

PROBLEMS OF ADMINISTRATIVE LAW IN THE SYSTEM OF PUBLIC ADMINISTRATION

Djamilya Ospanova, Al-Farabi Kazakh National University

Duman Kussainov, Al-Farabi Kazakh National University

Akif Suleimanov, Narxoz University

Ainur Kussainova, Al-Farabi Kazakh National University

Rysgul Abilsheyeva, Caspian State University of Technologies and Engineering named after Sh. Yessenov (CSUTE)

ABSTRACT

The relevance of the work is determined by the fact that administrative law appears as one of the significant factors influencing the development of both the public administration system as a whole and the processes of its reform that the Russian Federation has faced today. The authors show that if the relations of state administration are the subject of the administrative law's influence, then we are faced with an extremely important question regarding the character and specificity of the relationship between administrative and legal relations and relations of state management, on the one hand and analysis of the concept of administrative and legal regulation of public administration relations on the other. This goal is important, given that the authors substantiate the relationship between administrative law and public administration through identifying the possibilities of regulatory influence on the part of administrative law on public administration relations.

Keywords: Administrative Law, Public Administration, Municipal Authorities, Development Subjects, Regulation of Relationships, Approaches to Management.

INTRODUCTION

One of the leading approaches to understanding the place of administrative law in public administration is defined as state-administrative, alternative to it as administrative-legal. Naturally, in this case we are not talking about a categorical delineation of such disciplines as the science of public administration and the science of administrative law and an attempt to single out among them some dominant way of determining the essence of public management relations. But nevertheless, the introduction of certain clarity in this issue, especially when it is not a question of a particular sphere of state administration, but of relations of state administration as a whole, is important and at the same times an urgent task for modern legal science and for our research.

Since public administration is called upon to ensure a stable and orderly development of society, it is quite natural that it is implemented with respect to a huge array of manifestations of social life. Recognition of this feature helps in a better understanding of the dynamic, the complex and mosaic nature of the subject of regulation of administrative law and in an adequate explanation of the fact that scientific research on the subject of administrative law always faces certain difficulties.

It is obvious that the phenomenon of public administration has a universal character. In this sense, individual researchers even state the thesis that virtually all branches of state power, without exception, realize the functions of state administration. For example, according to Kassow, the essence of public administration is revealed through its definition as a purposeful influence of the state through the system of all its bodies on public relations (Kassow, 2016). Similarly, in his later writings, he describes public administration as a practical, organizing and regulating influence of the state on the social life of people, which, in fact, extends this concept to all spheres of the state power's exercise. Another lawyer Dragos characterizes the state administration in such a way: Public administration is an integral sphere of activity of the state power, all its branches, all its bodies, all officials, the realization of state power in all its forms and methods (Dragos, 2016). A similar interpretation of public administration is proposed by Howland, who writes that the term management refers to the process of managing public affairs, which is carried out by all organs of the state and in all branches of government (Howland, 2016). The definition of De Hert and Boulet suggests that public administration is a purposeful organizational and regulatory influence of the country on the state and development of social processes, the consciousness, behavior and activities of a person and a citizen in order to achieve the goals and the state functions' realization, reflected in the Constitution and legislative acts, through the introduction of state policy developed by the political system and legislatively secured through the state power bodies' activities, endowed with the necessary competence (De Hert, 2016).

At one time, Chatzopoulou, Poulsen wrote that public administration is the activity of executive and administrative bodies of state power and any attempts to expand the content of state-administrative relations lead only to erroneous ideas about it (Chatzopoulou, 2017). Jreisat also considers it inappropriate to extend the content of the concept of "public administration" to others, except for the executive branch of government (Jreisat, 2016). The same opinion is held by Koenig, who writes that public administration is the activity of specially created bodies, public-service posts that constitute the system of executive bodies (Koenig, 2016).

THEORETICAL CONSTRUCTIONS OF ADMINISTRATIVE LAW

One of the first generally accepted definitions of the subject of administrative law was proposed by the Soviet scientist Prunty. To the subject of administrative law, he enumerated public relations of managerial nature, directly related to the performance by state agencies of specific executive and administrative tasks, namely, the constant and direct management of economic and cultural-political construction (Prunty, 2016). Leksin held similar views on the subject of administrative law, which he understood as a set of public relations arising in connection with the implementation of public administration functions, regarding the implementation of wide and diverse executive and administrative activities (Leksin, 2016). Zhu among the main characteristics of public relations, which constitute the subject of administrative law, identifies the following (Zhu, 2016): Arise only as a result of state-managerial (power) activity, the executive body of the state is an obligatory participant.

Gordon tried to generalize the definition of the subject of administrative law, which he defines as a system of homogeneous public relations of a regulative and protective material and procedural nature, in which the rights, freedoms and duties of the participants in managerial activity or administrative and legal protection are realized (Gordon, 2016). Osorio sought to

provide the most detailed list of social relations that constitute the subject of administrative law, to which he attributed (Osorio, 2016).

The peculiarity of these relations is that they arise only as a result of power activity, state-administrative activity, on behalf of the state and the relevant executive and administrative body always participates in them. However, the lack of this approach is its internal contradiction, which consists in a combination of uncertainty with a relative certainty, which, in our opinion, introduces some discomfort in the perception of this kind of definitions, but this circumstance does not diminish its value. (Miller, 2016) Therefore, analyzing the positive and negative aspects of the synthetic approach, we still believe that its application is the most optimal and justified. On one hand, it delineates the general outlines of the corresponding definition, giving it certainty and on the other hand, for the purpose of better visualization and disclosure of the content of this concept, gives the researcher the right to identify certain social relations as examples and to avoid their exhaustive enumeration. In the future, we will use it to determine the subject of administrative law.

Cases of administrative jurisdiction include cases of appealing decisions, actions or inactivity of the subjects of power authority, which are understood as state authorities, local government bodies, their officials, other entities in the exercise of their administrative functions, including the discharge of delegated authorities (Quinot, 2016).

Interesting views on the nature of the subject of administrative law were expressed by Smorgunov, who, among other things, ranked it as managerial activity, which arises during the implementation of lawmaking and justice (Smorgunov, 2016). In general, we are impressed by this opinion, but with one serious addition: Such managerial activity should be immediate and relatively permanent in nature and implemented on the basis of executive and administrative activities. This clarification is conditioned by the need to distinguish state administration from general government, which under certain conditions could be considered part of the subject of administrative law, since in the scientific literature it is sometimes possible to interpret the legislative function of the state as a kind of public administration (Dong, 2016).

DETECTION OF THE GRADING CHARACTERISTICS OF ADMINISTRATIVE AND MANAGEMENT ACTIVITIES

State administration is the practical, organizing and regulating influence of the state on the public and private life of people for the purpose of ordering, preserving or transforming it, based on its domineering power. State administration is the process of implementing authoritarian governance through the formation and implementation of a system of state executive bodies at all levels of the administrative and territorial division of the country, which uses a combination of methods, mechanisms, methods of power influence on society. Thus, state administration is imperious and the key elements of this system are the state and state power (Farazmand, 2017).

As for public administration, this term originates from the law and practice of foreign countries (Chirita, 2016). According to the UN glossary, public administration has many definitions. Public administration is the centralized organization of the implementation of public policies and programs, as well as coordination of staff activities. Other specialists in the field of state administration determine that public administration is connected with the implementation of laws and other norms adopted by the legislative bodies of the state. Still others argue that public

administration is used in managerial, political and legal theory and is a procedure for carrying out actions by the legislative, executive and judicial branches of government in order to implement state regulation and provide services to the public. According to the UN, public administration has two closely related meanings: a) Holistic state apparatus (policies, rules, procedures, systems, organizational structures, personnel, etc.) that is financed from the state budget and is responsible for managing and coordinating the work of the executive branch of government and its interaction with other interested parties in states, society and external environment; b) Management and implementation of the whole complex of state measures that are related to the implementation of laws, decisions of the government and management related to the provision of public services.

Simon and Milakovich define public administration as the social system's subsystem that is part of a society whose functioning and development are under the powerful influence of all other spheres of social life (Simon, 2016). Thus, for public administration, society and public authority are the key elements (Badovskis, 2017).

In today's science of administrative law, two approaches to the interpretation of the state administration phenomenon continue to exist. It is a broad and narrow understanding of state administration. For objectivity, let's imagine both. State administration in the broadest sense is the aggregate of all types of state activity that is realized in the functioning of the organs of all power branches and directed at regulating public relations. Speaking of a broad understanding of state administration, it must be said that it covers activities of (Gallahue, 2016).

State management in the narrow sense is the executive and administrative activity of executive authorities, as well as other bodies, insofar as they exercise executive and administrative functions. A feature of this activity of other (non-executive) bodies, which allows distinguishing between a broad and narrow understanding of state law, consists in the following: Only a part of the entire range of activities of state bodies that is executive-administrative in nature is included in the state administration. This activity is not leading for these bodies; it has a secondary, auxiliary, internal organizational character. It should be noted that in administrative law it is the narrow understanding of the state administration is the main one. This approach allows us to qualitatively analyse the executive activity of executive bodies, as well as internal organizational activities within the framework of other state bodies' functioning (Swartzendruber, 2016).

The encyclopedia of state administration indicates that public management means the development and implementation of public policy. In our opinion, public management is carried out through the provision of power to society-through decentralization and the more management becomes decentralized the more it is public. If there is a risk of publicity, state administration becomes public management through the introduction of public administration (Curtis, 2016).

CONSLUSION

The analysed provisions make it possible to define the subject of administrative law, by which we mean the aggregate of social relations that make up administrative relations that are not related to the subject of another branch of law, are relatively permanent and immediate, are implemented with the help of an executive mechanism, implemented within a certain government body, local government or non-governmental organization (in case of state authorities delegated to it) with the purpose of ensuring its proper functioning (intra-

organizational management relations). Or outside the framework of a certain state authority, local government or non-governmental organization (in case of delegating state authorities to it) and is directed to other (external) with respect to the relevant body or organization of the entities (externally-organizational management relations), as well as public relations of the security nature of the above-mentioned management relations (of ancillary nature) that arise in direct connection with them and ensure their implementation: Quality, high-grade, that meets the legal requirements.

REFERENCES

- Badovskis, M., Briede, J., Danovskis, E., Dupate, K., Kārklīņa, A., Ketners, K. & Strada, R.K. (2017). Public law. In: T. Kerikmäe, K. Joamets, J. Pleps, A. Rodiņa, T. Berkmanas & E. Gruodytė (Eds.), *The Law of the Baltic States* (pp. 191-275). Cham: Springer International Publishing.
- Chatzopoulou, S. & Poulsen, B. (2017). Combining centralization and decentralization in Danish public administration. In: J. M. Ruano & M. Profiroiou (Eds.), *the Palgrave Handbook of Decentralisation in Europe* (pp. 273-296). Cham: Springer International Publishing.
- Chirita, A.D. (2016). Procedural rights in EU administrative competition proceedings: Ex Ante Mergers. In: C. Cauffman & Q. Hao (Eds.), *Procedural Rights in Competition Law in the EU and China* (pp. 59-99). Berlin, Heidelberg: Springer Berlin Heidelberg.
- Curtis, C. (2016). Law constraints on public administration. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-8). Cham: Springer International Publishing.
- De Hert, P. & Boulet, G. (2016). The Co-existence of administrative and criminal law approaches to data protection wrongs. In D. Wright & P. De Hert (Eds.), *Enforcing Privacy: Regulatory, Legal and Technological Approaches* (pp. 357-394). Cham: Springer International Publishing.
- Dong, L. (2016). Procedural rights in competition law proceedings: Ex Post Proceedings. In: C. Cauffman & Q. Hao (Eds.), *Procedural Rights in Competition Law in the EU and China* (pp. 161-194). Berlin, Heidelberg: Springer Berlin Heidelberg.
- Dragos, D.C. (2016). Administrative procedure. In A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-7). Cham: Springer International Publishing.
- Farazmand, A. (2017). Impact of law on public administration. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-10). Cham: Springer International Publishing.
- Gallahue, P. (2016). Law and public administration ethics. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-5). Cham: Springer International Publishing.
- Gordon, G.J. (2016). Federalism and public administration. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-10). Cham: Springer International Publishing.
- Hatcher, W. & Cooper, S. (2016). Law and public administrator's commitment. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-5). Cham: Springer International Publishing.
- Herm, M., Joamets, K., Kairjak, M., Kerikmäe, T., Kranich, H., Künnapas, K. & Teplöhh, D. (2017). Public Law. In: T. Kerikmäe, K. Joamets, J. Pleps, A. Rodiņa, T. Berkmanas & E. Gruodytė (Eds.), *The Law of the Baltic States* (pp. 41-100). Cham: Springer International Publishing.
- Howland, D. (2016). The alternative order of international administration. *International Law and Japanese Sovereignty: The Emerging Global Order in the 19th Century* (pp. 73-97). New York: Palgrave Macmillan US.
- Jreisat, J.E. (2016). Comparative public administration and globalization. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-12). Cham: Springer International Publishing.
- Kassow, B. (2016). Administrative law judges and politics. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-6). Cham: Springer International Publishing.
- Koenig, H.O. (2016). Complex interaction of administration and law. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-8). Cham: Springer International Publishing.

- Leksin, I. (2016). Constitutional law and public administration, Russia. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-7). Cham: Springer International Publishing.
- Miller, E. J. (2016). Law making and public administration. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-5). Cham: Springer International Publishing.
- Osorio, A. (2016). Foundations of the administrative law. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-6). Cham: Springer International Publishing.
- Prunty, R. (2016). Constitutional law and public administration. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-8). Cham: Springer International Publishing.
- Quinot, G. (2016). Private law and public administration. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-4). Cham: Springer International Publishing.
- Schnurr, E. (2016). Local law enforcement and public administration. In: A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy and Governance* (pp. 1-5). Cham: Springer International Publishing.
- Sgueo, G. (2016). A Framework for Interactions between National, European and Global Administrative Systems of Law *beyond Networks – Interlocutory Coalitions, the European and Global Legal Orders* (pp. 1-54). Cham: Springer International Publishing.
- Simon, A.M. & Milakovich, M.E. (2016). Future of public administration and law. In: A. Farazmand (Ed.), *Global Encyclopaedia of Public Administration, Public Policy and Governance* (pp. 1-9). Cham: Springer International Publishing.
- Smorgunov, L. (2016). From public administration reform to e-government: Russian path to digital public services. In: A.V. Chugunov, R. Bolgov, Y. Kabanov, G. Kamps & M. Wimmer (Eds.), *Digital Transformation and Global Society: First International Conference, DTGS 2016, St. Petersburg, Russia, June 22-24, 2016, Revised Selected Papers* (pp. 232-246). Cham: Springer International Publishing.
- Swartzendruber, A. (2016). Law and public administration innovation. In: A. Farazmand (Ed.), *Global Encyclopaedia of Public Administration, Public Policy and Governance* (pp. 1-4). Cham: Springer International Publishing.
- Zhu, S. (2016). Court trial and its administration. *Sending Law to the Countryside: Research on China's Basic-level Judicial System* (pp. 29-49). Singapore: Springer Singapore.