче забезпечення» та «нормативно-правове забезпечення». Дедуктивним шляхом розмежовуються відносини щодо державного управління господарською діяльністю. З використанням індукції формулюються висновки щодо ефективності нормативно-правового забезпечення відповідного напряму діяльності держави. Висловлюється позиція, згідно з якою законодавче забезпечення має бути представлене лише законами України та міжнародними договорами, ратифікованими Верховною Радою України, згоду на обов'язковість яких надано Верховною Радою України.*
***Результати та висновки.** Наголошується на необхідності розмежування термінів «нормативно-правове забезпечення», «законодавче забезпечення» та «правове забезпечення». Співвідношення останніх двох понять може бути визначене за аналогією до співвідношення термінів «система права» й «система законодавства».*
Автор звертає увагу на те, що принциповим у питанні визначення кола відносин, які охоплюються нормативно-правовим забезпеченням державного управління господарською діяльністю, є розуміння суб'єкта такого управління – держави, яка наділена як владними повноваженнями, так і господарською правосуб'єктністю. Тому відповідне нормативно-правове забезпечення об'єднує джерела, що визначають правила поведінки для держави – суб'єкта владних повноважень та держави – суб'єкта з господарською правосуб'єктністю. Також наголошено на тому, що якість нормативно-правового забезпечення державного управління господарською діяльністю в Україні залежить від належної реалізації державної регуляторної політики у сфері господарської діяльності, насамперед визначених Законом України «Про засади державної регуляторної політики у сфері господарської діяльності» принципів відповідної політики: доцільності, адекватності, ефективності,

збалансованості, передбачуваності та врахування громадської думки. Останні можуть бути критеріями для регуляторних актів у сфері господарювання, невідповідність яким свідчить про низьку якість певного нормативно-правового акта та недоцільність його прийняття. Водночас якість регуляторних актів свідчить про рівень державної регуляторної політики загалом, а їх застосування – про ефективність державного управління господарською діяльністю. У статті стверджується, що з метою усунення практики прийняття нормативних актів з одних і тих же питань необхідно насамперед інкорпорувати відповідне законодавство, а потім кодифікувати його: нормативно-правові акти, що регулюють організаційно-господарські відносини, – у межах Господарського кодексу України, а акти, що регулюють адміністративні відносини, – у межах спеціального закону та майбутнього Кодексу адміністративних процедур.

Ключові слова: законодавство, законодавчий, господарська правосуб'єктність держави, владні повноваження держави, принципи державної регуляторної політики, систематизація законодавства.

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DEVELOPMENT OF THE ADMINISTRATIVE LAW IN GEORGIA

Purpose. *In 1999 the adoption of the General Administrative Code and Administrative Procedure Code in Georgia gave basis for creation of the new administrative law, since before the entry into force of the above-mentioned codes, Georgia had no tradition of the administrative law and, hence, no practice of the administrative justice. In Georgia being part of the Soviet Union, and in the Soviet Union overall, the administrative law did not exist with the understanding that is regulated by the modern administrative law. The communist doctrine of the administrative law radically differs from the modern administrative law because in those times the administrative legislation was mainly defining the citizens' obligations before the administration, rather than ensuring citizens' rights and protection of their interests.*

Methods. *Therefore, the article discusses development stages of the administrative law, the path gone through by the administrative law starting from the formulation until present time, also the Soviet heritage and its influence on the development of the administrative law is discussed, along with the influence of the European reception and establishment within the Georgian legislation, the core factors are analyzed, which caused the necessity of the creation of new administrative law.*

Results. *The significant part in the article is devoted to the discussion of the subject of administrative law and system of administrative law on the example of the Georgian administrative law. The core elements of the implementation of public administration are discussed, the notion of the administrative body, forms of activity of the administrative body and basic principles that are characteristic to the Georgian administrative law.*

Conclusions. *In this regard, the important place is given to particularities of the administrative proceeding and judicial process in Georgia, namely, so called "prejudicial" rule of appealing within the administrative body, suspensive effect of the administrative appeal, principles of disposition and inquisition in the administrative process, as well as the institute of the amicus curiae is discussed, as a particularity of the Georgian administrative justice.*

Key words: *Georgian administrative law, reception of the legal system, General Administrative Code of Georgia, Administrative Procedure Code of Georgia.*

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1. Introduction

The purpose of the modern administrative law is to protect persons from the bureaucratic arbitrariness of the administrative body, at the same time, make the legal-administrative relations emerged between them more flexible and effective. As far as the administrative law relates to everyday life, the factual and, at the same time, legal diversity of the modern world brings on the agenda the modernization of public administration and its regulation on legislative level.

In Georgia, the adoption of General Administrative Code and the Administrative Procedure Code in 1999 played significant role in the reformation of the administrative law. The adoption of these codes created the foundation for the administrative law as a discipline, since the administrative law did not exist as an independent discipline. The General Administrative Code stipulated the notion of administrative body, the general provisions and principles of activity of the administrative body for the first time. Besides, the rules for the decision-making in the process of execution of public administration, deliberation with regard to the administrative appeals and grounds for state responsibility were defined. Whereas the adoption of the Administrative Procedure Code, has initiated the execution of administrative justice. This Code prescribed the basic principles of the process, procedural legal capacity, rules of jurisdiction in administrative courts, rules for delivering judgments and filing appeals.

Amendments in the mentioned codes were introduced gradually, which clarified and completed those provisions that had some gaps as emerged by the practice. Consequently, the reformation of the administrative law is ongoing nowadays as well. Representatives of academics, practitioners and international experts are involved in the mentioned process. Their work facilitates systemic and disciplinary study of the administrative law, as well as development of administrative law in Georgia.

The purpose of the presented article is to make a certain contribution to the development of the administrative discipline, to the complex study of issues related to administrative law, which is possible by consideration, analysis and delivering particular conclusions on the issues linked with the creation of the administrative law as an independent subject, on one hand, and, on the other hand, on issues related to its functioning.

The article discusses stages of development of the administrative law, the path it has gone through from the establishment up to now, the main aspects of the soviet heritage

in the administrative law, the influence of European reception and incorporation into the Georgian legislation, those important factors, which caused the necessity of the creation of administrative law. The core provisions will be analyzed, which are characteristic to the administrative proceeding and judicial process.

2. Stages of the development of administrative law in Georgia

2.1. European reception in the Georgian legislation

It shall be noted, that Georgian law never has been the country closed and hidden into its national values. It always showed big interest towards progressive culture and in this way improved its own culture. Moreover, considering the geopolitical location of Georgia, it always has been influenced by the east-west culture (Zoidze, 2005: 20). Georgian law always was remarkable for the exceptional scope of borrowing foreign law (Korkunov, 2004: 281). However, it shall not be understood as striving towards reception of Georgia was done or is done by the direct transposition of foreign law. Georgian legislator always tries to have harmonized and synthesized law. Herein, we shall note that continuous strive and development of Georgia was interrupted by Russian annexation and it had no possibility to implement serious reforms in the area of law during 70 years[1]. Hence, the first stage of development of the Georgian administrative law starts only after dismantlement of the Soviet Union and declaration of the independence of Georgia[2].

At this point, it shall be noted that Europeanisation of the Georgian administrative law was not a goal in itself, but such obligation derives from the constitution itself. As far as the constitutional law defines the main principles and provisions of any area of law. According to the opinions expressed in literature, we can find the dominant regulation of the constitutional law mostly in the administrative law. In general the core principles of constitutional law in the administrative law, comparing to all other areas, may be said that are directed with more intensity. In particular, by virtue of administrative legislation the content and principles of the constitutional law are specified (Tskhadadze, 2016: 5).

2.2. The heritage of the Soviet Union in administrative law

Because of the communist regime existing in Georgia, the administrative law developed in different direction. According to the communist doctrine, administrative bodies are instruments for only expressing and implementing the will of a State (Adeishvili, Samkharauli, 2003: 3). In general, the concept existing in those times did not arouse the necessity of having mechanisms for protecting citizens' rights in relation to administrative bodies and it was based on the restrictive rules in the administrative legal relationships, as well as types of responsibilities for the breach of these rules. All these

[1] On February 24 of 1921, Soviet Russian troops entered Georgia and took the whole territory.

[2] On 31 March of 1991 referendum was conducted in Georgia in which 90,3% of the whole population participated. On the question of referendum – whether they want to restore the independence on the basis of the declaration of independent act of 26 May of 1918, the 98,9% of the referendum participants answered positively. Based on this, on 9 April of 1991 the act on the restoration of the Independence of Georgia was adopted. Restoration of independence based on the independence act of 26 May of 1918 meant that after restoration of independence the State of Georgia would be the legal successor of the democratic republic of Georgia of 1918–1921 years. However, after dismantlement of the Soviet Union diverse countries in the world and UN recognized independence of Georgia not as of successor of the democratic republic of Georgia, but as a successor of the soviet socialistic republic of Georgia.

had a negative influence on the public administration sphere. The legal nihilism was so strong that that prevented firstly creation of such administrative legislation, which would be based on human rights. Given that the communist doctrine linked public administration not to the rules of law principle, but the will of communist party, the administrative legislation reflected only the will of the prevailing class, which was given to administrative bodies in form of directives by the communist party. Administrative law was equated only with the Administrative Offences Code that stipulated administrative offences and types of responsibilities/sanctions.

In the democratic and legal state public administration and administrative legislation regulating it have functions of ensuring basic human rights, order, protection, provision of service and democratic guarantees. In everyday life, realization of these functions (public and private) is done by the administrative legislation. Considering the European legal experience in this sphere, for which human is considered as a main value, has only a positive impact on the increase of standard of protection, control and stability. Clearly, in the conditions of state constitutional identity, this only facilitates the realization of those thoughts of legislator that are considered in general constitutional norms (Kalichava, 2017: 289). Therefore, preparation of both draft codes in Georgia was carried out according to experiences of administrative legal orders from different western countries. Experts from Netherlands, Germany, France and US participated in the preparation of draft laws, in order to share experiences of their countries. At the end, the group of reformers agreed on the reception of Dutch and German models of administrative law.

2.3. Need for creation of new administrative law

After the political changes, namely collapse of the Soviet Union, the political will of Georgia appeared to aim at establishing bodies based on totally new concept and transform into democratic and lawful country. Consequently, the development of administrative law was put on the agenda in a way that it would regulate public administration and legal affairs between citizens, the role of public administration in the protection of citizens' interests and rights should have been increased. Therefore, during the codification of administrative law it is advisable to define general principles of administration. Inasmuch as, the purpose of regulating principles under legislation is that citizen, who reads the law, may understand the main essence of the law promptly (Winter, 2013: 68).

The idea of codification of administrative law initiates from 1997, after Georgia has become a member of the Council of Europe and took an obligation to put the legislation into the framework of the rule of law principles. On September 2 of 1997 the Parliament of Georgia adopted resolution on "the harmonization of the Georgian legislation with the European Union law" (Parliament of Georgia, 1997), according to which from September 1st of 1998, all laws and other normative acts shall be adopted in compliance with the standards and norms prescribed by the European Union. The purpose of mentioned normative obligations was to develop processed of integration of Georgia into international institutions of Europe, approximate and harmonize legal systems, to ensure compliance of Georgia legislation with principles recognized by the European Union.

The new administrative law stood before the necessity to solve problems of various and, at the same time, complex nature. Consequently, the role of the legislative body of those times was highly important, as it stood before a big challenge. In particular,

the issue of privatization of state assets, legislative guarantees of the freedom of entrepreneur, decentralization of administration and many other issues, which are important for establishment of the state of market economy, required legislative amendments.

As stated by the German scholar Gerd Winter, among the transitional countries the transformation of Georgian legal order is exemplary for two grounds: first is that Georgia promptly conducted changes in the legal form and comparing to other Eastern or Asian, or CIS countries managed to develop rapidly (Winter, 2013: 68). The Parliament of Georgia on June 25 of 1999 (Parliament of Georgia, 1999a) adopted the General Administrative Code of Georgia, and on July 23 of the same year – the Administrative Procedure Code (Parliament of Georgia, 1999b). Exactly by the adoption of these two codes, the development of new administrative law, as of discipline of law, has started in Georgia.

3. Review of the reform implemented in the administrative law

3.1. I stage of the reform of administrative law

As mentioned above, in 1999, since Georgia became member of the Council of Europe, protection of human rights turned out to be the priority issue within the national legislation. Therefore, the formation of modern administrative law in Georgia was leaded in two directions: one in the legislative regulation of public administration and second in creation of administrative justice (Adeishvili et al., 2005: 22). Georgian legislator decided to regulate the relations aroused between citizen and state in the substantial as well as in procedural framework by adopting separate acts. Often, in countries of continental law system, substantial and procedural administrative norms are regulated separately. Distinctive regulation of the legislation is related to those important legal affairs that, on one hand, are regulated by the substantial administrative legislation and, on the other, hand by the procedural administrative legislation. Substantial administrative law regulates the entitlement of administrative body to interfere in the rights, hence prescribes thematic-essential provisions between the person and administrative body. The administrative justice defined the rules according to which the process of decision making takes place in court. Hence, there is a interdependent close connection between those, as well as there is a significant distinction. Therefore, for compiling substantial and procedural norms in one legislative act it is important to have string argument, which would justify not only the effectiveness of its usage from technical perspective, but first would clarify the legitimate purpose of regulating administrative law relations.

In Georgia, the administrative law consists of general and special parts. The general part entails general norms regulating governmental sphere. General administrative law stipulates core rules for activities of governing bodies and covers any governing institution, despite the activity of this institution, and the special part of the administrative law entails particular components of public law; additionally, it regulates certain areas of governmental activities, according to the group of objectives (e. g. police law, construction law, social law, etc.).

3.2. II stage of the reform of administrative law

The second crucial stage of the development of administrative law started in 2014. Namely, on June 27 of 2014 the Association Agreement (AA)[3] was signed between Georgia and the European Union, according to which one of the proclaimed core obligation is that

[3] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, 27/06/2014. URL: https://matsne.gov.ge/document/view/2496959?publication=0.

parties shall further strengthen respect for fundamental freedoms, human rights, including the rights of persons belonging to minorities, democratic principles, the rule of law, and good governance, based on common values of the Parties. Therefore, in the framework of the EU-Georgia Association Agreement Georgia committed itself to strengthen good governance. Following this, in 2016 the constitutional reform took place in Georgia, based on which numerous amendments were introduced into the Constitution of Georgia. One of the amendments concerns obligation of administrative bodies to ensure good governance. Particularly, as a result of reform the new record was introduced in the Constitution, which ensures engagement of a person in the process of public administration. The new edition of the Constitution of Georgia offers a new right in the catalogue of fundamental rights in the form of good governance, namely, according to article 18[4] of the constitutional law of Georgia "on the amendments to the Constitution of Georgia", person has a right to have the case related thereto, deliberated fairly by the administrative body within a reasonable period of time. Current provision ensures the right of a person to address administrative body for fulfillment of his/her interests and queries, as well as to participate in the administrative proceeding, get aware of case materials, also an obligation of administrative body to justify its decision and deliberate the case in reasonable period.

According to the new edition of the Constitution of Georgia, good governance, as well as codification of fundamental right in the main law of the country, will facilitate the protection of person's rights and effectiveness of public administration. Therefore, such provision represents a "new category" of fundamental right, by which the basic principles of administrative proceeding are constitutionalized, and this represents a novelty for the Georgian legal sphere. Moreover, the mentioned provision will facilitate development of good governance, as a fundamental right (Tskhadadze, 2017: 54).

4. Scope of the General Administrative Code of Georgia

4.1. Notion of administrative body

Even though, the notion of administrative body in the administrative law gives possibility for non-uniform interpretation, that is why regulation of its legal definition in the code evidently often does not solve the problem, however for definition of adminis-

[4] Article 18 "Rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by public authority":

1. Everyone has the right to a fair hearing of his/her case by an administrative body within a reasonable time.

2. Everyone has the right to be familiarized with information about him/her, or other information, or an official document that exists in public institutions in accordance with the procedures established by law, unless this information or document contains commercial or professional secrets, or is acknowledged as a state secret by law or in accordance with the procedures established by law as necessary in a democratic society to ensure national security or public safety or to protect the interests of legal proceedings.

3. The information contained in official records pertaining to an individual's health, finances or other personal matters shall not be made available to anyone without the consent of the individual, except as provided for by law and as is necessary to ensure national security or public safety, or to protect public interests and health or the rights of others.

4. Everyone shall be entitled to full compensation, through a court, for damage unlawfully inflicted by the bodies of the State, the autonomous republics and local self-governments, or their employees, from state funds, the funds of the autonomous republics or the funds of local self-governments, respectively.

trative proceeding and specification of the scope of the judicial code, it is important to define the meaning of administrative body.

The General Administrative Code defines the notion of administrative body, according to which administrative bodies are the State, the self-government institutions, also any other entity, which are equipped with public law powers for ensuring public and private interests.

In light with the definition, first part if the organizational conception of administrative body (state and local self-government institutions), and second part represents the functional conception ("any other entity"). In this case, the second part of the definition is important as we mention here not state bodies, but any other entity, which is not a state institution and does not represent the subject of relations of public law however, based on the legislation carries out public powers. Under "any other entity", we assume legal entities of private law, which, in accordance with the legislation, may be equipped with public law powers by the State.

It shall be noted, that in practice public governance functions are transferred to private entities when it is necessary to have specialized knowledge and creation of public institution for that purpose would be linked to excessive costs. Whereas, private entities may exercise the power more effectively and with less costs. Consequently, it is not possible for legislative act to prescribe exhaustive list of those organizations, which may fall under the definition of administrative body and exercise public powers. For this reason, the guiding factor is the second part of the definition, its functional conception, according to which we may identify the subject, whether it executes the public authority or not.

4.2. Forms of activity of administrative body

In accordance with the General Administrative Code, administrative act (individual or normative act) stipulates the forms of activities of an administrative body, also the factual deed of an administrative body – real act, which has no legal outcome. However, it shall be noted that for being more flexible and effective public administration issues not only acts or implements particular actions, but also it may conclude an agreement as a form of mutual expression of will. Conclusion of an agreement by administrative body represents one of the most spread form of activity. Base on the type of the regulated relationship, administrative body may conclude agreements under private law, as well as public law. The important criteria for differentiating legal nature of an agreement is the purpose for which the agreement is stipulated, would it be under public law (administrative agreement) or aiming at creating private law relations. Hence, administrative agreement differs from other agreements by the object. Particularly, by virtue of an agreement administrative body delegates the power of exercising public functions to other party of the agreement.

4.3. Principles of administrative law

Not only general constitutional principles are outlined in the administrative legislations, such as: democratic state, state of law and principles of social state, but also it is regulated to have principles characteristic for administrative law, so-called special principles: effectiveness of public administration, discretional power of administrative bodies, right to lawful fidelity, publicity, impartiality. Special principles characteristic to administrative law are regulated in the General Administrative Code of Georgia, as well as in the Administrate Procedure Code of Georgia (Tskhadadze, 2016: 6).

4.3.1. Principle of legal reservation

Requirements of State of law prescribe that the administrative act issued in accordance with the legislation by the administrative body with its content, purpose and scope shall be specified in a manner that the citizen has a possibility to foresee and "calculate" in advance the measures to be implemented under this act[5]. All these are directed to make interference of public governance more predictable. Legislator shall regulate the content of the activities of an administrative body and it should not be limited by general principles (Tskhadadze, 2016: 9).

4.3.2. Discretional authority

We come across the definition of discretional authority principle among definitions of terms in the General Administrative Code of Georgia, where the discretional authority is defined as liberty of an administrative body or administrative official to choose most acceptable decision among several decisions set by the legislation based on protection of public and private interests.

Granting discretional power does not mean full freedom of the administrative body, but the mentioned article sets framework of decision-making competence for respective administrative body. On one hand, it is limited by the requirement established by law, and on the other hand, considering the proportionality of public and private interests, which means that in every particular situation such interests shall be scaled and compared.

5. Administrative justice in Georgia

5.1. Scope of the Administrative Procedure Code

As it was stated above, in the Soviet Union times administrative justice existed only with regard to administrative offences. Inasmuch as administrative legal relations create guarantees for protection of rights and necessity for protection, therefore the existence of administrative justice is essential. By the adoption of Administrative Procedure Code in Georgia in 1999, the administrative legal disputes are deliberated by the administrative court. Firstly, the code regulated the institutional subordination of the court and also the issue of jurisdiction. Regulation of mentioned issues is very crucial as after positive decision on institutional subordination the question arises exactly which court shall deliberate and decide the case. In comparison to subordination, by virtue of which the powers are defined between diverse legal bodies, jurisdiction also defines the power, but only among courts (Kopaleisvhili et al., 2008: 141).

According to article 2 of the Administrative Procedure Code, the subject of the administrative dispute may be: a) compliance of the administrative legal act with the Georgian legislation; b) conclusion, implementation or termination of the administrative agreement; c) obligation of administrative body to restitute the damage, issue administrative legal act or implement other action; d) declaring nullity of an act, defining the existence or non-existence of the right or legal relations.

Along with the abovementioned, the Administrative Procedure Code outlines special types of administrative judicial procedure. Namely, the court deliberates by administra-

[5] Decision of the Federal Administrative Court of Germany from July 4 of 1956, (BVerwGE 4,24). URL: www.juris.de.

tive legal process the case of placing person in hospital for the purpose of non-voluntary psychiatric assistance, also administrative judicial process on preclusion of domestic violence, protection and help for victims of violence, moreover administrative judicial procedure is used with regard to the realization of frozen assets of tax payer by the taxation body, and other cases.

Paragraph 3 of article 2 of the Administrative Procedure Code is crucial provision, according to which, besides the cases listed above, other cases are also deliberated in court with administrative legal procedure mostly related to those legal relations that derive from administrative legislation. Such provision enhances the scope of jurisdiction of administrative court and disputes are not deliberated with narrow sense only for checking the lawfulness of acts and real acts. At the same time, such provision gives possibility to differentiate civil, constitutional and administrative disputes.

5.2. Review of amendments made to the Administrative Procedure Code

The first edition of the Administrative Procedure Code that entered into force in 2000 entailed 35 articles. Afterwards this law has been amended 50 times approximately and nowadays comprises 48 articles and additional 30 articles on special proceedings. The main part of amendments represents the outcome of the practical experience and is related to very particular issues, especially adjusting terms for proceeding, involving third parties in the administrative process, administrative process on checking lawfulness of classification of secret information, types of claims, admissibility of types of complaints and prerequisites for justification, and admissibility of appellate and cassation complaints.

Certain factual circumstances resulted in introduction of special types of proceedings on administrative cases, which is a competence of administrative body by its nature, but considering their importance, competence of hearing such cases was given to judges deliberating administrative disputes, as for instance permitting the control of activities of an entrepreneur, preclusion of domestic violence, or placing person in the hospital with the purpose of providing psychiatric assistance.

The legislative strategy of the Administrative Procedure Code is that administrative cases most of the time are deliberated by using Civil Code. Therefore, the Administrative Procedure Code entails only those rules that are different from regulations of the Civil Code of Georgia. Despite this theoretically understandable line, there are doubts with regard to some paragraphs in court practice, namely: whether the regulations of the Civil Code are substituted by the regulations of the Administrative Procedure Code? Whether respective provisions of the Civil Code shall be used directly or with analogy?

For example: the legal condition of participants to the administrative process is regulated with respective norms of administrative, as well as civil procedure legislation. As it is known, legal relationship does not exist without parties and in this regard, the administrative law is not an exception. However, the Civil Procedure Code of Georgia defines the circle of subjects of administrative process. Article 14 of the Administrative Procedure Code, which concerns participants of the administrative procedure, stipulates that except persons defined in article 79 of the Civil Procedure Code of Georgia, the administrative body, which issued and administrative act or implemented action of legal relevance, participates in the administrative process. Therefore, administrative legislation broadens the circle of subjects in the process and introduces administrative body as a compulsory

participant. This is the core distinctive feature of the administrative process comparing to the civil procedure law. In the administrative process beside the subjects mentioned above, administrative body must be party to the case either as a plaintiff, or as defendant. Moreover, according to the administrative legislation everyone has a right to participate by the representative in administrative legal relations.

Despite the similarity of legal institutes, the reference by the administrative law to use civil law provisions in the administrative process shall nor serve to the fact, that civil law provisions must be used directly by public law. Direct application of civil law forms destroys core distinctions between the public and private law, as administrative legal relations principally differ from private law relations by its essence. In particular, the expression of will by a person which is characteristic to private law, may confront the will of a State in public law. Herein it should be noted that using private law provisions does not always cover administrative legal relations, as far as regulation of administrative legal relations is impossible without administrative legislation (Tskhadadze, 2018: 36).

5.3. Particularities of the administrative justice

5.3.1. Principles of administrative process

By introduction of administrative legal procedure in Georgia, the significant principles of administrative process were also defined: principle of disposition, principle of inquisition, principle of leading process by the judge, principle of oral nature of judicial proceedings and principle of directness, principle of publicity, principle of adversary proceeding, principle of equality before the law, principle of independence and impartiality of the judiciary.

5.3.2. Filing a complaint in the administrative body by administrative proceeding, so called "prejudicial" rule

According to paragraph 5 of article 2 of the Administrative Procedure Code, judge may not admit the claim against administrative body, except the occasions prescribed by law, if plaintiff did not use the single possibility to file administrative complaint as prescribed under the General Administrative Code of Georgia, which implies the prejudicial authority.

Prejudicialness entails restriction of person's right to apply the court until he/she will not exhaust the right of protection base on administrative regulation by filing complaint in the administrative body. Administrative rule of filing complain firstly implies protection of the right of a person in short period of time and it represents measure of self-control for the system of administrative body. Thus, contesting the decision in the administrative body as prescribed under law gives possibility to the interested party to claim review of a final decision made through the administrative proceeding.

Here we shall note that by itself, the right to apply the court does not fall into category of absolute rights. It may be restricted and, in such way, states are taking advantage of certain freedom to act. However, prescribed restrictions shall not limit the right to apply to the court tin a way that it loses its sense.

5.3.3. Suspensive effect of the administrative compliant

For ensuring the determination of real guarantees for the protection of person's rights and restoration of the infringed right effectively and promptly, important provision in the regulation of law, which concerns the suspension of the disputed act, in case the complaint is filed, until the final decision. According to this, administrative act is suspended until the decision is made.

5.3.4. Principle of disposition

The basis for the principle of disposition lies in article 3 of the Administrative Procedure Code of Georgia. The principle of disposition gives possibility to parties of the process to decide individually issues such as application to the court, defining subject of the dispute and concluding case by settlement.

The principle of disposition gives leading role to parties of the process. Only plaintiff may determine in what scale he/she will apply to the court. The principle of disposition gives parties a possibility to decide by themselves whether to settle or not. In light of the principle of dispositions parties also decide the issue of presenting evidence and when necessary revoking evidence. The result of the principle of disposition is that by its virtue it is possible to admit the claim or settle in certain cases (Kopaleisvhili et al., 2008: 21).

5.3.5. Principle of inquisition

The content of the principle of inquisitions is that the court hearing administrative case is entitled, deriving from public interest, to make efforts on his/her own initiative for obtaining the evidence necessary to deliberate the case. The judge on his/her own initiative or by motion of the party may obtain evidence necessary for discussion of the administrative dispute.

The ground for the principle of inquisition lies in article 4 of the Administrative Procedure Code of Georgia, according to which "<…> Court is entitled on its own initiative to make decision on receiving additional information or presenting evidence".

The principle of inquisition applies in occasions, when in relation to the particular case there is a specific public interest. This is the occasion when the existence of public interest influences the decision. In case of existence of public interest, the decision on the administrative case and prerogative to find objectively the evidence and circumstances in order to identify the truth, may not be entrusted only to the parties. In such case, the title of the court to define the issue of presenting evidence required for the case and investigate on its own respective circumstances, is the prerequisite for protection of public interest (Kopaleisvhili et al., 2008: 21).

5.4. Institute of Amicus Curiae

Institute of "amicus curiae" is very important one in terms of increasing involvement of interested parties and executing justice effectively. The institute of amicus curiae means that any person who is not party to the dispute or a third party, may present his/her written opinion regarding this case. The purpose of presenting written opinion must be supporting any of the parties to the case. This written opinion must help court in properly evaluating the discussed issue. If the court considers that the written opinion is not drafted in compliance with the requirements stipulated in this provision, the opinion will not be deliberated. The court is not obliged to share the arguments presented in the written opinion, however, if he/she considers it necessary, may use the opinion sent by amicus curiae. This opinion may be reflected in the motivational part of the decision.

6. Conclusions

Deriving from all presented above, development of new ideas and concepts in Georgia resulted in the necessity of reforming administrative law. Georgian administrative law experiences reform of several stages. The first stage of the reform is

linked to the period of declaration of independence of Georgia and to an important fact, when Georgia became member of the Council of Europe and took an obligation to harmonize legislation with the European Union legislation, what entailed putting all laws and bylaws in compliance with the standards and norms defined by the European Union. The first results of the reform implemented in Georgia are the General Administrative Code and the Administrative Procedure Code of Georgia adopted in 1999. Adoption of these codes became foundation for developing new type of administrative law, as the discipline of administrative law was developing in completely different direction in the period when Georgia under the soviet regime, administrative procedure law and separate discipline and legislation did not exist at all. Herein, we shall note that experiences of administrative legal order of diverse western countries played crucial role in the creation of substantial and procedural administrative legislation in Georgia. Namely, reception of German, Dutch and American legal systems was made into Georgian legislation. As far as administrative law is linked to everyday life, factual and legal variety of modern environment influences greatly the codification of discipline, the issue of constant change of the legislation arises, but despite that, Georgian administrative law does not stray from the purpose which was set in 1999 by creation of new administrative law.

Inasmuch as according to the Association Agreement, ensuring protection of human rights, rule of law and good governance is one of the priorities of public administration. Therefore, after signing the Association Agreement next phase of reforming Georgian legislation is initiated. Herein, we shall note that amendments of Georgian administrative law shall respond to the criteria of State of Law, also while adopting provisions the socio-economic reality existing in Georgia shall be taken into consideration.

As it was mentioned above, transition from the soviet system to post-soviet system touched almost all areas of life. State institutions developed, democratization was undergoing, etc., what is not achievable with the highest quality from the very start. In such occasions states, which have to transit to the completely different legal system, directly transpose models of democratic, developed countries, which mostly is done mechanically and without thinking through. Hence, the Georgian administrative law, where "translation" was done directly from German-Dutch legal system, also is undergoing a reform and specification of certain provisions or institutes.

The fact that a lot of changes are introduced in the Georgian administrative legislation is a result of many factors, at the same time, establishing innovatory ideas is not easy within the activity of administrative bodies. By virtue of these codes, certain provisions are being realized in practice gradually, which in itself has a negative impact on effective public governance. Therefore, studying and researching actual issues in the administrative law will facilitate effective and qualified work of public administration; simultaneously ensure making justified decisions by administrative bodies.

In light of the abovementioned, Georgia has moved forward by one more step on this path, towards normal everyday life of the society, which expects regulation action from the administration and wants to participate in this process, and in case of illegal actions it is ensured with the protection of rights.

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РОЗВИТОК АДМІНІСТРАТИВНОГО ПРАВА В ГРУЗІЇ

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Мета. *З прийняттям у Грузії в 1999 році Спільного адміністративного кодексу та Адміністративно-процесуального кодексу була закладена основа створення нового адміністративного права, оскільки до набрання чинності цими кодексами Грузія не мала традиції адміністративного права та, відповідно, практики адміністративного правосуддя. У Грузії, яка входила до складу Радянського Союзу, як і в Радянському Союзі загалом, адміністративного права в тому розумінні, яке регулюється сучасним адміністративним правом, не було. Комуністична доктрина адміністративного права*

радикально відрізнялася від сучасного адміністративного права, оскільки адміністративне законодавство того часу було правом, яке переважно встановлює зобов'язання громадян щодо адміністрації, а не засобом, що забезпечує захист прав громадян і їхніх інтересів.

Методи. *У статті аналізуються етапи створення та подальшого розвитку грузинського адміністративного правосуддя, загострюється увага на основних принципах, які передбачаються грузинським адміністративно-процесуальним правом. У цьому сенсі значне місце відводиться особливостям адміністративного провадження й судочинства в Грузії, зокрема так званому «преюдиціальному» порядку оскарження в адміністративному органі в адміністративному порядку, суспензійному ефекту адміністративної скарги, принципам диспозитивності та інквізиційності в адміністративному процесі. Також розглядається інститут одного суду як особливість адміністративного правосуддя.*

Результати. *Значне місце в статті приділяється розгляду предмета адміністративного права та системи адміністративного права на прикладі грузинського адміністративного права. Розглядаються основні елементи здійснення публічного управління, поняття адміністративного органу, форми діяльності адміністративного органу та ті основні принципи, які характерні для грузинського адміністративного права.*

Висновки. *У наведеному плані важливе місце відводиться особливостям адміністративного судочинства й судового процесу в Грузії, а саме так званій «досудовій» нормі оскарження в адміністративному органі, що припиняє дію адміністративного оскарження, принципам диспозитивності й дізнання в адміністративному процесі, а також інституту «amicus curiae» («друг суду»). Обговорюються особливості грузинського адміністративної юстиції.*

Ключові слова: грузинське адміністративне право, рецепція правової системи, Загальний адміністративний кодекс Грузії, Адміністративно-процесуальний кодекс Грузії.

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PROBLEMS OF THE DEVELOPMENT OF ADMINISTRATIVE LAW AND ADMINISTRATIVE AND LEGAL DOCTRINE IN THE REPUBLIC OF ARMENIA (CONCEPT AND SUBJECT MATTER OF ADMINISTRATIVE LAW, ADMINISTRATIVE LAW WITHIN THE SYSTEM OF PUBLIC LAW, THE SYSTEM AND SCIENCE OF ADMINISTRATIVE LAW)

The author of this study has studied in details the problems of the formation and development of administrative law, administrative and procedure law, administration and administrative doctrine in the Republic of Armenia (Khandanian, 2019).

The relevance of the research. The integrated institution of systemic protection of individual rights and freedoms became a part of administrative and legal regulation's mechanism in the areas of administration and administrative procedure after the amendments to the Constitution of the Republic of Armenia (December 6, 2015), which established the legal protection of individual rights and freedoms as a priority (the Art. 3 and Chapter 2 of the Constitution of the Republic of Armenia).

The national science of administrative law at present time, is undergoing a rethinking, updating and replenishment of the conceptual apparatus. This process is associated with changes in the economic and legal systems of the Armenian society.

The tasks related to the formation of the civil society and legal state in Armenia make it necessary to take a fresh look at many administrative and legal concepts that have become customary with regard to their compliance with the modern stage of development of administrative law and the science of administrative law of the Republic of Armenia.

The theory of administrative law, which has the status of fundamental science in the system of national jurisprudence, faces complex challenges – revising and rethinking the scope of such fundamental concepts as legal personality issues in administrative law, as well as the concepts and content of administration, administrative and legal acts, the purpose and objectives of administrative procedure, etc.

Objective of the research. *The objective of the research is to develop the basic provisions of the scientific concept of modern administrative law and procedure corresponding to what happened in Armenian society. Besides, the present study is aimed at a comprehensive, interrelated study of theoretical problems of administrative law and procedure in the context of the reforms carried out in our country, the transfer of legal theory and practice into a qualitatively new status.*

Research method. *The methodological basis of the research consists of the provisions of modern scientific methodology, the latest tools and methods of the theory of administrative law and other branches of law. While working on the topic the author has focused on the results of the research of national and international theorists and practitioners working in the areas of public administration and administrative procedure. The systematic approach to the problems of administrative law made it possible to conduct a thorough analysis of the attributes of administrative law and procedure. The author of the work has also used the methods of scientific cognition, logical methods of analysis, synthesis, generalization, comparison, abstraction.*

According to the author of the research, the analysis of any state and legal problem, including the problem of administrative law and procedure, should be carried out on the basis of the concept of the rule of law state.

The main results of the research. *The implementation of the norms of administrative law in the modern period of the development of the Armenian society is one of the most urgent tasks of the state and legal activity. Administrative and legal norms are of paramount importance for the entire society in the and for each citizen of the Republic of Armenia in particular, through the regulatory acts of its agencies related to ensuring the rights and legitimate interests of citizens and economic entities in the field of public administration. The norms of administrative law play an important role in the regulation, organization and functioning of the state apparatus, ensuring the proper and timely definition of positive relations in the field of public administration through administrative procedures and regulations. In this regard, the author focuses on the key issues of political and legal modernization and improvement of administrative law and procedure of the Republic of Armenia. In particular, the author has revealed the content and characteristics of the subject matter of administrative law of the Republic of Armenia, the place of administrative law in the system of public law, the system and science of administrative law.*

As a result of the work, carried out in accordance with the objective of the research, the author has come to certain results and conclusions that probably reflect the main tendencies in the development of administrative law and procedure of the Republic of Armenia and, in our opinion, will contribute to enrichment of the conceptual apparatus of the science of administrative law and procedure.

The improvement and amendments of Armenian legislation, the socio-economic and political reforms carried out in the Republic of Armenia, and the transformation of administrative apparatus have a significant influence on the science of administrative law.

According to the author of the research, it is almost impossible to find a sphere of public relations that would not be left without administrative and legal influence.

The author of the research has also paid attention to the problems of administrative procedure, administration, legality, administrative justice, correlation of administrative law, procedure, administration and the relevance of the problems of law-enforcement practice.

The research that we have carried out suggests that separation from the absolutization of the regulatory approach to administrative law prevailing in the Soviet legal science, diversity of opinions is in legal thinking and integration of legal sciences, the subject of which includes administrative law and procedure as objects of the research, in predetermining changes in the subject matter's content, system and structure of administrative law and procedure.

The systematic approach to study basic institutions of administrative law deepens our understanding of the social nature of administrative law and procedure, allows for a deeper study of individual institutions and categories of administrative target-oriented development of a civilized society.

Due to changes occurring in the country, the system and structure of administrative law and procedure, as well as formal sources of administrative law (for example, judicial and administrative precedent) also change.

The author of the research has highlighted the importance of creating an adequate philosophical, legal and ideological paradigm of the development of administrative legal awareness and worldview, ensuring legal stabilization of Armenian society in the context of modernization of the political system of the Republic of Armenia and declared reform, based on key principles of modern democratic law, respect and protection of human rights and freedoms.

Conclusions. *The following conclusion, formed in the work, is that the doctrinal understanding of administrative jurisprudence is, to say the least, inconsistent; this is the main problem of the theory of administrative law, which, in the author's opinion, can be removed by reforming legislation (for example, with the adoption of the new Code on Administrative Offenses, etc.).*
According to the author, it can be stated that the importance of administrative and administrative procedural legislation, as well as the norms of administrative law in general, attracted and attracts the attention of scholars and practitioners. Considering the current tendency in the development of legal science, it can be argued that the science of administrative law will continue to develop intensively and perspectively in the future.

Key words: legal state, reform, administrative law, administrative procedure, modernized society, law system, law and order, state authorities, civil society, jurisprudence, political system, human rights, administration, administrative act, law-enforcement practice, interpretation.

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1. Introduction

The legal system of the Republic of Armenia has entered a completely new stage of legal and political developments, which is characterized as an ambitious initiative to form legislation inherent in a sovereign state's legislation and corresponding law-enforcement experience (Republic of Armenia 25th anniversary, 2017). The state policy administering consonant with building statehood was announced in our country with the acquisition of state independence, that meets modern international criteria and solely dictated by the principles of democracy and universal human values.

Inevitably, these really necessary and fair intentions faced a number of obstacles, among which we also feel the lack of sufficient grounds and conditions for the required professional skills. Moreover, the creation of a really unique system of national law could not be considered realistic in a fundamentally reformed society and in the context of the main tasks in overcoming the various challenges facing the latter in the shortest time, and ultimately, taking adequate steps towards the formation of legal political culture with a democratic spirit.

With the adoption of the new Law of the Republic of Armenia "On the Fundamentals of Administration and Administrative Proceedings" on February 18, 2004 (Parliament of the Republic of Armenia, 2004) and "Administrative Procedural Code" on January 7, 2014 (Parliament of the Republic of Armenia, 2013), Armenia has taken a decisive step in the field of administrative law and the establishment of a legal state. Although the basis for this was already laid in the new Constitution, adopted in 1995, however, to implement these principles, it was necessary to abandon the old Soviet laws, the starting point of which was the dominant position of the state over private individuals. Administrative law of the Soviet era did not protect citizens before the state, but was aimed at guiding the behavior of citizens through sanctions.

This process of changes was also characterized by the introduction of new structures, structures and methods of research. This turn of common administrative law leads the Armenian people to the adoption of the constitutional and administrative traditions of Europe. It is characteristic for these spiritual and political traditions that state power and its holders are constrained by law, that law is higher than power and that political power can act exclusively within the framework of law. Thus, Armenia joins the highest criteria of the European legal culture that dominates in the countries of the Council of Europe.

2. The concept and subject matter of administrative law

The key to the implementation of the policy of the government of the Republic of Armenia in the current era of social development, consonant with the key tasks of the fundamental revision of legal and political views in regard to the relationship between the state and individuals regarding these topical phenomena and legal institutions, is scientific and practical preparation of adequate depth and awareness in line with international legal criteria.

It is extremely easy to talk about the need to overcome the Soviet mentality, as well as about fundamental revision of the Soviet legal political system and its movement to a democratic basis, but in practice the steps that are taken in this direction can be profound and fundamental only when we properly understand and we perceive the essence of these mutually opposing systems with the criteria of professionalism, their positive and negative sides, expected difficulties and effective ways of overcoming them and the ways to mitigate the serious consequences of the inevitable collision of the old and the new, etc. Any attempts to deny any institution and component of the old legal system and the inability to find a replacement distort public perceptions about democratic institutions, resulting in undisguised mistrust in the society's legal awareness even to indisputable democratic principles and nostalgia for the past.

In the basis of the full-fledged formation of legal statehood, the implementation of state power in the present era, in the context of proclaiming a person, his dignity, fundamental rights and freedoms as supreme values, we inevitably feel the need not only for legal, organizational, political or economic guarantees, and for the desired legal culture, the direct path of which is legal knowledge and practical skills (Zelentsov, 2015: 11–12).

Thus, the administration realized by the competent authorities of the state plays a crucial role in the process of forming people's attitude towards the state and statehood. Each person in an incomparably greater extent and framework is associated with the agencies realizing the administration than with the agencies vested with the competence of the legislative or judicial power and their officials, which also emphasizes the important social meaning of administration. Among the effective guarantees of administration that are consonant with the principles of democracy is the availability of sound administrative legislation and adequate knowledge of administrative law.

Unlike other branches of law, administrative law is distinguished by an incomparably wide range of legal grounds, as well as by the institutions they establish. If the legal norms of some branches of law are consolidated mainly in one fundamental legislative act, the other branches of administrative law are extremely diverse and numerous.

To draw up an initial idea of administrative law, you must first distinguish its subject matter. The subject matter of administrative law – is "administration". It corresponds to the Latin noun "administratio" and the verb "administrare"[1] and has several meanings: to serve, manage, guide, as a noun: administration, execution, realization, government, etc. (Gamzatov, 2002: 37–38).

[1] English administration – administrative law, French Administration – droit administrative, German Verwelung – Verwalungsteebt and others.

The term "administration" is understood as the long-term implementation of the tasks of the executive power in any state. Thus, administration from ancient times was associated with political power, no matter what ideological orientation this power would have. Administration is a mandatory element of state power, and therefore is a universal phenomenon.

The modern state, which was originally appeared in Europe, at the dawn of the New Age, that is, approximately in the XVI century, serves as an example for all existing states today, the importance of administration is constantly growing. The main reason for this is that the state at present time is opposed to a person who takes an active responsibility for almost all spheres of public life and, thus, has almost everywhere taken over the powers. Initially these powers were limited to meeting the needs of the regular army – the main tool of an active foreign policy, as well as the protection of citizens' life, health and property, and the provision of security as they said at that time in Europe. Starting from the XVIII century, the state began to be actively engaged in economic, labor, transport, education, science, social welfare for the disabled and the elderly, health care, energy supply, and in the Modern time also in the protection of the environment.

Naturally, the subject matter of administrative law can only be ***public*** administration, that is, state administration and local self-government. Meanwhile, administration of private enterprises and organizations is not public administration.

In this regard, administrative law with its legal meaning acts as a managerial law or the law right of management. No wonder that, in general, administrative law is considered as the law to govern.

The concept of administration in laws and legal practice is used in two senses: administration in an organizational sense and administration in a functional sense.

In an organizational sense, administration includes all subjects: agencies, organizations and officials who carry out administrative activities and are called administration[2]. They together constitute the administration. Its typical representatives are administrative agencies (Danielian, 2012). As a part of the executive power, they differ from both the policy makers – the Prime Minister, the President and the Government of the Republic, and the courts, which are the agencies that administer justice.

In a functional sense, management is the activity of administrative agencies – administration. Administration, in turn, can be viewed from two aspects – the formal and the material. From a ***formal*** point of view, speaking about management, we refer to the form of administration. A characteristic form of activity of administrative agencies is an administrative act[3]. The latter is a settlement carried out by an administrative agency or an official whose purpose is to regulate the behavior of certain legal entities specifically involved in this act. Consequently, an administrative act is concrete and individual regulation, in contrast to a normative legal act, which has the character of an abstract

[2] Despite the fact that the expression "administration" was used back in the years of the First Republic (1918–1920), it was most widely used in post-Soviet Armenia. In the Soviet period, the term "administration" was used instead of the term "administration".

[3] An administrative act is a decision, order, order or other individual legal act that has an external effect that the administrative body has adopted in order to settle a specific case in the field of public law and is aimed at restricting, changing, eliminating or recognizing the rights and obligations of persons.

and general regulation. Classical examples of an administrative act are building permits issued by the head of the community, a license issued by the ministry, an order of a police officer to a person during the road trafficking, etc. The formal definition of an administrative act is given in Part 1 of the Art. 53 of the Law of the Republic of Armenia "On the Basis of Administration and Administrative Procedure" (Parliament of the Republic of Armenia, 2004) and it is not by chance that it occupies a key place in this law, the law that is the basis of the general administrative law of the Republic of Armenia.

From the ***material*** point of view, speaking about administration, the author emphasizes on an active and concrete modification in public relations, which is characteristic for administrative activity. It is true that this modification is made on the basis of laws, within their framework, therefore, its goals are also predetermined by law; however it is not limited to the purely mechanical execution of laws. Moreover, the activity of administrative agencies is characterized by a creative element. It is expressed in giving adequate legal solutions to specific situations, choosing the most suitable and effective means for this.

Through legal forms of administrative law, we ensure the most effective implementation of the original executive tasks and functions characteristic for the activities of state administration (executive power). Based on the interests of the state and citizens in the sphere of implementing the executive power, administrative law gives public and legal nature to administrative relations (Kostennikov et al., 2015: 10–12).

Thus, administrative law is one of the fundamental, most important branches of law and, along with constitutional, civil and criminal law, occupies a leading position in the sphere of regulating social relations.

Taking the aforementioned initial provisions as a basis, and also in order to adequately understand the subject matter of administrative law, one should imagine the real role of this branch of power, which was approved by the majority within the legal system of the Republic of Armenia:

1) administrative law exercises its regulatory influence in relation to such public relations with the participation of citizens, their associations and other various public associations that do not arise on their own or under the influence of other branches of power, but only under the influence of those relations whose emergence associated with state administration activities;

2) administrative law, as a manager of public relations, is directly manifested in the field of a special – state administration (executive power). The latter is connected with the provision of individual and group interests of citizens, as well as with the settlement of economic, socio-cultural, administrative and political processes. Without the participation of the executive authorities, their officials (special subjects of the executive power), these relations can not be counted among a number of objects of administrative law;

3) in the field of state administration, administrative law regulates those social relations that arise not only in connection with the implementation of their tasks and functions by the executive authorities and their officials (special subjects), but also on the basis of the fulfillment of these functions and the related powers in practice. Due to the latter features, these agencies and officials are considered as subjects of the executive power and are empowered with special authorities of the executor-manager nature;

4) administrative law regulates such social relations, where the legal equality of its participants (parties) is fundamentally absent. This is due to the fact that an executive agency (an official), endowed with such powers that the other party does not have (participant), acts as an obligatory party within administrative and legal relations. This circumstance served as the basis for the will of the latter to be subordinated to the unilateral legally authoritative expression of the will of the said agency (an official);

5) the regulatory role of administrative law is often expressed in the framework of the norms of other branches of law. It is assumed that the relations that are included in the subject matter of other branches of law (labor, financial, etc.) can be administrative by their very nature (Kostennikov et al., 2015);

6) administrative law regulates relations arising in connection with cooperation between local self-government agencies not included in the system of state authorities and state agencies (officials). They are maximally expressed in cases when local self-government agencies are delegated to perform certain functions of government agencies. In this case, the subject of the executive power (state agency) within the relations regulated by administrative law, may be absent, however, the latter is replaced by a party equal in the legal sense – the local self-government agency and is endowed with the necessary amount of powers of a legally authoritative character. In this case, the local self-government agency acts on behalf of the state authority (Mikhailova, 2006: 846–847).

The study of the practice of the executive agencies and the characteristics of the participants in various managerial relations governed by administrative law gives grounds to distinguish the following most characteristic types:

1) between subjects of executive power and citizens;
2) between subjects of executive power and public associations;
3) between subjects of executive power and various state economic and socio-cultural associations, institutions, organizations;
4) between subjects of executive power and executive agencies of local self-government;
5) between subjects of executive power and state agencies, organizations subordinated to them;
6) between subjects of executive power at various levels (superior and subordinate, republican, territorial, sectoral, intersectoral, subordinate and non-subordinate, etc.);
7) between executive authorities and their employees;
8) between executive authorities of the Republic and international organizations, associations.

Among the participants of the above mentioned state-management relations, citizens have the most spread participation. Within the framework of these relations, executive authorities (officials) expand their activities in the direction of the realization of the rights, freedoms and duties of citizens in the field of state administration and the protection of their interests.

It should be also emphasized that administrative law among these relations does not regulate relations between citizens, as well as between public associations, since there is no special subject of executive power regulated by administrative law. This kind of relations is regulated by civil law.

On the basis of the effectiveness of the legal impact of administrative law, it is necessary to clearly distinguish between the social relations that are characteristic for a particular branch of law or are adjacent to it and separate from them those special relations that are regulated by administrative law (Bakhrakh, 2010: 16–17).

Administrative law corresponding to the theory of law, unlike other branches of law, has two types of subject-object relations:

1) the so-called, ***exclusively legal relations***, which constitute only the subject matter of administrative law and are fully regulated by it exhaustively (for example, the procedure for preparing and adopting administrative acts, administrative regimes, the status of executive agencies and the organization of labor, the legal status of employees of the apparatus, etc.);

2) the so-called ***adjacent relations***, which constitute the subject matter of administrative law, but are often regulated by the norms of other branches of law (constitutional, financial, etc.). Relationships of this group are particularly numerous in administrative law, taking into account the most capacious framework of applying the latter. They are applied universally in a consistent manner or through the binding of common and detailed norms.

Some experts in the field of administrative law set out the ***definition of administrative law*** briefly, the rest – in volume (Kostennikov et al., 2015). This is due to the fact that state management relations are extremely changeable, as regards both in volume and applied spheres, as well as the content and methods of implementation. Besides, the institutional characteristic of administrative law, as well as in relation to the restructuring carried out in post-Soviet states and management reform processes, is influenced to a certain extent by the theory and practice of management in foreign countries. We should note some of them.

In our opinion, *administrative law is a set of legal norms regulating social relations arising in the process of the organization and operation of executive power (state administration).*

Administrative law, as has been noted, is an independent branch of the unified legal system of Armenia and regulates peculiar social relations. Being an integral part of the structure of the law of the Republic of Armenia, administrative law relates to it as part and whole. According to this principle, administrative law in its essence does not differ from other branches of law. This is due to the fact that both the norms of administrative law and the norms of other branches of the legal system are determined by an authorized state agency, they have a generally binding character and their execution is guaranteed by means of coercion.

However, it should be noted that administrative law differs from other branches of law in the subject matter and method of regulation. This feature lies in the fact that the branch of administrative law, taking into account the peculiarities of state administration activity, in its regulatory impact, unlike the other branches of law, covers a rather wide range of social relations that arise in economic, socio-cultural, administrative and political life of the country. In this regard, administrative and legal norms often penetrate into the areas of regulatory activity of other branches of law. The basis for such phenomena is essentially the presence of actual managerial relations in those branches of law that

are subject to regulatory influence. This is how the diversity of forms of administrative and legal regulation is expressed.

These features predetermine the content and significance of administrative law as the branch of law. At the same time, it is necessary to take into account that there are also norms of other branches of law in the sphere of state regulation, which regulate emerged public relations not covered by administrative law, but those that have to be regulated by them.

Being a branch of fundamental law in the nature and being in close cooperation with other branches of law, they often serve as the basis for already established and existing or newly created branches of law (for example, financial, environmental, customs, tax, official, etc.).

Consequently, as a rule, any branch of law under the present conditions does not exist without a close relationship with other branches of law, which is of great importance both for other branches of law and especially for the nature of administrative and legal regulation (Korenev, 1961: 21–22).

If certain branches of the legal system are considered relatively independent (for example, constitutional, civil, international, criminal) and regulate relations of a clear range, then administrative law does not have such limited strict boundaries. Therefore, there is no such peculiar issue at present time that could be considered purely administrative, since it also affects the interests of the remaining branches of the system of the single law of the Republic. There are also such branches of law, in particular, financial, land, water, where the interaction of political and legal, criminal and legal, administrative and legal norms is expressed.

Reforms of state institutions carried out in the Republic (Danielian, 2011), as well as a sharp decline in the state sector due to privatization, as a result of which various objects remained outside the influence of the direct control of state administration, does not imply that they also remained outside the framework of administrative and legal regulatory relations. The forms and methods of realizing state administration have just changed (Khandanian, 2017).

The range of administrative and legal norms and the number of administrative regulations also did not decrease because of the aforementioned reasons. On the contrary, the number of such legal acts has increased. This is particularly noticeable in the sphere of solving human rights problems (for example, about six dozen amendments and alterations to the Code of Administrative Offenses of 1993–2018, the Law of the Republic of Armenia "On the Basics of Administration and Administrative Procedure" and other administrative and legal acts). Administrative law in this context also acts as a regulator of social relations of other branches. Thus, administrative and legal regulatory norms are used to ensure environmental, labor, tax, customs and other relations (for example, certain powers are established, exercising control in various areas of the agencies, organizational principles of entrepreneurial activity, the procedure for accepting and terminating public service, collecting taxes and duties, as well as state control over their observance, etc.).

One of the characteristic features of administrative law is also the relationship with the definite branches of the legal system of the Republic of Armenia. The legal system consists of such branches of law, which are primarily distinguished by the subject matter and method of legal regulation. Moreover, the subject matter of each branch of law is those social relations that are regulated by the norms of this branch (Siniukov, 2010: 25–26).

Administrative law, as a branch of law, is regulated by a set of special social relations that arise in the process of state regulation, that is, the organization of their activities of the executive power system. More specifically, these are relations arising in connection with intraorganizational administrative activities on the part of the heads of a number of organizations and state administration agencies. In this kind of managerial relations, state interests and the managerial will of the state are directly reflected. Public relations of precisely this nature are usually called managerial, which constitute the subject matter of administrative law.

Thus, the subject matter of administrative law covers two groups of social relations of a managerial nature: a) relations directly related to the implementation of state administration (executive power) (main group) and b) other, in particular, intraorganizational relations arising in the course of the activities of other state agencies (auxiliary group).

In other words, the subject matter of administrative law is constituted by such management relations that arise, change and are terminated in connection with the implementation of executive power (Khandanian, 2018b).

However, it must be borne in mind that not all public relations with the participation of executive authorities are included in the subject matter of administrative law. For example, if any executive agency, in accordance with the procedure established by the Civil Code, acquires property, such a transaction is not an action for the implementation of the executive power.

At the same time, it is necessary to take into account that not all managerial public relations can be subject matter to administrative law. This is due to the fact that management activities are carried out not only by state agencies, but also by various non-state formations (for example, public associations, commercial organizations, etc.). Although the relations of these non-state formations are managerial in nature, they mainly reflect the interests and will of the members of the respective organization and are connected with the organization (self-organization) of their own affairs. The latter, as subjects of administrative law, do not act on behalf of the state and do not reflect its interests. In spite of the fact that the state formations are obliged to obey the general legal regime established in the field of state administration.

The subject matter of administrative law also covers such diverse relations that sometimes act in the norms of other branches of law (labor, financial, environmental, business, etc.). For example, the powers of the executive branch ensure the rule of law in these branches, the organization of natural resource management, etc.

The subject matter of administrative law also includes those issues of administrative and legal regulation that arise from public relations, regulated not only by management, but also by other branches of law (Atamanchuk, 2003: 27–28). In such cases, the specific feature of administrative law is expressed in the fact that it has legal means at its disposal, in the form of administrative liability, to protect these relations.

Administrative influence of administrative law extends to organizational and legal relations, which arise in particular in the field of activities of other branches of power (for example, the National Assembly, in the process of organizing the work of the judiciary). This kind of relationship is subject matter of administrative law.

Management relations arising in the field of activity of local self-government agencies are also included in the subject matter of administrative law.

Thus, the main types of administrative relations that are directly related to the state administration, that is, the implementation of the executive power, are related to the subject matter of administrative law.

3. Administrative law within the system of public law

The legal system of the Republic of Armenia ***is part of the European continental legal system***. This system, called "Romano-Germanic" from a structural point of view, differs significantly from the Anglo-Saxon (common law), where large parts of civil law are not codified, but developed by the courts, that is, on the basis of judicial acts (precedents). Therefore, in the "common law" countries (the USA, Great Britain, Canada, India, Australia, South Africa, etc.), the courts as the "third power" in the states, play a greater role than in countries of continental law.

Meanwhile, the law is subject to ***codification*** in the countries of the European continental legal system (from the Latin word codex, which means "code") in the form of laws that are adopted as a result of democratic elections by organized and authorized parliaments by the constitution to adopt laws. Therefore, the legislator plays a decisive role in the legal system of these countries[4]. He also "programs" the administration of justice through laws, because the courts are subordinate to the law.

The roots of the European continental legal system are in Roman law. It is the origin for the ***crucial division of the entire (national) legal system into two major legal branches***: private and public law. Civil law constitutes the most important part of private law. Administrative law is a part of public law.

This distinction has not only scientific, but also practical importance. ***Scientifically***, it helps us to see more precisely and, therefore, better understand the structure of the legal system and the characteristics of its components. This, in turn, has a positive effect on the interpretation and application of laws and their individual provisions. And ***in practical terms***, this distinction is important, since the norms of private law, as a rule, are applied in a different way and in other processes, the norms of public law. This is also the case in the Republic of Armenia, since public and legal disputes that have administrative and legal nature are resolved by administrative courts and the court of cassation (the Chamber on Civil and Administrative Cases)[5].

In order to find out whether this or that legal norm is applied to the sphere of public or private law, there are various theoretical approaches and criteria that have been developed in jurisprudence. For Roman lawyers, it was crucial whose ***interests*** this legal

[4] Nevertheless, the power of the legislator, as a rule, is more limited in those countries where there is a constitutional court, which by its decisive interpretation of the constitution in some cases establishes that certain laws are unconstitutional, declares them invalid and thereby ensures the subordination of the parliament (legislator) provisions of the constitution. Such is the situation in the Republic of Armenia, the Constitution of which provided for the existence of a constitutional court and assigned to it also the competence to establish the constitutionality of legal acts (Articles 167–170 of the Constitution of the Republic of Armenia).

[5] The provisions of the Judicial Code of the Republic of Armenia, adopted in 2018, in combination with Articles 1 and 3 of the Administrative Procedure Code of the Republic of Armenia, adopted on December 5, 2013.

norm serves. If it served the public interest and thereby prospering the society (Latin res publica = public business = state), then it was a public right (ius publicum), and if it served individuals, it was a private right (ius privatum).

Based on the principle of the division of the rule of law into two major parts, the sphere of public law includes constitutional, administrative law, judicial law, criminal law and all procedural codes. Meanwhile, the category of public law is perceived, as a rule, in legal faculties and in legal practice, in a narrower sense, namely, as a general concept, which includes constitutional law, administrative law. The fact is that criminal law, along with criminal procedural law, the law relating to the prosecutor's office, penal law, criminology and criminalistics is a large, interconnected and very specific complex. Due to the close intertwining of material, civil, and economic law, public law should also include civil procedural law – as a related branch (Khandanian, 2018a).

For the same reason, constitutional procedural law and administrative procedural law are included in public law.

Thus, public law *in the narrow sense* includes constitutional law, state law and administrative law, as well as derived from them constitutional procedural and administrative procedural laws.

At the same time, the matters that constitute the core of public law constitute one ***system***, since they are closely interconnected due to common structural principles. Constitutional law, state law and administrative law are hierarchically related to each other. This relationship can be represented in the form of a pyramid.

The top of the pyramid of the legal system of the Republic of Armenia is the ***constitutional law***. It is a set of provisions contained in the Constitution of the Republic of Armenia, adopted on July 5, 1995[6].

Constitutional law is a set of legal provisions relating to two large groups: the system of state agencies and the fundamental rights of citizens (Mikhailova, 2006: 15–17). The rights regulating the system of state agencies combine provisions on the legal status of supreme state agencies, the Prime Minister, the President of the Republic, the National Assembly, the Government, the Constitutional Court, their organizational structure, their formation, functions and powers, as well as their relations. They are supplemented by legal provisions on the legal status of an individual, that is, on the rights of a man and a citizen and obligations of a citizen, and legal provisions on the fundamentals of civil society inseparably linked to them, that is, on political parties, public organizations (non-governmental organizations sector), mass media, etc.

Administrative law is next lower order than the constitutional and state law. It is the bottom step – the basement of the pyramid of the public law system. It can be defined as a set of provisions regulating the organization and activities of administrative agencies and officials, that is, all those subjects of public law that are neither the parliament, nor courts, nor government. Administrative law, divided into general and special parts is the largest, voluminous part of public law.

4. The system and science of administrative law

Administrative law, regulating social relations of a wide range, acts as a branch of law, as a branch of legal science and as a training course. If administrative law, as a system

[6] The Constitution of the Republic of Armenia was amended through referenda of 2005 and 2015.

of interrelated legal norms, dictates proper behavior, then the science of administrative law studies, classifies and coordinates these norms, unites them according to legal institutions and represents them in a particular system.

Being a sphere of human activity, the science of administrative law, as a legal science, studies, explains administrative and legal phenomena through specialists. The science of the branch also covers knowledge of the accumulated and systematized norms of administrative law, institutions, concepts and categories, with the aim of developing which and providing weighted information using appropriate methodological tools. These tools are the composition (content) of administrative law science, which also includes the subject matter, method and system of science, scientific terminology, category (type) of science, as well as the sectoral bibliography and history of science. At the same time, the basis of this composition is the subject, method and system of science.

There are different opinions in the issue of the characteristics of the ***subject matter of administrative law science***.

In our opinion, the science of administrative law is a system of scientific points of view and ideas, knowledge and theoretical provisions on administrative law and the subject matter of its regulation.

Most scholars argue that the subject matter of administrative law science is the current administrative law (Lapina, 2009; Chetverikov, 2004). However, according to administrative law, the latter has its constituent parts: administrative and legal norms, administrative and legal categories and the application of administrative law norms.

The norms of administrative law are coordinated and united into institutions, subbranches and are systematized. Administrative and legal relations arising from these norms, their parties (participants), legal facts, material and procedural, internal organizational and external organizational issues are also studied.

Knowledge on the norms of administrative law is important (Borodin, Gromyko, 2007: 41–42). Only knowledge of the current administrative law can not provide adequate knowledge regarding the legal regulation of social relations in the field of executive power (state administration). This knowledge includes such categories as "executive power" (state administration), "executive authorities" (state administration agencies), "public service", "officials", "administrative coercion", etc. The above categories reflect the essential characterizing this branch of the legal system and the issues of organization and development of which are directly influenced by the subject matter of the science of administrative law.

One of the important components of the subject matter of administrative law science is the practice of state administration, as well as law enforcement activity of the executive authorities (state administration), and their officials. The science of administrative law studies administrative and legal norms and the practice of their application both with management agencies (officials), and with citizens and interested organizations. The study of practical implementation of administrative and legal norms provides an opportunity for the science of administrative law to submit scientifically grounded propositions to the competent authorities (officials) on structural changes to improve the efficiency, change, supplement or eliminate relevant administrative law norms, or make structural changes to improve efficiency of the competent authorities' activities (Kostennikov et al., 2015: 121–133).

Thus, the subject matter of the science of administrative law is the study and analysis of practical implementation of social relations arising in this area of executive power (state administration) and regulating their administrative and legal norms, as well as the identification and study of general and characteristic patterns of administrative and legal regulation of social relations.

The main legal institutions of administrative law and the science of administrative law of the Republic of Armenia fundamentally correspond to each other; however, in general, the system of science of the branch has some characteristic features:

1) it contains complete knowledge on administrative law and its institutions, as well as on general concepts of the branch (for example, the principles of the subject matter and method, administrative and legal norms and relations);

2) non-integrated and mixed materials are systematized into logically formed administrative and legal institutions, which makes it easier to inform about them, their use and influence on the system of administrative and legal norm;

3) summarizes the data related to the structural, sectoral and procedural system of administrative law into a single system of knowledge on administrative law.

The system of science of administrative law in the whole must contain any kind of knowledge on administrative and legal institutions and on administrative law in general.

Political and economic reforms carried out in the Republic, the application of the principles of democracy and other processes in relation to the executive power (state administration) created an objective need for a new discussion of the concept and subject matter of administrative law, skillfully using previously developed sustainable scientific research and experience of foreign countries. Undoubtedly, these changes will continue to be made, considering the constitutional division, improvement and development of state authorities, the strengthening of a democratic, social, legal state, as well as a change in the forms and methods of government, its theory and practice. In regard to these processes, the legal system of the Republic will be significantly updated and reformed, including administrative law.

One of the important processes for the science of administrative law in the transition period is the revision of the problem of state regulation of the economy (Alekhin et al., 2003: 111–112). The transition from a single production and economic complex, that is, from a planned system to various economic relations, caused serious problems. The legal basis for the transition to market economy has not been fully studied yet. Absolute power methods in relation to previously existing economy were replaced by softer and more flexible methods in relation to objects of management. Besides, indirect managerial influence is applied in relation to the economy.

In terms of the implementation of market relations in the Republic, the problem of state administration seems to have become meaningless. It creates the illusion that improving the relations of the Republic with some countries and the assistance provided will mechanically contribute to the normal course of reforms.

Practical life also demonstrates that the creation, reorganization, liquidation of new agencies, ostensibly to increase the efficiency of the executive authorities (state administration), increase or decrease in their number, personnel changes, and the appointment of their leaders on a purely party basis, do not give the desired result.

Meanwhile, new scientific approaches to management can become a real driving force for the development of society, if it is managed by professionals who possess adequate managerial knowledge and skills, resourceful, having a good knowledge of moral and global production and management experience. We think it would be appropriate to recall the idea of Democritus that the welfare of citizens of the state depends on the quality of management.

Nowadays, state administration should objectively reflect the need for effective management of economic, social, administrative, legal and other spheres and the use of the latest information technologies, which has visible advantages according to the experience of developed countries (Salomatin, 2013: 7–9). In this regard, the functional and managerial role of administrative law will be increased in the nearest future, and it is intended to perform the following main functions: a) organization and implementation of state administration; b) state administration; c) protection of public interests; d) implementation of citizens' rights to participate in state administration and local self-government.

The functions carried out in the field of state administration can, without hesitation, make more democratic, in particular, the publication of draft laws and other legal acts and public discussions, so that individuals and legal entities, whose interests are affected, can have an opportunity to announce their opinion on projects, as well as accessibility of adopted legal acts. Considering public opinion is one of the fundamental principles of law-making activity, which also contributes to the development of administrative legal awareness of the population and the creation of powerful levers in the law-making and law-enforcement fields.

The organization of state activity is directly related to public servants, who play an important role in solving problems of the economic, socio-cultural, administrative and political branches. Despite the fact that laws related to various public services have been adopted and are in force in the Republic, however, there are various kinds of problems in the process of their practical implementation, some of which are the gaps of the legislation and the rest – of practitioners (Egian, 2004: 89–90). At the same time, it should be noted that the basic principles of these services, the procedures for taking vacant positions, certification, retraining, the legal situation of community servants and other provisions do not significantly differ from each other. It is also strange that the special republican agency represented by the council of the civil service was created in the system of public service only in the sphere of the civil service. Service relations in all other public services are regulated in the manner established by the government or an authorized agency of the Republic of Armenia. We also consider that it is advisable to create a single republican independent public service agency in order to conduct a unified state policy in various public services, their leadership and organization.

Due to the weakening of the levers of state administration, the insecurity of citizens, legal entities from offenses and the arbitrariness of the apparatus has increased. Their protection is supposed to exercise law enforcement agencies and especially the administrative court (Danielian, 2002). By the way, the observance of public order and public security is closely related to the public economic order and this (business activities, development of various kinds of property, etc.) is possible if a strong public order and security is ensured.

Despite adopted in 1985 and the current Law of the Republic of Armenia "On Administrative Offenses", numerous amendments and additions have been made, nevertheless, it is in a deplorable state. The improvement and development of administrative legislation is too slow and, sometimes, with conflicting decisions. This is also due to the fact that reforms on legal issues do not provide the concept of development of administrative legislation. Administrative and legal norms: the sources of administrative law, regulating various social relations, as compared with other branches of the law system of the Republic of Armenia, are in a chaotic state.

I believe that the further development and improvement of the legislation on administrative liability should take place on the principle of incorporating all legal norms establishing administrative offenses into one legislative act (code). Currently, it consists of the said code and numerous laws that are in parallel with it, which are not properly coordinated and lead to some contradictions, disagreements, comments and difficulties. In this regard, it is necessary to create a clear systematization of these acts, through the incorporation (unification) or mutual agreement and systematization of the latter. There is a need to expose administrative and legal acts to a proper codification.

Studying the legal systems of different countries is also important for the development of the science of administrative law of the Republic of Armenia. We should note that there is a convergence of legal systems of different countries and comparative law has a wider nature (Gevorgian, 2019). However, some features of management, administrative legislation of different countries are sometimes copied mechanically with distortions, taking into account the fact that they can not correspond to the processes, requirements, general situation, as well as internal patterns of administrative sphere. As a result, they create some difficulties in practice and the process of infinite amendments begins.

Generally, they are problems of consciousness of administrative law in the Republic in the future, which are relevant and interrelated.

5. Conclusions

The legal system of modern states, as a rule, differentiates ***the law of substance*** and ***formal law***. The general doctrine of law understands the law of substance as the totality of legal norms defining the *content* of the rights and obligations of legal entities. In contrast, the formal law is understood as legal norms regulating the procedures, which assist to clarify the content of undefined right or the right under question and carried out despite possible resistance. The interaction between the law of substance and formal law can be demonstrated by the example of the Civil Code of the Republic of Armenia and the Civil Procedural Code of the Republic of Armenia. The Civil Code, in particular, establishes those rights and obligations enjoyed by the parties to purchase agreement, that is, the buyer and the seller. The duty of the seller and owner of goods is to transfer the goods to the buyer, and the buyer's obligation is to pay the agreed price and accept the goods (the law of substance). The Articles of the Civil Procedural Code regulate the process, where the parties to the purchase agreement, by applying to a (state) court of general jurisdiction, can force to recognize and exercise their (private) rights (requirements). Besides, if the debtor does not fulfill his duties approved by the court, the creditor's right is exercised in another proceeding with the help of a compulsory executor – within the proceeding of enforcement. The norms of procedural proceedings and enforcement are called formal law, in contrast to the law of substance.

As soon as (the law of substance) civil law (private law) and the formal procedural law (public law) are related to each other, this relationship does not differ from that one, which exists between, on the one hand, substantive administrative law, and, on the other hand, the law regulating (formal) administrative proceedings and forced (formal) execution in the sphere of administrative law.

For (substantive) administrative law, that is, for the realization of the rights and obligations of citizens, business enterprises, public organizations (NGOs, etc.), the ***law regulating administrative proceedings*** is of primary importance. It is aimed at the adoption of an administrative act by an administrative agency, through which the substantive rights and obligations of individuals and legal entities are established on the basis of certain administrative and legal provisions. So, in contrast to administrative proceedings, a dispute on any substantive law within administrative procedure that takes place in an administrative agency is decided not by a sentence, but mainly by an administrative act that only recognizes the existence of such a right. Consequently, the main purpose of the law regulating administrative procedure is to strengthen its role in comparison with the state (administrative agency) by granting procedural rights to the non-state, private party, and thereby to reduce the power difference in favor of a citizen, and to provide an approximate balance between an administrative agency and a citizen by forming administrative and legal relations in the spirit of the rule of law.

The same goal was pursued by the creation of the specialized administrative court and the development and adoption of the Special Administrative Procedural Code. The fact is that the court and the judge, by specializing in administrative law, are able to better evaluate the activities of administrative agencies and officials, according to the laws, better control it and, thereby, ultimately, strengthen the legal status of a citizen in the realization of his legitimate interests and rights in a legal dispute with an administrative agency (state).

The logical complement and completion of formal administrative law is administrative justice. With the adoption of the "Administrative Procedural Code of the Republic of Armenia" (entered into force on January 1, 2008), the administrative court began to operate, which resolves administrative and legal disputes arising between individuals and/or legal entities and government authorities and/or local self-government agencies. Proceeding within administrative courts is carried out on the basis of the Administrative Procedural Code of the Republic of Armenia, which sets out in details the disputes considered by the administrative court. They can be summarized in three groups, first, cases that are initiated on the basis of a statement of private persons against administrative agencies or officials, secondly, cases that are initiated against private persons on the basis of a claim of administrative agencies or officials and thirdly, disputes between government authorities, local self-government agencies and officials. Usually citizens and economic entities file lawsuits against administrative agencies, that is, the administrative court most often investigates administrative and legal disputes of the first category.

By means of a claim, it is possible to oppose any kind of behavior and all types of actions of administrative agencies and officials, namely:

1) the adoption of administrative acts, but also to refrain from their adoption;
2) the adoption of regulatory acts;

3) implementation of real actions, for example, blocking the road leading to the citizen's house, or refraining from real actions requested by the citizen, for example, from paying a certain sum of money.

In order to consider a lawsuit submitted to administrative court as admissible, it is necessary that administrative agencies or officials in all cases violated the rights or freedoms *belonging* to the claimant by their decisions, actions or omission. You can file a lawsuit in court in the case, when the claimant only "holds the opinion" that the administrative agency violated his rights. And whether the claimant's statement is true, is established by the administrative court, if necessary, through the acquisition of evidence.

The law regulating administration and administrative procedural law are such achievements of the rule of law state that are worthy of being considered "historical". They give a citizen more value in relation to the state in communicating with the authorities of the latter. These two examples should prevent the administrative authority, because of the mentioned, to treat individuals as objects and not to take into account their legitimate interests. According to the historical experience, they continue to exert influence in the future. Administrative law, consonant with the new – the legal state of Armenia, is able to overcome the past authoritarian style of administration.

Administration, administrative court and administrative procedural law are legal institutions that are especially closely related to the rule of law principle, namely within the context of the art. 1 of the Constitution of the Republic of Armenia. Consequently, these institutions make an important contribution to ensuring that the executive branch is constrained by the law. Thus, there are necessary legal prerequisites to avoid the danger of arbitrariness in the activities of the executive branch.

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ПРОБЛЕМИ РОЗВИТКУ АДМІНІСТРАТИВНОГО ПРАВА ТА АДМІНІСТРАТИВНО-ПРАВОВОЇ ДОКТРИНИ В РЕСПУБЛІЦІ ВІРМЕНІЯ (ПОНЯТТЯ Й ПРЕДМЕТ АДМІНІСТРАТИВНОГО ПРАВА, АДМІНІСТРАТИВНЕ ПРАВО В СИСТЕМІ ПУБЛІЧНОГО ПРАВА, СИСТЕМА ТА НАУКА АДМІНІСТРАТИВНОГО ПРАВА)

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У дослідженні докладно вивчаються проблеми становлення й розвитку адміністративного права, адміністративно-процесуального права, адміністрування та адміністративно-правової доктрини в Республіці Вірменія.

Актуальність дослідження. *Зі змінами Конституції Республіки Вірменія, що відбулися 6 грудня 2015 р., було закріплено як пріоритет правової охорони права й свободи особистості (ст. 3 та глава 2 Конституції Республіки Вірменія). При цьому комплексний інститут системного захисту названих прав і свобод став частиною механізму адміністративного-правового регулювання також у сферах адміністрування та адміністративно-процесуальної діяльності.*

Нині вітчизняна наука адміністративного права переживає переосмислення, оновлення й поповнення власне понятійного апарату. Цей процес пов'язаний зі змінами, що відбуваються в економічній і правовій системах вірменської громади.

Завдання, пов'язані з формуванням громадянського суспільства та правової держави у Вірменії, змушують по-новому поглянути на багато звичних адміністративно-правових понять щодо предмета їх відповідності сучасному етапу розвитку адміністративного права та науки адміністративного права Республіки Вірменія.

Перед теорією адміністративного права, що має статус фундаментальної науки в системі вітчизняної юриспруденції, стоїть складне завдання – перегляд та переосмислення обсягу таких основоположних понять, якими є проблеми правосуб'єктності в адміністративному праві, а також поняття та змісту адміністрування, адміністративно-правових актів, мети й завдань адміністративного процесу тощо.

Мета дослідження *полягає в розробленні основних положень наукової концепції сучасного адміністративного права та процесу відповідно до подій у вірменському суспільстві. Крім того, робота націлена на комплексне, взаємозалежне дослідження теоретичних проблем*

адміністративного права й процесу в умовах здійснюваних у Вірменії реформ, переведення юридичної теорії та практики в якісно новий стан.

Методи дослідження. *Методологічну основу дослідження становлять положення сучасної наукової методології, новітні засоби й методи теорії адміністративного права та інших галузей права. У роботі над темою акцент робиться на результатах досліджень вітчизняних та зарубіжних теоретиків і практиків, які працюють у галузях державного управління й адміністративного процесу. Системний підхід до проблем адміністративного права дав змогу провести ґрунтовний аналіз атрибутивних ознак адміністративного права та процесу. У роботі також використані методи наукового пізнання, логічні методи аналізу, синтезу, узагальнення, порівняння, абстракції.*

На думку автора дослідження, аналіз будь-якої державно-правової проблеми, у тому числі проблеми адміністративного права та процесу, має здійснюватися на основі концепції правової держави.

Основні результати дослідження. *У сучасний період розвитку вірменської громади реалізація норм адміністративного права є одним із найактуальніших завдань державно-правової діяльності. Адміністративно-правові норми здійснюють вагомий вплив на суспільство загалом та на кожного громадянина Республіки Вірменія окремо через нормативно-правові акти її органів, що стосуються забезпечення прав і законних інтересів громадян та господарюючих суб'єктів у сфері публічного управління. Норми адміністративного права відіграють вагому роль у регулюванні, організації та функціонуванні державного апарату, забезпечуючи за допомогою адміністративних процедур і регламентів належне та своєчасне визначення позитивних відносин у сфері державного управління. У зв'язку із цим автор акцентує увагу на ключових проблемах політико-правової модернізації та вдосконаленні адміністративного права й процесу Республіки Вірменія. Зокрема, розкриваються зміст та особливості предмета адміністративного права Республіки Вірменія, місце адміністративного права в системі публічного права, система й наука адміністративного права.*

У результаті проведеної відповідно до поставленої мети дослідження роботи автор дійшов певних результатів і висновків, які, як видається, відображають основні тенденції в розвитку адміністративного права та процесу Республіки Вірменія, а також сприятимуть збагаченню, поповненню понятійного апарату науки адміністративного права й процесу.

На науку адміністративного права істотний вплив чинять удосконалення та зміна вірменського законодавства, соціально-економічні й політичні реформи, що проводяться в Республіці Вірменія, а також перетворення апарату управління.

На думку автора, сьогодні практично неможливо знайти сферу суспільних відносин, у якій не здійснюється адміністративно-правовий вплив.

У дослідженні приділено увагу також проблемам адміністративного процесу, адміністрування, законності, адміністративного правосуддя, співвідношенню адміністративного права й процесу, адміністрування та актуальності проблем правозастосовної практики.

Проведене дослідження дає змогу говорити про те, що спостерігається відхід від абсолютизації нормативного підходу до адміністративного права, що переважав у радянській правовій науці, плюралізм напряму в праворозумінні та інтеграція юридичних наук, у предмет яких включаються адміністративне право й процес як об'єкти дослідження, зміни в змісті предмета, системи та структури адміністративного права й процесу.

Системний підхід до вивчення основних інститутів адміністративного права поглиблює наші уявлення про соціальну природу адміністративного права й процесу, дає змогу глибше дослідити окремі інститути та категорії адміністративного права, цілеспрямований розвиток цивілізованого суспільства.

У зв'язку зі змінами, що відбуваються в країні, змінюються також система й структура адміністративного права та процесу, формальні джерела адміністративного права (наприклад, судовий та адміністративний прецедент).

Висновки. *У дослідженні визначається вагомість формування адекватної філософсько-правової та світоглядної парадигми розвитку адміністративної правосвідомості, забезпечення правової стабілізації вірменської громади в контексті модернізації політичної системи держави та заявленої реформи на основі ключових принципів сучасного демократичного права, поваги й захисту прав і свобод людини та громадянина.*

Доктринальне розуміння адміністративної юриспруденції знаходить нормативне закріплення, м'яко кажучи, у невідповідності. Це і є основною проблемою теорії адміністративного права, яка, на думку автора, може бути знята реформуванням законодавства (наприклад, з прийняттям нового Кодексу про адміністративні правопорушення тощо).

Варто констатувати, що значимість адміністративного та адміністративно-процесуального законодавства, а також загалом норм адміністративного права привертає увагу вчених і фахівців-практиків. З огляду на наявну тенденцію розвитку юридичної науки можна стверджувати, що наука адміністративного права й надалі буде інтенсивно та перспективно розвиватися.

Ключові слова: правова держава, реформа, адміністративне право, адміністративний процес, модернізоване суспільство, система права, правопорядок, органи влади, громадянське суспільство, юриспруденція, політична система, права людини, адміністрування, адміністративний акт, правозастосовна практика, інтерпретація.

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DEVELOPMENT OF ADMINISTRATIVE LAW AND ADMINISTRATIVE LEGAL DOCTRINE IN LITHUANIA

The system of national law and the corresponding system of democratic authorities had to guarantee optimal protection of the individual's fundamental freedoms and rights, and help to create human welfare. Science of administrative law is constantly evolving, and its insights are strategic in nature, oriented towards the future. There is often a struggle for new ideas, opinions, concepts, paradigms to be embedded or denied. The new, old, inaccurate statements are changed to be more accurate, the new ideas criticize the old ones, and life practices raise new problems that science must answer rationally. The science of administrative law in Lithuania is not static, it is constantly changing as the administrative law itself changes. The concept of administrative law is changing, its regulation is expanding. The science of administrative law is an integral part of Lithuanian law science, where the specialists of administrative law – scientists investigate the essence of this branch of law, its subject matter and separate institutes and in general all actual problems of administrative legal practice and science of the whole country.

This article is the first scientific research in the cycle of articles "Development of Administrative Law and Administrative Legal Doctrine in Lithuania".

***The purpose** of this article is to present the development of administrative law and administrative law doctrine in Lithuania since 1990 by analysing the works of Lithuanian scientists in this field through the categories defined in the research tasks. In order to achieve the aim of the article, the following tasks are raised: briefly to introduce and discuss the development of Lithuanian administrative law science and administrative law as a category, to define and analyse the goals of administrative law, the subject of regulation and the system of administrative law in Lithuania. In order to achieve the aim and tasks of the research, the analysis of the works of Lithuanian scientists and the main laws implementing the administrative legal regulation of Lithuania was performed.*

***Methods.** Historical comparative, documents' analysis, synthesis and other methods were used for research.*

***Results** of research showed that Lithuania has modern administrative law and administrative justice system, that meets nowadays meets and European Union justice standards' requirements.*

***Conclusions.** We can conclude that Lithuanian scientists understand the administrative law in broad sense as law of management and described quite wide range of its regulation subjects. After Lithuania's accession to the European Union and its commitment to take over its acquis communautaire, the entire Lithuanian legal system, together with administrative law, had to adapt to change. Implementation of the provisions of the European Union legislation in Lithuanian law has become a priority. The abundance of administrative legal regulation at European Union level and the need for its application in the case-law have created challenging tasks for administrative law science. An accurate analysis of the implementation of European Union legislation in the systems of state power and public administration in Lithuania, analysis of administrative legal systems of the Member States of the European Union, search for similarities and differences, effective defence of the rights and legitimate interests of a person when a Member State misapplies (waives) the provisions of European Union legislation, the jurisdiction of national courts to deal with damages where, for example, damage caused by inappropriate application of European Union law is made by a court of final instance in the state, and other issues become the subject of modern administrative law research.*

Key words: *administrative law science, administrative law, public administration, administrative justice, legal doctrine.*

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1. Introduction

The purpose of administrative legal research is to reveal the essence, regularities and peculiarities of development of legal ideas, legal norms and legal practice, and to reveal the tendencies of development of administrative law doctrine and justice. After the restoration of the independence of Lithuania the task was to reform the existing Soviet legal system, to prepare new laws of the Republic of Lithuania that would meet the needs of the public administration of a democratic legal state, to harmonize national laws with the provisions of international acts and to foresee their development perspectives of legal regulation. Thus, the system of national law and the corresponding system of democratic authorities had to guarantee optimal protection of the individual's fundamental freedoms and rights, and to help to create human welfare. The mentioned reasons influenced that the more attention at the concept of administrative law, the legal institutes regulated by it, the development of this branch of law, social changes and their influence on the administrative legal regulation was given only after the restoration of Lithuania's independence in 1990.

The science of administrative law is an integral part of Lithuanian law science, where the specialists of administrative law – scientists investigate the essence of this branch of law, its subject matter and separate institutes and in general all actual problems of administrative legal practice and science of the whole country. The science of administrative law, as well as one of its research objects – administrative law, is not static, unchanging. Changing public legal relations, values that are fostered in society, administrative law, its goals and objectives are also changing. The administrative law science must also develop accordingly, actively participates in the development of methodological foundations of administrative law, in the development of institutes and legal norms of this branch of law, as well as in forecasts and proposals on how to effectively implement the state administration.

This article is the first scientific research in the cycle of articles "Development of Administrative Law and Administrative Legal Doctrine in Lithuania". The purpose of this article is to present the development of administrative law and administrative law doctrine in Lithuania since 1990 by analysing the works of Lithuanian scientists in this field through the categories defined in the research tasks. In order to achieve the aim of the article, the following tasks are

raised: briefly to introduce and discuss the development of Lithuanian administrative law science and administrative law as a category, to define and analyse the goals of administrative law, the subject of regulation and the system of administrative law in Lithuania. In order to achieve the aim and tasks of the research, the analysis of the works of Lithuanian scientists and the main laws implementing the administrative legal regulation of Lithuania was performed.

2. Development of administrative law doctrine and administrative law as category in Lithuania

Of course, administrative law, as a branch of public law, regulates the public relations that exist in the field of public administration. The norms and principles of administrative law must not be immobile, without development, as if they are "going by themselves" because they would soon become insignificant. The collecting, analysing, researching, systematising knowledge of administrative law, improving the theoretical foundations of administrative law, its institutes, concepts and categories are the main task of administrative law science. The essential feature of the science of administrative law lies in its the methods, that administrative law science uses to study social legal objects. Another important feature of this science is the development of administrative law theories, scientists not only provide research data, but seek to explain them based on a certain theory.

In the interwar Lithuania (1918–1940), the main focus of administrative law science was on the systematization of laws and post-statutory legislation in the field of administrative law, but also published articles, monographs, and lectures sought actively investigate administrative law and its institutes (Administrative law, 1939). Particularly important contributions to the administration law science during the interwar period were the works of Mykolas Riomeris (Riomeris, 1994). After the establishment of the Soviet government and Soviet ideology in Lithuania in 1940, the independent development of Lithuanian administrative law was prevented. The lack of researchers in this field, limited sources of administrative law – normative acts issued by the relevant government departments of the respective councils, prevented the progressive development of Lithuanian administrative law science. The restoration of the independence of the Republic of Lithuania has led to fundamental changes in all areas of public life, including administrative law and public administration. The latter had to adapt to the new state governance system, to move from advocating Soviet ideology to a democratic system based on human rights.

Since 1990, developing administrative law science concerning the questions of the concept of administrative law and public administration, Lithuanian administrative law issues and problems has been discussed in many works: the "Administrative law" manual published by the collective of authors (Bakaveckas, et al., 2005), A. Andruškevičius works "Administrative law: general theoretical issues, institute of management acts, legal aspects of conflict relationships" (Andriuškevičius, 2008) and "Principles and boundaries of norms of administrative law" (Andriuškevičius, 2004), in A. Bakaveckas handbook "Administrative law: theory and practice. Part I "(Bakaveckas, 2012), E. Bilevičiūtė "Development of administrative law science in Lithuania" (Bilevičiūtė, 2013), in the A.P. Čiočys handbook "Basics of law" (Čiočys, 2008), I. Deviatnikovaitė "Administrative law: categories, definitions, tasks" (Deviatnikovaitė,

2009), J. Paužaitė-Kulvinskienė work "Administrative justice: theory and practice" (Paužaitė-Kulvinskienė, 2005), B. Pranevičienė work "Quasi-court institutions in administrative control system" (Pranevičienė, 2003), "History of Lithuanian law" (Andriulis et al., 2002) manual published by the collective of authors and others. Separate aspects of administrative law are discussed in scientific collective monograph "Human Rights, the Rule of Law and Administrative Justice" (Piličiauskas, 2012), in scientific articles of Algimantas Urmonas "Administrative law in area of social changes" (Urmonas, 2006), "Social interactions of administrative law" (Urmonas, 2010), "Administrative Law as a Macro-System Phenomenom" (Urmonas, 2009), "Searching for the application of conceptual models of social technologies in administrative law" (Urmonas, 2007), M. Maksimaitis "Law science in Lithuania in Soviet times: achievements and looses" (Maksimaitis, 2007), D. Urmonas "Origins of administrative jurisdiction in Lithuania" (Urbonas, 2009), D. Žilinskas, "Will we tackle the tree from top?" (Žilinskas, 2000), E. Bilevičiūtė and V. Kosmačaitė "Global administrative law", (Bilevičiūtė, Kosmačaitė, 2013) and others.

Not only the legislator and public administration entities, but also administrative law science is creating and developing administrative law, is solving the problems arising in field of public administration and governance of the state. The main object of this science is administrative law as a branch of law. However, the study of the legal norms of this branch is not limited to administrative law. The science of administrative law in the broad sense is the system of cognitive researches results of one or another country, reflecting state governance, theoretical and methodological foundations of this process, its principles, basic ideas and traditions. Today's Lithuanian administrative law science seeks to clarify, summarize and present various recommendations (proposals) in the organization and implementation of the public administration of the state. The science of administrative law is an integral part of Lithuanian law researches the essence, subject and separate institutes of administrative law. The clear definition of these concepts, the determination of their content and attributes, and the establishment of relations with social management and advanced administrative legal ideas and concepts in scientific publications (textbooks, monographs, materials of scientific practical conferences, articles collections and other literature) generally create the subject of Lithuanian administrative law. Today's Lithuanian administrative law, as a branch of law and a discipline of teaching, is fundamentally reformed as its system and subject matter of legal regulation is changing, especially the norms of substantive and procedural administrative law are intensively developing (changing and supplementing).

Thus, administrative law, as a branch of law and as science, is closely linked, but far from being identical. Administrative law, as well as administrative law science, is interested in the relationships that exist in the field of public administration. However, the science of administrative law also analyses the administrative legal categories, formulates the concepts of administrative law, examines its norms, examines the regularities of state administration, the practice of the executive authorities, as well as the connections between administrative legal relations, the practice of the implementation of the norms of administrative law, the functioning of administrative institutions, prepares forecasts of the development of legal norms, makes recommendations for improvement of norms

and administrative legal relations, prepares codification programs, theoretical basis for interpretation of norms, helps to improve state management mechanism. The science of administrative law is interested in the historical perspectives and tendencies of the development of administrative law as a branch of law and as a science, examines the theories and views of various scientists, the reasons for their emergence, and compares the administrative law of foreign countries.

Of course, it should be emphasized that the most important element of the subject of administrative law science is administrative law (current and valid administrative regulation). However, as we have already mentioned, the concept of the subject of administrative law will be incomplete if it is not supplemented by research into the application of administrative legal categories and administrative law in practice. Scientific researches on subjects of legal relations, as well as legal facts, vertical and horizontal, material and procedural, internal and public administration relations, aspects of state administration today, executive management activities of the governing institutions in application of legislation are particularly important, researches should be close with social practice, with purpose to improve the legal framework effectively. The subject of administrative law science is closely related to the practice of administrative legal regulation (especially in the field of public administration) (Bakaveckas et. al., 2005). Thus, it can be summarized that the science of administrative law investigates the doctrines of administrative law (ideas, tendencies, regularities of public administration, etc.), norms and practices of administrative law and simulates the tasks (perspectives) of public administration. Particularly topical for administrative law researchers is question of ensuring the rule of law – legality and justice – in administrative justice and jurisdiction by interpreting the true meaning of administrative legislation, guaranteeing the legal status of parties, their representatives, experts, lawyers, and other involved persons (Bakaveckas et. al., 2005).

The restoration of independence of the Republic of Lithuania has led to changes in all areas of society. In the short term, a major reform was needed in the fields of public administration, regulation of property legal relations, judicial activity and other areas. Article 5 of Constitution of Republic of Lithuania of 1992 October, 25 adopted the provision that the State institutions shall serve the people" (Constitution of the Republic of Lithuania, 1992). Essential policy decisions as one of the first objectives of the reform included public administration and the judiciary (including the establishment of administrative courts). The old administrative institutions were seen as a benchmark for rigidity, unprofessionalism (Bakaveckas et. al., 2005). After the restoration of the independence of the Republic of Lithuania, the entire system of public administration had to be re-established. We needed to take Western experience of public administration quickly and without major shocks. The process was complex and hasty. Lithuania, having freed itself from the Soviet (Eastern) state administration system, did not have independent state life experience. Western public administration experience was difficult to reconcile with the nomenclature (inherited from the Soviet past), closed and corrupt in the post-Soviet administration of Lithuanian institutions. In addition, the restored Lithuanian state could not take over the interwar Lithuanian public administration experience. The tradition of improving the administration of state institutions was terminated by the Soviet occupation. On the other hand, in 1990, The Republic of Lithuania has chosen the path

of democratic development, and in the interwar period Lithuania, the last fourteen years of its existence, has been an authoritarian state. Another reason that prevented Lithuania from taking over administrative management from the interwar period was that in the area of public administration Lithuania had conceived the main reforms in the 20th century, in the early and mid-1990s (Smalskys, 2010).

Thus, a new, modern and efficient mechanism of the public administration system was needed. The main idea was to seek state quality. Objectives such as simplicity, bringing solutions closer to citizens, and greater state responsibility have been highlighted. These goals were related to Lithuania's aspiration to become a member of the European Union, to strengthen administrative capacity and to make effective use of European Union support in the area of public administration reform (Smalskys, 2010). Thus, after the restoration of the independence of the Republic of Lithuania, a large-scale reform of the public administration system was implemented, which, however, had many shortcomings and had to be improved.

One of the most important reforms of the judiciary is administrative courts' establishment in 1999. As a conceptual basis for the establishment of these courts, the provision of Paragraph 2 of Article 111 of the Constitution of the Republic of Lithuania has established that specialized courts may be established for the examination of administrative, labour, family and other categories of cases (Constitution of the Republic of Lithuania, 1992). It should be noted that together with the Law on Administrative Proceedings (Law on Administrative Proceedings of the Republic of Lithuania, 1999), the Law on Administrative Disputes Commissions (Law on Pre-Trial Administrative Disputes Procedure of the Republic of Lithuania, 1999), which introduced the pre-trial investigation of administrative disputes, came into force.

So, Lithuania has special administrative courts' system and also the developed system of pre-trial hearing and investigation of administrative disputes.

A regional administrative court is the court of special jurisdiction established for hearing complaints (petitions) in respect of administrative acts and acts of commission or omission (failure to perform duties) by entities of public and internal administration. Regional administrative courts hear disputes in the field of public administration, deal with issues relating to the lawfulness of regulatory administrative acts, tax disputes, etc. Before applying to an administrative court, individual legal acts or actions taken by entities of public administration provided by law may be disputed in the pre-trial procedure. In this case disputes are investigated by the Lithuania Administrative Dispute Commission or Tax Dispute Commission. The Supreme Administrative Court is first and final instance for administrative cases assigned to its jurisdiction by law. It is appeal instance for cases concerning decisions, rulings and orders of regional administrative courts, as well as for cases involving administrative offences from decisions of district courts. The Supreme Administrative Court is also instance for hearing, in cases specified by law, of petitions on the reopening of completed administrative cases, including cases of administrative offences. The Supreme Administrative Court develops a uniform practice of administrative courts in the interpretation and application of laws and other legal acts. The practice of administrative courts of Lithuania is also the part of administrative law doctrine.

Administrative law is one of the most significant branches of modern law, because it regulates a very wide spectrum of social field. From the fields of social tension in political relations and processes, social contradictions are manifested, which transform into analogous tension in law – fields of legal tension: legal disputes at macro and micro levels (Urmonas, 2009). Due to constant social changes, it is not possible to provide a single definition of administrative law, to clearly define its subject. That is why it is not easy to define the subject of its regulation because it is intertwined with other legal rights – constitutional, criminal, tax, financial, civil, labour, environmental (ecological), construction.

Ieva Deviatnikovaitė defines administrative law as part of a public law, the norms of which regulate relations arising in the exercise of their powers by the public administration, i.e. by allowing sub statutory acts to be implemented in laws, monitoring compliance with their decisions, and carrying out internal controls, administrative services, organisation of public service activities, internal administration (Deviatnikovaitė, 2009).

A. Andruškevičius proposes to determine the scope of administrative law (Andriuškevičius, 2004). They reveal the purpose of the branch of the law. Moreover, it is possible to define administrative law easily, i. e. the scope of validity becomes a methodological basis for the definition of this branch of law. Administrative law is a part of public law whose norms regulate: the system of public administrations, relations between them, functions, status of civil servants; relations between human/persons and public administrations; control of the activities of public administration entities; the examination of administrative disputes between man/persons and public administrations.

More definitions of administrative law of the same scientist are given: "administrative law is a set of specialized norms and principles of public law, which is used to establish the institutional structure and subordinate relations of public administration, defining the activities and methods of this administration in the field of management relations with individuals, as well as organizing the litigation of public and administrative public administration disputes in courts and other state institutions" (Andriuškevičius, 2008). The author admits that he deliberately does not describe administrative law as an independent branch of law, because it is closely related to other legal rights: "administrative law – a part of public law whose norms and, in their absence, the principles of law, define: 1) to whom and to what authority to require the conduct of participants in legal relationships that are not contrary to the interests of society and the state; 2) to whom and by what means, by lawful means, to force participants in a legal relationship to behave in a manner contrary to the public and public interest; 3) who has been given the power to settle the dispute if he arises between claiming unlawful conduct and those subject to such a claim" (Andriuškevičius, 2004). The scientist points out that he perceives administrative law not only as a norm but also as a rule, as a set of principles. This is based on the fact that the principles represent a "qualitative side of this branch of law". In addition, the principles are a "stabilizing factor in administrative law". It is possible to get information from the norms that reveal only the "instantaneous state", because the laws are very often changed, filled, destroyed (Andriuškevičius, 2008).

Professor A. Vaišvila describes administrative law as branch of law regulating the public relations that arise in the performance of state institutions in compliance with

the requirements of the constitution and laws. It defines the structure and competence of public administration entities of ministries, departments, municipalities, their relations with citizens in managing and supervising economic and other activities of citizens and their associations. Scientist distinguishes its subject – human relationships arising from economics, science, education, health care, law enforcement, national defence, protection of citizens' rights and other areas, and an approach based on the principle of authority and subordination, which is expressed through binding orders and instructions, subordination of services, disciplinary, official responsibility for the area of activity entrusted (Vaišvila, 2004). Professor Audrius Bakaveckas says that in scientific literature, administrative law is usually described as a management law, because it regulates the public relations that arose in organizing and implementing the executive, state and public administration (administration). As part of public law, this branch of law is considered to be a tool for the management and regulation of social processes in the public sector, and the subject of its regulation is public administration (Bakaveckas, 2007; Bakaveckas, 2012). Professor Urmonas gives some detailed definitions of administrative law: "administrative law is a branch of law that is composed of legally significant human, social, state social values, regulated by state administration, their legitimate means of implementation and protection, and the rules of administrative law on the basis of social justice, regulated by natural and legal persons, with the participation of public administration institutions, activities (Bakaveckas et. al., 2005).

3. Tasks of administrative law

Legislative regulation has some goals. It has been mentioned that administrative law regulates the managerial relations between persons and public administration entities, which are established by the latter in the exercise of the powers provided for in the Constitution, laws and other legal acts. Thus, the purpose of administrative legal regulation is to achieve one of the main goals – to reconcile the interests of opposing groups in seeking a social compromise.

Hence, the balance between individual and societal interests must be maintained in the compromise. The regulatory impact of administrative law must be directed towards individuals in a way that combines individual and public interests and meets public interests. It can therefore be said that the main purpose of administrative law is to create a model of administrative legal regulation (normative) that would ensure the reconciliation of the interests of individuals, their groups and society.

Here A. Andriuškevičius argues that "current administrative law is a set of principles and legal norms, the main function of which is the safeguarding and protection (defence) of mutual public interests (connecting the needs of both the state and society). The task of this branch of law is to provide citizens with effective legal possibilities to defend themselves against unlawful actions of public administration" (Andriuškevičius, 2004). He gives the following concepts of administrative law: "administrative law – a measure of protection of public interests", "a measure of prevention of conflicts of public interest", "administrative law has no more important task than harmonization of relations between human and executive power" (Andriuškevičius, 2004). The scientist argues that the purpose of administrative law is not only to establish the status of institutions of public administration, but also to perform the function of prevention of public conflicts. This

means that the institutes of this branch of law have to establish principles that would prevent public administration from taking decisions ignoring the public interest. So, there is another purpose here: administrative law rules must set up mechanisms for overseeing the public interest to ensure the effectiveness of the principles. Here the author emphasizes the role of courts in solving disputes between individuals and public administration (Andriuškevičius, 2008). Emphasizing the mission of administrative law, A. Urmonas believes that it "must serve the public interest in a coordinated manner, ensuring personal protection, cultural development, economic development <…>, is not enough to define the mission alone, it is no less important to perceive it in the context of social change. Since social life is not stable, constantly changing, refusing certain values and replacing them, therefore, the change of mission must be ensured so that it does not lag behind the reality and not become formal" (Urmonas, 2006). So, the administrative law has very important goal – to be flexible and constantly reflect reality and the needs of today's people (Deviatnikovaitė, 2009).

It may be concluded that the aim of administrative law is to combine public and private interests. This objective can be divided into three elements: the subject of administrative law is the public interest. According to some authors, the subject of its regulation is public administration (Bakaveckas, 2007), and the aim of the public administration institutions themselves is to serve the public interest of individuals; function of administrative law – coordination of public interests; the task of administrative law is to create opportunities and means to defend against the actions of illegal public entities.

A. Andruškevičius argues that public interests are an informal subject of administrative law, and the coordination and prevention of their conflicts is a general function of this right. Thus, he specifies the functions of administrative law as the regulation, protection of personal rights, repressive, educative (Andriuškevičius, 2004). The regulatory function manifests itself in the fact that public administrations regulate the behaviour of individuals. Thus, public entities impose legal obligations, perform their duties by giving individuals access to subjective rights. The repressive function manifests itself in the fact that public administration entities may not only grant a license, but also withdraw it or terminate particular activities if the legal norms are violated. This function eliminates negative, dangerous public relations.

4. Subject of administrative law in administrative doctrine in Lithuania

The subject of administrative legal regulation is particular public relations. A number of legal entities are involved in these relationships: public authorities (not only executive but also legislative and judicial); subjects of local self-government (municipal councils, mayors, municipal administrators, municipal controllers, elders of municipalities, heads of municipal enterprises, budget institutions, etc.); regulatory authorities (National Audit Office, Parliament Ombudsmen, Bank of Lithuania, State Commission of the Lithuanian Language, Chief Official Ethics Commission, Competition Authority); non-governmental organizations (non-governmental), state-owned enterprises entrusted with the performance of appropriate public administration functions such as transport registration; dispute settlement commissions/quasi-judicial bodies (Lithuanian Administrative Disputes Commission, Municipalities, Tax Disputes Commission) (Andriuškevičius, 2002). And, obvious, natural persons, private legal persons are closely related to administrative legal

relations. The purpose of the above-mentioned institutions is to harmonize the interests of these persons with the public and to satisfy the public interest.

Administrative legal relations are regulated by various methods: imperative, dispositional, equality of parties, promotion, persuasion, etc. It is wrong to assume that only the imperative method dominates in administrative law, because this branch of law cannot be identified only with administrative violations of law and administrative penalties. But administrative legal relations usually arise when a legal rule arises. And this is a feature of the imperative method. However, there is also a method of equality between sides. It is the duty of the public administration to serve the people, that the principles of publicity and transparency are very important in administrative relations. It is possible to initiate relationships with public entities themselves – to apply for information, to request it, to apply to administrative courts or administrative dispute commissions to decide what is right and to apply for a license. In all of these relationships, we are equal and equal parties, and public actors must perform their duties. There may be an incentive method in administrative legal relations. Administrative legal relationships can encourage a wide range of individuals and may lead to administrative agreements.

5. System of administrative law in administrative law doctrine in Lithuania

In Lithuania, administrative law is perceived as a whole of two parts – general and special. Some authors separated all administrative law in two parts as material norm part (administrative law) and process norms (administrative procedure) (Andriuškevičius, 2008). The general part of administrative law unites legal norms, institutes regulating the "general legal status of subjects of administrative legal relations" (Andriuškevičius, 2008). The general part sets out the basic principles of administrative law, analyses the relationship between them and the principles of constitutional law – the rule of law, the state of social welfare, separation of powers, legitimacy, proportionality, equality before the law. Sources of administrative law, types of administrative acts, their purpose. These are norms that establish the principles of administrative law institutes, the principles of public administration, the administrative legal status of institutions, the administrative legal status of civil servants, non-governmental organizations (associations, public institutions, public organizations, charity and support funds) and citizens and aliens in the field of public administration or public administration. These norms also establish the foundations of the civil service, the forms and methods of management activity, the methods of control and supervision, the ways and procedure of ensuring legitimacy in the field of public administration, the foundations of administrative justice. The research of the institutes of the general part of the administrative law covers the issues of the significance of public administration, establishes the system of public administration institutions, mutual arrangement, relationship, competence, the principles which these institutions follow in the implementation of public administration, responsibility. It also describes the historical development of administrative law, the contribution of scientists and lawyers to its development, the relationship between administrative law and constitutional law, other branches of law, its place in the legal system of the country, influence on other branches of science, interaction with other legal and scientific fields. Possible division of institutes of general part of administrative law is possible (Deviatnikovaitė, 2009):

– the Institute of Public Administration: includes the establishment of the system of public administration institutions, relations between subjects of public administration, their establishment, liquidation, reorganization, coordination relations; as well as the content of the activities of public administration entities, incl. y. the functions, the areas in which they operate, the principles of public administration on the basis of which they operate, the legal framework governing their administrative legal status;

– the Civil Service Institute: it is the aspects of the acquisition, loss, civil servant, material liability of a civil servant, social guarantees, the system of legal acts regulating public service;

– Institute for Control of Activities of Public Administration Entities: parliamentary supervision of the executive power by the Parliament; supervision of the executive by the President, Government control of ministries, institutions under the ministries, Government agencies, administrative supervision of municipalities, State audit by the National Audit Office, powers of the Competition Council and the like;

– Institute for the Supervision of Public Administration Entities in respect of non-Personnel Persons – application of administrative impact measures, types of administrative violence measures, supervision methods, measures, forms, objectives. An institute of administrative responsibility may be distinguished;

– the Institute of Quasi-Legal Control of Public Administration Activities: it is the means and possibilities to appeal against the possible illegitimate decision of the public entity, the appropriateness of the behaviour (competence of the Administrative Dispute Commissions, Tax Disputes Commission, Parliament (Seimas) Ombudsmen, decisions);

– the Institute of Judicial Control of the Lawfulness of Activities of Public Administration Entities: activities of administrative courts for verification of compliance of public entity decision with higher legislation and others.

Professor A. Andriškevičius classified institutes of administrative law as follows: Institute of regulation of government organisation, Institute of regulation of administrative activities, Institute of Regulation of administrative punishment and Institute of administrative disputes (Andriuškevičius, 2008).

Special part of administrative law unites legal norms, institutes regulating public relations in specific areas of public administration activities: energy, industry, science, education, agriculture, competition, tax, health care, economy, agriculture, culture, registers, social guarantees, licensing, patenting, certification, environmental protection, asylum, spatial planning, consumer protection and other areas (Deviatnikovaitė, 2009). The institutes of the special part of this branch of administrative law may change. It depends on the relevance and the needs of the time.

After Lithuania's accession to the European Union and its commitment to take over its entire *acquis communautaire*, the whole Lithuanian legal system, together with administrative law, has been transformed. Implementation of the provisions of the European Union legislation in Lithuanian law has become a priority. The abundance of administrative legal regulation at European Union level, the need for its application in the case-law raises challenging tasks for administrative law science. Effective implementation of European Union legislation in the systems of state power and public administration in Lithuania,

analysis of administrative legal systems of the Member States of the European Union, search for similarities and differences, defines of personal rights and legitimate interests, when a Member State misapplies (refuses) the provisions of European Union legislation, the competence of national courts to deal with damages where, for example, damage caused by improper application of European Union law is made by a court of final instance in the State, and other issues are the subject of modern administrative law research.

The analysis of the relationship between administrative law and European Union law became relevant after Lithuania joined the European Union in 2004. Of course, this area wasn't left unnoticed by Lithuanian administrative law scientists. V. Valančius and S. Kavalnė "The implementation of European Union law in the administrative law of Lithuania" (Valančius, Kavalnė, 2009) is the first publication in Lithuania to discuss a wide spectrum of administrative and European Union law relations. V. Valančius also presented his insights on the subject of administrative and European Union law in scientific publications (Valančius, 2007), which deal with issues of application of the norms of European Union law in administrative courts; violation of European Union law by national courts. In 2017, Deviatnikovaitė published a comprehensive study on administrative law of foreign countries and the European Union (Deviatnikovaitė, 2017). At the end of XX century the highly active European integration processes did not spur Lithuania. In order to belong to one of the largest economic and political community in Europe – the European Union – Lithuania has committed to adopt its entire acquis, so-called *acquis communautaire*, to bring it into line with national legislation. Thus, in essence, the whole legal system, without distinction of administrative law, has been subject to change. Lithuanian administrative law must implement plenty of European Union directives or regulations, and complete legal regulation of public administration. Due to the very large scope of the European Union acquis in the area of administrative law, it is particularly difficult to absorb it properly, and with the extension of the legal framework, the workload of the institutions applying European Union law has been greater. Nevertheless, from the very beginning of the European Union membership, Lithuanian public administration institutions have to apply European Union law in the area of administrative law and administrative courts in case and decision-making follow the extensive jurisprudence of the European Union judicial authorities (European Court of Justice and General Court) on the interpretation of European Union legislation and validity issues. European Union law works in almost all areas of administrative law. Traditionally, economic administrative law has the greatest impact. This is evident in the field of tax law, competition law, state aid, subsidy law. However, the classical areas of administrative law, such as agriculture, environmental administrative law, police, aliens, refugees, state responsibility, are increasingly permeated by European Union law. Particularly influential is the directly applicable European Community law, which is abundant, for example, in the field of fund administration, state aid (Valančius, Kavalnė, 2009).

When implementing the requirements of the European Union legal acts in the Lithuanian legal system, mistakes are inevitable. Lithuanian euro integration has such an influence on administrative law that some of these laws are drafted and adopted in a hurry. It is obvious that all cases of application of European Union law in Lithuanian administrative law raise challenging tasks for administrative law science, which is forced to

change attitudes towards administrative law as part of the national legal system and to investigate it, to analyse the obligations of Lithuania to implement European Union law during European integration, context. Thus, the issues of administrative law research have become such as the effective implementation of European Union legislation in the systems of state power and public administration of Lithuania, analysis of administrative legal systems of the Member States of the European Union, search for similarities and differences, effective protection of the rights and legitimate interests of a person when a member state misapplies (refuses) the provisions of European Union law, which courts should deal with damages, for example, damage caused by improper application of European Union law by a court of final instance in the state, and so on. All these issues should become topical objects of modern administrative law research, because extensive administrative legal regulation at the European Union level requires especially precise, thorough and effective implementation and application in Lithuania. Implementation of this task is impossible without conceptual theoretical justification.

The question is whether it would be more efficient to unify or harmonize the administrative law of the Member States and thus ensure its uniform application. In addition, common administrative law mechanisms have already become a practical necessity. However, there are a number of major obstacles that are still encountered in trying to establish a single European Union administrative law. First of all, it is too small a number of legal mechanisms to directly implement European Union law. If the European Union, as a new legal order, is to ensure that the principles of supremacy and direct validity are respected, it must have its own means to implement these principles. This is a sensitive issue, because European Union law is directly administered in a rather narrow manner (essentially the work of the European Commission as an institution of the European Union). The vast majority of European Union law today is implemented with the help of national administrations. Another problem that still exists is the resistance of national legal systems to the idea of European administrative law. This is influenced by psychological (routine, national pride, etc.), professional and technical (different legal terminology and legal thinking, huge differences between countries based on common and continental law traditions, language problem), political (unwillingness of national parliaments to fully accept international conferences) projects, etc.) issues. The process of harmonization is particularly complicated in countries where the national constitutional concept of law has a strong influence on administrative law. The third problem is the unequal interpretation of legal principles and legal norms in different countries. Even a fundamentally homogeneous legal concept, interpreted in accordance with the national law of different countries, can have complex expressions.

Still in the Lithuanian doctrine of administrative law there are some researches about global administrative law (Bilevičiūtė, Kosmačaitė, 2013). Global administrative law is a new phenomenon not only in Lithuanian legal life, but also in the world, although the proponents of the latter theory are discovering sources related to this novel in the XIX century.

B. Kingsbury, N. Krisch, R.B. Stewart, J.B. Wiener can be legitimately named as the originator of global administrative law. They argue that the concept of global administrative law begins with two interrelated ideas that proclaim that global governance

can be understood as administration, and that such administration is often organized and shaped in accordance with the principles of administrative law. In this way, institutions that were not originally created as regulators are increasingly becoming such. These global governance bodies include intergovernmental institutions, informal intergovernmental networks, national government agencies operating under global standards, hybrid public and private sector bodies involved in international administration, and purely private organizations with a public role in international governance. Global administrative law includes legal mechanisms, principles and practices that promote or otherwise seek to influence the status of global administrative bodies, in particular by ensuring that these institutions meet adequate standards of transparency, performance, rationality, supervision and legality, and are able to make effective decisions and rules (Kingsbury et al., 2005). Thus, this theory analyses how international actors can successfully implement administrative-regulatory functions, and if such functions are performed by public authorities, their nature would obviously be administrative, but it is not possible to evaluate these entities in the context of classical administrative law, because the scope of their activities is international.

So, global administrative law is a field of public law that challenges classical international law and claims that the latter is no longer able to meet the needs of the modern world community and is therefore being declared a verdict and is gradually being offered a shift to global law. The goal of global administrative law is to create universal – international norms (norms – conglomerates), which would consolidate common principles of state governance and form transnational governance institutions, which would be assigned the implementation of administrative functions on a global scale. This phenomenon reflects the processes of legal integration and the creation of a global legal space that operates in accordance with the principles of administrative law. The Lithuanian administrative law as parts of European administrative law also is the parts of global administrative law.

6. Conclusions

The science of administrative law is described as an integral part of Lithuanian law science, where the specialists of administrative law – scientists investigate the essence of this branch of law, the subject of its regulation and separate institutes and in general the problems of administrative legal practice and science of the whole country. The development of administrative law, as well as administrative law science, is influenced by various political, economic, legal, socio-cultural and other social factors of a single whole. Each of these factors has different implications for the law of administrative law and presents different tasks to it, not always their influence on the development of the science of administrative law is positive (e. g. the Soviet regime in Lithuania in 1940–1990), but in the democratic, based on the protection of human rights and freedoms. In their pursuit, in society, they provide the basis for the development of administrative law science and its adaptation to changing political, economic and social conditions.

Today, the science of administrative law is delighted with its achievements: the research work of individual branches of administrative law, institutes, textbooks of the general part of administrative law is published, plenty of publications have been prepared, and several dissertations have been defended. In addition to analysing

the current problems of regulation and application of administrative law in the country, the research also criticizes the administrative law science itself. It is to be welcomed that the Lithuanian law of administrative law tends to apply administrative processes in a more effective direction of protection of human rights and freedoms.

Lithuanian scientists understand the administrative law in broad sense as law of management and described quite wide range of its regulation subjects. After Lithuania's accession to the European Union and its commitment to take over its *acquis communautaire*, the entire Lithuanian legal system, together with administrative law, had to adapt to change. Implementation of the provisions of the European Union legislation in Lithuanian law has become a priority. The abundance of administrative legal regulation at European Union level and the need for its application in the case-law have created challenging tasks for administrative law science. An accurate analysis of the implementation of European Union legislation in the systems of state power and public administration in Lithuania, analysis of administrative legal systems of the Member States of the European Union, search for similarities and differences, effective defence of the rights and legitimate interests of a person when a Member State misapplies (waives) the provisions of European Union legislation , the jurisdiction of national courts to deal with damages where, for example, damage caused by inappropriate application of European Union law is made by a court of final instance in the state, and other issues become the subject of modern administrative law research.

Today, the following tasks of administrative law science are to be elaborated:

– purification of administrative legal categories (state administration, public administration, executive power, social management, presidential power, etc.);

– advocating the application of administrative principles as a stabilizing, regulating, legal loophole, law-abolishing institution;

– conducting complex research on administrative law in the context of its social changes;

– cooperation with other legal branches and other sciences (economics, political science, philosophy, sociology, social work, management, psychology, ethics);

– conducting new feasibility studies of social influence mechanisms (e. g. acculturation) in the implementation of administrative law norms;

– improvement of the concept of administrative process and elaboration of code of administrative process;

– research on the activities of public administration (public administration) institutions in such aspects as: distribution of state authority functions to state and territorial level state institutions, standardization of their activity bases and detailed regulation of activities, reform of public service, taking into account the need to reduce corruption, bureaucracy and arbitrariness of civil servants, personal increasing responsibility in the public service, the role of public opinion in legislation, etc.;

– increasing administrative law and the involvement of other scientists in the implementation of the reform of the legal system and the planning of legal regulation;

– transformation of administrative law in the context of globalization and integration into the European Union;

– development of specific sub-branches of administrative law.

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РОЗВИТОК АДМІНІСТРАТИВНОГО ПРАВА ТА АДМІНІСТРАТИВНО-ПРАВОВОЇ ДОКТРИНИ В ЛИТВІ

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Система національного права та відповідна система демократичної влади повинна гарантувати оптимальний захист основних прав і свобод людини та допомагати створювати добробут людей. Наука адміністративного права постійно розвивається, її погляди мають стратегічний характер та орієнтовані на майбутнє. Часто йде боротьба за впровадження або заперечення нових ідей, думок, концепцій і парадигм. Нові, старі,

неточні твердження змінені, щоб бути більш точними, нові ідеї – щоб критикувати старі й життєві практики, ставити нові проблеми, на які наука повинна раціонально відповідати. Наука про адміністративне право в Литві не стоїть на місці, вона постійно змінюється внаслідок зміни самого адміністративного права. Поняття адміністративного права змінюється, його регулювання розширюється. Наука про адміністративне право є невід'ємною частиною литовської юридичної науки, де фахівці з адміністративного права досліджують суть цієї галузі, її предмет та окремі інститути, усі актуальні проблеми адміністративно-правової практики й науки.

Представлена стаття є першим науковим дослідженням у циклі «Розвиток адміністративного права та адміністративно-правової доктрини в Литві». ***Мета статті*** *– розкрити розвиток адміністративного права та доктрини адміністративного права в Литві з 1990 р. шляхом аналізу робіт литовських учених у цій галузі за категоріями, що визначені в завданнях дослідження. Для досягнення мети необхідно виконати такі завдання: коротко представити й обговорити розвиток литовського адміністративного права, науки та адміністративного права як категорії; визначити й проаналізувати цілі адміністративного права, предмет регулювання та систему адміністративного права в Литві. Для досягнення мети й завдань дослідження було проведено аналіз праць литовських учених та основних законів, які здійснюють адміністративно-правове регулювання в Литві.*

Методи. *Під час дослідження використано історико-порівняльний, документальний аналіз, синтез та інші методи.*

Результати *дослідження показали, що в Литві є сучасне адміністративне право та система адміністративного правосуддя, що відповідає вимогам стандартів правосуддя Європейського Союзу.*

Висновки. *За результатами дослідження можна зробити висновок, що литовські вчені розуміють адміністративне право в широкому сенсі як правове регулювання та описують досить широке коло питань, які воно розглядає. Після вступу Литви до Європейського Союзу та набуття його acquis communautaire вся правова система Литви разом з адміністративним законодавством повинна була адаптуватися до змін. Імплементація положень законодавства Європейського Союзу в законодавство Литви стала пріоритетним завданням. Велика кількість адміністративно-правового регулювання на рівні Європейського Союзу та необхідність його застосування в судовій практиці створили складні завдання для науки адміністративного права. Точний аналіз застосування законодавства Європейського Союзу у сфері державної влади й державного управління в Литві, аналіз адміністративно-правових систем у державах – членах Європейського Союзу, пошук схожих і відмінних рис, ефективний захист прав і законних інтересів особи, коли держава-член неправильно застосовує (відмовляється) від положень законодавства Європейського Союзу, юрисдикція національних судів щодо розгляду збитків (наприклад, збитку, викликаного неналежним застосуванням державою законодавства Європейського Союзу) та інші питання стають предметом дослідження сучасного адміністративного права.*

Ключові слова: адміністративно-правова наука, адміністративне право, державне управління, адміністративне правосуддя, правова доктрина.

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ADMINISTRATIVE APPEALS IN THE EUROPEAN UNION: TOWARDS A COMMON MODEL OF ADMINISTRATIVE JUSTICE

Purpose. *The aim of this paper is to analyse the activity of the European agencies as a mechanism of control prior to the judicial review. This procedure is carried out by independent and impartial administrative tribunals. This model supposes to create specialized administrative organs that solve conflicts previous to the judicial procedure. The "agencies model" is mainly used in western countries with legal Anglo-Saxon reminiscences. In this paper we analyze the importance of these agencies and its possibilities for improvement in the near future.*

Method. *To achieve this goal it is necessary to: 1) analysis the creative solutions of the agencies courts; 2) verify the performance of agencies through the information provided by themselves; 3) discuss the judicial decisions from a scientific perspective. This process has been implemented through direct contact with experts and professional actively involved at these European administrative courts.*

Results. *EU law is haphazardly creating a system of administrative review that is in many cases a pre-condition to judicial review. This system is most evidently manifesting itself in the application of EU law by administrative agencies. For this purpose, some of the EU's most important agencies have created specialised bodies known as boards of appeal. These objective and independent bodies have the power to review the decisions of the agency they form part on based on both questions of law and fact. The paper aims to establish a critical vision of the role that new judicial forms are developing and the importance of to reach a specialized criterion for solving technically increasingly complex issues.*

Conclusions. *The board-of-appeal model has proven a successful one as it offers parties a low-cost and effective way of having their complaints resolved without having to go to the European Union Court of Justice. Lastly, there appears to be a need for the European Union to, as it is currently doing with administrative procedure, establish a common set of rules for this emerging remedy for reviewing European administrative acts.*

Key words: *administrative law, European agencies, boards of appeal, courts, process, access to judicial review.*

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1. Introduction

Until relatively recently, the EU administration was basically the sum total of the administration of Member States. However, it is gradually playing an ever more prominent role in the application of EU law, both in the EU's centralised structure and in its increasingly important administrative institutions, typically via the agency model.

The application of EU law by the emerging Community administration has generated significant debate on whether there is a need for a common European administrative procedure that establishes a series of general guarantees for all direct intervention of these administrative structures. Arguments in the literature aside (Viñuales Ferreiro, 2015a; Fuertes López, 2012; Soriano García, 2012; Fuentetaja Pastor, 2014: 329–369; Parejo Alfonso, 2000: 229–278; Alonso García, 2012; Hofmann, Türk, 2009; Hofmann et al., 2011; Craig, 2012; Chiti, 2002; Mir Puigpelat et al., 2015), two key EU institutions have already called for a "procedural codification". First, the European Parliament passed a resolution on 15 January 2013 recommending to the European Commission that a "Law of Administrative Procedure of the European Union" be passed. The European Court of Auditors also advocates this in its Opinion 1/2015. And on 13 January 2016, a proposal for a regulation on the administrative procedure of the EU was published that had been adopted by the European Parliament's Committee on Legal Affairs the week before[1].

Although we find no direct reference to EU administrative procedure in primary law, with signing of the Lisbon Treaty, a particular set of rights became fundamental that are best understood in relation to administrative procedure. These fundamental rights are encompassed by the right to "good administration", which specifically entails the rights for citizens to have their "affairs handled impartially, fairly and within a reasonable time"; have access to their files; be heard; be given reasons for administrative decisions; use one of the EU treaty languages to communicate with institutions; and, lastly, have any damage caused by EU institutions or its agents repaired. Previously only recognised in EU case law, art. 41 of the Charter of Fundamental Rights of the European Union first sets down good administration as a general legal

[1] URL: http://polcms.secure.europarl.europa.eu/cmsdata/upload/0cc27221-1fd6-4023-9ad5-ec87fb4010fc/regulation.PDF.

principle, which includes the majority of principles essential to the administrative procedure of a rule-of-law state.

Therefore, although a specific legal rule is yet to materialise, there does appear to be consensus that one should exist, and it should not be too long before we see a European code of administrative procedure on the pages of the Official Journal of the European Union. Until now, however, the debate has overlooked the need or benefit of including in any common procedural framework a system of administrative appeals – like those existing in many Member States – for challenging administrative decisions before the administration itself or before specialised bodies prior to reaching the control that the European Court of Justice must necessarily offer.

Neither in the literature or the institutions has there been any debate on the need to implement a model of "administrative justice" that involves establishing a system of administrative appeals such as that found in Spain. However, despite this lack of debate, European positive law does contain the seed of an EU legal system of administrative justice or appeals. And while it is still only a loosely structured and in some aspects rudimentary system, it contains elements that the Spanish model could adopt to correct some of its well-known shortcomings.

As a minimum guarantee for a European Union subject to the principles of a rule-of-law state, it must be possible to contest administrative decisions made as a result of applying EU law by the EU administration before the Court of Justice of the European Union. However, as occurs in most Member States, before an action can be pursued in a court of law, there is the requirement, or at least the possibility, of filing what we could call an "administrative appeal" before the EU administration. J. Ziller claims: "<…> there are major differences from one Member State to another regarding the obligation to file an administrative appeal before filing a complaint before the court of competent jurisdiction. In Germany, an administrative appeal must be filed before a complaint can be filed with an administrative court. In France, for instance, there is no general obligation. The TFUE only requires a prior administrative appeal for appeals against bodies, offices and agencies of the EU for failing to act. In many Member States, although there is no general requirement for a prior appeal, it is often required for specific cases set out in the sectoral legislation" (Ziller, 2012: 53–54). Among other reasons, the diverse and varied nature of the national models of administrative justice has meant that such a question has not been examined to any depth, not even in the literature (essential reading on this topic is the Professor Luca Di Lucia of the University of Salerno, who has examined more thoroughly than anyone in Europe, and also nearly exclusively, the appeal system in the European Union (Di Lucia, 2014; Di Lucia, 2013; Chirulli, Di Lucia, 2015a; Chirulli, Di Lucia, 2015b; Navin-Jones, 2015); in the Spanish literature, the first attempt at an analysis of the boards of appeal was done by Professor Fernando López Ramón (López Ramón, 2007)).

Thus, this article sets out to (a) identify cases where EU law has established an administrative appeal model, (b) outline the heterogeneous legal framework of this model, and (c) sketch out a possible administrative justice system that is indirectly and almost unintentionally being developed at the heart of the EU. Once we have described the main characteristics of this system, we will be in a position to determine

whether it contains any elements we might be able to adopt to improve the Spanish administrative appeal system.

Aside from the control of the EU administration provided through institutions such as the Court of Auditors, the Ombudsman, the European Data Protection Supervisor and the European Anti-Fraud Office (OLAF), which do not really bear resemblance to a traditional system of administrative appeals, at the core of EU administration, where procedures directly affecting the rights and interests of European citizens are resolved, we find two examples of control or internal review of EU administrative acts that resemble administrative appeals under Spanish law: a) review procedures before the body responsible for the act being appealed or internal review; b) procedures resolved by independent committees created within Community agencies (Di Lucia, 2014: 299). In addition to the two systems mentioned, Di Lucia also includes the review offered by some sectorial regulations that allows for a type of hierarchical appeal before the European Commission against illegal acts by particular European agencies. For instance, this author cites art. 18 of Regulation 337/1975 (European Centre for the Development of Vocational Training), art. 122 of Council Regulation 207/2009 (Community trademarks), art. 44 of Council Regulation 2100/94 and art. 22 of Council Regulation 58/2003 (executive agencies). This does not entail controlling the activity of EU agencies via specific and independent bodies created in these agencies but is an external control carried out by the European Commission. However, it does not appear to be a sufficiently developed system, and it does not bear the characteristics of a review system equivalent to an administrative appeal system. It approximates a kind of "internal" appeal for reconsideration that is a manifestation of the control the central administration has over an instrumental body dependent on it.

These two administrative review systems have three characteristics that make them comparable to an administrative appeal system such as that found in Spanish law: a) they are established in secondary legislation as provided for in art. 263 of the Treaty on the Functioning of the European Union (TFEU); b) they give rise to binding decisions; c) a decision from them is a pre-condition for judicial review. Therefore, the procedures of the Ombudsman do not meet these requirements as, in accordance with articles 228 of the TFEU and 3 of the Ombudsman's Statute, its decisions are not binding. Neither can infringements of European codes of conduct or purely optional administrative appeals such as appeals to the European Data Protection Supervisor be considered appeals in this sense.

In any case, the most clearly developed model of "administrative appeals" is offered by the specialised bodies, the boards of appeal, found in some EU agencies for resolving appeals. Here is where we find the origin of what may become a common model of administrative justice in the European Union. Although the TFEU neither governs nor expressly refers to EU agencies, from the 1990s on, there has been a significant increase in the number and presence of such agencies in the legal and administrative framework of the EU. This phenomenon is clearly described by J. Avezuela Cárcel (Avezuela Cárcel, 2012). It has been by means of art. 352(1) of the TFEU that most of these true entities have been created, which, alongside the EU Commission, constitute the essence of the EU administration.

European agencies (also called offices, centres, foundations, observatories, etc.) are specialised bodies of the EU administration established by secondary legislation for carrying out specific tasks. They are equipped with a range of competences and powers and have legal personality and functional autonomy, although they are subject to heterogeneous frameworks of administrative and judicial controls. Their organisational structure usually includes a management or administration board; an executive director; committees of experts, technicians and scientists; and a financial controller. They are normally funded by European subsidies allocated in the General Budget of the European Union. The organisation of the agencies depends largely on the regulation that creates them, which usually authorises the management board to create its internal regulations, which means agencies have broad scope for autonomous organisation. Both in terms of how they appoint their management bodies and with regard to financing, physical locations and internal legal frameworks, agencies are truly independent administration bodies that act fairly autonomously from the political power.

As has occurred in Spain, the excessive proliferation of institutional bodies has caused the EU to question whether these agencies should be reduced or reorganised. There are currently over 40 agencies[2].

As they all form part of the EU, all decisions by European agencies may be reviewed in the last instance by the Court of Justice of the European Union. However, in some cases, the EU agency itself has an internal procedure for reviewing its acts by which administrative appeals are heard and ruled upon by a specialised body created by the agency. This specialised body is usually called a "board of appeal". There is a clear separation of functions between the board of appeal and the agency to guarantee the independence of the board of appeal. Aside from this internal control by the agencies and the last-resort review provided by the Court of Justice of the European Union, there are other controls such as those foreseen in certain founding regulations of the EU Ombudsman and the European Court of Auditors.

In accordance with art. 298 of the TFEU requiring that institutions, bodies, offices and agencies of the Union be supported by an open, efficient and independent European administration, the direct basis for establishing internal review mechanisms for the decisions of Community bodies is found in art. 263 paragraph 5.

As we will see, the regulations of some of the most important EU agencies provides for the creation of independent and impartial boards of appeal formed by independent and impartial specialists who review, substituting in many cases, the act of the executive body of the corresponding agency.

This mechanism for reviewing the acts of Community agencies by means of specialised boards and bodies is likely to gradually become the model of administrative justice applicable to the increasingly numerous cases in which the application of European law is carried out directly by EU institutions. On the other hand, some of these boards of appeal may turn out to be the seeds of specialised courts as set out in art. 257 of the TFEU, which

[2] For a categorical listing of EU agencies, see the following EU information page: http://europa.eu/about-eu/agencies/index_es.htm. For a general rundown on the role of EU agencies and their classification, see the COM(2002) 718 final Communication from the Commission, "The operating framework for the European Regulatory Agencies".

has, for instance, given rise to the creation of the European Union Civil Service Tribunal and the proposed creation of the Community Patent Court (López Ramón, 2007: 562).

In any case, this embryo of "specialised administrative justice" more closely resembles the common-law model than the continental one. Although, as I will elaborate on, Spain has also had some experience with similar instruments, the United Kingdom and United States have by far the longest traditions with such systems. In the case of the United Kingdom, these originally administrative boards have gradually become more judicial in nature as they have come to exercise jurisdictional functions – being, in fact, composed partly by professional judges – and lighten the judiciary's caseload of conflictive and high-volume matters such as immigration and asylum (Chirulli, Di Lucia, 2015a: 9).

In Spanish law, there are examples of bodies that exercise internal and specialised administrative control. These are the tax appeal boards, the Administrative Tribunals of Contractual Appeals (*Tribunales Administrativos de Recursos Contractuales*), the Administrative Court for Sport (*Tribunal Administrativo del Deporte*) created by Organic Law 3/2013 of 20 June and the Provincial Boards on Condemnation Proceedings (*Jurados Provinciales de Expropiación Forzosa*) and the bodies with identical functions and similar composition created by the autonomous communities. The model of specialised bodies ruling on administrative appeals is therefore by no means new to Spanish law, neither in positive law or the literature. Some time ago, Professor Tornos Más proposed a system of administrative appeals that would be optional and handled through an informal and free procedure ruled on by non-hierarchical bodies of mixed membership (civil servants and professionals appointed according to subject matter competence) who cannot be removed during their appointment. The key is to create specific bodies external to the hierarchical structure with powers for resolving or deciding appeals (Tornos Más, 1993).

2. Common characteristics of EU agency boards of appeal

After examined the legal framework of the boards of appeal of six EU agencies[3], we are in a position to identify the most significant common features characterising this initially diverse and heterogeneous model. Despite this legal and organisational diversity (which is to be expected given the absence of any unifying framework), systematically identifying the most important features will allow us to map out the main characteristics of a possible common European model for administrative appeals by specialised bodies.

2.1. Legal nature of the boards of appeal

The great majority of the regulations for the boards of appeal aim to guarantee their autonomy and independence with respect to the entity that creates them and issues the contested decisions, i.e., the corresponding EU agency. Both how members are appointed and, secondly, the reinforced guarantee of their functional autonomy might lead us to consider the boards of appeal as judicial bodies or at least hybrid or quasi-judicial bodies. Indeed, in some respects, they can be seen as courts. For instance, they can submit requests for preliminary rulings to the Court of Justice of the European Union.

[3] Agency for the Corporation of Energy Regulators, European System of Financial Supervision, Community Plant Variety Office, European Aviation Safety Agency, European Chemicals Agency and Office for Harmonization in the Internal Market (Trade Marks and Designs).

A recent judgment of the Court of Justice (Grand Chamber) (6 October 2015)[4] spelt out the requirements for considering an entity, regardless of its national status, a jurisdictional body for Community purposes for requesting preliminary rulings in accordance with art. 267 of the TFEU. In applying these requirements in this case, the Court of Justice determined that the *Tribunal Català de Contractes del Sector Públic,* an administrative court for appealing public contracting decisions, was indeed a jurisdictional body for the purposes of art. 267 of the TFEU.

Despite this case law, which only refers to the possibility of requesting preliminary rulings, when the Court of Justice of the European Union has directly examined the legal nature of the boards of appeal, it has ruled that, regardless of their composition and independence, they are authentic administrative bodies and not courts. For instance, Judgment of the Court of First Instance (Fourth Chamber) of 12 December 2002[5] states that: "<…> while the Boards of Appeal [of the OHIM] enjoy a wide degree of independence in carrying out their duties, they constitute a department of the Office [i. e., the OHIM] responsible for controlling, under the conditions and within the limits laid down in Regulation № 40/94, the activities of the other departments of the administration to which they belong. Since a Board of Appeal enjoys, in particular, the same powers as the examiner, where it exercises them it acts as the administration of the Office [i.e., the OHIM]. An action before the Board of Appeal [of the OHIM] therefore forms part of the administrative registration procedure <…>".

As boards of appeal are administrative bodies, in its judgment of 13 July 2015[6], the Court of First Instance (Fourth Chamber), in determining the reasonable time for a board of appeal (in this case, of the OHIM) to provide its decision, finds that the criteria and rights set out under art. 6 of the European Convention of Human Rights, which sets out the rights of individuals with regard to the administration of justice, are not applicable. However, precisely given the administrative nature of the board, this court did not leave the individual concerned in this case unprotected, stating that the decisions of boards of appeal must be issued in a reasonable timeframe as this is a requirement of the general legal principle of good administration provided for in art. 41 of the Charter of Fundamental Rights of the European Union for administrative procedures in the EU (Bacigalupo Saggese, 2012; 465).

[4] *Consorci Sanitari del Maresme v Corporació de Salut del Maresme i la Selva* (2015) (C-203/14) EU:C:2015:664, Request for a preliminary ruling from the Tribunal Català de Contractes del Sector Públic (Spain). In this case, other judgments were cited, including *Vaassen-Göbbels*, 61/65, EU:C:1966:39, and *Umweltanwalt von Kärnten*, C-205/08, EU:C:2009:767.

[5] *Procter & Gamble v OHIM (T-63/01)* (*Soap bar shape*) [2002] E.C.R. II-5255. Along the same line, also see, among others, Judgment of the Court of Justice of 20 September 2001 *Procter & Gamble v OHIM (BABY-DRY)* (T-163/98) [1999] E.C.R. II-2383 and Judgment of the Court of First Instance (Fourth Chamber) of 13 July 2005 (*The Sunrider Corp. v OHIM (*T-242/02) [2005] E.C.R. *II-02793*. Also see Judgment of the General Court of the European Union (Eighth Chamber) of 11 December 2014 (*Heli-Flight GmbH & Co. KG, v AESA (T-102/13) EU:T:2014:1064).*

[6] Judgment of the Court of First Instance (Fourth Chamber) of 13 July 2005, *The Sunrider Corp., v OHIM* (T-242/02) E.C.R. II-02793.

Finally, in addition to the organisational and structural aspects of the boards of appeal, it is their objective jurisdiction and, therefore, their capacity to act, that sets them apart from jurisdictional bodies. The fact that they can substitute technical decisions of the EU administration and that they do not just review the legality of the decision is a strong indicator that the boards are actually administrative and not judicial bodies.

2.2. Functional independence of the boards of appeal

The regulations for all the boards of appeal reiterate that these bodies are created for reasons of procedural economy and are independent of the Community agencies that create them. Aside from the guarantee of impartiality and independence of their members, which we will come back to, in its creation of these types of bodies, EU law supports their functional independence. Formally at least, this independence is found both at the regulatory level and in terms of administrative structure (see, for instance, Regulation (EC) 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (ACER), Recital 19. See also, Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), Recital 59). All the regulations creating these boards of appeal expressly and emphatically state that their members may not receive instructions from any member of any other body in the agency.

As EU case law demonstrates, one of the most important characteristics of these boards of appeal is the independence with which their members are able to act, free from instructions from their respective EU agencies or offices. As the Court of Justice finds in Judgment of the Court of First Instance (Second Chamber) of 30 June 2004[7] (paragraph 33): "Boards of Appeal and their members have functional independence in carrying out their tasks. The Office [i. e., the OHIM] cannot therefore give them instructions".

However, there are certainly grounds for questioning this independence given that, for instance, the budget and the resources of the boards of appeal clearly depend on the budget and resources of the agencies that create them (Navin-Jones, 2015: 165). Somehow guaranteeing or strengthening the budgetary autonomy of the boards of appeal with respect to the agencies they officially form part of would significantly contribute to their desirable and fundamental substantive and functional independence.

3. Objectivity, impartiality and independence of board of appeal members

The pronouncement that boards of appeal are autonomous and independent finds its real basis in a series of measures aimed at ensuring the objectivity, impartiality and independence of the members of the boards of appeal. All the measures, which are listed and examined below, are proceeded by the following general statement found in all the regulations looked at: "The members of the boards of appeal are independent and will not be bound by any instructions". This would, of course, be an empty statement if it were not accompanied by and embodied through specific measures and strategies such as the ones listed in the following sections.

3.1. Appointing of board of appeal members: public call, required technical qualifications, and formal declarations of interest and commitment to independence

Board of appeal members are usually appointed by the highest governing body of the corresponding agency – the management or administration board. This discretion-

[7] In *GE Betz v OHIM – Atofina Chemicals (BIOMATE) (*T-107/02) E.C.R. II-01845.

ary decision is limited to the extent that members can only be selected from a list proposed by the European Commission. In turn, the Commission's proposal usually comes out of a public call for expression of interest done after consultation with some other specialised body of the European Union.

In some agencies, the discretional appointing of board of appeal members is even further limited as it is frequently conditioned regarding the origin of the candidates. For instance, board of appeal members may have to be selected from candidates who belong to or have belonged to regulatory bodies of a given sector.

For example, Regulation (EC) 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, art. 18(1), states: "The Board of Appeal shall comprise six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector". Both with regard to the appointment process and the professional requirements of board of appeal candidates, Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) ("ESA Regulation"), art. 58 provides for similar measures, although they are, logically, related to the competence area of the corresponding administrative authority. As does art. 41 of Regulation (EC) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ("EASA Regulation"). See also art. 89(2) of Regulation (EC) 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency. This last regulation contains a more up-to-date public call of interest for board of appeal candidates.

In most of the regulations of the boards of appeal, the guarantee and commitment to impartiality and independence for each of the members of the board usually takes the form of a written document or declaration stating their commitment and declaration of interests in which they indicate the absence or presence of any direct or indirect interest that may compromise their independence. These declarations are public and must be done annually (ACER Regulation, art. 18(7), and the ESA Regulation, art. 50(6)).

3.2. Term of office, renewal and impossibility of removal: five-year, renewable terms and removal by the agency or the Court of Justice of the European Union

The terms of office of members in "independent" bodies and administrations is a key element to understanding the real extent of the body's autonomy. For the boards of appeal, we do not find permanent terms of office, as occurs with courts. This is, perhaps, the element that most differentiates these administrative bodies from the courts that review the legality of EU activity. In the case of the boards of appeal of Community agencies, practically across the board we see five-year terms of office that can be renewed, normally for one term (an example of this is art. 50(4) of the ESA Regulation). In some cases, members are not limited to one renewed term of office and may renew for additional five-year periods or until retirement age if this age is reached during the new term of office (as occurs in art. 131(1) of Council Regulation (EC) 40/90).

The performance of the duties of board of appeal members is characterised by the fact that they cannot be removed during their terms of office unless they are found guilty of serious misconduct, and the administrative or management board, after consulting with some other agency body, decides to remove them (see articles 18(3) of the ACER Regulation, 50(5) of the ESA Regulation and 90(4) of the ECHA Regulation).

However, in two instances this guarantee against removal is further strengthened because it requires a decision from the Court of Justice of the European Union, normally at the request of the European Commission and following recommendation by the corresponding management or administration board. This occurs in the OHIM and the CPVO (this is a case in the OHIM in which art. 131(1) and (3) of its regulation prohibits removing the members of the board of appeal, "unless there are serious grounds for such removal and the Court of Justice, after the case has been referred to it by the Administrative Board on the recommendation of the President of the Boards of Appeal, after consulting the chairman of the Board to which the member concerned belongs, takes a decision to this effect"; the same provision is found in art. 47(1) of Council Regulation (EC) 2100/94 of 27 July 1994 on Community plant variety rights). Therefore, in these two cases, the irremovability of the board of appeal members bears closer resemblance to judges than other public servants.

3.3. Incompatibility with other agency duties

Another of the recurring guarantees aimed at ensuring the independence and objectivity of board of appeal members is to prohibit them from performing duties other than their board of appeal duties in any other body of the agency the board of appeal belongs to.

The requirement of very specialised and specific qualifications and experience of board of appeal members and requiring that they come from the sector being regulated could result in real conflicts of interests with regard to the professional commitments of these experts. In addition to other relationships we mention further down that give rise to the obligation of exclusion and the possibility of objecting to these members, the regulations governing these boards of appeal prohibit carrying out any other role or duty in the agency in question (see articles 18(3) of the ACER Regulation, 59(6) of the ESA Regulation, 90(3) of the ECHA Regulation and 131(5) of the OHIM Regulation).

In some cases, they are permitted to perform their duties part-time and are not required to work exclusively on the board of appeal (see articles 47(4) of the CPVO Regulation and 42(3) of the EASA Regulation). One measure not found in the EU regulations but that is considered an important guarantee of independence, both from the administration that appoints the boards and from the business groups that operate in a given sector, is the establishing of a system of *ex post* incompatibilities, as does art. 15 of Spanish law 3/2015 of 30 March governing the duties of senior public officials (*Ley Reguladora del Ejercicio del Alto Cargo de la Administración General del Estado*) (Santamaría Pastor, 2015: 62). An a posteriori guarantee of this nature would safeguard against what some politicians graphically refer to as the "revolving door" phenomenon. Such measures ensure that the decision-making of people with consequential responsibilities in important economic arenas cannot be influenced by the promise of future professional opportunities.

3.4. Exclusion and objection provisions

And if all these formal and substantive guarantees for independence and impartiality established prior to appointment were insufficient, the regulations of the boards of appeal provide for exclusion and objection provisions that are in part similar to those established in the Spanish legislation establishing the legal framework and the common administrative procedure but that go further by allowing a member of the board to object to another member taking part.

In general, members cannot take part in the board of appeal if they have any personal interest in the case in question or they were previously involved as representatives of any of the parties to the proceedings, or if they participated in the decision under appeal (the ACER Regulation art. 18(4)). Furthermore, if for these or any other reason a board of appeal member considers that another member should not take part in an appeal proceeding, this member must inform the board of appeal.

The regulations also state that parties to appeal proceedings may object to the participation of a member of the board of appeal on any of the aforementioned grounds or if they suspect any bias. There are, however, two limitations to objections to board of appeal members: 1) such objections cannot be based on nationality; and 2) while knowing a reason for objection exists, the objecting party to the appeal proceeding cannot take any other procedural step in the appeal proceeding apart from objecting to the composition of the board of appeal (for examples of this, see articles 48(4) of the CPVO Regulation, 43 of the EASA Regulation, 90(5) of the ECHA Regulation and 132(5) of the OHIM Regulation).

3.5. Technical qualification of board of appeal members: possibility of appointing non-legal experts and the requirement for a minimum number of members with legal training

One of the most interesting elements of the legal framework of boards of appeal, which could provide inspiration for improving the Spanish model of administrative appeals, is the possibility of including subject-matter, non-legal experts on boards. Because of their qualifications, these experts can provide the technical knowledge required to review the original decision of the EU agency in question.

Normally, as we saw above, the regulations that establish the agencies and their boards of appeal defer to the internal regulations of the agency with regard to the technical qualifications of board of appeal members. In some cases, the board of appeal must have a majority of legally trained members or at least a legally trained president.

This diverges from the model adopted by the Spanish legislation on public contracting that requires selecting civil servants of a certain grade with a minimum of 15 years' experience, preferably working in administrative law directly related with public procurement. This is precisely the type of very rigid criteria that EU law usually seeks to avoid at all costs in favour of its traditional flexibility and informality. The OHIM Regulation, for instance, sets out in art. 130(2) that: "The decisions of the Boards of Appeal shall be taken by three members, at least two of whom are legally qualified". Article 50(2) of the ESA Regulation is very ambiguous with regard to this requirement stating simply that the "Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality of the Authority's exercise of its power" without specifying a specific number of legal experts.

Depending on the ratio of legally qualified to technical experts on the different boards of appeal, the decisions issued by these boards will put more emphasis on either reviewing the technical aspects of the facts taken into account by the executive body of the agency or on revising the legal and procedural basis of the decision (Chirulli, Di Lucia, 2015a: 21–22). In reference to the technical qualifications set out in the Directive on Public Procurement, while not discarding the presence of non-legal experts, J.A. Santamaría Pastor states it is preferable that these commissions or boards have a majority of legally trained experts given that their duties are based on legal reasoning (Santamaría Pastor, 2015: 45). Indeed, the different stages of the administrative procedures handled by this type of specialised agency emphasise one aspect or the other. Thus, the initial decision made by the executive body of an agency is based on technical criteria. Secondly, any appeal made to the board of appeal involves applying mainly legal criteria but also taking into account technical aspects, taking advantage of the presence of technical experts on the board. Finally, any appeal that reaches the Court of Justice is decided purely on a legal basis.

4. The appeal as a pre-condition for further action

One of the most important aspects to take into account in mapping out the common features of appeals filed with specialised boards of appeal of EU agencies is undoubtedly whether making use of this administrative remedy is a pre-condition for pursuing action in a court.

Although the regulations of the administrative agencies examined are not totally clear with regard to whether filing an appeal with the board of appeal is optional or required for pursuing a further action, an analysis of the regulations on the filing of appeals with the Court of Justice of the European Union against acts of Community agencies suggests that appeals must be filed with the corresponding board of appeal before parties can access the Court of Justice.

Given the variety of functions and competences of some of these agencies, logically, it is only mandatory to file an appeal for matters that fall under scopes of the decision-making powers of the agency in question, meaning that appeals in other areas are optional (For example, the ESA Regulation states that a decision from the board of appeal on matters related to the application of articles 17, 18 and 19 of the ESA Regulations is a pre-condition for accessing the CJEC; this is not the case for ESA decisions on other matters, which can be directly appealed before the court. Furthermore, in accordance with art. 61(3) of the ESA Regulation and art. 265 of the TFUE, an appeal against an ESA for failing to act can be filed (Minguez Hernández, 2014: 14). See also articles 73 of the CPVO Regulation, 63 of the OHIM Regulation and 50 of the EASA Regulation). In my opinion, this element should be revised to make filing appeals before specialised bodies optional in all cases so that it does not constitute a limit or restriction on directly accessing the Court of Justice of the European Union. Let it be the prestige of the board of appeal in question, earnt based on both its effectiveness and the technical quality of its decisions, that make citizens opt for administrative over judicial appeals.

5. Automatic suspensory effect of the appeal on the original decision

In the case of Community administrative justice, as with judicial appeals, the general rule is established in art. 278 of the TFEU, which states: “Actions brought before

the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended".

However, this judicial procedure rule does not always apply to EU administrative appeals. Some of the regulations of certain Community agencies provide for an automatic suspensory effect when a Community act is appealed before a particular board of appeal. This is the case with the Community Plant Variety Office (CPVO), art. 67(2) of whose regulation states: "The filing of an appeal has an automatic suspensory effect on the decision". In this case, the exception is that the appealed decision may be applicable where "circumstances so require" (the ECHA Regulation (art. 91(2)) and the OHIM Regulation (art. 58(1)) also include this provision; in this last case, the Regulation simply states that the appeal has a suspensory effect without specifying any specific time-limits or procedures for rectifying or adopting this preventative measure).

In other cases, the general rule is that the appeal does not have an automatic suspensory effect although, if the board of appeal in question considers that circumstances may warrant doing so, it may suspend the application of the contested decision (see articles 19(3) of the ACER Regulation and 50(6) of the ESA Regulation).

6. Content of the appeal decision: capacity for reassessing the facts and not just the legality of the contested act

As stated above, perhaps the element that most clearly determines the administrative and non-judicial nature of the boards of appeal is the content of their decisions. In accordance with the regulations of the Community agencies they form part of, boards of appeal can substitute administrative decisions of the agency if they consider these decisions entail elements of illegality. This is, therefore, different from the task of judges and courts of reviewing whether an administrative act is lawful. In actual fact and despite the special characteristics of autonomy and independence of these bodies, we have a kind of second procedural stage in which, aided by the mixed composition of the body (both technical and legal experts), the board of appeal can make a new decision based on the facts of the case or completely condition the response that the corresponding agency must formally issue. The board of appeal can, therefore, analyse new facts and adopt a new technical decision. This is what has been referred to in EU case law as "continuity in terms of their functions"[8].

In the majority of cases analysed and based on a review of their decisions, boards of appeal can substitute the decision of any agency body or remit to the corresponding body of this agency binding criteria for a new decision. These are, therefore, full powers for resolving the conflict given that the board of appeal can substitute the decision of the corresponding body or completely condition the new decision that the agency must issue.

[8] See *Procter & Gamble v OHIM (Soap bar shape)* (T-63/01) [2002] E.C.R. II-5255. Along the same line, also see, among others, Judgment of the Court of Justice of 20 September 2001 *Procter & Gamble v OHIM (BABY-DRY)* (T-163/98) [1999] E.C.R. II-2383 and Judgment of the Court of First Instance (Fourth Chamber) of 13 July 2005 (*The Sunrider Corp. v OHIM (*T-242/02) [2005] E.C.R. *II-02793*. See also Judgment of the General Court of the European Union (Eighth Chamber) of 11 December 2014 *Heli-Flight GmbH & Co. KG v EASA* (T-102/13) EU:T:2014:1064.

Given the technical background of some or at least one of its members, the board of appeal has the capacity to substitute the technical reasoning of the agency. The scientific basis for an agency decision, for instance, could be substituted by the board of appeal, whereas the Court of Justice of the European Union's review would only be based on grounds of legality.

Therefore, the board of appeal does not have to justify any correction of a decision issued by an agency body on grounds of illegality. It only needs to find flaw in the technical arguments used initially by the agency to rectify its decision. For instance, in its judgment of 13 March 2007, the Court of Justice (Grand Chamber)[9] states: "Second, no reason of principle related to the nature of the proceedings under way before the Board of Appeal or to the jurisdiction of that department precludes it, for the purpose of giving judgment on the appeal before it, from taking into account facts and evidence produced for the first time at the appeal stage".

It is basic EU legal doctrine that while the courts must control the legality and legitimacy of any specific decision or act by an EU body, they generally cannot substitute the assessment of questions of relevant facts, reasoning or the opinion of the body that made the initial decision. As stated in the DIR International Film case: "The Court of Justice and the Court of First Instance cannot under any circumstances substitute their own reasoning for that of the author of the contested act"[10].

In a recent judgment (13 May 2015), the Court of Justice of the European Union clearly and emphatically states: "It should be noted that the review carried out by the General Court under Article 61 of Regulation No 6/2002 is a review of the legality of the decisions of the OHIM Boards of Appeal. It may annul or alter a decision against which an action has been brought only if, at the time the decision was adopted, it was vitiated by one of the grounds for annulment or alteration set out in Article 61(2) of that regulation. It follows that the power of the General Court to alter decisions does not have the effect of conferring on that Court the power to substitute its own reasoning for that of a Board of Appeal or to carry out an assessment on which that Board of Appeal has not yet adopted a position. Exercise of the power to alter decisions must therefore, in principle, be limited to situations in which the General Court, after reviewing the assessment made by the Board of Appeal, is in a position to determine, on the basis of the matters of fact and of law as established, what decision the Board of Appeal was required to take"[11].

However, this limitation on the EU courts does not extend, nor is applicable, to boards of appeal because, as stated above, they are not judicial bodies that must

[9] *OHIM v Kaul* (C-29/05) [2007] E.C.R. I-02213.

[10] DIR *International Film and Others v Commission* (C-164/98 P) [2000] ECR I-00447. See also *Spain v Commission* [2007] (C-525/04 P) ECR I-9947 and *Pfizer v Council of the European Union* (T-13/99) E.C.R. II-03305.

[11] Judgment of the General Court (Eighth Chamber), *Group Nivelles v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, (Case T-15/13) T:2015:281 (2015). See also the judgments of 5 July 2011 in *Edwin v OHIM*, (C-263/09) E.C.R. I-05853 and of 5 May 2015 of the General Court of the European Union in *Spa Monopole/OHMI – Orly International (SPARITUAL) v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (T-131/12) C:2014:317.

only review the legality of the administrative activity. In Spanish law, the opposite occurs with the Public Procurement Administrative Courts. Despite being specialised administrative bodies, their decisions cannot contradict the intention of the contracting administrative body that initially issued the decision, and any new decision must be issued by the original administrative body (art. 47(2) and (3) of the Consolidated Text of the Spanish Law on Public Procurement (*Texto Refundido de la Ley de Contratos del Sector Púbico*)).

Providing for a complete review of the administrative decision by the boards of appeal, as occurs traditionally in the Spanish appeal system, is much more useful and effective. Such an administrative appeal system is likely to provide greater satisfaction to the appellant than through the obtaining of an administrative appeal strictly linked to the claims in the appeal filed. In addition to the fact that the appellant would be saved the ordeal usually entailed in trying to enforce a judgment, sidestepped completely with a favourable decision from an administrative appeal (Escuín Palop, Belando Garín, 2011: 40).

Despite this interpretation, there is another course of action open to boards of appeal. They can decide to consider only the legality of the measure adopted by the executive body of the agency without proceeding to substitute or replace its decision. This occurred, for instance, with the decision of the ECHA board of appeal in the *Italcementi* case[12]. In this case, the board of appeal, decided not to reassess the evidence or evaluate the factual basis. It simply annulled the decision of the ECHA for violating the principle of good administration by giving a very short time-limit for the appellant to resolve a particular matter.

However, once we have established that boards of appeal have the power to totally review agency decisions, the next question is whether they may decide or rule on matters not expressly requested by the parties but that, in any case, may arise in the appeal proceeding. In this regard, in paragraph 37 of its judgment of 13 September 2010[13], the General Court of the European Union (Sixth Chamber) states: "Admittedly, having regard to that continuity, the extent of the examination which the Board of Appeal must conduct with regard to the decision which is the subject-matter of the appeal is not, in principle, determined by the grounds relied on by the party who has brought the appeal. Even if the party who has brought the appeal has not raised a specific ground of appeal, the Board of Appeal is none the less bound to examine the appeal in the light of all the relevant matters of fact and of law (Case T-308/01 *Henkel v OHIM – LHS (UK) (KLEENCARE)* [2003] ECR II-3253, paragraph 29, and HOOLIGAN, paragraph 18)".

For P. Chirulli and L. De Lucia, this interpretation is only applicable in proceedings in which the boards of appeal must rule on disputes between two individuals as occurs with the boards of appeal of the OHIM (one party applies to register a trade mark and another

[12] *Italcementi Fabbriche Riunite Cemento S.p.A. Bergamo v ECHA*, A-007-2012, 25 September 2013. URL: https://echa.europa.eu/documents/10162/13575/a-007-2012_boa_decision_en.pdf.

[13] *Inditex v OHIM* (T-292/08) EU:T:2010:399. See also paragraph 80 of Judgment of the General Court of the European Union (First Chamber) of 21 September 2012 in *Wesergold Getränkeindustrie v OHMI – Lidl Stiftung*) (T-278/10).

contests it) and of the CPVO (an individual opposes the granting of a Community plant variety right). In all other cases, these authors believe that the boards of appeal should only review the decision of the corresponding agency based on the appellant's claim (Chirulli, Di Lucia, 2015a: 18).

Another matter that needs to be considered are the restrictions on the Court of Justice of the European Union for reviewing the decision of a board of appeal. Should it be bound by the pleadings made in the administrative appeal proceedings or can it rule based on other matters? In its judgment of 15 April 2010 (C-38/09 P), the Court of Justice of the European Union (Second Chamber) appears to lean towards the classic interpretation (in national law): "Facts not submitted by the parties before the departments of the CPVO cannot be submitted at the stage of the action brought before the General Court. The General Court is called upon to assess the legality of the decision of the Board of Appeal by reviewing the application of European Union law made by that board, particularly in the light of facts which were submitted to the latter, but that Court cannot carry out such a review by taking into account matters of fact newly produced before it (see, by analogy, Case C-29/05 P OHIM v Kaul [2007] ECR I-2213, paragraph 54)".

While this is the general rule, there is another line of EU case law that affords a certain amount of flexibility to the Court of Justice for dealing with matters not expressly stated by the parties in the appeal proceeding[14].

The review nature of the EU jurisdiction, as occurs with Spanish administrative law, does not allow pleading new facts not part of the administrative appeal before the Court of Justice although new arguments not dealt with or argued previously may be used.

7. Conclusions

The European Union has basically two mechanisms or systems for reviewing the administrative acts it directly implements. The first of these is a type of appeal for reconsideration by which the body that made the decision in question affecting the rights of European citizens may resolve the claim. Given that this option or mechanism is very straightforward without any significant nuance, there is little to be learnt or of use for improving the Spanish administrative appeal model.

The second system for reviewing administrative acts are the specialised and independent bodies known as the boards of appeal that form part of some EU agencies. These boards of appeal are responsible for resolving disputes arising between this particular type of administrative organisation, the agencies, and individuals affected by decisions made by these bodies.

This is a successful model as it has lessened the workload of the Court of Justice of the European Union through the creation of these technically specialised administrative bodies that are both highly regarded and accepted by the citizens and economic sectors affected in each case. The system of administrative review by specialised bodies is well received because it is perceived as a true advance on what a judge or court might decide if the dispute went before an EU court.

[14] GCEU (Appeal Chamber), in its judgment of 10 July 2014, paragraph 110.

Although these boards of appeal vary widely, particularly with regard to their workload, on average 10 per cent of their decisions are contested before EU courts[15]. In other words, in the economically sensitive and specialised sectors in which these EU agencies operate, over 90 per cent of the decisions of their boards of appeal are taken by the citizens and companies affected as acceptable decisions that do not warrant being appealed before EU courts. This is because, among other reasons, these decisions are adopted via administrative procedures that cost significantly less than judicial proceedings and are normally handed down in less time, and the procedure is more flexible.

The power the EU legal system grants to these boards of appeal to completely review agency decisions, which can even include substituting the decision, is a clear advantage over judicial appeals, which in spheres as technical as those in question can only require that the agency instigate a new administrative procedure if it finds some irregularity. Appealing before a board of appeal is often seen as more effective and efficient than pursuing an action before the Court of Justice of the European Union.

It is also a model designed to emphasise the defence of the rights and freedoms of citizens over strictly defending the public interest represented by the corresponding agency. This favourable position of the appellant written into the regulations of boards of appeal is demonstrated, for instance, by the fact that agencies cannot appeal unfavourable decisions of boards of appeal in defence of the public interest they represent before the Court of Justice as, for instance, can be deduced from the case law arising out of the judgment of the Court of Justice (Second Chamber) of 12 October 2004 (C-106/03 P, E.C.R. I-09573). Among other reasons, allowing agencies to appeal board of appeal decisions before the Court of Justice would effectively put these boards outside of the organisational structure of the agencies and break the aforementioned principle of "functional unity" that underlies their legal configuration and nature.

This positive perception of the boards of appeal in Europe is comparable to the case in Spain of the Administrative Tribunals of Contractual Appeals which, at least at this point in time, are seen as a very useful tool for resolving disputes in the economically sensitive area of public procurement, and are based on the same philosophy as EU agency boards of appeal.

The accessibility, specialisation, independence and objectivity, informality, "full powers of review", and low cost are some of the main characteristics of EU agency

[15] For instance, in the case of the OHIM boards of appeal, by far the busiest of the boards of appeal examined, of the 2568 appeals cases handled in 2013, only 291 were appealed before the General Court of the European Union. In 2014, of the 3284 appeals lodged, 281 were contested before the General Court and 33 before the Court of Justice.

In 2015 (until December, when these lines were written), 2382 appeals had been filed, of which 255 had been appealed before the General Court and 45 before the Court of Justice. Therefore, there is a 90 per cent acceptance rate of board of appeal decisions (these statistics are available at: https://oami.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_ohim/the_office/appeal_statistics/appeal_stats_2014_en.pdf and https://oami.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_ohim/the_office/appeal_statistics/appeal_stats_2015_en.pdf).

According to information provided by the OHIM, the courts upheld board of appeal decisions over 80 per cent of the time. Specifically, 95 per cent for *ex parte* cases and 75 per cent for *inter partes* cases.

boards of appeal that have made this a model of success from which certain measures and lessons can be learnt for the necessary and desirable improvement of the Spanish administrative appeal system.

Furthermore, there appears to be a need for the European Union to standardise, as it is doing with administrative procedure, the board-of-appeal system by establishing common rules for this model of administrative review.

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АДМІНІСТРАТИВНІ ЗВЕРНЕННЯ ДО ЄВРОПЕЙСЬКОГО СОЮЗУ: ЩОДО СПІЛЬНОЇ МОДЕЛІ АДМІНІСТРАТИВНОЇ ЮСТИЦІЇ

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Мета. *Метою статті є аналіз діяльності європейських органів як механізму контролю перед судовим розглядом. Ця процедура здійснюється незалежними й неупередженими органами адміністративної юстиції. Така модель передбачає створення спеціалізованих адміністративних органів, які вирішують конфлікти, що передують судовій процедурі. Поняття «модель органів» використовується переважно в західних країнах із правовими англосаксонськими ремінісценціями. У роботі ми аналізуємо важливість цих органів та можливості їх покращення в найближчому майбутньому.*

Методи. *Для досягнення поставленої мети необхідно: 1) проаналізувати творчі рішення судів таких органів; 2) перевірити діяльність органів через надану їм інформацію; 3) розглянути судові рішення з наукової позиції. Цей процес здійснювався шляхом безпосереднього контакту з фахівцями та професіоналами, які активно беруть участь у відповідних європейських адміністративних судах.*

Результати. *Законодавство Європейського Союзу безладно створює систему адміністративного розгляду, що в багатьох випадках є передумовою для судового розгляду. Ця система найбільш очевидно проявляється в застосуванні законодавства Європейського Союзу адміністративними органами. Із цією метою деякі з найбільш важливих установ Європейського Союзу створили спеціалізовані органи, відомі як апеляційні ради. Ці об'єктивні й незалежні органи мають право переглядати рішення органу, до якого вони входять, на основі як питань права, так і фактів. У статті надано критичне розуміння ролі нових судових форм та важливості досягнення спеціалізованого критерію для вирішення технічно дедалі складніших питань.*

Висновки. *Модель апеляційної ради виявилася успішною, оскільки пропонує сторонам недорогий та ефективний спосіб вирішення скарг без звернення до Суду Європейського Союзу. Зрештою, видається, що Європейський Союз має встановити спільний набір правил для цього нового засобу правового захисту для перегляду європейських адміністративних актів, що зараз здійснюється адміністративною процедурою.*

Ключові слова: адміністративне право, європейські органи, апеляційні ради, суди, процес, доступ до судового розгляду.

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ADDITIONAL PROVISIONS TO ADMINISTRATIVE ACTS

Purpose. *Preconditions for the enactment of an administrative act and the legal effects following from enactment of such an act are not always absolutely clear. The reason is life's diversity and the related fact that in life it is impossible to plan everything in advance, therefore, it is also impossible to regulate each detail by law. In this context, there is the need to have certain flexibility in issues connected with the application of legal regulations (as part of the regulatory scope) and their impact (as part of the legal effects of the regulation).*

Methods. *As concerns the regulatory scope, this is implemented by the use of indeterminate legal concepts (assessment). But in turn, the concepts shouldn't breach the principle of the rule of law, and, at the same time, they must be clearly stated. In practice, this is achieved mainly through specifications by a long-term judicial practice which determines the relevant administrative practice.*

Results. *As concerns legal effects, there are regulations providing for discretion and therefore ensuring the possibility for the administrative authority to select the appropriate addressee and means of action. In this context, the administrative authority may also choose whether or not to publish an administrative act with an additional provision. Such additional provisions include determination of the terms, conditions, instruction, a clause on revocability and clause on imposition or modification of an obligation. If the administrative act is published at the discretion of the executive authority, then the act may be extended by additional provisions at the appropriate discretion of the executive body. If the administrative act is not issued under the discretion of the executive body, additional provisions may be added if it is definitely permitted by law or if the additional provision is required only for ensuring the fulfillment of the legal preconditions for the enactment of an administrative act.*

Conclusions. *The article covers the nature and preconditions for enacting additional provisions in administrative law.*

Key words: *administrative act, discretion, indeterminate legal concepts, condition, determination of terms, instruction, additional provision.*

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In the practice of executive authorities, it is often issued administrative acts containing not only one (main) provision of a regulatory nature, for example, a permit. Frequently additional provisions are issued, for example, a provision that the permission for a public catering enterprise is issued on the condition that five additional water closets will be built for guests. This kind of instructions of executive authority along with the main provision is so-called additional provisions which are divided into "real" and "unreal". § 36 part 2 of Federal Administrative Procedure Act (hereinafter referred to as APA) controls "real" additional provisions. According to this section, there is a determination of term, condition, a provision on revocability, instruction, and a clause on imposition or modification of an obligation.

At the same time, there are other alternatives where the executive body independently modifies the main provision. Such provisions are often also defined as "unreal" additional provisions, although, they do not actually operate along with the main provision but deal with its content. Thus, relevant effects mainly follow in the procedural context if it is referred to the re-examination of this kind of unreal additional provisions.

As a rule, the citizen has the right to demand to issue an administrative act, that is its issuance is not under the discretion of the executive authority, which may contain an additional provision if only such additional provision is allowed by the law or if its purpose is to ensure compliance with the preconditions of the administrative act stipulated in the law (§ 36 part 1 of APA).

Example: If the applicant has fulfilled all preconditions for issuing a permit for a catering company, then the permit must be issued to him/her. Executive authority doesn't have any context for coercion. However, if almost all preconditions are fulfilled and if, for example, there is a lack of water closets (in Germany, the law indicates the number of toilet rooms per square meter of guests' service area that have to be available), then the executive body can issue a permit with the condition precedent (§ 36 p. 2 para. 2 of APA) that the relevant water closets will be set up. This is effective: a citizen gets his/her permission which becomes "valid" only when the toilets rooms are fixed, that is when legal preconditions for issuing permission are executed. However, after installing the sanitary facilities, he/she doesn't need to turn to the executive body again. But if he/she does not build sanitary facilities, the permission will not become "valid". Thus, both private and public interests are satisfied.

a) Determination of time limits

In accordance with § 36 part 2 of paragraph 1 of APA, if a term is established, it is referred to a provision whereby the effect of any benefit or any charge takes effect, terminates at a certain point or operates during a particular period of time.

Example: Permit to conduct entrepreneurial activities is issued for the period from January 1, 2015, to December 31, 2017.

In order to insert an additional provision in the form of the determination of a time limit, it does not matter whether the relevant point in time has been already determined by the calendar at the moment of issuance of the administrative act. Thus, it is enough that the determinacy becomes due later. However, the determinacy must be predictable. If there are doubts that the time of the event, the determinacy depends on, takes place, then the case is not about the determination of time limits but about the condition.

Example: The permission for a concession stand at the annual spring market may be not determined in the calendar context at the moment of its issuance that is with regard to dates. Nevertheless, it is clear that the market takes place every year in spring that is it's about the determination of date even if the exact market days are identified later (Kopp, Ramsauer, 2015).

Another typical example of term determination is stay permit for foreigners (for example, visas).

b) Condition

In terms of § 36 part 2 of APA, a condition is a provision whereby validation or termination of benefit or charge depends on the indefinite term of the future event.

It is necessary to distinguish two possible scenarios: suspensive condition and resolutive condition. In contrast with term determination, in the case of effect (suspensive condition) or termination (resolutive condition) of the regulatory provision followed by this administrative act depends on event occurrence which has not been completely undefined at the moment of the issuance of the administrative act.

Example: A foreigner gets a residence permit in Germany exclusively for the period of work for a specific employer (for example, a fine cuisine chef at a specialised restaurant). From the date of termination of the employment contract, the resolutive condition comes into effect and thus, the stay permit automatically terminates (OVC, 1966).

The applicant gets a construction permit under the condition that prior to the building activities and related felling of trees on the construction site, so he/she is obliged to plant the appropriate number of trees on another piece of land. When the trees have been planted on another piece of land, a suspensive condition comes into effect, and the applicant can use the construction permit. The example may be modified by setting instruction due to which the executive body, on the one hand, seeks to have an opportunity for implementing the provision on tree planting and, on the other hand, doesn't want that construction start depends on planting process (condition of processing particular case).

c) Clause on revocability

The clause on revocability provides the executive body with authority, under specific circumstances stipulated by the administrative act or by the legislation or in accordance with the general principles acting towards the competent exercise of discretion, to revoke the administrative act to which the clause on full or partial revocability is attached in

accordance with § 49 part 2 of paragraph 1 or in accordance with the relevant rules of law and, thus, to terminate it in regard to the future (Kopp, Ramsauer, 2015).

In such a case, revocation is a new administrative act which can be independently appealed by virtue of legal remedies (response and claim). This new administrative act may not only cancel the former act (except as otherwise provided herein, however, this is possible exclusively in regard to the future) but also to supplement it with onerous conditions, that is, with other additional provisions.

A special type of revocability clause is the so-called amendment clause. If at the moment of issuance of the administrative act there are doubts towards, for example, an amount of particular payment, the executive authority can provide it with later amendment clause. In such case, the amendment also may take place with retroactive effect due to which the former administrative act (at least partially) can be cancelled.

d) Instruction

According to § 36 part 2 paragraph 4 of APA, an instruction is a provision by virtue of which the beneficiary (that is, the addressee of the administrative act) is enacted with commitment, undergoing and failure of certain actions.

In the context of instructions, this is about independent regulatory provision which is in parallel with regulatory provision of the main administrative act. Although the instruction refers to the act, however, it is independent of it by the content in the sense that the basic administrative act can exist without the regulatory provision of the instruction. If it doesn't, then this is not about a "real" instruction, but about something else (Latin aliud), a substitution. In such cases, this is the so-called determination.

Example: If the applicant filed for a permit to build a house with a pointed roof but got a construction permit related to an "instruction" to build a house with a flat roof, this is not an instruction in the context of § 36 part 2 of paragraph 4 of APA. The "instruction for a flat roof" is not an independent provision; on the contrary, it directly regulates the content of the main administrative act (construction permit). "The instruction for a flat roof" cannot be imaginatively excluded in such a way that the main administrative act keeps its relevance. The applicant filed for a permit to build a house with a pointed roof but he/she got a "substitution", something completely different ("aliud") (so-called "modified instruction"). On a related note, this – unsolicited – permit to build the house with a flat roof is also formally illegal as there is a lack of required application for the construction. However, this formal mistake can be improved by the fact that the applicant uses construction permit and thereby implicitly submits backdating application.

Within this framework, when differentiating instruction and determination, it is necessary to put a question whether the instruction contains an independent regulatory provision which falls beyond the regulatory provision of the main administrative act and has an independent regulatory content, which, if it is necessary, can also be implemented by compulsory enforcement.

Example: If the applicant has received the required permission to build a supermarket, however, it is connected with an instruction to provide cars with appropriate parking spaces, and then this is an independent – separated from the permit for supermarket construction – regulatory provision, that is, a "real" instruction. This instruction also may be independently put into effect. The executive authority could produce parking spaces

by fulfilling this obligation at the developer's expense in the case of failure to fulfill its duties. However, it does not affect either the existence or the validity of the permission to build a supermarket in no way.

Sometimes there are problems with the distinction between instruction and condition. In the above example, one could also think that the executive body wanted to make the creation of parking spaces a condition for the construction of a supermarket. For this differentiation, it is possible to refer to the classical formula of Friedrich Carl von Savigny, the Prussian jurist and the former Minister of Lawmaking of Prussia. In 1840 he noted in his paper "System of modern Roman law" ("Das System des heutigen römischen Rechts"):

A condition suspends but does not enforce;

an instruction enforces but does not suspend (Friedrich Carl von Savigny, 1840).

In addition, Savigny makes a differentiation in the content. If the executive body seeks to achieve the possibility of independent implementation (execution) of "instruction" but that it does not affect the validity of the basic administrative act, then the instruction is accepted. If the executive body, on the contrary, seeks to be able to put into effect not the additional provision but a combination under which the basic provision can be used only after the condition fulfillment, then it refers to the condition in the context of § 36 part 2 of paragraph 2 of APA. Within this framework, in the above example, one may speak about the instruction in the context of § 36 part 2 of paragraph 2 of APA as it is not important for the executive body that parking spaces be build up for a non-existent supermarket. In fact, one can proceed from the fact that parking spaces will be built together with a supermarket, and, if they do not available or there is a lack, the executive authority may also require fulfilling the duty of creating parking spaces by compulsory execution.

e) Clause on imposition and modification of instruction

The clause on imposition and modification of an instruction empowers the executive body to adopt or amend the instruction after the issuance of the main administrative act according to § 36 part 2 of paragraph 5 of APA. Hence, the clause also permits the executive body tightening instructions after the issuance of an administrative act.

A precondition for the clause on instructions is the fact that actual and legal regulation at the moment of issuing of an administrative act, for example, can't be clarified completely, but the executive body did not want to refuse granting the applications for reasons of adequacy. Then, it is provided the opportunity to issue the intended administrative act, however, reserving the right to impose instructions later. But the clause on imposition or modification a prescription cannot be abused in order to provide the executive authority with "complete freedom of action in the future", thereby compensating shortcomings when clarifying facts of the case or during a legal assessment (Kopp, Ramsauer, 2015).

f) Additional provisions

The opportunity of the executive body to issue an administrative act with an additional provision primarily depends on whether the issuance of the main administrative act is under the discretion of the executive authority or there is the right to claim to issue the act. According to § 36 part 1 of APA, an administrative act for the issuance of which there is the right to claim may be issued with an additional provision only if it is allowed

by a certain norm or if it must ensure the execution of the conditions of the administrative act provided for by law.

This is clear: if a citizen has the right to claim issuance; if the executive body has no discretion regarding the act issuance, then it does not have the right to restrict again the right of the citizen de facto or in a "roundabout" way issuing an administrative act only with an onerous additional provision.

If at the moment of issuing an administrative act, on the contrary, not all the conditions necessary for its issuance have been fulfilled, but the executive body may ensure that they will be fulfilled soon, then the principle of proportionality will be consistent if the executive authority does not refuse to issue the administrative act, which the body will be obliged to issue in the near future in any case and will issue it with an additional provision ensuring compliance with all the preconditions provided by law.

Example: A wants to set up a catering enterprise. However, in the old building, there is no certain number of urinal units and toilets, which is fixed by the Regulation on public catering enterprise for such a large service area. Instead of dismissal of permit, the executive authority may issue a permit with the condition that A will install the missing sanitary facilities. This is the best option for both parties: A immediately gets a permit and it has not to go through the licensing procedure again, the executive authority has not to deal again with this case (operating efficiency of the executive authorities).

However, if an administrative act is issued at the discretion of the executive authority, then, the act may be also a supplementary regulation at the relevant discretion of the executive body (Section 36 Part 2 of APL). This is also quite logical. If the executive body has to decide to issue or not to issue an administrative act at the discretion, taking into account all the facts of a particular case, then there may be several possible options for such kind of a decision: refusal to issue an administrative act, issuance of an administrative act according to the application or – the sort of golden mean – issuance of an administrative act but with (restrictive) supplementary regulation.

The discretion of the executive authority is not "free" but always shall be exercised for the purpose of its provision constantly observing statutory limits of discretion (§ 40 of APA).

The executive body does not need an individual provision of the law empowering to issue an additional stipulation in the case when the main administrative act is issued at its discretion; in this context, § 36 part 2 of APA covers it. According to the very wording of § 36 part 2 of APA, it follows that § 36 part 1 of APA is (additionally) suitable in the case of discretionary administrative acts.

g) Differentiation and procedural effects

If the distinction between whether it is a matter of an additional provision to any discretionary administrative act or any related administrative act is more important for the issue of the need for an authorizing norm of law, then the issue of differentiation of individual additional provisions from each other is of central procedural importance. The possibility and way of challenging an additional provision depends on the type of additional provision.

The main rule is the fact that a claim challenging act is an appropriate type of claim with regard to onerous administrative acts. Due to it, a claimant – after passing the procedure of pretrial appeal – has an opportunity to seek full or partial cancellation of an admin-

istrative act by the court. There is no need for special execution or enforcement of a judicial act by the executive authority.

It is beyond argument that this also applies to instructions and clauses on imposition or modification of an instruction (§ 36 part 2 paras. 4 and 5 of APA) (Kopp, Ramsauer, 2015: 60). The very wording of Article 36 of part 2 of APA indicates that these additional provisions may be a subject of an independent dispute: this norm states that an administrative act may be combined with an order or order's clause. But according to the letter of the article, it is allowable to combine only independent mess. It seems logical that such a combination could be again disconnected by means of a suit. In addition, the instruction contains an independent regulatory stipulation that refers to the regulatory provision of the main administrative act or is interrelated with it. Nevertheless, this order meets all the criteria of administrative act fixed in § 35 of APA. Thus, a claimant may also sue for challenging only in relation to an instruction or a clause on imposition or modification of instruction. In the case of success, the court will cancel an instruction, and the claimant will get the main administrative act without an additional provision.

All other variations cause violent disputes in some degree among representatives of science and practice. The classical doctrine relies upon the fact that all other additional provisions cannot be a subject of independent challenging. According to this point of view, the claimant, if he/she disagrees with the additional provisions, must bring suit on enforcement to fulfill an obligation in the form of issuing the main administrative act without the additional provision. In this regard, a claim cannot be filed for challenging just one additional provision (Kopp, Ramsauer, 2015).

The modern doctrine, which the Federal Administrative Court also joined (Entscheidungen des Bundensverwaltungsgerichts), on the contrary, now relies upon on the fact that all (present) additional provisions, which are provided in § 36 part 2 of APA, may be a subject of an independent contestation. This is supported, firstly, by the resulting clarity and uniformity: there is a single legal protection in respect to all additional revisions. In addition, this point of view is favoured by the consideration that the issue of separation of the main administrative act from the additional provision is not a procedural but a substantive legal matter. If so, then this issue is also should be clarified not by virtue of procedural law (type of a claim) but by virtue of substantive law, more specifically in the context of the validity of the claim. Thus, in accordance with this fact, a claim on contestation is relevant in respect of all types of (real) additional provisions, and it is subjected to clarifying whether the main administrative act can lawfully exist without an additional provision under the framework of justification of the claim. Only in this case the claim is justified. Otherwise, the claim must be refused.

Example: If a permit is issued for a public catering enterprise with the condition that, according to Regulation on public catering enterprises, firstly, it is necessary to set up a certain number of urinal units and toilets, the claimant may file an independent claim to challenge this condition in accordance with a new doctrine. However, within the framework of the validity of the claim, the court will verify whether the main administrative act (permission for catering) can legally exist without this condition. If it doesn't (as in this case) the claim on contestation will not be satisfied even if the condition is unlawful and violates the rights of the claimant.

In other words, procedurally there will be no more difference which of the (real) additional provisions provided in § 36 of part 2 of APA are in the process. Claim on contestation is always appropriate. In the context of justifiability, it is necessary to check the followings:

1) the availability of an authorizing provision of law for encumbrance (in this case it includes exclusively encumbrance resulting from an additional provision);
2) pro forma legitimacy of an additional provision;
3) substantive legitimacy of an additional provision (does the additional provision fulfill all the preconditions of the authorizing rule of law?);
4) separable nature (herein, it is verified whether the main administrative act could legitimately exist without an additional provision);
5) violation of claimant's rights.

If all preconditions are available, the claim is justified. If at least one precondition is not fulfilled (for example, separable nature), then it is necessary to dismiss the claim. It is essential to emphasize another practical consequence of the fact that a claim on contestation is appropriate in all cases: an individual claim on contestation under additional provision leads to its suspension according to the rules of § 80 of the Administrative Procedure Code (with provided exceptions).

In the case of availability of so-called unreal additional provisions, that is, those that are not enlisted in § 36 part 2 of APA (for example, "unreal" or modified instruction), but nevertheless there is a rule that an independent claim on contestation in relation to (unreal) additional provision is impossible. In such a case, the claimant has the possibility to fill a claim for enforcement in the form of issuing the desired administrative act.

And there is no another alternative as an unreal instruction does not have – including in procedural terms – any part that can be separated from the basic provision. It independently modifies the main provision and as a result, is not an additional (new) provision but just a constituent part of the main provision. Accordingly, the means of challenging should also be directed to the main provision. However, taking into account the fact that it rarely makes sense for a complainant to dispute the main regulation, and in the case of a modified instruction, as a rule, this means the necessity of filing a claim on coercion to fulfill the obligations in the form of issuing an act.

Example: A applies for a permit to build a house with a pointed roof. A is allowed to build a house with an "instruction" to build a flat roof instead of a pointed one. This unreal instruction or a modified instruction is not an additional instruction in the context of § 36 part 2 of APA because it has no independent regulatory content. On the contrary, it refers to the content of the main provision, thus, there is only one regulatory provision, namely, the provision of the main administrative act. Under this framework, (unreal) additional instruction also cannot be disputed separately by virtue of a claim on contestation. A has to fill a claim on coercion to fulfill the obligation in the form of issuing a permit to build a house with a pointed roof.

Consequently, if the executive body doesn't issue an administrative act, which was requested by the citizen in his/her application, with some restrictive additional regulation but issues a "substitution" that is "something else" ("aliud"), then the citizen has to fill a claim on coercion to exercise the obligation in the form of issuing the desired adminis-

trative act. Thus, there is nothing to dispute separately: otherwise, in our example, after challenging "instruction for a flat roof", the applicant would have the permission to build a house without a roof because the unreal instruction modified the content of the construction permit regarding roof and did not add a second roof to the first one, which also could be removed.

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ДОДАТКОВІ ПОЛОЖЕННЯ ДО АДМІНІСТРАТИВНИХ АКТІВ

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Мета. *Передумови для прийняття адміністративного акта та правові наслідки, що постають із прийняття такого акта, не завжди є абсолютно зрозумілими. Причина полягає в різноманітності життя та пов'язується з тим, що в житті неможливо спланувати все заздалегідь, а отже, закон не може регулювати кожну деталь. У цьому контексті є необхідність мати певну гнучкість у питаннях, пов'язаних із застосуванням правових норм (як частини сфери регулювання) та їх впливу (як частини юридичних наслідків регулювання).*

Методи. *Що стосується сфери регулювання, то воно здійснюється шляхом використання невизначених правових понять (оцінка). Однак поняття у свою чергу не повинні порушувати принцип верховенства права та водночас мають бути чітко визначеними. На практиці це досягається переважно за допомогою специфікації довгострокової судової практики, яка визначає відповідну адміністративну практику.*

Результати. *Якщо йдеться про юридичні наслідки, то є нормативні акти, які передбачають можливість розсуду, а отже, забезпечують адміністративному органу можливість обрати відповідного адресата та засоби дій. У цьому контексті адміністративний орган може також обирати, чи публікувати адміністративний акт із додатковим положенням. До таких додаткових положень належать визначення термінів та умов, інструкції, положення про відкликання та положення про накладення чи зміну зобов'язання. Якщо адміністративний акт публікується на розсуд виконавчої влади, то цей акт може бути продовжений додатковими положеннями за належним розсудом виконавчого органу. Якщо адміністративний акт не видається на розсуд виконавчого органу, додаткові положення можуть бути додані, якщо це чітко визначається законом або якщо додаткове положення необхідне лише для забезпечення виконання правових передумов для прийняття адміністративного акта.*

Висновки. *Таким чином, у статті розглянуто сутність і передумови для ухвалення додаткових положень в адміністративному праві.*

Ключові слова: адміністративний акт, розсуд, невизначені юридичні поняття, умова, визначення термінів, інструкція, додаткове положення.

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EVOLUTION OF ADMINISTRATIVE LAW AND ADMINISTRATIVE AND LEGAL DOCTRINE IN THE REPUBLIC OF BELARUS SINCE INDEPENDENCE

In Belarus, the national doctrine of administrative law has been oriented to a large extent towards the Soviet and modern Russian legal traditions, albeit with some distinct contextual features. In this work, we review the positions of some of the most authoritative scholars, and make a number of summative judgements and conclusions.

The primary aim of administrative law is to provide and create a regulatory framework for the exercise by the government authorities of their mandate and powers.

The objective of administrative law is to govern and regulate the interactions between the executive power and other legal subjects in the performance of its functions.

In the Belarusian doctrine, the predominant position of most scholars is that the scope of administrative law should include the administrative legal relations arising in the course of the exercise by the public administration bodies of their administrative functions, including of regulatory mandates towards external bodies, and in relation to the enjoyment by the citizens of their rights and liberties.

In Belarus, the system of administrative law is customarily understood as an ordered framework composed of institutions, norms and domains, which may be divided into four sections.

The first section encompasses the institutions that determine the legal status in the area of public administration of the citizen, of state bodies, of non-governmental organizations and of civil servants, it also incorporate the institutions that exercise control over the subjects of administrative law.

The second section encompasses the regulations that govern liability under administrative law.

The third section incorporates the norms of administrative procedure.

The fourth section includes provisions that constitute the administrative legal framework for the management of the economy, socio-cultural and other spheres.

Each section is comprised of the relevant legal institutions and sectors.

The greatest challenge for administrative law of in Belarus seems to be the definition of the administrative procedure, which has not changed since the Soviet period. The alternative propositions presented in this work are of a purely theoretical character and should eventually be superseded by a legal definition, which views it as a distinct type of legal procedure governed by the norms of administrative procedure law grounded mainly in the Code of Execution Procedure for administrative torts.

The legal term "administrative procedure" in Republic of Belarus is still identical to the concepts "administrative tort procedure" or "procedure for the hearing of administrative tort cases".

The main method of this study is that of integrated comparative analysis, with elements of the historical and formal-logical method. As a part of a comprehensive study in administrative law in the former Soviet Union, this work is intended to make a contribution to academic debate, by deepening and broadening its scope.

Key words: *public administration, public authorities, executive authorities, scope of administrative law, system of administrative law, social relations, state management, administrative-public organ, administrative proceedings, branch of law, scholarship in administrative law.*

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1. Introduction

The scope of administrative law, administrative process, administrative jurisdiction, public administration, and executive power – these are just some of the terms that remain at the centre of an intense academic debate throughout the post-Soviet space, as the former Soviet republics turned independent states are seeking to establish their own frameworks and doctrines in administrative law by building on the legacy of the Soviet legal tradition that was in turn grounded in the administrative and legal doctrines of the Russian Empire and Roman-German legal system.

The Republic of Belarus is not an exception in this regard. Here, the legacy of the Soviet legal tradition is still strong, as is the influence of the modern Russian doctrine. Participation in a range of regional integration initiatives such as the Union State of Belarus and Russia and the Eurasian Economic Union calls for harmonization and standardization of the national legal system with that of the Union, in which the Russian Federation clearly plays a leading role. However, a number of national distinctions exist, and they are quite substantial, including with regard to notions such as *scope and system of administrative law, administrative procedure* and *administrative jurisdiction.* The Belarusian tradition of administrative law has acquired a dynamic of its own, and seems capable of emerging from the shadow of the still predominant Russian tradition and of making a distinct contribution to the development of legal science, the discipline of law and the domain of administrative law.

The aim of this study is to expose the distinct national features of the Belarusian doctrine of administrative law, to define the main elements of administrative law and to systematize them, and to outline the long-term prospects for the evolution of the administrative law as an academic field. This research appears to be particularly relevant as Belarus is entering a new era in the history of its nation state, and in the construction of a an academic and theoretical base.

The aim of the research, as indicated above, can be achieved by addressing the following *research objectives*:

– to identify and describe the features of the Belarusian doctrine of administrative law as distinct from the Soviet and contemporary Russian tradition of administrative law;

– to provide own definitions of the key notions of administrative law grounded in the Belarusian doctrine of administrative law;

– to identify the prospective areas and pathways of the further evolution of administrative law in the Republic of Belarus.

The main method of this study is that of *integrated comparative analysis*, with elements of the historical and formal-logical method. As a part of a comprehensive study in administrative law in the former Soviet Union, this work is intended to make a contribution to academic debate, by deepening and broadening its scope.

2. Objective and tasks of administrative law

As specified by some of the most authoritative Belarusian scholars, administrative law combines at least three branches of law: Public administration law (otherwise termed administrative law), administrative law of torts and law of administrative execution procedure (Kramnik, Chupris, 2013: 8).

Recently, there has been a tendency in Belarus to equate the notions administrative and public administration law under the influence of the Western legal tradition, where public administration and government administration are synonymous and derive from the Latin word "*administratio*", which literally means "governing"; consequently, the respective areas of law are named *administrative law* in English, *droit administratif* in French, Verwaltungsrecht in German (Verwaltung – management). Remarkably, Part 1 of 2003 edition of the classic three-volume textbook "Administrative law" by A.N. Kramnik – titled "Nature of Administrative Law" was renamed in the 2013 edition (co-authored with O.I. Chupris) as "Nature of Public Administration law", with similar changes made throughout the text.

It should also be noted in this regard that "government" and "public administration" are not equivalent, as this would contradict the meaning of Article 6 of Constitution of Belarus, which stipulates the division of powers into the legislative, executive and the judiciary. Although this commonly accepted division of powers was established without regard to the historical traditions and the actual situation in the Republic of Belarus (Kramnik, Chupris, 2013: 53), the identification of executive power with public administration eliminates the distinctions between the powers altogether. In essence, this approach distinguishes only one branch of power – public administration, as public administration in the broad sense is also provided by the legislature and the judiciary.

Executive power and public administration are not in mutual opposition, but rather have a mutually dependent, connected and complementary relationship. The executive power cannot function without public administration, and likewise public administration cannot be effective without the executive power, as both constitute essential and indispensable parts of one another (Kramnik, Chupris, 2013: 56).

The primary aim of administrative law is to provide and create a regulatory framework for the exercise by the government authorities of their mandate and powers.

Therefore, the main objective of administrative law is to govern and regulate the interactions between the executive power and other legal subjects in the performance of its functions.

3. Scope of administrative law

In Soviet theory, the predominant and most important subject of administrative law was the state, whose interests were placed above those of the individual, while the concept of administrative law as such did not conceive in principle of the possibility of a con-

flict between the Soviet citizen and the Soviet state acting on behalf of the people. The notion of administrative right was brought back into existence by the Attorney-General of the USSR A.Ya. Vyshinsky at the First meeting on Soviet law studies in July 1938. Although A.Ya. Vyshinsky was opposed to the idea of a legal relationship between the government and the citizen (which he viewed as a bourgeois construct), he nevertheless did not rule out the existence and evolution of administrative law on a Marxist-Leninist ideological platform (Belskii, 1997: 18).

The formation in the USSR of an administrative command system of public administration made relevant the utilisation of the experience of state administration from Tsarist Russia, especially in the performance of police functions by the state administrations. As a result, the Soviet doctrine of administrative law has been based, ever since the beginning of the 1940s, on the precepts of the police law of Prussia and Russia from mid-19th century and, which were in turn reinforced for many decades was by Soviet ideological dogma (Kirin, 2012: 54). Therefore, the scope administrative law in the Soviet legal system was confined within rigid limits and did not extend beyond regulating the social relations within the USSR state administration and the exercise of *administrative and executive functions* (Kozlov, 1967: 5–6). Also classic was the approach to the definition of the range of administrative relations subject to administrative law based on three criteria:

1) administrative relations that arise in the context of public administration;
2) such relationships always have a state authority as a subject;
3) such relationships are relationships of power and subordination, and are characterised by the legal inequality of the parties (Kobalevskii, 1924: 30–31, 34–37).

This approach is still common to this day, testifying to the powerful inertia of the Soviet administrative law doctrine (Kononov, 2011: 3). Nevertheless, there a tendency has emerged within the Belarusian legal doctrine transgress the limitations of a narrow interpretation of the scope of administrative law. On the one hand, the administration of government in a democratic state is performed not only by the executive, but also by the legislature, the courts and directly by the citizens (Makh, 2002: 21). This kind of emancipation of an individual citizen, no longer acting only as the "object" of government, and has acquired the powers to govern directly and event "subjugate" the institutions of government to their will is a characteristic of advanced democracies. One telling example in this regard is the right of the Belarusian citizens *to obtain information on the state of the environment*, established by Article 74-4 of the Law "On environmental protection" (titled "Provision of information on the environment to citizens and legal entities other than bodies of government or institutions of the state") (National Assembly of the Republic of Belarus, 1992).

Upon receipt of a formal request from a citizen for information to a government authority, such authority is obliged to provide the information information requested within in the time frame provided by the law, or forward the request to a competent authority which is in possession of the such information. In this process, the citizen directly initiates the administrative procedure, and exercises some degree of direction over it (for example, by requesting additional information or making a complaint to a higher body).

It is also true, however, that the scope of administrative law should not cover any relationship between physical persons or organisations arising in the course of their public interaction that do not directly involve an administrative body but are subject to the supervision or oversight from any such body. Because supervision and oversight from public administration covers almost any private relationship governed by the provisions of civil, labour, land and other areas of law, the scope of administrative law in this case would be extremely vague (Poliakova, 2011: 118).

Recognition of an individual's legal standing under a defined set of conditions is only a first step towards the transition to an advanced democracy. Accordingly, many authoritative Russian scholars conclude that Russia's administrative law is not fully consistent with the rule of law and an advanced civil society. A lot of work still remains to be done by the Russian legal community to develop a modern theory of administrative law, to clarify the details of a modern administrative law theory and of the notions and institutions, to identify new sub-domains of administrative law and to adjusting its framework and system (Rossinskii, Starilov, 2009: 17; Kononov, 2011: 6).

This is also true for Belarus. The Constitutional provision on the status of Belarus as a democratic, law-governed and social state and on the obligation of the state to protect the rights and liberties of individual persons have transformed the standing of an individual in administrative law relationship into that of an active subject with a legal standing (even though still incomplete, owing to the lack of an administrative apparatus). The additional function of government to provide public/social goods to citizens is also a part of public administration in a bread sense (Bentam, 1997: 556; Makh, 2002: 22). The pursuit of this socially relevant objective is dependent on the establishment of an effective legal and administrative mechanism acting, first and foremost, for the exercise of government. The circle is thus fully closed.

Therefore, the scope of administrative law in the Republic of Belarus comprises several main elements distinguished by the groups of the subjects to which they apply.

The scope of the domain of administrative law is centred around the relations between the bodies of public administration and subordinated entities in the administration of government by the executive power.

The key counterpart of the public administration bodies are the citizens of the Republic of Belarus, who exert an influence in the course of the exercise by such bodies of their administrative and legal powers. The provisions of Article 1 of the Constitution defining the status of Belarus as a democratic, law-governed and social state enables citizens to participate in the administration through direct involvement in the decision making processes, including by participating in referenda, petitioning the government authorities and appealing against the actions of administrative officials.

In consequence, the administrative legal relations that constitute the core of the scope of administrative law also arise also in the exercise by the citizens of their constitutional rights and liberties, and create a number of duties for the state if those are violated or infringed upon. In these situations, the public authorities are not engaged in the exercise of power per se, but rather in the internal organisation processes by addressing the weaknesses in administration and making public administration more effective. Therefore, the scope of administrative law should also incorporate the relations that arise

in the administration by the public administration bodies of internal systemic functions to improve organisation and maximise performance.

In sum, the predominant position of most scholars is that the scope of administrative law should include the administrative legal relations arising in the course of the exercise by the public administration bodies of their administrative functions, including of regulatory mandates towards external bodies, and in relation to the enjoyment by the citizens of their rights and liberties (Makh, 2002: 23).

4. System of administrative law

Administrative law governs a distinctly varied range of relations. It is only by building a clear structure of these relations, and building a logically grounded framework – or otherwise a system of administrative law – that an in-depth study and evolution of this legal domain may be possible. In the context of a relatively stable administrative command system of the Soviet state, the widely accepted division of administrative law was into the *general and the special domains*. The general domain encompassed the theoretically defined institutions, while the special part addressed the mechanisms for the interaction among these institutions within specific areas and fields of government. This approach was grounded in the prevalence of the interests of the state over those of the individual person or society (Kirin, 2012: 52).

Despite the conservatism of the legal doctrine of administrative law, the imperative to seek out and build strategies to strengthen Belarusian statehood have brought to life a number of alternative perspectives and positions. A.N. Kramnik, for example, believes that the division of administrative law into the general and special domains is not fully justified or useful. In support of his view, he refers, among other things, to the disruption of the internal consistency and coherence of the administrative procedures in administrative tort cases. A.N. Kramnik is also opposed to the inclusion of administrative procedure norms in the general domain and supports their separate treatment in a dedicate sub-area of administrative law (Kramnik, 2001: 52).

In general, A.N. Kramnik proposes to group the norms of administrative law into four sections. The first section would cover the institutions which:

1) determine the legal standing of the citizen in public administration;
2) determine the legal standing of the state bodies in public administration;
3) determine the legal standing of the non-state government organisations in public administration;
4) determine the legal standing of public servants;
5) exercise control over the subjects of administrative law.

The second section encompasses the regulations that govern liabilities under administrative law.

The third section incorporates the norms of administrative procedure.

The fourth section would include provisions that constitute the administrative legal framework for the management of the economy, socio-cultural and other spheres.

Each domain is comprised of the relevant legal institutions (Kramnik, 2001: 52–53).

Alternatively, D.A. Gavrilenko and I.I. Makh suggest that the system of administrative law should be defined as a legal domain, discipline and academic subject (emphasis added), united by a common purpose and potentially acting as independent system-forming phenomena (Gavrilenko, Makh, 2004: 20).

The common position shared by most scholars in administrative law – both Russian and Belarusian – is to view administrative law as the totality of administrative legal norms institutions and legal interactions united by a common scope and *means of regulation.*

Consistent with the theory of law, an administrative legal norm, *like any other, has a structure consisting of a hypothesis, a disposition and a sanction*. As already indicated, an administrative legal norm does not always act vertically, as is typical for the relations of subordination. An administrative law provision may apply to a contractual (or "horizontal") relationship, and may alter the legal standing of the citizen from one bound by a duty to one vested with the power to demand an action from an administrative body in the exercise of their constitutional rights and liberties.

In the most general sense, an administrative legal provision may be defined as a rule of good conduct for a public administration established by the law and sanctioned by the state authorized by the state to be applied in the administration of government by a public administration and to the exercise of the rights and duties by the citizen.

The main purpose of a provision of administrative law is to put un place a demand for the legality of actions for all actors in the sphere of public administration. However, even the actions of a public administration that do meet the formal definition of legality, may not be in conformity with the principle of *legitimacy*. The additional criterion here is *the proportionality* of an administration's actions. The criterion of proportionality is not met when the intended positive impact of an administration's actions (e. g. Maintenance of law and order) could have been achieved by measures of a less restrictive nature. For example, rather than prohibiting a public rally for security reasons, the administration should consider the possibility of moving it to a different, more appropriate location (Kanunnikova, 2015: 26; Maurer, 1999: 239).

Some fundamental principles of administrative law, as defined by the Russian scholars, include legality; basis in legal research and clarity for the general public; groundedness in the national context; federalism and coherence of the executive power; accountability and active citizenship; prevention of offences; and guaranteed help legal redress and protection of civil rights (Antonova, 1998: 8; Gavrilenko, Makh, 2004: 380). These criteria are also shared by the most authoritative Belarusian scholars, with the exception of federalism, which is replaced by the principle of unitarism typical for the Belarusian statehood model. Of key importance from the perspective of Belarusian statehood are the principles of groundedness of administrative law in the national context and coherence of the system of executive power.

Russian and Belarusian scholars alike name among the key institutions of administrative law *the executive power, administrative justice, administrative procedure and administrative liability.* Fundamental changes in the system of public administration during the transition to democracy and the rule of law in the Post-Soviet period led to the emergence of new institutions of administrative law, the instition for the protection *individual rights and liberties.* One important caveat in this regard is the probability of confusion over the meanings of legal notions that may result from the overly enthusiastic pursuit of innovation in this area. Specifically, some new institutions of administrative law announced by Russian scholars (e. g. for provision of state services, for management of state property, for delegation of state powers or for preventing corruption

(Talapina, 2006)) have not found support within the Belarusian community of researchers in administrative law. However, Belarusian legal scholars still regard as a positive trend the emergence of complex institutions spanning several related domains of law, including administrative law (Gavrilenko, Makh, 2004: 388; Kirimova, 1998: 17–18).

5. Administrative jurisdiction

In Russia, the debate on what should be understood as the administrative procedure continued up until the coming into force of the Administrative Procedure Rules (APR) on 15 September 2015 (State Duma, 2015). The traditional approach – inherited from the Soviet doctrine of administrative law – is based on a very narrow definition of the administrative procedure and the relevant functions of the law enforcement agencies. The term "administrative jurisdictional activity" that was proposed by A.P. Shergin in the late 1970s and became an accepted part of the Soviet doctrine of administrative law referred to a type of law-enforcement activity by state administrations and other competent bodies in the context of the legal proceedings in cases involving administrative torts and some types of criminal offences and the making of decisions on these cases in a manner and form established by the law (Shergin, 1979: 45). A similar approach was also supported by another authoritative legal scholar, Yu.N. Starilov (Starilov, 2004: 5).

The situation changed fundamentally with the entry into force of the Administrative Procedure Rules in Russia. Article 1 of the Rules governs the administrative legal proceedings applicable to the hearing and resolution by the Supreme Court of Russia, general courts and magistrate judges of administrative cases involving allegations or disputes over the rights, liberties and lawful interests of individuals, rights and liberties of organisations, and other administrative cases arising from administrative and other public law relationships or related to judicial oversight of the legality of the exercise of official and other public authority. Previously, these types of cases were treated under civil law procedures. The new Rules made finally made a part of the Russian legal system one of the four types of judicial proceedings referred to Article 118 of the Russian Constitution of 1993, after 21 years of its enactment.

In Belarus, the situation has not changed. The Civil Procedure Code of Belarus still has a separate chapter (Chapter 29) dealing with administrative procedures (titled "Judicial procedures in cases arising from administrative legal relations"), whereby administrative legal disputes are to be treated under the *civil law procedure*. What is the understanding of the administrative procedure in Belarus in light of the administrative reform of 2015 in Russia?

V.A. Argues that the administrative tort procedure (in cases involving administrative torts) represents just an aspect of the administrative procedure, but the whole procedure (Kruglov, 2008).

Similarly, G.A. Vasilevich places the administrative procedure outside the limits of the administrative tort procedure. He writes: "the administrative procedure is an activity governed by administrative procedural norms involving the hearing and resolution of individual and specific cases in the area of public administration by competent subjects of administrative procedural relations with the aim of securing the rule of law and legal order (in the legal understanding)" (Vasilevich, Zabelov, Tagunov, 2013: 76).

According to O.I. Chupris, the administrative procedure represents a totality of administrative hearings. An administrative hearing is the activity of mandated bodies of public administration and officers thereof directed towards the resolution of a range of homogeneous individual cases arising from the exercise of government and sharing a common generic attribute of social relations (Riabtsev et al., 2014). The range of administrative hearing types proposed by O. I. Chupris, unlike the list proposed by the Russian scholar Sorokin (Sorokin, 2004) does not include administrative tort hearings altogether, but includes some new types, such as hearings involving the performance of duties in civil service, administrative contractual and administrative oversight hearings. Thus, similarly to A.N. Kramnik, O.I. Chupris argues for a separate type of administrative hearing – the hearing related to the administration of government (Kramnik, Chupris, 2013). T.A. Chervyakova holds a similar view, claiming the existence of two conceptions of the administrative procedure – jurisdictional and government-related: "The first type is grounded in the understanding of the administrative procedure as an activity for resolving an administrative legal dispute or conflict". The second concept is broader and incorporates, along with the jurisdictional activity, other types of activity by the authorities of executive power pertaining to the creation and application of the law (Cherviakova, 2014: 54).

However, all of the above authors have approached the subject of administrative procedure from the perspective of legal theory. In contrast, the concept of procedures involving the exercise of government is not used in any Belarusian law or regulation. A.N. Kramnik has proposed by enact a single legal act prescribing a uniform process for the enactment and promulgation of administrative legal acts. He proposed to compile the provisions of administrative/exercise of government law in a code on treatment of individual/specific cases in the area of public administration, and the provision of procedural law in a code of proceedings in individual/specific cases in the area of public administration. A solution along these lines would have addressed multiple disputes over the notion of the administrative procedure and would have provided a legal foundation for the hearing of individual-specific cases in the area of public administration (Kramnik, 2016: 26). However, the Belarusian legislators have taken a different route. An code of execution procedure for administrative tort cases was adopted, which established a separate type of the judicial process, a process for administrative torts. Although some Belarusian scholars still believe that this type of procedure represents only one out of many aspects of the broader notion of administrative procedure (Kramnik, 2016: 26), other highly authoritative Belarusian scholars – including A.N. Kramnik and G.A. Vasilevich believe that criminal tort proceedings are not related to the administration of government (Kramnik, 2010), and that the law of execution procedure represents a totality of legal norms that govern the relations arising on account of the commission of an administrative tort (Vasilevich, Dobriian, 2014: 8).

In this regard, it seems appropriate to name a key difference in the understanding of the term "administrative process" in Belarus and Russia. In Belarus the term "Administrative procedure" is used in only one piece of legislation, the Code of Execution Procedure for Administrative Torts, referring to hearings in administrative tort cases. The

views of G.B. Kedrov, A.N. Kramnik, O.I. Chupris, and T.A. Chervyakova cited above are purely theoretical and are pre-empted by the legal definition of the term "administrative procedure" from the Code of Execution Procedure, where it is repeated more than 400 times. Ultimately, A.N. Kramnik does admit that the administrative procedure is indeed a separate type of judicial procedure governed by the norms of administrative procedure law, of which the main source is the Code of Execution Procedure. The legal term "administrative procedure" is still identical to the concepts "administrative tort procedure" or "procedure for administrative tort cases" (Kramnik, 2016: 27). This means that Belarus is still using the concept from the late 1970s, as proposed by A.P. Shergin (Shergin, 1979: 14).

6. Conclusions

This study may give grounds to the following conclusions.

1. Belarus has evolved a distinct doctrine of administrative law. It is grounded in the legal tradition inherited from the Soviet period. In general, the doctrine of administrative law in Belarus can be described as highly conservative and not motivated towards fundamental change. However, the Belarusian legal doctrine has been forced to respond to the needs arising from the development of Belarus as an independent state, which has added it a new dynamic and the power to overcome the inertia of the Soviet period.

2. Within the Belarusian doctrine, most scholars define the scope of administrative law in terms of the relationships arising in the exercise by public administration bodies of their government functions. These relationships can have the character of subordination of power or relate to the internal management and organisation processes. Since the enactment of the 1994 Constitution, the scope of administrative law has included relationships pertaining to the exercise by the individual citizen of their rights and liberties, which led to the expansion of the range of subjects of administrative law, limited the power of the public administration over the citizen and vested the individual with some decision making functions.

3. Most of the Belarusian scholars have rejected traditional separation of administrative law into the general and the special domains, and make more complex and delicate distinction among its elements depending on the type of legal relationship and the nature of the parties involved. The system administrative law is defined as a totality of norms, institutions and relationships that share a common scope and method of regulation.

4. Belarusian scholars name among the key institutions of administrative law the executive power, administrative justice, administrative procedure and administrative liability. Fundamental changes in the system of public administration during the transition to democracy and the rule of law in the Post-Soviet period led to the emergence of new institutions of administrative law, the instition for the protection individual rights and liberties.

5. One key challenge for legal scholarship and administrative law is the explicit divide between the theoretical base and the legal framework over the definition of the term "administrative procedure". While the theoretical base has been evolving along the lines of the European trends and has made extensive progress, the legal framework has been stuck in the 1970s, by equating administrative procedure with the administrative tort process and the hearing of administrative tort cases. Since the enactment

of the Administrative Procedure Rules in Russia, the administrative procedure has been uniformly understood throughout the European legal area as activity towards the resolution of an administrative legal dispute or conflict, making the gap in the Belarusian administrative law ever more visible.

6. Belarusian legislators and theorists of administrative law have yet to join their efforts to bring the Belarusian administrative law into conformity with the generally accepted European standards.

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РОЗВИТОК АДМІНІСТРАТИВНОГО ПРАВА, АДМІНІСТРАТИВНОЇ ТА ПРАВОВОЇ ДОКТРИНИ В РЕСПУБЛІЦІ БІЛОРУСЬ ПІСЛЯ ЗДОБУТТЯ НЕЗАЛЕЖНОСТІ

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У Республіці Білорусь створена національна школа адміністративного права, яка орієнтована значною мірою на радянську та сучасну російську школу права, проте має свої особливості. У роботі розглянуто думки найбільш авторитетних учених та на основі цього зроблено узагальнюючі висновки.

Первинна мета адміністративного права – забезпечення нормативної бази та створення правової основи, необхідної для здійснення органами державного управління своїх владних повноважень.

Основне завдання адміністративного права полягає в регулюванні й упорядкування відносин виконавчої влади з іншими суб'єктами права в ході здійснення нею функції державного управління.

До предмета адміністративного права в білоруській доктрині більшість учених відносять адміністративно-правові відносини, що виникають у процесі виконання органами публічної адміністрації функцій державного управління, які мають як зовнішній підпорядковано-владний, так і внутрішньоорганізаційний характер, а також відносини, пов'язані з реалізацією громадянами своїх прав і свобод.

Система адміністративного права в Республіці Білорусь традиційно розуміється як упорядкована структура, що складається з інститутів, норм і галузей, які можна розділити на чотири частини.

До першої частини включені інститути, які визначають правовий статус громадян у сфері державного управління, державних органів у сфері державного управління, недержавних організацій у сфері державного управління та державних службовців, а також забезпечують контроль за суб'єктами адміністративного права.

У другій частині об'єднані норми, що регулюють відповідальність з адміністративного права.

У третій частині розташовані норми адміністративного процесу.

До четвертої частини включені норми, що визначають адміністративно-правові основи управління економікою, соціально-культурною та іншими сферами.

Кожна частина при цьому складається з відповідних правових інститутів і галузей.

Найбільш гострим дефіцитом адміністративного права Республіки Білорусь є застигле ще в радянський період визначення адміністративного процесу. Наведені в роботі альтернативні судження мають виключно теоретичний характер і повинні поступитися легальній дефініції адміністративного процесу, згідно з якою це самостійний вид юридичного процесу, урегульований нормами адміністративного процесуального права, основним джерелом яких є Процесуально-виконавчий кодекс про адміністративні правопорушення Республіки Білорусь.

Правовий термін «адміністративний процес» у Республіці Білорусь досі тотожний поняттям «адміністративно-деліктний процес» і «процес у справах про адміністративні правопорушення».

Основним методом дослідження є комплексний порівняльний аналіз із використанням історичного та формально-логічного методів. Як частина всеосяжного дослідження в галузі адміністративного права на пострадянському просторі, ця робота покликана зробити свій внесок у науковий обмін, сприяючи його поглибленню й розширенню.

Ключові слова: публічне адміністрування, органи державної влади, органи виконавчої влади, об'єкт адміністративного права, система адміністративного права, суспільні відносини, державне управління, адміністративно-громадський орган, адміністративне судочинство, галузь права, адміністративно-правова наука.

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MAIN CHARACTERISTICS OF ADMINISTRATIVE ACTS FROM THE PERSPECTIVE OF ADMINISTRATIVE PROCEDURE LAW OF LATVIA AND JUDICIAL PRACTICE

An administrative act is the main concept and instrument of administrative procedure. Despite the availability of other forms of the performance of public administration (for example, practical step, public law agreement, legislative action etc.), an administrative act is considered as an activity in classic form. Consequently, as a rule, the concept of an administrative act is analysed more frequently in the Latvian administrative judicial practice and legal literature. The article provides an overview of the main characteristics of administrative acts from the perspective of Administrative Procedure Law in Latvia. In the article, the author elaborates on several main characteristics of administrative acts from the perspective of judicial practice and Latvian doctrine. The author also undertakes a comparative analysis between the Latvian Administrative Procedure Law and the newly adopted Law on Administrative Activities and Administrative Procedures of the Kyrgyz Republic. From the above, it follows that the positive part of the definition of an administrative act in the Administrative Procedure Law of Latvia is the same as in the Law of the Kyrgyz Republic. Thus, both laws provide for similar features that a decision must have to be recognized as an administrative act. It is noted that the Administrative Procedure Law of Latvia includes an exception to the general principle that an interim decision is not an administrative act, apart from cases when the decision itself substantially affects the rights or legal interests of a person or substantially limits them. The definition of an administrative act, which is stipulated by the Law of the Kyrgyz Republic "On Administrative Activity and Administrative Procedures", does not indicate that an administrative act is not an interim or procedural decision. The above does not mean that even now in Kyrgyzstan in order to recognize the decision as an administrative act, there must be no features of a final character. The jurisdiction of administrative offenses cases was changed from the jurisdiction of administrative courts to the courts of criminal jurisdiction. Consequently, the competence of administrative cases doesn't involve considering administrative offences cases.

Key words: *Latvia, administrative act, characteristics.*

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1. Introduction

The choice of the topic under consideration is determined by the adoption of a new Law of the Kyrgyz Republic "On Administrative Activities and Administrative Procedures" and scheduled implementation of the law in the context of which one of the high priorities is the issue of administrative act concept.

Thus, the purpose of the research is to identify a characteristic of the main instrument of administrative procedure – administrative act by means of explanations along with references to conclusions of the Latvian legal literature. The research is not aimed at detailed studying of every characteristic of an administrative act but at thorough examining characteristics which caused complications in judicial practice with a slight focus on the sort of decisions which are not recognized as administrative acts according to Administrative Procedure Law in Latvia.

An administrative act is the main concept and instrument of administrative procedure. Despite the availability of other forms of the performance of public administration (for example, practical step, public law agreement, legislative action etc.), an administrative act is considered as an activity in classic form. Consequently, as a rule, the concept of an administrative act is analysed more frequently in the Latvian administrative judicial practice and legal literature.

Due to this fact, the genuine comprehension of an administrative act is an important condition for adequate application of the law and its effective functioning.

Administrative acts can be distinguished from other forms of public administration on some grounds which usually the legislator consolidates in normative acts regulating administrative procedure.

In the Law of the Kyrgyz Republic "On Administrative Activities and Administrative Procedures", the legislator also defined administrative act indicating features which are inherent for decisions admitted by administrative acts. The very administrative act is defined as an act of administrative body or its official who at the same time:

a) has public-law and individually defined character;

b) has an external effect that is there is a lack of intradepartmental nature;

c) causes legal consequences that is one establishes, alters, terminates the rights and obligations for an applicant and/or a person concerned.

Based on the above, it results that according to the Law of the Kyrgyz Republic "On Administrative Activities and Administrative Procedures", an administrative act is considered as a decision involving the following features:

1) issued by an administrative body or its official;
2) public-law character;
3) individually defined nature;
4) an external effect;
5) a lack of intra-departmental nature;
6) causes legal consequences that is establishes, alters, terminates the rights and obligations for an applicant and/or a person concerned.

If one compares this definition with the one included in the Administrative Procedure Law of Latvia, it is evident that the understanding of the administrative act is very similar in both laws.

The Latvian Administrative Procedure Law contains the definition of an administrative act consisting of two parts – positive and negative. The positive part includes the main features that the decision must possess in order to be recognized as an administrative act. That is, the Administrative Procedure Law of Latvia provides that an institution's decision is recognized as an administrative act if it contains the following features:

1) to have an external influence;
2) to be a legal act;
3) to be applied in the field of public law;
4) to be issued by the institution;
5) to be directed towards an individually determined person or a scope of persons;
6) to establish, alter, determine or terminate specific legal relations or state an actual situation (part 3 of Article 1 of Administrative Procedure Law of the Republic of Latvia) (Seimas of the Republic of Lithuania, 2001).

From the above, it follows that the positive part of the definition of an administrative act in the Administrative Procedure Law of Latvia is the same as in the Law of the Kyrgyz Republic. Thus, both laws provide the same characteristics that a decision must have to be recognized as an administrative act.

At the same time, it should be noted that the definition of an administrative act in the Administrative Procedure Law of Latvia also includes the negative part. This part stipulates that an administrative act is not:

1) a decision of the institution or other action in the field of private law;
2) an internal decision of the institution;
3) an interim decision (including proceeding decision) in the context of administrative procedure, except for cases when the decision itself essentially affects the rights or legitimate interest of a person or significantly restricts them;
4) a political decision of Saeima, state president, the Cabinet of Ministers or self-government body (council) (political statement, declaration, invocation or news about election of officers etc.);
5) a court decision, criminal procedure decision, as well as a decision adopted in the context of the proceedings on the case of an administrative offence (part 3 of Article 1 of Administrative Procedure Law of the Republic of Latvia) (Seimas of the Republic of Lithuania, 2001).

Based on the above comparison, it is clear that the definition of Latvian law is more detailed. The practical situation contributed to the formation of that sort of a comprehensive definition. Originally, the definition of an administrative act was limited, but there were frequent incidents in judicial practice when parties disputed decisions which were not administrative acts. Moreover, the legislator specified the definition of administrative act many times, taking into account development trends of judicial practice which pointed at new types of administrative acts[1].

Despite the fact that there is a lack of negative part in the definition of an administrative act in the law of the Kyrgyz Republic (except for the feature that an administrative act is not internal decision), in general, the comprehension of an administrative act is alike from the perspective of both laws. Thus, the article's goal is to do a review and in-depth analysis of some features of an administrative act by virtue of the judicial practice of Latvia looking forward developing of understanding of the institution of the administrative act not only in the Kyrgyz Republic but also in other countries of Central Asia.

2. Interpretation of some features of an administrative act

2.1. External influence

To be recognized as an administrative act a decision must have an external influence. In the judicial practice and legal literature of Latvia, there is an idea that the feature "it has an external impact" means that the decisions that the institution adopts in relation to own establishment, employees of own institution, persons who are subordinate to the institution and other subordinate institutions will be excluded from the scope of administrative acts (Briede, 2013).

Public administration has to decide on various issues exercising its daily obligations, for example, orders on the official journey, on the handing over of documents, on the creation of workgroup, on the reorganization of structural units, etc. Those kinds of orders are directed not at a particular person but at the organisation of institution performance or exercising official duties by the institution's employee. In cases when an employee considers orders illegal (on removal from office for the duration of considering disciplinary case or order on rest leave or on participation in a workgroup, etc.), he/she is entitled to challenge them in a superior institution but does not have the right to appeal in a court (Briede, 2013).

It is worth mentioning that Administrative Procedure Law of Latvia provides exceptions, in particular, in relation to persons especially subordinate to the institution who have to follow internal regulations and orders in a greater degree than others. The Supreme Court of the Republic of Latvia recognizes the following persons as special subordinates of the institution: officials, military servants, judges, school children and students, customers of public establishments (for example, museum, library, swimming pool), persons who are in compulsory medical treatment or convicted persons (Supreme Court of the Republic of Latvia, 2010a). Administrative Procedure Law of Latvia consolidates that an administrative act is also a decision on establishment, alteration, termination of a legal status of an official or person especially subordinate to the institution, dis-

[1] For example, the legislator clarified that an administrative act is such a decision which, in cases prescribed by the law, is issued by the institution with regard to individually unspecified public which is in particular identified circumstances (general administrative law).

ciplinary punishment of the person, as well as other decision if it significantly limits rights of a man, official or person especially subordinate to the institution (part 3 of Article 1 of Administrative Procedure Law of the Republic of Latvia) (Seimas of the Republic of Lithuania, 2001). Such decisions are considered as administrative acts because they affect the rights and interests of particular persons more profoundly. This means that the decisions influence a particular person not only as an employee either a special subordinate of the institution or as a person but have an external influence (Briede, 2013).

For example, the Supreme Court determined that the decision of the institution, which decides on a base salary of a special subordinate of the institution, affects a human right to get a relevant salary for conducted work which is consolidated in Satversme of the Republic of Latvia. Thus, the institution's decision, which has reduced fixed salary of a person, significantly affecting his/her right to equal work for equal pay will be considered as an administrative act. This conclusion is equally touches both officials and other officers (Supreme Court of the Republic of Latvia, 2010b). The Supreme Court also admitted that the issue of salary payment for a judge considered under administrative procedure essentially affects officials in the context of human rights, because the judge being a civil servant is an official (Supreme Court of the Republic of Latvia, 2009a).

The Supreme Court concluded that in the relations between a school child and the state, administrative acts are decisions which affect (establish, change or terminate) the basic relations of the school child and state, invoke punishment towards the school child or significantly affects his/her rights and interests in the context of human rights. But decisions concerning the organization of the process of getting education by the school child, including decisions that launch the activities of educational institutions (for example, on the shutdown of educational institutions and on the transfer of the schoolchild to another educational institution), do not affect the right of school child to education to a significant degree. The above decisions have an internal influence (internal decision) and for this reason, they are not considered as administrative acts (Supreme Court of the Republic of Latvia, 2010b).

In the context of the mentioned argument of the Supreme Court, it is important to mark that internal decisions of the institution are not recognized as administrative acts, and this fact is directly covered by the negative part of the definition of administrative act. In other words, if an object which is mainly subjected to the decision is organization or institution activity, this is an internal decision of the institution (Supreme Court of the Republic of Latvia, 2007).

Internal decisions, which may have similarities with administrative acts but touches upon exclusively the institution, are decisions, instructions or orders which were issued with the purpose of ensuring activities of state administration bodies and special subordinates (including officials) (Briede, 2013), as well as with purpose of institutions cooperation for information sharing; in the relations between institution and its subordinate institution (for example, order of superior institution for subordinate institution on provision of tasks execution) (Briede, 2008).

Thus, for example, the decision of self-governing body to liquidate the orphan's court, which is an institution of self-government, is a decision concerning the institutional systems of direct management of state administration. This decision is aimed

at organizing the functioning of the self-government in order to ensure the execution of the autonomous function of the respective self-government; it is an internal decision. Accordingly, the decision of the self-government to liquidate the orphan court touches upon the liquidated orphan court itself as an institution, which does not affect persons in the sphere of human rights, and therefore is not an administrative act (Supreme Court of the Republic of Latvia, 2010c).

At the same time, it is important to point out that internal organizational acts may have external consequences as an exceptional case. Administrative acts are those organizational acts that eliminate the possibility of using so-called public grounds (for example, the closure of schools, kindergartens, cemeteries, etc.). These organizational decisions directly affect the basic rights of the individual, so one can talk about their external impact (Briede, 2013).

2.2. Sphere of public law

An administrative act is a legal act issued by an institution in the sphere of public law.

To determine whether the action of the subject of public law takes place in the sphere of public law or in the sphere of private law, it is necessary to find out what rule is the main one in this activity, or more specifically, whether it belongs to the public or private law. For example, the Supreme Court, making decision on the sphere a particular decision was made in and taking into account the type of relationship that a specific decision was directed on, stated that the decision of the Professors Council on election of a specific person for the position of associate professor is a prerequisite for the origin of legal relations between a professor and university. The above decision is not intended to establish public-legal relations, that is, it is not adopted in the sphere of public law, because a labour contract, that is a private-law one, is concluded between the professor and the university based on the decision of Professors Council. Thus, the lawfulness of the decision of Professors Council is not verified under administrative procedure as this decision is not an administrative act (Supreme Court of the Republic of Latvia, 2010d).

Thus, during the consideration of cases where a self-governing body decided to hold a land plot on lease for a period of 10 years owned by the self-governing body, the Supreme Court concluded that the subject of public law acts privately maintaining its property, for example, by leasing land or premises. Taking into account the aforementioned, the Supreme Court admitted that the actions of the self-governing body in providing a specific entity with the leasehold were not based on public norms, and the order was exercised as by means of a private owner. Consequently, the Supreme Court marked that the decision of the self-governing body to lease its land plot is not recognized as an administrative act (Supreme Court of the Republic of Latvia, 2012a).

Summarising the above, it is stated that the court in assessing the fact whether a particular legal act was adopted in the sphere of public law should also evaluate on which kind of relations a particular decision was focused and what standards guided the institution when making the relevant decisions.

2.3. Agency

The agency must issue a decision in order it to be recognized as an administrative act.

The concept of agency in the Latvian Administrative Procedure Law is a quiet comprehensive and covers not only state and self-government structures but also their sub-

divisions, officials, as well private individuals if they are delegated powers in the sphere of public administration. In addition, an agency is any subject, if only this subject operates in the sphere of public administration in a particular case (Briede, 2008). Thus, the concept "agency" should be considered functionally, not constitutionally (Constitutional Court of the Republic of Latvia, 2005).

The Supreme Court admitted that the law may vest body or official, who is a part of judicial branch, with the functions of state power. And in cases when it exercises the powers, a relevant official or institutions are recognized as the agency within the meaning of Administrative Procedure Law of Latvia (Supreme Court of the Republic of Latvia, 2004). Thus, the legislative body also can be a functional agency, if it performs tasks that relate to public administration. Information provision or refusal to provide information is a typical example.

At the same time, it is essential to point out that the court has to be very careful in considering whether the decision was made by the agency, because only actions related to public administration are subjected to the jurisdiction of administrative court (Briede, 2008). Thus, according to the Latvian Administrative Procedure Law, acts are not court orders as well as other decisions adopted in the judiciary.

In this context, the Supreme Court concluded that the qualification board of judges, which is an institution of professional self-government of judges, fixed the competence in the procedure of judicial selection. When evaluating adequacy of judicial candidate and conducting qualification examination, qualification board of judges exercises the functions of judicial authority while forming panel of judges. Qualification board of judges is not vested with powers in public administration, and it is not recognized as an agency in the process of selecting judicial candidates. Consequently, a decision on judicial candidate is not an administrative act because the decisions were adopted in judiciary sphere, but not in public administration (Supreme Court of the Republic of Latvia, 2009c).

Moreover, the Supreme Court admitted that the decision of the Minister of Justice with regard to the initiation of disciplinary case against a judge was approved not in the sphere of public administration but in the judiciary one and, for this reason, it is not an administrative act. That kind of reasoning is based on the fact that the right of the Minister of Justice is associated with the implementation of the principle of separation of state power, and the purpose of such actions is to influence the judicial power but not to establish, change or terminate public-law relations with private individuals (Supreme Court of the Republic of Latvia, 2008).

In addition, there are features of an administrative act in criminal procedure decisions. However, according to the Latvian Administrative Procedure Law (para. 5 part 3 of Art. 1), criminal procedure decisions are not administrative acts because they don't gave a feature "agency" since investigators don't exercise the function of public administration (Briede, 2013).

2.4. Individually specified person and particular legal relations

As a rule, an administrative act is addressed to an individually specified person or a scope of people and affects particular legal relations. Due to the fact that administrative acts are individual acts, that is, they are addressed to particular individuals and differ from regulatory acts, which are addressed to any number of unspecified persons (Briede, 2013).

It is important to note that in Latvia, the Constitutional Court verifies the compliance of laws with the Constitution, compliance of other regulatory acts or their parts with the legal norms (acts) of higher legal force, compliance of other acts with the law (except for administrative acts) of the Saeima (legislative body), the Cabinet of Ministers, President, the Speaker of the Saeima and the Prime Minister (Seimas of the Republic of Lithuania, 1996).

It should be noted that in Latvia in the Administrative Procedure Law, there is a special case of an administrative – general administrative act. It is referred to the cases when an administrative act is recognized a decision, which, in cases provided for in the law, is issued by the institution towards individually specified scope of people who are under particular identified conditions. Thus, the Supreme Court concluded that traffic limitation order is an administrative act (Supreme Court of the Republic of Latvia, 2011). In addition, a general administrative act is recongnised as a decision of self-governing body on non-privatization of a particular dwelling house due to the fact that a scope of addressees of an administrative act is not specified individually and, for this reason, the decision refers to individually unspecified scope of people who are under particular identified conditions (Supreme Court of the Republic of Latvia, 2006a).

In spite of the fact that it is not specified in the law of the Kyrgyz Republic, judges of the Kyrgyz Republic should also take into account that kind of a special case when resolving a matter of statement admissibility.

2.5. Interim and final decisions

When considering a negative part of the definition of administrative act in the Latvian Administrative Procedure Law, it is also essential to mention the concepts of interim and final decisions.

Administrative Procedure Law of the Republic of Latvia stipulates that an administrative act is not an interim decision (including proceeding decision) in terms of administrative process (para. 3 part. 3 of Article 1) (Seimas of the Republic of Lithuania, 2001). Thus, according to the Latvian Administrative Procedure Law, the final settlement is one of the main features of administrative act.

The Latvian juridical literature marks that, generally, in order to make a final decision it is necessary to adopt dozens of interim decisions, which determine legal relations. The final decision is taken after the implementation of other preliminaries for decision making. Most of them are provided in procedural rules, for example: initiation of proceedings, information request, listening of process actors etc. Compared to administrative acts, these decisions don't have finality. As a rule, an administrative act is considered a last decision adopted in a relevant process (Briede, 2013).

Administrative courts often deal with the cases when a person wants to appeal an interim decision falsely assuming that judgment being appealed is an administrative act. For example, the Supreme Court concluded that the purpose of the State Revenue Services in requiring provision of an additional declaration is data verification in original declaration. That is, the request for the additional declaration is one of the means whereby the State Revenue Services can verify the validity of the original declaration. In this regard, it follows that the request for an additional declaration itself and its receipt do not achieve the goal due to which the State Revenue Services initiated a specific

process. Thus, when requesting an additional declaration, there is a lack of the nature of the final settlement, and, therefore, it is considered an interim decision but not an administrative act (Supreme Court of the Republic of Latvia, 2015).

It is important to point out that taking into account that actually interim decisions are not administrative acts and for this reason they cannot be appealed before a final decision is taken. This does not mean that after the adoption of final decision (that is, after issuing an administrative act) it will be impossible to verify the legality of the intermediate decision. If any of the decisions made during the process were taken illegally, this would be the ground for the illegitimacy of the relevant result of the whole process, that is, the administrative act (Briede, 2013).

However, it should be mentioned that Administrative Procedure Law of Latvia provides an exception to the general principle regarding the fact that an interim decision is not an administrative act, unless when such a decision essentially affects the rights or legal interests of the person or limits them (para. 3 p. 3 of Art. 1) (Seimas of the Republic of Lithuania, 2001). For example, the Supreme Court, in examining whether a person has legal public rights to challenge a decision which suspended him/her from further participation in the competition for the post of prosecutor, admitted that the decision which suspended the person from participation as a candidate for the post of prosecutor may be considered as a decision that significantly affecting the rights or legitimate interests of a person, as the applicant is suspended from further participation in the selection to the position of prosecutor by means of the decision, and, therefore, this decision can be appealed to court (Supreme Court of the Republic of Latvia, 2006b).

The Supreme Court also stated that the decision to ignore an application, which does not comply with the requirements of the Law "On the State Language", can be appealed if the person cannot fulfill these requirements objectively. Thus, the person will be restricted in exercising his/her rights (Supreme Court of the Republic of Latvia, 2014).

The definition of an administrative act, which is stipulated by the Law of the Kyrgyz Republic "On Administrative Activity and Administrative Procedures", does not indicate that an administrative act is not an interim or procedural decision. The above does not mean that even now in Kyrgyzstan in order to recognize the decision as an administrative act, there must be no features of a final character. There is contrast situation – the definition of an administrative act, which is contained in the law, shows the necessity of defining that sort of feature. The very law of the Kyrgyz Republic states that the administrative act is a decision that creates legal consequences. Accordingly, it is referred to a decision that creates legal consequences per se, and not one of the decisions taken in the decisions making process that create legal consequences (Supreme Court of the Republic of Latvia, 2006c).

2.6. Political decisions

Considering the negative part of the administrative act, it is necessary to mention a political decision, which is often may resemble administrative acts to its form.

The Supreme Court pointed out that a political decision can be separated from an administrative act by the adoption procedure (it is usually adopted by virtue a democratic procedure, during voting; it does not include instructions concerning content of the decision and does not require to disclose substantiation for a specific vote) by

the institution which adopts it (it has democratically legitimate character, which does not have government institutions) and the essence of the decision (a political decision which directly depends on the political will of adopter and trust, which are always subjective terms not regulated in legal rules) (Supreme Court of the Republic of Latvia, 2010e). Thus, legal literature notes that political decisions are formulated on the basis of political will, internal confidence, trust and other criteria, which are not regularised in law rules (Briede, 2013).

Based on the above considerations, the Supreme Court concluded that the election and tenure of a self-government official directly depend on the inner convictions of the majority of deputies, political will and trust, which are subjective terms not regulated by law rules. The court cannot assess whether the deputies correctly voted "for" or "against", and also cannot oblige deputies to vote "for" or "against". Therefore, the self-government official doesn't have subjective rights to receive a post and to keep the post, and these decisions are not subject to appeal in the administrative court (Supreme Court of the Republic of Latvia, 2010e).

The Supreme Court also marked that political decision is a decision which the local government awarded to a person in recognition of his/her achievements. The Supreme Court admitted that this decision was made by deputies by voting and none regulatory act obliges to justify this decision (Supreme Court of the Republic of Latvia, 2010f). The Department of Administrative Cases of the Supreme Court admitted that the decision of self-government to create Walk of Fame and platform for "New Wave" doesn't meet features of administrative act. That is, the present decisions are not based on the arguments of law but on the political will on the need for memorial places that is the nature of political decisions (Supreme Court of the Republic of Latvia, 2012b).

2.7. Other administrative acts which are not administrative ones

In conclusion, when considering other legal acts that are not administrative ones, it is important to point out that in Latvia it is established that a decision made on administrative offenses cases is not considered as an administrative act. Until 2012, the administrative courts also dealt with administrative offenses cases, but since July 1, 2012, the jurisdiction of administrative offenses cases was changed from the jurisdiction of administrative courts to the courts of criminal jurisdiction (Reizniece-Ozola, 2016).

The above changes have been made, taking into account that administrative offense cases are quasi-criminal cases and differ from other administrative cases by the fact that during the process it is applied not only the authority of public administration due to an administrative offense against a person, as it happens in any administrative process, but also the function of punishment is implemented. That is a person is punished administratively with using the punishment specified in a relevant law for an illegal act. Accordingly, the principles for the consideration of such cases are as close as possible to the principles for the consideration of criminal cases (Reizniece-Ozola, 2016).

Consequently, the competence of administrative cases doesn't involve considering administrative offences cases.

3. Conclusions

Summarising the above, once again, it is essential to emphasize the large role of administrative courts in forming an understanding of an administrative act. An ade-

quate understanding of the concept of an administrative act is a condition for the effective implementation of administrative law and procedure. Thus, at the moment, an important task is given to judges of the Kyrgyz Republic. There is a hope that they will successfully cope with it, thereby contributing to the effective implementation of the new law.

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ОСНОВНІ ОЗНАКИ АДМІНІСТРАТИВНОГО АКТА КРІЗЬ ПРИЗМУ АДМІНІСТРАТИВНО-ПРОЦЕСУАЛЬНОГО ЗАКОНУ ЛАТВІЇ

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Основним поняттям та інструментом адміністративного процесу є адміністративний акт. Незважаючи на те, що є й інші форми діяльності державного управління (наприклад, фактична дія, публічно-правовий договір, законодавча дія тощо), у класичному вигляді діяльністю вважається адміністративний акт. У зв'язку із цим правильне розуміння адміністративного акта є важливою умовою правильного застосування закону та його ефективного функціонування. Стаття розглядає основні ознаки адміністративного акта крізь призму Адміністративно-процесуального закону Латвії. У статті автор представляє більш детальні пояснення деяких основних ознак адміністративного акта в контексті юридичної практики та правової доктрини Латвії. Автор також проводить порівняльні паралелі між Адміністративно-процесуальним законом Латвії та нещодавно прийнятим Законом Киргизької Республіки «Про основи адміністративної діяльності та адміністративні процедури». Позитивна частина дефініції адміністративного акта в Адміністративно-процесуальному законі Латвії така ж, як у законі Киргизької Республіки. Отже, обидва закони передбачають ті ж ознаки, якими має володіти рішення, щоб воно

було визнане адміністративним актом. Зазначено, що Адміністративно-процесуальний закон Латвії передбачає виключення із загального принципу щодо того, що проміжне рішення не є адміністративним актом, за винятком випадків, коли таке рішення саме по собі істотно зачіпає права чи правові інтереси особи або істотно їх обмежує. У дефініції адміністративного акта, яка передбачена Законом Киргизької Республіки «Про основи адміністративної діяльності та адміністративні процедури», немає вказівки на те, що адміністративним актом не є проміжне чи процесуальне рішення. Це не означає, що й нині в Киргизькій Республіці для того, щоб визнати рішення адміністративним актом, не повинно бути ознаки остаточного характеру. Підвідомчість справ про адміністративні правопорушення змінена з юрисдикції адміністративних судів на суди кримінальної юрисдикції. Таким чином, до компетенції адміністративних судів не входить розгляд справ про адміністративні правопорушення.

Ключові слова: Латвія, адміністративний акт, ознаки.

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NOTES ON THE RELATIONS BETWEEN THE EU AND UKRAINE AND THE PROGRESS IN THE IMPLEMENTATION OF THE ASSOCIATION AGREEMENT[1]

The 2014 Association Agreement between the EU and Ukraine, which replaces the 1994 Partnership and Cooperation Agreement, may be considered the most important result of a cooperation developed since the beginning of 90's, first in the framework of the European Neighbourhood Policy, then of the Eastern Partnership.

This paper analyses in an essential way the evolving relations between the EU and Ukraine, and the progress made by Ukraine in pursuing the objectives set forth in the Association Agreement. The Author considers the main features of the Agreement, and identifies and assesses the principal legal issues arising from its implementation.

The Agreement is aimed at deepening political and economic relations between the EU and Ukraine, and to gradually integrate Ukraine into the EU internal market. It is the first of a new generation of EU agreements characterized by comprehensiveness, and democratic conditionality. It requires a broad and detailed work of approximation of the Ukrainian laws to the EU regulations. Reforms are foreseen in a number of key areas.

Ukraine has been developing a complex strategy to reorient its legal system towards the EU. According to the 2018 Report on Implementation of the Association Agreement – prepared by the Government Office for Coordination of European and Euro-Atlantic Integration, and the Vice Prime Minister's Office for European and Euro-Atlantic Integration, based on the outcome of performance of the objectives scheduled for 2018, the Agreement was implemented by 52%.

According to the Author, in evaluating the "results achieved" by Ukraine in the approximation of the national legislation to the EU legislation, it must be taken into account the challenging situation of the country. The Government and the Verkhovna Rada have been acting with the aim to pursue the overall objectives of the Association Agreement notwithstanding the difficult political and administrative situation following the events in Crimea, the Donbass conflict, the worsening of the relations with Russia until the termination of the Treaty of Friendship and the temporary adoption of the Martial Law.

He highlights the efforts of the EU in financially supporting the process of reform in Ukraine, and of Ukraine towards constitutional and legislative reforms reinforcing the European choice. Ukraine has finally developed an ad hoc institutional framework, and new legislation, including amendments to the Constitution, for the implementation of the Association Agreement.

Relevant progress has been made in various sectors of the cooperation, while in various others the actions taken are not yet effective. For example, in the sector of the rule of law,

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various actions were taken, but modest results were achieved in the fight against corruption; while in the environment sector, which is not considered among the priorities, the Law on EIA might be considered an important achievement.
In the whole, the implementation of the Association Agreement was evaluated positively at the highest level of political dialogue, by the 20th EU-Ukraine Summit (9 July 2018), and the 5th EU-Ukraine Association Council (Brussels, 17 December 2018).
In the Author's opinion, notwithstanding various critical points, the numerous constitutional and legislative acts, the regulations and the plans adopted in the period 2014–2018, represent important steps of a broad process of change. He underlines the importance to proceed focusing not just on the formal harmonization of the Ukrainian legal system to the EU law, but on the effectiveness and efficacy of the new rules, and their real implications on the social, economic, political and cultural heritage and life of people.

Key words: *EU – Ukraine relations, EU – Ukraine Association Agreement, Implementation of the Association Agreement, Ukraine reform process, environmental law.*

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1. Introduction

The relations between the EU and Ukraine have been developing and strengthening since the adoption, in 1994, of the *Partnership and Cooperation Agreement* (PCA), which entered in force in 1998. In 2003, Ukraine became, together with Georgia and Moldavia, one of the European non-member countries to which is directed the *European Neighbourhood Policy* (ENP); then, in 2009, a priority partner in the context of the EU *Eastern Partnership*.

In 2012 the negotiations for an Association Agreement between the EU and its Member States, of the one part, and Ukraine, of the other part, were finalised.

This course of the relations between the EU and Ukraine appeared at risk when, in November 2013, the Ukrainian Government suspended the signing of the Association Agreement. A series of exceptional events followed: on the one hand, huge protest demonstration and the "Revolution of Dignity", the government changes, the new presidential and general elections; on the other hand, the declaration of independence of Crimea and its annexation to Russia, and the conflict between the new Government of Kyiv and the Eastern regions of Donetsk and Lugansk, where referendum on the autonomy were held.

However, on 27th June 2014, the Association Agreement was signed, and on 16th September 2014 it was ratified by Ukraine and consent was given by the European Parliament.

The Agreement imposes on Ukraine the pursuit of a series of goals, and the passing of reforms concerning the rule of law, democracy, and basic human freedoms (Article 2). It has been considered, together with the Association Agreements stipulated by the EU with Georgia and Moldova, a milestone in the history of Europe as a whole, and also an innovative legal instrument providing for a new type of integration without membership (Van der Loo, 2014).

After a few years since its adoption, provisional implementation and, finally, entry into force, an analysis of the evolving relations between the EU and Ukraine, and of the progress

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made by Ukraine in pursuing the objectives set forth in the Agreement, seems therefore, of great interest. With this aim, I will consider the main features of the Agreement and, taking into account its model character (it served to a large extent as a template for the agreements with Georgia and Moldova), I will identify and assess the main legal issues arising from its implementation, and the first results achieved in the approximation of the Ukrainian legislation to the EU acquis.

2. The Association Agreement between the EU and Ukraine

The Association Agreement, which replaces the PCA, may be considered the most important result of a cooperation developed since the beginning of 1990's, first in the framework of the ENP, then of the Eastern Partnership. It is the first agreement based on political association between the EU and any of the Eastern Partnership countries, and is characterized by its breadth (number of areas covered) and depth (detail of commitments and timelines).

The comprehensive, and complex nature of the Association Agreement, and its political and strategic relevance, are reflected in the choice of the legal basis. We may observe that Article 8 (*The Union and Its Neighbours*) of the Treaty on the EU (TEU), endows the EU with an explicit competence to develop a special relationship with neighbouring countries, aiming at establishing an area of prosperity and good neighbourliness, founded on the values of the Union and characterized by close and peaceful relations. The EU Council Decision *on the signing and provisional application of the political provisions* of the Association Agreement, adopted on 17th March 2014, does not however, refer to Article 8; it instead combines the traditional provision on Association (Article 217, *Treaty on the Functioning of the EU* – TFEU)[3] with the legal basis for EU action in the area of Common Foreign and Security Policy (Article 31.1, and Article 37 TEU).

In line with the principles guiding EU foreign policy, one of the main characters of the Agreement is the so-called *democratic conditionality*[4]. This requires the inclusion of conditionality clauses, according to which if the third State violates standards of human rights or is guilty of serious violations of human rights, the EU reserves the right to suspend or terminate the agreement (Article 478, *Appropriate measures in case of non-fulfillment of obligations*).

The Agreement aims to deepen political and economic relations between the EU and Ukraine, and to gradually integrate Ukraine into the EU internal market. With regard to the principles affirmed, it puts a strong emphasis on democracy and the rule of law, human rights and fundamental freedoms, good governance, a well-functioning market economy and sustainable development.

[3] According to Article 217 of the TFUE (*Treaty on the Functioning of the EU*), the association agreements involve "reciprocal rights and obligations, common actions and special procedure".

[4] Before the 90s, all EC economic agreements were inspired by the so-called "ideological neutrality": the EC, in entertaining relations, did not take into account if the third State was or was not respectful of human rights, the rule of law, democracy. In 1991 the European Council held in Luxembourg introduced a new policy, confirmed by Article 6 of the 1992 Treaty of Maastricht, indicating the parameters that would guide the action of the EC with third countries. Since then, co-operation has become the primary instrument for the promotion outside of the values of democracy, respect for human rights and affirmation of the rule of law; financial aid has been granted to third State under the condition of the undertaking of agreed policies.

In expectation of the completion of the ratification procedure by EU Member States, the Agreement provisions concerning the respect for human rights, fundamental freedoms and rule of law; political dialogue and reform; justice, freedom and security; economic and financial cooperation were provisionally applied since 1st November 2014. The provisional application of the DFCTA – *Deep and Comprehensive Free Trade Area* was delayed until 1st January 2016, as part of the overall efforts towards a comprehensive peace process in Ukraine.

The Agreement finally, entered into force on 1st September 2017.

The EU Association Agreements with Georgia and Moldova include a general provision on the "territorial application", stating that "the application of the DFCTA in relation to those areas over which the Government does not exercise effective control" shall commence once Georgia/Moldova will be able to ensure the full implementation and enforcement of the DFCTA, in their entire territory.

The Association Agreement between the EU and Ukraine doesn't address the issue. The EU and Ukraine agreed however, in the Final Act, that the Association Agreement shall apply to the *entire territory of Ukraine as recognized under international law* and they "shall engage in consultations with a view to determine the effects of the Agreement with regard to the illegally annexed territory of the Autonomous Republic of Crimea and the City of Sevastopol in which the Ukraine Government does not exercise effective control". To overcome the problem of treatment of products exported from the region, the EU prohibited the imports of goods from Crimea and Sevastopol (cf. Council Decision № 386/CFSP of 23 June 2014. This Decision has been amended several times and renewed until 23 June 2019 by Council Decision № 880 of 18 June 2018).

The EU – Ukraine Association Agreement contains numerous provisions affirming the principles of independence, sovereignty, territorial integrity and inviolability of borders. The Parties declare their commitment to the promotion of those principles in the Preamble, and to the promotion of their respect in Article 2 (Title I, *General Principles*), according to which they constitute essential elements of the Agreement.

Furthermore, the strengthening of political dialogue between the Parties in all areas of mutual interest should "promote gradual convergence on foreign and security matters with the aim of Ukraine's ever-deeper involvement in the European security area" (Article 4).

The relevant provisions of the UN Charter and the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe are also recalled by Article 7 (*Foreign and Security Policy*, 2).

In this regard, we may note that the EU has strongly condemned the illegal annexation of Crimea and Sevastopol to the Russian Federation for the violation of the sovereignty and territorial integrity of Ukraine, and "will not recognize it". On its side, Ukraine regards the territory of Crimea as a "temporary occupied territory" (Verkhovna Rada of Ukraine, 2014).

3. Institutional framework for the implementation of the Association Agreement

Summit meetings, which will take place once a year, shall provide overall guidance for the implementation of the Association Agreement (Article 460). In addition, the Agreement establishes the Association Council and the Association Committee (Articles 461–466), the Parliamentary Association Committee (Articles 467–468), and the Civil Society Platform (Article 469–470).

The Association Council supervises the implementation of the Agreement, and may examine any major issues arising within its framework, and any other bilateral or international issues of mutual interest. It is empowered to make recommendations and decisions to pursue the objectives of the Agreement. In particular, the Association Council may update or amend the Annexes of the Agreement, taking into account the development of the EU law and applicable standards set out in international instruments.

It is composed by the members of the Council of the EU, members of the European Commission, and members of the Cabinet of Ukraine (Cabinet of Ministers of Ukraine, 2014). It shall meet at the ministerial level at least once a year or according to the specific circumstances, and shall be chaired in turn by a representative of Ukraine and of the EU.

The Association Committee shall assist the Association Council in the performance of its duties. It has the power to adopt decisions in some specific cases provided for in the Agreement, and when delegated by the Association Council. It is composed by representative of the Parties at senior civil servant level. For Ukraine, the members of the Association Committee are the Deputy Ministers responsible for European integration issues, the Deputy Minister of Economic Development and Trade, as well as the deputy heads of other executive authorities with competences related to the implementation of the Association Agreement (the EU-Ukraine Association Committee met on 13–15 July 2015 in Brussels; on 5–6 July 2016 in Kyiv; on 29–30 June 2017 in Brussels; on 5 October 2018 in Kyiv).

The Decisions of the Association Council, and those of the Association Committee, shall be binding upon the Parties, which shall adopt appropriate measures to implement them. The legal nature of these decisions might be argued. In my opinion, the fact that the binding decisions of the Association Council and the Association Committee are adopted by agreement and following completion of the respective internal procedures, leads to consider them as international agreements in simplified form. A specific issue might however, arise from these binding decisions, whenever they will be adopted, because international agreements lack of direct enforceability in the Ukrainian legal order.

4. The Association Agreement and the Ukrainian legal system: first issues

Various legal and judicial issues have arisen for Ukraine in the course of implementing the Association Agreement into its legal system. Since the very beginning, the question arose about the value of the EU acquis, including the case law of the Court of Justice (CJEU), in the Ukrainian legal system. In November 2014, the Ukrainian High Administrative Court interestingly stated that the EU law and the case law of the CJEU couldn't be considered as part of the Ukrainian legal system; however, "legal positions as they are formalized in decisions of the CJEU can be taken into consideration by administrative courts as argumentation, reflection regarding harmonious interpretation of Ukrainian legislation in line with established standards of the EU legal system"[5].

On 2 June 2016, the *Law on Amending the Constitution of Ukraine* envisaged the abolition of the system of high specialized courts, thereby undermining the value of this judgement by the High Administrative Court. It however introduced some provisions aimed to avoid one of the possible conflicts between some provisions of the Association Agreement

[5] Kyiv District Administrative Court Judgment № 2/416 of 25 November 2008.

and the Ukrainian Constitution (Petrov, 2018). It had in fact been argued that the provisions of Article 8 of the Association Agreement, binding Ukraine to ratify and implement the *Rome Statute on the International Criminal Court* (ICC) and its related instruments, were imposing commitments on Ukraine which contradict the national Constitution. In particular, because the provision in Article 1 of the Statute affirms that the ICC shall be complementary to national criminal jurisdictions, while the Ukrainian Constitution prohibits delegation of judicial powers to bodies other than the Ukrainian courts, and establishment of new courts that are not provided in the Constitution[6].

In a Judgment of 11th November 2001 (case № 1-35), the Constitutional Court of Ukraine had in fact affirmed that several provisions of the Rome Statute were not in conformity with the national Constitution. To overcome this judgment, the new text of Article 124 of the Constitution, as amended, include a specific provision reading: *Ukraine may recognize the jurisdiction of the International Criminal Court as provided for by the Rome Statute of the ICC* (paragraph 6). This provision will become effective since 30 June 2019.

More generally, the 2016 Law was aimed to ensure the respect for the principle of the rule of law, and to pursue the efficiency, the independence and impartiality of the judiciary (Title III – *Justice, Freedom and Security* of the Association Agreement).

5. The European choice of Ukraine and the relations with the Russian Federation

In September 2018, with the intention to consolidate the Euro-Atlantic and EU choices of Ukraine at the level of the Constitution, the President introduced to the Parliament the draft Law № 9037, *on the Strategic Course of the State towards Ukraine's Full Membership in the EU and the North Atlantic Treaty Organization* (NATO).

On 20th September 2018, the Parliament voted to submit the presidential draft Law to the Constitutional Court, which adopted a positive *Opinion* on the compliance of the draft Law with Articles 157 and 158 of the Constitution (Constitutional Court of Ukraine, 2018), giving "green light" for its adoption.

Then, on 22nd November 2018, the Parliament preliminarily approved the Law, which provides for the declaration, at the Preamble level, of the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine[7]. The Law, finally signed by the President of Ukraine on 7th February 2019, defines the powers of the Parliament, as well as of the Government and the President, in developing and implementing the EU and Euro-Atlantic course of the State. According to some comments, these amendments would have required further analysis (Kyrychenko, 2019).

[6] Ukraine is not yet a party to the Rome Statute. Nevertheless, on 17 April 2014, the Government accepted the ICC's jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014. On 8 September 2015, the Government lodged a second declaration under Article 12 (3) of the Statute accepting the exercise of jurisdiction by the ICC in relation to alleged crimes committed on its territory from February 2014 onwards, with no end date. Info at the website of the ICC: https://www.icc-cpi.int/ukraine.

[7] The 5th preamble paragraph has been supplemented with the words "and confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine".

Ukraine has been developing a complex strategy to reorient its legal system towards the EU, facing at the same time the worsening of the relations with the Russian Federation. In this context, on 6th September 2018 the Council of National Security and Defense adopted a *Decision* to suspend Ukraine from the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, and to declare to the Russian Federation the desire of Ukraine to terminate it (in accordance with Article 40 of the Treaty itself). To implement the Decision, the President adopted, according to Article 107 of the Constitution, the Decree № 284 of 17th September 2018, and introduced to the Verkhovna Rada the draft Law № 206 of 3rd December 2018.

On 6th December 2018, the Verkhovna Rada passed the Law, which provides for the termination of the Treaty from 1st April 2019, and the President signed it on 10th December 2018. The explanatory note to the draft Law states that "the ongoing aggression of the Russian Federation caused significant violations of most of the Treaty's articles", and that there are no signs of Russia's good faith to eliminate violations and compensate for the damage caused (Poroshenko proposes terminating Treaty of Friendship with Russia, 2018). The termination of the Treaty is expected to facilitate proper and effective protection of the national interests of Ukraine, and the strengthening of the relations with the EU. According to the President, the non-renewal of the Treaty with Russia should not be viewed as an episode, but "as part of our strategy for a final break with the colonial past and reorientation towards Europe <…> other components of this strategy are: visa-free, Association Agreement with the EU, Tomos on the creation of an autocephalous independent Ukrainian church, enshrined in the Constitution on accession to NATO and the EU <…>" (President of Ukraine signed a law on the termination of friendship with Russia, 2018).

The ongoing conflict in the Eastern Regions was also at the base of the *Martial Law* introduced for a 30-day period, from 26th November 2018, and effective in Vinnytsia, Luhansk, Mykolaiv, Odesa, Sumy, Kharkiv, Chernihiv, Donetsk, Zaporizhzhia, Kherson regions, and the Ukrainian inland waters of the Azov-Kerch water area. According to this Law, entry to Ukraine to male citizens of the Russian Federation aged 16 to 60 years was temporarily prohibited (from 30th November 2018), as well as entry to Crimea was prohibited for foreigners. Furthermore, States authorities had the right to impose various restrictions on nationals (from, among others, confiscating property, vehicles, machinery and equipment for the needs of the State, to restricting the scope of information that may be disseminated by the media).

6. The implementation of the Association Agreement in the Ukrainian legal system

The implementation of the Association Agreement requires a broad and detailed work of approximation of the Ukrainian laws to the EU regulations. Reforms are foreseen in a number of key areas: public governance, justice, law enforcement, consumer protection, and economic sectors such as: energy, transport, environmental protection, industrial development, social development and protection, education, youth, culture.

In order to ensure efficient coordination of the public policy in this sphere, the Government Office for European Integration was established in the Secretariat of the Cabinet of Ministers of Ukraine; and positions of Deputy Ministers on European integration were introduced (Klympush-Tsintsadze, 2019).

Among the numerous acts adopted, we might mention the Resolution of the Cabinet of Ministers № 847 of 17th September 2014, on the *Action Plan on Implementation of the Association Agreement for the Years 2014–2017*, and the Resolution of 25th October 2017, on the *Action Plan on Implementation of the Association Agreement for the Years 2018–2020*, as well as the Resolution of 31st May 2017, on the *Procedure for Planning, Monitoring and Assessing the Implementation of the Association Agreement*. These Resolutions are binding on the ministries and other executive agencies.

According to the *Report on Implementation of the Association Agreement between Ukraine and the EU 2018* – prepared by the Government Office for Coordination of European and Euro-Atlantic Integration, and the Vice Prime Minister's Office for European and Euro-Atlantic Integration, based on the outcome of performance of the objectives scheduled for 2018, the Agreement was implemented by 52%.

It seems opportune to develop an essential analysis of the progress made in some sector of the cooperation. For example, as regards the aim of achieving an improvement in the functioning of the judicial system and the rule of law, the relevant dispositions of the Agreement definitely set in motion an important series of reforming actions.

Following the constitutional amendments and legislative changes introduced in 2016, an entire new body of judges was appointed to the Supreme Court of Ukraine after completing a thorough procedure aimed at selecting candidates with the highest level of professional competence and personal integrity. With the adoption of the Law *on the High Anti-Corruption Court* in June 2018, the setting up of the specialized court also commenced.

However, I share the opinion of various international and EU observers according to whom there have been modest results in the fight against corruption; not only that of the judicial system, but also that of the 'renewed' political-institutional system. The Association Council itself, at its fifth meeting held in Brussels on 17 December 2018, reiterated that all anti-corruption institutions must carry out their work free from undue influence.

In the environment sector, which unfortunately is not considered among the priorities by the Association Council, the cooperation between the EU and Ukraine aims at preserving, protecting, improving, and rehabilitating the quality of the environment, protecting human health, prudent and rational utilisation of natural resources (Chapter 6, *Environment*, section on *Economic and Industrial Cooperation* of the Association Agreement).

Article 361 (*Cooperation*) identifies as areas of cooperation, inter alia: *environmental governance and horizontal issues*, including education and training, and access to environmental information and decision-making processes. Thus, the *Environment Annex* comprehends, among others, a section on *environmental governance and integration of environment into other policy areas,* and specific provisions concerning the timetable for the implementation of the EU EIA (environmental impact assessment) and SEA (s*trategic environmental assessment*) Directives.

The EIA Directive applies to those public and private projects which are likely to have *significant effects on the environment* (Article 1. 1). It defines principles and procedures of the EIA, and promotes an overall consideration of the relationship between project and environment within the decision-making process. The main steps of the required procedure are: drafting of an environmental impact study by the proponent, consultation of the authorities concerned, information and public consultation, final evaluation and final decision.

In April 2017, Ukraine adopted a new Law on EIA, which is "operative". This Law amended various legislative acts. Legal and organizational policies for the EIA have been defined with a view to avoid and prevent environmental damage, ensure environmental safety, environmental protection, and rational use and restoration of natural resources, in the process of decision-making on economic activity likely to cause a significant impact on the environment, taking into account state, public and private interests. The EIA shall be mandatory in the process of decision-making on carrying out the proposed activity identified in the Law (Article 3, *Scope of application*, paragraphs 2 and 3).

According to Article 10 (*Expert Commissions on EIA*) the competent central authority and the competent local authority may establish expert commissions on EIA, members of which shall be appointed for a 3-year period. The competent authority shall maintain the roster of experts from which the members of the expert commissions can be appointed. In Italy, a similar Commission for the verification of the environmental impact EIA – SEA is placed at the functional dependencies of the Ministry for the Environment, Land and Sea Protection. It is composed by 40 Commissioners, including the President and the Secretary. It will make use of a technical committee placed at the functional dependencies of the same Ministry[8].

On 20th March 2018, the Verkhovna Rada also adopted Law № 2354-VIII on SEA, which has been enacted on 12th October 2018. A SEA shall be carried out for draft public planning documents in the field of agriculture, forestry, fisheries, energy, industry, transport, waste management, water use, environmental protection, telecommunications, tourism, urban planning and land management schemes, and implementation of which require – in relation to the type of activity – an EIA, as well as for draft public planning documents which require an assessment in view of the likely effects on sites or objects of the nature-reserve fund or ecological network (Article 4).

The Law on EIA definitely represents an important step in the harmonization of the Ukrainian environmental legislation with the EU environmental acquis, while the Law on SEA requires further regulations to be effectively enacted, and a lot remain to be done in other sub-sectors. I. Klympush-Tsintsadze, Vice Prime Minister for European and Euro-Atlantic Integration, mentioned, as strategic documents introducing the European principles in various areas, the *National Waste Management Strategy until 2030*, the *National Plan for Reducing Emissions from Large Combustion Plants*, and the *Energy Strategy of Ukraine 2035*.

7. Priority cooperation directions

In the whole, the implementation of the Association Agreement, including the DCFTA, was evaluated positively at the highest level of political dialogue, by the 20th EU-Ukraine Summit (9 July 2018), and by the 5th the EU-Ukraine Association Council (Brussels, 17 December 2018)[9].

[8] Decree of the Ministry for the Environment, Land and Sea Protection, № 300 of 31 November 2018.

[9] The Association Council previously met on 15 December 2014, then on 7 December 2015, on 19 December 2016, and on 8 December 2017 (first time after the entry into force of the Association Agreement).

Four priority cooperation directions were identified and specified in detail in order to enhance political association and economic integration of Ukraine with the EU: digital market, customs policy, energy sector, as well as justice, freedom and security. The deepening of cooperation with the EU in the priority sectors, such as the energy sector, justice and internal affairs, customs matters and digital economy, were key discussion topics during the consultations at expert level held in the framework of the Ukrainian-Norwegian bilateral dialogue on the matters of European integration (Oslo, 11–13 June 2018), and also at the 13th meeting of the Permanent Ukrainian-Lithuanian Commission for European Integration (Vilnius, 19–20 April 2018).

The Council acknowledged the efforts of the Ukrainian authorities in the implementation of the justice sector reform, including the launch of the new Supreme Court. It affirmed the importance of further reforms in this area to ensure effectiveness, independence and transparency of the court system. The EU reaffirmed its continued commitment to support Ukraine with regard to the justice and civilian security sector reforms, through EU programmes and the work of the EU Advisory Mission. On 21st June 2018, the Law of Ukraine "On national security" № 2469-VIII was adopted, which provides for the reforming of Ukraine's security sector in line with the EU and NATO standards and the introduction of civil control within the security sector bodies.

8. Conclusions

The Association Agreement is the first of a new generation of EU agreements and is characterized, as underlined, by its comprehensiveness, and its conditionality. It can definitely be considered a milestone in the history of Europe and "the most advanced agreement of its kind ever negotiated by the EU"[10].

It seems, instead, of doubtful legal and political value the above-mentioned reference to a new type of integration without membership. The Association Agreement does not clarify the perspectives of the relations between the EU and Ukraine. It can only be said that it has contributed and is contributing to the wider recognition of Ukraine as a European country, which shares with the EU Members States a common history and common values. This recognition is particularly important because the quality of "European State" is one of the essential preconditions of EU membership (Article 49 of the TEU) (Joint Declaration on the EU-Ukraine Association Agreement, 2008).

EU Members States do not share a common vision on the future of the EU relations with Ukraine. This is not surprisingly, considering that, particularly in the last decade, they have often manifested different positions on several priority legal and political issues, from some requirements concerning respect of fundamental EU values (protection of democracy, the rule of law) in Hungary and Poland[11], to important aspects of their foreign policy, including relations with Ukraine, and Russia.

[10] Herman Van Rompuy, at that time President of the European Council, Press remarks, Brussels, 25 February 2013.

[11] See, among the last significant acts, the European Parliament Resolution of 1 March 2018 *on the Commission's Decision to activate Article 7 (1) TUE as regards the situation in Poland* (OJEU, C 119, 5 April 2019); and the European Parliament Resolution of 12 September 2018 *on a proposal calling on the Council to determine, pursuant to Article 7 (1) of the Treaty on EU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded* (2017/2131).

In this context, it seems important to highlight the efforts of the EU in financially supporting the process of reform in Ukraine, as well as of Ukraine towards constitutional and legislative reforms reinforcing the European choice. In addition to the macro-financial assistance (MFA), the EU has supported Ukraine through several other instruments, including humanitarian aid, and technical assistance. Ukraine has benefitted from a total of € 2.8 billion worth of EU MFA loans since 2014 (European Commission, 2018). In 2018, the scope of the financial and credit assistance from the EU amounted to over EUR 1.2 billion (Klympush-Tsintsadze, 2019).

In evaluating the "results achieved" by Ukraine in the approximation of the national legislation to the EU legislation, it must be taken into account the challenging situation of the country. The Government and the Verkhovna Rada have been acting with the aim to pursue the overall objectives of the Association Agreement notwithstanding the difficult political and administrative situation following the events in Crimea, the Donbass conflict, the worsening of the relations with Russia until the termination of the Treaty of Friendship and the temporary adoption of the above-mentioned Martial Law.

Ukraine has developed an ad hoc institutional framework for the implementation of the Association Agreement and new legislation, also amending the Constitution, to harmonize the national legal system with the EU acquis. Relevant progress has been made in various sectors of the cooperation, while in various others the actions taken are not yet effective. For example, in the sector of justice the fight to corruption has not yet become reliable, while in the environment sector, which unfortunately is not considered among the priorities, the above-mentioned Law on EIA represents an important step in the right direction, but a lot remain to be done in other fields. It is worth to note the adoption, on 28 February 2019, of Law of Ukraine "On the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030". This Strategy will be in force from 1 January 2020 (Verkhovna Rada of Ukraine, 2019).

Finally, in my opinion, notwithstanding various critical and arguable points, the numerous constitutional and legislative acts, the regulations and the plans adopted in the period considered (2014–2018), represent important steps of a broad process of change. It will now be important to proceed focusing not just on the formal harmonization of the Ukrainian legal system to the EU acquis, but on the effectiveness and efficacy of the new rules, and their real implications on the social, economic, political and cultural heritage and life of people.

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ПРИМІТКИ ЩОДО ВІДНОСИН МІЖ ЄС ТА УКРАЇНОЮ ТА ПРОГРЕС У ВИКОНАННІ УГОДИ ПРО АСОЦІАЦІЮ

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Угода про асоціацію між ЄС та Україною 2014 р., яка прийшла на зміну Угоді про партнерство та співробітництво 1994 р., може вважатися найважливішим результатом співпраці, яка розвивалася з початку 1990-х рр. спочатку в межах Європейської політики сусідства, а потім Східного партнерства.

У статі проаналізовано розвиток відносин між ЄС та Україною, а також прогрес, досягнутий Україною щодо цілей, визначених Угодою про асоціацію. Автор розглядає основні особливості Угоди про асоціацію, а також визначає й оцінює основні правові питання, що виникають унаслідок її виконання.

Угода фокусується на поглибленні політичних та економічних відносин між ЄС та Україною, а також на поступовій інтеграції України у внутрішній ринок ЄС. Це перша з угод ЄС нового покоління, що характеризується всебічністю й демократичною зумовленістю. Вона вимагає масштабної та детальної роботи щодо наближення законодавства України до Регламенту ЄС. Реформи передбачаються в низці ключових напрямів.

Україна розробляє комплексну стратегію щодо адаптації своєї правової системи до правової системи ЄС. Відповідно до Звіту про виконання Угоди про асоціацію між Україною та ЄС за 2018 р., підготовленого Урядовим офісом координації європейської та євроатлантичної інтеграції та Віце-прем'єр-міністром із питань європейської та євроатлантичної інтеграції, за результатами виконання цілей, запланованих на 2018 р., Угоду про асоціацію було виконано на 52%.

Автор вважає, що під час оцінки «досягнутих» Україною результатів щодо наближення національного законодавства до законодавства ЄС необхідно враховувати складну ситуацію в країні. Уряд і Верховна Рада України діють із метою досягнення загальних цілей

Угоди про асоціацію, незважаючи на складну політичну й адміністративну ситуацію після подій у Криму, конфлікт на Донбасі, погіршення відносин із Росією, припинення Договору про дружбу та тимчасове прийняття воєнного стану.

У статті акцентується увага на зусиллях ЄС у фінансовій підтримці процесу реформ в Україні та зусиллях України щодо конституційних і законодавчих реформ, які посилюють прагнення щодо європейського вибору. Україна нарешті розробила спеціальну інституційну базу та нове законодавство, у тому числі зміни до Конституції України, для імплементації Угоди про асоціацію.

Досягнуто прогресу в різних галузях співпраці, проте водночас деякі вжиті заходи ще не принесли відповідних результатів. Наприклад, у галузі верховенства права було вжито низку заходів, однак у сфері боротьби з корупцією поки що досягнуті скромні результати. У свою чергу в галузі навколишнього середовища, яка не розглядалася як пріоритетна, Закон України «Про оцінку впливу на довкілля» може вважатися важливим досягненням.

Загалом виконання Угоди про асоціацію було позитивно оцінене на найвищому рівні політичного діалогу на 20-му саміті Україна – ЄС (9 липня 2018 р.) та на 5-й Раді асоціації Україна – ЄС (Брюссель, 17 грудня 2018 р.).

На думку автора, незважаючи на деякі критичні моменти, конституційні та законодавчі акти, положення й плани, прийняті в період 2014–2018 рр., є важливими кроками на шляху до процесу масштабних змін. У статті підкреслюється важливість зосередження уваги не лише на формальній гармонізації правової системи України з правом ЄС, а й на ефективності та дієвості нових норм і їхніх реальних наслідках для соціальної, економічної, політичної й культурної спадщини та життя людей.

Ключові слова: відносини між ЄС та Україною, Угода про асоціацію між Україною та ЄС, виконання Угоди про асоціацію, процес реформування України, екологічне право.

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PROTECTION OF ECONOMIC COMPETITION: AN OVERVIEW OF THE LATEST LEGISLATIVE NOVELTIES

Purpose. *The article is dedicated to the analysis of the main changes introduced by the Law of Ukraine "On Amendments to Some Laws of Ukraine ensuring the principles of procedural justice and increasing the efficiency of proceedings in cases of violations of the legislation on the protection of economic competition".*

Methods. *Law of Ukraine "On Amendments to Some Laws of Ukraine ensuring the principles of procedural justice and increasing the efficiency of proceedings in cases of violations of the legislation on the protection of economic competition" proposes the implementation of several novelties. Among them are: the restriction for the Antimonopoly Committee of Ukraine by certain time limits for considering cases; possibility of extension of the term for consideration of cases by decision of the Committee's State Commissioner or head of a territorial office; renewal of deadlines for consideration of cases where the respondent is replaced or a co-respondent is involved; provision for the consequences of missing the deadlines for considering cases and also the mechanism of consultations during the consideration of a case, which may be appointed either on the initiative of the Antimonopoly Committee of Ukraine or on the motion of interested persons.*

Results. *The abovementioned amendments will influence the existing system of economic competition protection in a serious way. Among the changes are:*

– *the fine for delayed payment of a fine imposed by the Antimonopoly Committees of Ukraine decision on violation of the legislation on the protection of economic competition is cancelled;*
– *the member of the Antimonopoly Committee of Ukraine who conducted or organized an investigation is deprived of the right to vote in the process of decision-making in the respective case;*
– *the procedure for holding hearings is defined;*
– *recusals and self-recusals are envisaged for the Antimonopoly Committee of Ukraine officers;*
– *the grounds for acquiring the third-party status in a case are changed;*
– *the rights of persons involved in the case are specified and expanded.*

An important remark of the Law of Ukraine "On Amendments to Some Laws of Ukraine ensuring the principles of procedural justice and increasing the efficiency of proceedings in cases of violations of the legislation on the protection of economic competition" is that a person that is exempted from liability or whose fine is reduced shall still be liable for damage caused by the violation to other persons.

Conclusions. *As a result, Law of Ukraine "On Amendments to Some Laws of Ukraine ensuring the principles of procedural justice and increasing the efficiency of proceedings in cases of violations of the legislation on the protection of economic competition" is expected to become an important step forward in increasing the effectiveness of investigations into violations of the legislation on the protection of economic competition. It can also be regarded as the next step to harmonize Ukrainian legislation with the European Union acquis.*

Key words: *competition, novelties, Antimonopoly Committee of Ukraine, case review, penalties, protection of economic competition.*

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1. Introduction

On 7 February 2019, the Parliament adopted the Law of Ukraine "On Amendments to Some Laws of Ukraine ensuring the principles of procedural justice and increasing the efficiency of proceedings in cases of violations of the legislation on the protection of economic competition" (hereinafter – the Law) to amend the Laws of Ukraine "On Protection of Economic Competition" and "On the Antimonopoly Committee of Ukraine".

The final version of the Law has not been published yet (as of imprimatur date – S. Sh., O. B.). The Law will come into effect 3 months after its promulgation (except for the settlement procedure provisions). The changes introduced by the Law are intended to improve the proceedings in cases of competition violation. This can be regarded as the next step to harmonize Ukrainian legislation with the European Union acquis.

In this article, we will analyse the main changes that will soon take place in the Ukrainian legislation on the protection of economic competition.

2. Timing

Under the amended Law of Ukraine "On Protection of Economic Competition" the Antimonopoly Committee of Ukraine (hereinafter – AMCU) will be restricted by certain time limits for considering cases, which will be figured from the date of the order on commencement of proceedings till the date of decision-making:

– general term (2 years) – for all violations other than those subject to the special term mentioned below;

– special term (5 years) – for cases of horizontal anti-competitive concerted actions (among competitors);

– special term (1 year) – for cases of violations under the Law of Ukraine "On Protection from Unfair Competition" as well as for cases on breach of provisions of founding documents approved by the AMCU for companies established by merger and for mergers without obtaining the respective clearance from the AMCU;

– special term (6 months) – for cases instituted upon non-compliance with the AMCU's decision; non-provision or provision of incomplete or unreliable information to the AMCU; creating obstacles for the AMCU's officers.

The mentioned terms will be applied to cases instituted by the AMCU's offices after the entry into force of the Law.

The Law provides for the possibility to extend the term for consideration of cases by decision of the Committee's State

Commissioner or head of a territorial office, however, not more than by 6 months, provided that the following grounds exist: there is a need for obtaining information that was not provided when requested by the Antimonopoly Committee; in case of a hearing; to ensure that the persons involved in the case have enough time to provide their comments on the findings set forth in the Submission with the preliminary findings.

Also, the Law provides for renewal of deadlines for consideration of cases where the respondent is replaced or a co-respondent is involved. It is established that the deadlines for consideration of cases do not include the time for receipt of case-related information requested from the respondent by the Antimonopoly Committee of Ukraine as well as the time of suspension of proceedings on the Committee's initiative for the period of expert examination ordered by the Committee, until the consideration of another related case is completed by the court or until a state authority decides an issue related thereto.

In our opinion, the above rules allow the AMCU to drag out cases. The use of the set of opportunities provided by the Law for extending the term may lead to substantial delays in the actual term provided to the Committee by the Law.

For comparison, we studied the actual timing for the AMCU to handle cases depending on their category. According to the new Law, the deadline for considering an abuse of monopoly case will be 2 years (without taking into account the deadlines for demanding evidence, stay of proceedings etc.). The actual period currently ranges from 4 to 25 months, making up 1 year and 3 months on average. Anti-competitive concerted actions are considered within 1 to 3 months (bid-rigging) to 6 years (cases in the pharmaceutical market), the average period for investigating cases in this category being 2 years, which is much less than the 5-year term established by the Law. Cases of mergers without obtaining the necessary clearance, for which the Law establishes an annual period, actually last from 2 to 18 months, i. e. 9 months on average. Unfair competition should also be investigated within 1 year, while actual investigations into such cases last from 4 months to 6.5 years, which makes 2.5 years on average. Cases, for which a 6-month period is currently established, are actually investigated within 6 months (non-submission of information), 7 months (incomplete submission of information or unreliable information), or 9 months (creating obstacles for the AMCU's officers).

Apart from that, the Law provides for the consequences of missing the deadlines for considering cases. If the AMCU has not passed a decision within the deadlines set by the Law, the case shall be closed due to failure to prove the violation. In view of the above, the question arises as to the respondent's further actions if the AMCU misses the deadline for considering its case. In our opinion, the respondent should apply the following algorithm to prompt the AMCU to close the case:

– step 1 – ask the AMCU in writing about the reasons for missing the deadline;
– step 2 – unless the AMCU provides a proper justification to the effect that the deadline has not been missed, it is necessary to submit objections to the AMCU's actions with a request to close the proceedings;
– step 3 – if the AMCU does not comply with the respondent's request, a claim should be filed with the administrative court for recognizing the Committee's inaction as unlawful and obliging it to close the case due to failure to prove the violation.

The problematic point of implementing this mechanism is that the respondent has the right to familiarize itself with the case file only after a submission with preliminary findings is made. Therefore, if the question arises regarding the AMCU's having missed the deadline for considering a case, it will be difficult for the respondent to justify such omission due to the lack of information on the circumstances determining the extension of time limits in a particular case. We believe that the source of such data may be the respondent's exercising the right to ask questions and have them reasonably answered by the Committee, as provided by the new Law.

The problem of further action will also arise before the respondent, if the AMCU makes a decision with omission of the deadline set by the Law. One of the possible algorithms of acting in this case may be to appeal the illegal actions of the Antimonopoly Committee to the administrative court with the simultaneous commitment of the Antimonopoly Committee to act (to review the decision, to close the case). Another option is to appeal the AMCU's decision to the commercial court to invalidated it in connection with a violation of procedural law rules, which has resulted in a wrong decision. The second option is more risky, as it may be difficult to prove to the court that the causal link exists and that the decision is wrong.

3. Institute of consultations

One of the novelties under the Law is the stipulated mechanism of consultations during the consideration of a case, which may be appointed either on the AMCU's initiative or on the motion of interested persons. At the same time, the legislation does not specify the persons who may have the status of interested ones. It can be assumed that the consultations may initiated by the persons involved in the case (according to the changes introduced by the Law, such persons include the respondent, the applicant, and a third party) and other interested persons (hypothetical, they may include the participants (shareholders) of persons involved in the case as well as the respondent's officials or officers who allegedly have participated in the violation and are participants in related criminal proceedings, as well as law enforcement (state) authorities investigating related cases).

The purpose of the consultations may be to discuss the actual, economic and legal issues pertaining to the suspected violation, its nature as well as the possibility of voluntary termination or correction of actions that have or may have signs of violation of the legislation on the protection of economic competition.

It can be assumed that the consultation mechanism will be predominantly used by respondents to obtain another platform (apart from hearings) for the AMCU to report its position on the actual facts of the case, to interpret them from the legal or economic standpoint, and to converse with the AMCU on the algorithm and the procedure for the respondent to eliminate the violation.

4. Settlement with the AMCU

A settlement procedure may be initiated in a case on the basis of a respondent's statement, which should be filed before the Committee makes its submission with preliminary findings in the case. The settlement procedure is only commenced if the Committee decides that applying that procedure and granting the corresponding consent to the respondent's statement is reasonable.

At the stage of settlement, the Committee and the respondent conduct negotiations, upon which a settlement agreement may be signed, which should contain the essential conditions specified by the Law (in particular, the legal qualification of the violation, the respondent's acknowledgment of the violation, the circumstances of the violation, the amount of the fine). The fine for such a respondent shall be reduced by 20% of the amount calculated in accordance with the AMCU's published approaches to the determination of the amount of fines. Such approaches are currently enshrined in the AMCU's Recommendatory Explanations № 39-p dated 09.08.2016.

After the agreement is signed by the parties, it is sent to the commercial court, which approves it, if it contains all the essential conditions stipulated by the Law, or refuses to do so, if the terms of the agreement are contrary to the requirements of the Law, the interests of the State or society, violate the rights and interests of the parties or other persons, or if the respondent is obviously unable to fulfil its obligations.

After the agreement is approved by the court, the Committee makes its decision in the case according to the terms of the settlement agreement, which cannot be further appealed to the court by the respondent. The settlement procedure shall be terminated by the AMCU, if no agreement was reached with the respondent on the essential terms of the agreement, if the respondent did not send the signed agreement to AMCU, or if the commercial court has not approved the terms of the agreement.

If the respondent fails to comply with the requirements of the agreement, the AMCU shall initiate the cancellation of the approval decision and shall review its decision regarding the respondent. It should be recalled that, in reviewing its decision, the Committee may change or cancel the decision or adopt a new one.

However, the mentioned novelties regarding the settlement agreement will turn into "dead" rules, if no relevant changes are introduced to the Commercial Procedural Code next year, which should stipulate the procedure for the court to approve settlement agreements.

5. Improvement of leniency in cases of anticompetitive concerted actions

An important and progressive novelty of the Law is the clear and improved (compared to similar provisions of the current Law on the Protection of Economic Competition) algorithm for exempting persons from liability under the so-called leniency program, which is successfully applied to fight cartels in the European Union and the United States.

The law stipulates that a person involved in anticompetitive concerted actions shall not be brought to liability, if it has previously informed the AMCU of the committed anticompetitive concerted actions prior to others. Also, a particular list of conditions is defined, under which a person shall be exempted from liability:

– the statement should be received by the AMCU prior to the commencement of proceedings in the case and before other participants in the concerted actions file their statements;
– the applicant did not initiate the concerted actions;
– the person has terminated the violation;
– the person facilitated the investigation as determined by the law.

For other participants of concerted actions, who have voluntarily applied to the AMCU and provided strong evidence of the violation before they received the submission with

preliminary findings, the amount of the fine shall be reduced depending on the precedence of providing evidence:

– for the first person – by 50%;
– for the second person – by 30%;
– for other persons – by 20% from the calculated amounts of fines, in accordance with the AMCU's published approaches to determining the amounts of fines.

An important remark of the Law is that a person that is exempted from liability or whose fine is reduced shall still be liable for damage caused by the violation to other persons. It should be recalled that the Law of Ukraine "On Protection of Economic Competition" stipulates that damage may be recovered in a double amount, if it is caused by a competition violation.

6. Other important novelties under the Law

– the fine for delayed payment of a fine imposed by the AMCU's decision on violation of the legislation on the protection of economic competition is cancelled;
– the AMCU's member who conducted or organized an investigation is deprived of the right to vote in the process of decision-making in the respective case;
– the procedure for holding hearings is defined;
– recusals and self-recusals are envisaged for the AMCU's officers;
– the grounds for acquiring the third-party status in a case are changed;
– the rights of persons involved in the case are specified and expanded.

We believe that the adopted Law is an important step forward in increasing the effectiveness of investigations into violations of the legislation on the protection of economic competition. However, Bill № 2431 aimed at improving the process of determining the amount of fines for violations of the legislation on the protection of economic competition was unfortunately not passed into law. In particular, the Bill was supposed to entitle the court to verify the fines calculated by the AMCU and to oblige the AMCU to review its decisions regarding them. At present, the protection of rights in court proceedings is not effective enough, since the court has no authority to influence the amounts of fines, if the latter are found to be not commensurate to the committed violation, in the absence of grounds for invalidating the AMCU's decision.

7. Conclusions

As a result, Law of Ukraine "On Amendments to Some Laws of Ukraine ensuring the principles of procedural justice and increasing the efficiency of proceedings in cases of violations of the legislation on the protection of economic competition" is expected to become an important step forward in increasing the effectiveness of investigations into violations of the legislation on the protection of economic competition. It can also be regarded as the next step to harmonize Ukrainian legislation with the European Union acquis.

ЗАХИСТ ЕКОНОМІЧНОЇ КОНКУРЕНЦІЇ: ОГЛЯД ОСТАННІХ ЗАКОНОДАВЧИХ НОВЕЛ

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Мета. *Статтю присвячено аналізу основних змін, внесених Законом України «Про внесення змін до деяких законів України щодо забезпечення принципів процесуальної справедливості та підвищення ефективності проваджень у справах про порушення законодавства про захист економічної конкуренції».*

Методи. *Закон України «Про внесення змін до деяких законів України щодо забезпечення принципів процесуальної справедливості та підвищення ефективності проваджень у справах про порушення законодавства про захист економічної конкуренції» пропонує реалізували декілька новел: обмежити діяльність Антимонопольного комітету України певними строками для розгляду справ; надати можливість продовження строку для розгляду справ за рішенням державного уповноваженого Комітету або голови територіального відділення; надати можливість поновлення термінів розгляду справ, де відбувається заміна відповідача або залучення співвідповідача; ввести покарання за порушення термінів розгляду справ, а також механізм консультацій під час розгляду справи, які можуть бути призначені або за ініціативою Антимонопольного комітету України, або за клопотанням зацікавлених осіб.*

Результати. *Вищезгадані зміни серйозно вплинуть на наявну систему захисту економічної конкуренції, зокрема:*

– скасовується штраф за прострочення платежу, накладений рішенням Антимонопольного комітету України про порушення законодавства про захист економічної конкуренції;

– член Антимонопольного комітету України, який проводив або організував розслідування, позбавляється права голосу у процесі прийняття рішень у відповідній справі;

– визначено порядок проведення слухань;

– для працівників Антимонопольного комітету України передбачені самовідводи;

– змінюються підстави для набуття статусу третьої особи у справі;

– визначені й розширені права осіб, які беруть участь у справі.

Важливим зауваженням Закону України «Про внесення змін до деяких законів України щодо забезпечення принципів процесуальної справедливості та підвищення ефективності проваджень у справах про порушення законодавства про захист економічної конкуренції» є те, що особа, яка звільнена від відповідальності або суму штрафу якої було зменшено, все ще несе відповідальність за збиток, заподіяний іншим особам.

Висновки. *У результаті передбачається, що Закон України «Про внесення змін до деяких законів України щодо забезпечення принципів процесуальної справедливості та підвищення ефективності проваджень у справах про порушення законодавства про захист економічної конкуренції» стане важливим кроком на шляху до підвищення ефективності розслідувань порушень законодавства про захист економічної конкуренції. Він також може розглядатися як наступний крок адаптації українського законодавства до законодавства Європейського Союзу.*

Ключові слова: конкуренція, новела законодавства, Антимонопольний комітет України, розгляд справи, покарання, захист економічної конкуренції.

ДО УВАГИ АВТОРІВ

До друку приймаються наукові статті провідних фахівців у галузі публічного права, представників юридичної практики, молодих науковців.

Технічні вимоги до оформлення статті:

Формат А 4; поля – 2 см (нижнє) х 2 см (верхнє), 3 см (ліве) х 1,5 см (праве); абзац – 1,25 см; міжрядковий інтервал – 1,5 см; шрифт – Times New Roman; кегль – 14.

Обсяг статті – від 10 до 20 сторінок.

У тексті слід використовувати символи за зразком: лапки «…», дефіс (-), тире (–), апостроф (’).

Послідовність розміщення структурних елементів у науковій статті:

1. Вказується мовою статті (англійською або німецькою):

назва;

прізвище, ім’я, по батькові автора (-ів) статті (не більше двох осіб);

посада, місце роботи/навчання, науковий ступінь, вчене звання (за наявністю), електронна адреса;

розширена анотація та ключові слова. В анотації повинна бути така структура: Мета, Методи, Результати та Висновки. Обсяг анотації: мінімум – 300 слів, максимум – 350 слів. До анотації обов’язково додають 5–10 ключових слів.

2. Текст статті:

Вступ (Introduction) є обов’язковою частиною роботи, в якій автор вказує новизну теми та актуальність наукових рішень. Мета дослідження повинна бути чітко вказана поряд з науково-дослідницькими завданнями. Необхідно вказати методологію дослідження, логіку уявлення дослідженого матеріалу.

Основний текст повинен бути поділеним на змістовні розділи з окремими заголовками (до 4-6 слів).

Стаття повинна містити висновки з проведеного дослідження (Conclusions), в яких представлені розгорнуті конкретні висновки за результатами дослідження і перспективи подальших досліджень у цьому напрямку.

3. Список використаних джерел. Бібліографічний опис списку оформлюється з урахуванням розробленого в 2015 році Національного стандарту України ДСТУ 8302:2015 «Інформація та документація. Бібліографічне посилання. Загальні положення та правила складання». За умови неправильного оформлення списку використаних джерел стаття може бути відхилена рецензентами.

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Dikhtiievskyi, P. V., Lahniuk, O. M. (2015). Kadrove zabezpechennia sudiv zahalnoi yurysdyktsii: administratyvno-pravovyi aspekt [Staff assistance of of courts of general jurisdiction: administrative and legal aspect]. Kherson: Helevetyka. [in Ukrainian]

Bondarenko, I. (2002). Sudova systema Ukrainy ta yii reformuvannia v suchasnykh umovakh [Judicial system of Ukraine and its reforming in the modern conditions]. Pravo Ukrainy, no. 8, pp. 37–39.

Транслітерація імен та прізвищ з української мови здійснюється відповідно до вимог Постанови Кабінету Міністрів України «Про впорядкування транслітерації українського алфавіту латиницею» від 27 січня 2010 р. № 55.

Транслітерація з російської мови здійснюється відповідно до ГОСТ 7.79-2000. Система стандартов по информации, библиотечному и издательскому делу. Правила транслитерации кирилловского письма латинским алфавитом.

5. Вказується українською і англійською (якщо статтю подано німецькою мовою):

назва;

прізвище, ім'я, по батькові автора (-ів) статті (не більше двох осіб);

посада, місце роботи/навчання, науковий ступінь, вчене звання (за наявністю), електронна адреса;

розширена анотація та ключові слова. В анотації повинна бути така структура: Мета, Методи, Результати та Висновки. Обсяг анотації: мінімум – 300 слів, максимум – 350 слів. До анотації обов'язково додають 5–10 ключових слів.

Посилання на літературу подаються у тексті тільки в круглих дужках:

При цьому кожен громадянин України, який відповідає встановленим вимогам до кандидата на посаду прокурора, має право звернутися до Кваліфікаційно-дисциплінарної комісії прокурорів із заявою про участь у доборі кандидатів на посаду прокурора (ЗУ «Про прокуратуру», 2015).

Усі статті, що надходять до редакції проходять закрите рецензування та перевіряються на плагіат.

Редколегія вправі рецензувати, редагувати, скорочувати та відхиляти статті. У разі недотримання зазначених вимог щодо оформлення рукописів редакція залишає за собою право не розглядати їх. Редакція не завжди поділяє позицію авторів публікацій. Передрук статей можливий лише з дозволу редакції.

ВНИМАНИЮ АВТОРОВ

К печати принимаются научные статьи ведущих специалистов в области публичного права, представителей юридической практики, молодых ученых.

Технические требования к оформлению статьи:

Формат А 4; поля – 2 см (нижнее) х 2 см (верхнее), 3 см (левое) х 1,5 см (правое) абзац – 1,25 см; межстрочный интервал – 1,5 см; шрифт – Times New Roman; кегль – 14.

Объем статьи – от 10 до 20 страниц.

В тексте следует использовать символы по образцу: лапки «...», дефис (-), тире (–), апостроф (‘).

Последовательность размещения структурных элементов в научной статье:

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должность, место работы / учебы, ученая степень, ученое звание (при наличии), электронный адрес;

расширенная аннотация и ключевые слова. В аннотации должна быть такая структура: Цель, Методы, Результаты и Выводы. Объем аннотации: минимум – 300 слов, максимум – 350 слов. К аннотации обязательно добавляют 5–10 ключевых слов или словосочетаний.

2. Текст статьи:

Введение (Introduction) является обязательной частью работы, в которой автор указывает новизну темы и актуальность научных реше ний. Цель исследования должна быть четко указана рядом с научно-исследовательскими задачами. Необходимо указать методологию исследования, логику представления исследованного материала.

Основной текст должен быть разделен на содержательные разделы с отдельными заголовками (до 4-6 слов).

Статья должна содержать выводы из проведенного исследования (Conclusions), в которых представлены развернутые конкретные выводы по результатам исследования и перспективы дальнейших исследований в этом направлении.

3. Список использованных источников. Библиографическое описание списка оформляется с учетом разработанного в 2015 году Национального стандарта Украины ДСТУ 8302: 2015 «Информация и документация. Библиографическая ссылка. Общие положения и правила составления». При неправильном оформлении списка литературы статья может быть отклонена рецензентами.

4. References. Оформляется в соответствии со стандартом APA (APA Style Reference Citations). Автор (транслит), название статьи (транслит), название статьи (в квадратных скобках перевод на английский язык), название источника (транслит), выходные данные (город с обозначением на английском языке), издательство (транслит). К примеру:

Dikhtiievskyi, P. V., Lahniuk, O. M. (2015). Kadrove zabezpechennia sudiv zahalnoi yurysdyktsii: administratyvno-pravovyi aspekt [Staff assistance of of courts of general jurisdiction: administrative and legal aspect]. Kherson: Helevetyka. [In Ukrainian]

Bondarenko, I. (2002). Sudova systema Ukrainy ta yii reformuvannia v suchasnykh umovakh [Judicial system of Ukraine and its reforming in the modern conditions]. Pravo Ukrainy, no. 8, pp. 37–39.

Транслитерация имен и фамилий с украинского языка в соответствии с требованиями Постановления Кабинета Министров Украины «Об упорядочении транслитерации украинского алфавита латиницей» от 27 января 2010 № 55.

Транслитерация с русского языка осуществляется в соответствии с ГОСТ 7.79-2000. Система стандартов по информации, библиотечному и издательскому делу. Правила транслитерации кирилловского письма латинским алфавитом.

5. Указывается на украинском и английском языке (если статью подано на немецком языке):

название;

фамилия, имя, отчество автора (-ов) статьи (не более двух человек);

должность, место работы / учебы, ученая степень, ученое звание (при наличии), электронный адрес;

расширенная аннотация и ключевые слова. В аннотации должна быть такая структура: Цель, Методы, Результаты и Выводы. Объем аннотации: минимум – 300 слов, максимум – 350 слов. К аннотации обязательно добавляют 5–10 ключевых слов или словосочетаний.

Ссылки на литературу даются в тексте только в круглых скобках:

При этом каждый гражданин Украины, который соответствует установленным требованиям к кандидату на должность прокурора, вправе обратиться в квалификационно-дисциплинарной комиссии прокуроров с заявлением об участии в отборе кандидатов на должность прокурора (ЗУ «О прокуратуре», 2015).

Все статьи, поступающие в редакцию проходят закрытое рецензирование и проверяются на плагиат.

Редколлегия вправе рецензировать, редактировать, сокращать и отклонять статьи. В случае несоблюдения указанных требований по оформлению рукописей редакция оставляет за собой право не рассматривать их. Редакция не всегда разделяет позицию авторов публикаций. Перепечатка статей возможна только с разрешения редакции.

FOR AUTHORS

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The article volume is from 10 to 20 pages.

It should be used symbols as follows: quotes "…", hyphen (-), dash (–), apostrophe (').

Sequence of placement of structural elements in a research article:

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Introduction is an obligatory part of the research, where the author indicates topicality of the subject and actuality of scientific decisions. Goal of research should be clearly indicated along with the research tasks. It is necessary to specify the methodology of research, the logic of presentation of the investigated material.

The main text should be divided into content-rich sections with separate headings (up to 4-6 words).

The article should contain conclusions from the study, which present detailed findings from the study and the prospects for further research in this direction.

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Dikhtiievskyi, P. V., Lahniuk, O. M. (2015). Kadrove zabezpechennia sudiv zahalnoi yurysdyktsii: administratyvno-pravovyi aspekt [Staff assistance of of courts of general jurisdiction: administrative and legal aspect]. Kherson: Helevetyka. [in Ukrainian]

Bondarenko, I. (2002). Sudova systema Ukrainy ta yii reformuvannia v suchasnykh umovakh [Judicial system of Ukraine and its reforming in the modern conditions]. Pravo Ukrainy, no. 8, pp. 37–39.

Transliteration of names and surnames is carried out in accordance with the requirements of the Resolution of the Cabinet of Ministers of Ukraine "On Normalization of Transliteration of the Ukrainian Alphabet by Means of the Latin Alphabet" dated January 27, 2010, No. 55.

Transliteration from Russian is carried out in accordance with GOST 7.79-2000. System of standards on information, librarianship and publishing. Rules of transliteration of Cyrillic script by Latin alphabet.

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surname, name, patronymic of author (-s) of the article (no more than two persons);

job position, place of employment/study, academic degree, rank (if any), e-mail;

extended summary and key words. Summary has to contain: subject of research, methodology, goal and conclusions of research. The minimum volume of summary is 350 words.

References to the literature are given in the text only in parentheses:

At the same time, every citizen of Ukraine, who meets the established requirements for a candidate for a post of prosecutor, has the right to appeal to the Qualification Disciplinary Commission of Public Prosecutors with application of participation in the selection of candidates on the post of prosecutor (The Law of Ukraine "On Public Prosecution Service", 2015).

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