SOURCES SYSTEM OF ADMINISTRATIVE LAW IN UKRAINE

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Abstract: The article examines modern approaches to understanding the essence of the sources of administrative law in Ukraine. The constituent elements of the system of sources of administrative law are considered based on a functional approach to their application. The distribution of sources of administrative law into groups and types has been studied, based on the peculiarities of the field of administrative law, its subject and purpose. It was determined that the legal system of Ukraine includes, as sources of administrative law, normative legal acts of state bodies, local self-government bodies, international legal treaties of Ukraine, and decisions of the Constitutional Court of Ukraine, as specific normative and auxiliary sources.

Keywords: Administrative law, Constitutional provisions, Sources of administrative law, System of administrative law.

1 Introduction

The formation of Ukraine as a legal state requires a new content of administrative law. The development of administrative law implies consideration of the concept and types of sources of administrative law from a new angle since significant changes are taking place in the content and system of the specified sources, which contribute to the formation of a new administrative law in Ukraine. This, in particular, affects the updating of the domestic administrative and legal doctrine. It is the changes in administrative law that actualize the problem of the systematization of sources of law in this field. Thus, in previous years, the system of sources of administrative law traditionally included only acts of law-making by state authorities, which contain administrative and legal norms. At the same time, in Ukrainian administrative science, the circle of sources is not exhausted by legislative acts, but there is a tendency to expand them with the help of so-called "non-legislative" sources. However, at present, there is no single functional approach to the constituent elements of the source system of this fundamental field.

In our time, the issue of sources of law is becoming especially relevant in connection with the rapid development and increase of institutes and sub-branches of administrative law. In accordance with the Constitution of Ukraine, statutory legislation (on the legal status of executive authorities) is being formed. In addition, questions of sources of law have always been relevant for administrative law, since this branch (unlike other material ones) does not have a single codified act that contains the norms of the branch. Administrative and legal norms are contained in normative acts adopted by the parliament, the president, the government, central and local bodies of executive power, local self-government bodies, and administrations of state-owned enterprises, institutions, and organizations. The sources of administrative law are international legal agreements of Ukraine, which have been ratified by the Verkhovna Rada of Ukraine, and international acts recognized by Ukraine if they regulate administrative and legal relations.

2 Literature Review

Studies of problems of practical implementation of issues and problems of the system of sources of administrative law are sufficiently widely disclosed in specialized legal literature. These questions are most widely considered in the works of such scientists as O. Agres [1], A. Boiar [4], V. Demchenko [6], Z. Kisil [16], V. Kurylo [18], R. Melnyk [21], T. Shmatkovska [26-29], O. Stashchuk [36-38], Yu. Tsurklenko [39], V. Yakubiv [41], Ya. Yanyshyn [43], O. Yatsukh [44] and others. In addition, in our opinion, it is necessary to note the significant contribution that was made to the study of the classification of sources of administrative law and practical aspects of its application in legal practice, which are highlighted in the studies of such scientists as O. Apostolyuk [2], O. Binert [3], O. Chornomaz [5], M. Dziamulych [7-15], T. Kolomoets [17], N. Mazaraki [19], M. Melnyk [20], O. Panasiuk [22], N. Popadynets [23-25], O. Shubalyi [30-31], R. Sodoma [32-35], S. Yaheliuk [40], A. Yakymchuk [42] and many others.

But despite such a significant number and wide variety of thematic works devoted to the problems of the sources of administrative law, there are still many issues regarding which there is no unity of views of the representatives of the branch scientific professional community, and the provisions of their research are marked by fragmentation, contradictory content. Therefore, there is an objective need to improve these issues in view of the specifics of today.

3 Materials and Methods

In practice, an important role in the implementation of administrative law's regulatory function belongs to the method of regulating social relations, or method of administrative law. The very concept of the subject and method of legal regulation provides a complete description of any branch of law, including administrative law.

The administrative-legal method is a set of legal means and methods (techniques) used by governing bodies to ensure the regulatory influence of the norms of administrative law on social relations [16]. Thus, the method of administrative and legal regulation differs from other methods in its authoritative, imperative nature. Its practical significance, as well as the subject of administrative and legal regulation, consists in the fact that with their help, the demarcation of various legal branches is carried out.

The peculiarity of the method of administrative law is that its norms are aimed at satisfying not private and personal, but public interests – the interests of people, the state, and society, they provide for the direct application of administrative sanctions. In addition, social relations regulated by the norms of administrative law always involve inequality of participants, and rigid subordination of the will, which is directed by a single administrative will.

It is also necessary to pay attention to the fact that the method of administrative law is characterized by general methods of legal regulation: imperative and dispositive, which are implemented in the following way:

- Use of prescriptions;
- Establishment of prohibitions;
- Granting of permits [16].

In addition, administrative law is also characterized by special methods that are inherent only to this branch of legal science, namely: subordination, coordination, reorganization, administrative contract, registration, incentives, investments, etc.

The imperative method of legal regulation is a method of authoritative prescriptions, characteristic of administrative law.

The dispositive method (method of coordination), unlike the imperative method, assumes legal equality of the participants in the legal relationship and is used, as a rule, in civil law, but has a place in private administrative law. The dispositive method in

administrative law is used to establish the legal status of civil servants and to exercise their official powers in the field of public administration. The legal fact in this case, as a rule, is the contract [16].

Thus, it can be noted that the administrative, or administrative-legal, the method is a set of legal methods that reflect the authoritative nature of state administration, and the relations regulated by this method are defined as relations of authority and subordination.

4 Results and Discussion

Today, in the scientific literature, there are several views on the relationship between the concepts of "source of law" and "form of law": some authors equate these concepts, others divide them according to different variations, and still others believe that the term "source of law" and "form of law" is two different concepts that cannot be equated. It should be borne in mind that in scientific literature the terms: "source of law" and "form of law" are considered identical, which is a kind of tradition. At the same time, the source of law is a category that explains where the norm of law comes from, and how it is "born". In view of this, it is worth distinguishing the source of law (answers the question of where the rule of law comes from) and the form of law (answers the question of what (how) the rule of law is fixed, gets its external manifestation) [39]. Understanding the difference between these categories, we use the term "source of administrative law" in what follows. In order to understand this concept, let's try to figure out what is actually the source of administrative law today.

In general, sources of law are ways of expressing and consolidating legal norms, giving them a universally binding, legal meaning. In Ukraine, a system of sources of administrative law is implemented, which includes the following types of sources: normative legal act, normative contract, legal precedent, legal custom, and doctrine.

Soviet and post-soviet theories consider the sources of administrative law as acts of state authorities that regulate social relations in the sphere of management; the external form of expression of administrative norms. The theory of sources in European foreign countries considers the latter as a means of limiting state administration and emphasizes the practice of administrative courts, rather than normative legal acts of the sources of administrative law.

Practically all modern jurists agree with the opinion that legislation in Ukraine is the primary source. That is, regulatory legal acts of state bodies, which establish the norms of administrative law, are the first and largest group of sources of modern administrative law. And this group includes normative acts that make up a certain hierarchical system. At the same time, the Constitution of Ukraine is considered a fundamental source of administrative law of Ukraine, as it is the Basic Law of Ukraine, which enshrines the principle of the rule of law, and also acts as a basis for the emergence of new sources of administrative law. Its norms are norms of direct action. Directly on the basis of the Constitution of Ukraine, recourse to court is guaranteed to protect the constitutional rights and freedoms of a person and a citizen. In addition, it enshrines the principle of dividing power into three branches: executive, legislative and judicial. It is this division that later becomes the basis for a number of normative legal acts detailing the system of executive authorities and their powers [6].

At the same time, it should be noted that the following sources of law are common to all systems included in the Romano-Germanic legal family:

- Normative legal acts headed by law;
- Customs forming a system of norms called customary law;
- Case law, and court precedents, which are generally recognized as sources;
- Rights, which, however, are often denied in some countries (for example, in Germany);
- International agreements;
- General principles of law, which are often considered in the scientific literature;
- As "higher principles" according to which the activity of judicial and other state bodies should be built;
- Doctrines, with the help of which many principles of Romano-Germanic law are developed and numerous norms are created in the legislative order – rights covering various spheres of social life [5].

A debatable issue is the distribution of sources of administrative law into groups and types. Agreeing with the fact that a feature of administrative law is the diversity and a significant number of its sources, which is due to the specificity of the field itself, its subject, purpose, and the theoretical and practical significance of their division into groups and types, at the same time, scientists demonstrate mostly simplified solutions to this issue, limiting themselves only to one or two criteria for such distribution. At the same time, those changes that are related to the sources of administrative law are sometimes not taken into account, without distinguishing the criteria for their division and justifying their expediency [17].

At the same time, in the countries of the European Union, the main sources of administrative law include three codes:

1. Administrative-procedural, which regulates social relations between public administration and objects of public administration;
2. Code of Administrative Misdemeanours;
3. Code of administrative proceedings [5].

These codes in practice guarantee the comprehensive public provision of human and citizen rights and freedoms at all stages of interaction with the public administration: when individuals and legal entities apply to the public administration for the provision of service administrative services; bringing to administrative responsibility those guilty of violating the rights, freedoms of a person and a citizen, the normal functioning of civil society and the state; protection of the rights, freedoms and legitimate interests of individuals and legal entities against violations by subjects of authority in the administrative justice system.

Therefore, in the context of the European integration of Ukraine, it can be argued that the activity of concluding international agreements is also law-making. According to Art. 9 of the Constitution of Ukraine: "Current international agreements, the binding consent of which has been given by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine". At the international level, social relations are also regulated, which are the subject of administrative law: the issue of protection of the rights and freedoms of a person and a citizen, stateless persons, the procedure for crossing the state border, the interaction of border troops and customs services of neighbouring states, etc. Thus, the sanctioning of state legal custom can be a method of legalization. However, there is no such practice in Ukraine today.

Therefore, it can be stated that the legal system of Ukraine includes sources of administrative law normative legal acts of state bodies, local self-government bodies, international legal treaties of Ukraine, and decisions of the Constitutional Court of Ukraine as specific (normative and auxiliary) sources. At the same time, the source of administrative law (in the legal sense) is external forms of establishment and expression of universally binding rules of conduct that regulate social relations arising in the sphere of public administration, acts of law-making by state bodies (legislative, executive, judicial, economic administration), local councils and territorial communities, and sometimes joint acts of state bodies and public organizations.

That is why, in our opinion, this approach is the most acceptable in the legal study of the system of sources of administrative law. Therefore, it can be argued that the modern system of sources of

administrative law in Ukraine should include:

- Administrative and legal concepts and doctrines;
- Administrative and legal acts;
- Acts of state administration bodies;
- Acts of judicial bodies;
- Administrative contracts and agreements;
- Natural law;
- Administrative and legal customs;
- Administrative and legal precedents [18].

At the same time, administrative-legal concepts and doctrines specify and detail the principles of administrative law, and, in fact, are a legal basis, a kind of the beginning of a legal norm, from which it is formed and born in accordance with the objective conditions of economic and social development, with the aim of reflecting social interests It is natural that such fundamental ideas are the source of administrative law, and failure to include such ideas in their system obviously makes it incomplete.

Administrative legal acts, acts of state administration bodies, and acts of judicial bodies traditionally belong to the sources of administrative law, and therefore do not cause doubt and unnecessary explanations.

Administrative contracts and agreements in the activity of state bodies have become more and more important in recent years. Previously, administrative contracts and agreements were practically not distinguished as sources of administrative law. The change in the situation today is directly related to the strengthening of the role of contractual regulation in the public sphere and, in connection with the latter, the strengthening of the importance of management services in administrative-legal relations to the level of assigning these services to the subject of administrative law, which is emphasized in the scientific literature. Therefore, under the existing state of social relations in the sphere of executive power, administrative contracts and agreements, which are a formal expression of administrative services, obviously belong to the sources of administrative law and do not raise doubts as such.

Understanding natural law as a source of law, one should start from its content. Natural law means certain opportunities for subjects of social life objectively determined by the level of development of society, which should be common and equal for all subjects of the same name. Depending on the type of subjects, the natural law of a person, family, nation (people), and other social communities is distinguished. In other words, the law is the elementary prerequisite for a dignified human existence and the development of humanity as a whole. Certain capabilities of a person that ensure his existence and development are objectively determined by the level of development of humanity and should be common and equal for all people [18].

In view of the above, it becomes clear that in a democratic society the scope of natural human rights is increasing, and the task of the state is only to recognize these rights and create opportunities to ensure their implementation and protection. Such a scheme illuminates the algorithm for the formation of legal norms, according to which norms are born from the natural law of man, and, therefore, are also one of the sources of law.

In general, the recognition of new sources of administrative law (in particular, those that already exist in fact), as well as the reverse process, should be considered only in the aspect of their system-functional connections. The modern system of sources of administrative law does not lose its functional capabilities, integrity, complexity, multi-level, dynamism, openness, and hierarchy, but only changes its "target orientation" and updates its structure accordingly. Therefore, it is the system analysis that allows us to find out the real resource of each source of administrative law (an independent element of the system) and the entire system of sources of administrative law [17].

In view of this, the system of sources of administrative law is defined as a logical sequence of normative legal acts and international legal agreements of Ukraine, which are united on the basis of the subject of legal regulation to solve the goals and tasks of the state administration in general and in the spheres of economy, social and cultural construction and administrative and political activity.

5 Conclusion

Thus, based on the analysis of the system of sources of administrative law, it can be concluded that it is currently in the process of development and is constantly undergoing changes by supplementing its traditional list. This process attracts the attention of many scientists, and their opinions often fundamentally differ among themselves. From our point of view, the modern system of sources of administrative law in Ukraine should be formed by: normative legal acts of state bodies of Ukraine, international sources, and decisions of national courts. Such a system will meet the needs of our country, which is at the stage of development and democratization.

In addition, the analysis of the relevant constitutional provisions makes it possible to conclude that the Constitution of Ukraine is the main source of administrative law, because:

1. Consolidates the system of executive authorities;
2. It materializes the principles of public administration;
3. The rights and duties of citizens in the administrative sphere are established;
4. Has a higher legal force;
5. Constitutional provisions are the basis for other sources of law.

Based on this, it can be argued that the definition of the concepts "system of sources of administrative law" and "sources of administrative law of Ukraine" should be implemented not only in the legal sense, as external forms of manifestation of universally binding rules in the field of executive activity, acts of law-making by state bodies and local bodies self-government, but also in the socio-material sense, as a set of objectively existing economic, political, cultural, spiritual and other circumstances of social development that determine the content of rule-making activity in the administrative-legal sphere.

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