FEATURES OF THE PROVISION OF ADMINISTRATIVE SERVICES BY PUBLIC AUTHORITIES: EU EXPERIENCE

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Abstract: To date, the basis for the effective operation of state power is to ensure the rights and freedoms of citizens, as well as meeting the needs of citizens at a high level, which includes high-quality interaction between executive authorities and citizens. The article examines the evolution and features of the provision of administrative services in the EU countries in the national context and as a general policy. It also considers two concepts of public administration that have dominated in historical and legal method. The methodological basis of the study was made up of both the historical and legal method.

Keywords: Administrative services, Good governance, New public management, Public administration.

1 Introduction

The supreme goal of the state is to achieve the common good. This fundamental category predetermines the directions, limits, and methods of activity of public authority. It is obvious that the content of the concept of “common good” is changeable, it depends on current political attitudes and various national legal traditions. However, modern states that position publicly significant activities to meet public needs (primarily of economic nature) as a rule, retains a very wide discretion for the legislator in determining the category of public services, their types and directions for the further development of this legal institution. It is obvious that in these matters it is necessary to focus not only on current political attitudes and various national legal traditions, but also on the experience of countries, in particular the states of Europe, where the institute under discussion was born and has been evolving for a long time.

2 Materials and Methods

The methodological basis of the study was made up of both general scientific and particular scientific methods, among which the following were mainly used: the dialectical method, methods of analysis and synthesis, comparative legal and formal legal methods, the method of generalizing judicial practice, the historical and legal method.

Public services are the subject of study by various specialists, usually economists, political scientists, sociologists, scientists in the field of information technology. As part of the study, the provision of public services is proposed to be considered as an activity regulated by administrative and legal norms for the execution by authorized executive bodies (their officials) of requests from individuals, their associations and legal entities on the use of subjective rights granted to them, including in cases where the implementation of all or some administrative procedures related to the implementation of the relevant powers of executive authorities is carried out by institutions (organizations) subordinate to them.

3 Results and Discussion

Currently, one of the most popular theories of public administration is the model of state-legal organization, which is based on the idea of service public administration. The service concept of the state became widespread in the United States and a number of Western European countries in the 80-90s of the last century. According to it, the essence and purpose of the state is to serve the individual through the effective provision of public services. An important component of public services is administrative services, the provision of which is associated with the exercise of power.

Public services in the national legal order of the states of continental Europe have both common and different features. To designate the phenomenon under consideration in the states of continental Europe, various categories are used, reflecting different theoretical approaches.

In France, the concept of public services has developed, the development and scientific justification of which are associated primarily with the name of L. Duguit, who saw a system of socially useful services in the state [30]. Subsequently, it was recognized in the literature and judicial practice that the duties of certain public services (especially those of an economic nature) can also be assigned to subjects of private law6. Such an approach embraced not only the traditional power prerogatives of the state, but also areas in which relations can be built on the...
model of civil law obligations. As a result, the category of public services is interpreted very broadly – as any mandatory activity in the general interest, carried out under the guidance of a subject of public law [34].

J.-M. Pontier writes that public service is traditionally defined by its two aspects: organizational and material; the first is associated with persons performing public service (subjects of public law, as well as authorized subjects of private law), the second - with the content of activities, the main goal of which is public benefit. At the same time, the author notes that the concept of public benefit as a necessary condition for the functioning of the public service is relative; in a country like France it is constantly changing with the times, and also with the ideas of the political leaders, who determine, with some control by the courts, what constitutes the public good; The situation is further complicated by the fact that the public benefit is interpreted differently in different states, which is determined by the peculiarities of their history and culture [17]. In general, as E. V. Talapina rightly points out, public services in the French doctrine are a generic concept that combines all types of generally significant and mandatory activities of public persons both at the national and local levels, including material activities (justice, post, telephone, water, gas, electricity, garbage collection, kindergartens), financial activities (subventions, loans, social assistance, allowances, scholarships), cultural activities (public education), etc. [50].

Thus, it would be incorrect to designate the category of French public services with the term “public services”, since, firstly, the phenomenon of services covers both the activity itself and the subject of its implementation in their unity and, secondly, the functioning of services is not always provision to private individuals. For example, access to certain services and their property may in principle be prohibited for citizens under the threat of criminal punishment (weapons, barracks).

Important for the institutionalization of public services was the fact that since the beginning of the 20th century, in the French doctrine, it has become generally accepted to extend the legal regime of objects of public property (domain public) to property intended for the needs of public service [1]. At present, to be precise, we are talking about property that belongs to a subject of public law and is specially adapted for the implementation of public service functions [5].

The French concept of public services, including the legal regime of their property, taking into account certain transformations and national specifics, was adopted in many states of the continental legal family (Spain, Italy, Latin American countries, etc.). However, in a number of countries, mandatory publicly significant activity has received a slightly different interpretation. First of all, it is about Germany, where the category “public administration” is used as the base one, which is divided into two types: negative – interference and restrictions (Eingriffsverwaltung) and positive – the provision of public services (Leistungsverwaltung) [21]. Thus, for example, ensuring public safety and order from the standpoint of German law, unlike French law, is not covered by public services. The German doctrine of public services, the formation of which is associated mainly with the name of E. Forsthoff, is based on the concept of “life support” (Daseinsvorsorge) introduced by him [21]. The state is responsible for life support, which can use both public law and private law forms of providing public services; at the same time, in recent decades, the state has been moving away from monopoly production and the provision of public services, remaining only a guarantor and delegating the relevant functions to subjects of private law [15].

In accordance with the German doctrine, in contrast to the French, property used for the provision of public services does not constitute a special “public property”, however, in many cases it can be classified as so-called public things (öffentlichen Sachen) – objects of property that belong to different persons, but are always burdened with use in the interests of the common good, in this case they are intended for the provision of public services [17].

Thus, France and Germany have proposed alternative doctrines of mandatory publicly significant activities of the state (service public and Daseinsvorsorge), which are still considered as competing [37].

Of particular interest for practice is the normative regulation of Belgium, in which there is no single codified act that would regulate the process of providing administrative services by public authorities [2-4]. However, the presence of legal norms in certain legal acts does not create barriers for the activities of public administration bodies. As a result, certain legal acts are considered as public services; public authorities and citizens in Belgium is regulated by the Public Service Consumer Charter, the Public Administration Decision Act, etc.

Legal regulation of the provision of administrative services in Sweden is carried out primarily by the Law on Administrative Procedure [18]. The Government of Sweden has developed a “National Interoperability Strategy” [7], which provides for measures to implement e-government, ensure organizational, semantic and technical compatibility, and legal interaction between public authorities.

Mention should also be made of the formation of a pan-European doctrine of services of general importance. In the 90s of the last century, in the conditions of the formation of a pan-European market, the sphere of public services (life support) becomes more open, competitive principles penetrate into it [14]. As a result, within the framework of European integration, the national concepts discussed above were adapted, and the corresponding basic concepts began to disappear from the acts of the European Union. Today, in EU documents, instead of the expression “public services”, the term “services of general interest” (SGIs) is increasingly used, which are mentioned in articles 14, 106 of the Treaty on the Functioning of the EU and a separate Protocol No. 26 on services of general interest (as amended by the Treaty of Lisbon 2007) [20]. At the same time, in European literature, these terms often continue to be used as synonyms, but already in the sense that EU documents put into them.

The wording of the basic acts of the EU, including after the signing of the Lisbon Treaty, fixes the concept of services of general importance only in general terms, in connection with which numerous documents of the European Commission, reflecting the process of transformations in this area, acquire a special role in the interpretation of this category. Thus, in 2007, the European Commission came to the conclusion that this term combines economic and non-economic services that public authorities qualify as having a general meaning and impose on them the corresponding specific obligations. This means that namely the public authorities at the appropriate level decide on the nature and scope of a service of general interest; at the same time, public authorities have the right to provide the relevant services on their own or entrust their provision to other persons, both private and public, acting on a commercial or non-commercial basis [39]. However, regardless of who owns or manages SGIs, their activities are subject to intense regulation in the public interest. Any detailed regulation of the legal regime of the property basis of services of general importance is absent and hardly possible, since Article 345 of the Treaty on the Functioning of the EU establishes that the agreements concluded do not in any way prejudice the systems of property rights existing in the Member States.

Services of general interest are divided in the EU into two types: services of general economic interest and non-economic services of general interest [6; 8; 9]. A clear distinction between them has not been made; the criterion for differentiation is not the service sector, not the status of the subject and not the method of financing, but rather the nature of the activity and the conditions in which the service operates, that is, the functional approach is applied [35].
Services of general economic interest (SGEI) include transport, postal, telecommunications, electricity, gas, water, public broadcasting, waste management and other services necessary for the normal functioning of the economy as a whole, for the well-being of all members of society [36]. EU Member States are competent to provide these services, commission and finance their provision, subject to the principles and conditions for the operation of services of general economic importance established by the European Parliament and the Council [13]. A service is considered to be economic if the relevant services are generally provided for remuneration, and it is not necessary that the recipient of the service pays. Therefore, the same enterprise can provide both economic and non-economic services, and such a distinction is extremely important from the point of view of the operation of EU rules [21].

Non-economic services of general interest (NESGIs), according to the European Commission, cover, first of all, “the traditional prerogatives of states”, in particular the police, justice and statutory types of social security; At the same time, EU acts do not limit the competence of Member States to provide non-economic services of general importance, to entrust or organize their provision, taking into account the observance of the general principle of non-discrimination [17]. Thus, insofar as public services (services) do not affect economic activity, competitiveness issues and the functioning of the common market, they are regulated at the national level.

Within the framework of services of general interest, the so-called social services of general interest (SS-GI) are singled out separately in the EU documents; special studies are devoted to them [38]. According to the European Commission, such services can be either economic or non-economic in nature, depending on the specific areas of activity. Despite the lack of formalization, it is believed that social services are divided into two types: firstly, statutory and additional social insurance, organized in various ways and covering the main life risks associated with health, old age, accidents, unemployment, access to pension and disability, and, secondly, social support services in difficult situations, employment and vocational training, social housing and long-term care, etc. The analyzed services are organized, as a rule, at the local level and are largely dependent on public (budgetary) funding [34].

One of the main directions of state policy in the field of administrative services is to improve their quality. The issues of improving the quality of administrative services occupy a separate place in the policies of European states. In the UK, in 1991, the Citizens' Charter was developed - a 10-year program whose task was to raise the standards and benefits of administrative services, improve their organization and distribution [11; 12; 19]. The Charter of Citizens consolidated the principles that are fundamental in the activities of state institutions and organizations, including: clear standards of services, openness and completeness of information, provision of consultations to the population and the possibility of choosing services, their usefulness and effectiveness, the right to appeal in case of unsatisfactory quality of services [16]. In general, the Charter contributed to a better understanding by the population of their rights when receiving services, and also created the prerequisites for changing the psychology and legal culture of civil servants themselves [5]. In order to assess the practical results of the work of state bodies, institutions and organizations that provide administrative services, the so-called tables of compliance with service quality standards were introduced. Subsequently, the concept was revised and included in a broader executive improvement initiative, the Modernizing Government White Paper, which is a long-term program to reform the entire public administration system [31-33]. This reform was implemented in five areas: ensuring an integrated approach to the development of state policy; increasing focus and responsibility for the distribution of public services; improving the quality of public services through the development of reporting programs; use of information technologies; modernization of the civil service [22; 24-28]. To ensure public control over the implementation of the “Modernization of Government” program, regular notifications were introduced through the media to monitor its implementation. Similar programs and documents aimed at improving the procedures for obtaining administrative services were adopted in France (for example, the Charter of Marianne) [18], the purpose of which is to simplify the access of citizens to state bodies providing services to the population. Other countries in Europe were no exception, where documents were also adopted that contain specific initiatives or proposals for reforms in the quality of administrative services (Charter of rights for consumers of public services in Belgium, Supervision of quality observance in Spain, Charter of observance of quality in the provision of public services in Portugal). The main purpose of their adoption was to improve the response of public sector institutions to the needs of the public, in particular, through focusing on the final results of their activities.

In the UK, for the nationwide “Charter Seal” award for satisfying the needs of consumers of public services, the quality of the latter is assessed according to ten criteria: the existence of developed standards, the possibility of choice, the availability and usefulness of services, the right to appeal in case of poor quality, efficient use of resources, respect to the rights of citizens, the introduction of innovations, collaboration with service providers, feedback from the population, the degree of satisfaction of consumers of services [16]. Such a competition performs regulatory and stimulating functions in the field of improving the quality of administrative management and bringing it closer to the needs and interests of citizens. It should also be noted that today the study of international practice and the introduction of theoretical developments related to the formation of a management model based on the addition of the service-oriented approach of the “New Public Management” concept to the network approach of the “Good Governance” concept are being activated, in which the interaction between the subject of provision and the subject of circulation will be based on tools of e-democracy.

In the context of developing a new approach to managing the system of providing administrative services, the strategic task is to reorient the perception of the subject of circulation not only as a client of the service activities of the subjects of provision, but as a co-producer of management decisions [40-45]. Achieving an effective result is possible only through the promotion of the promotion of the electronization of management processes and a complete transition to electronic management.

Trends in the development of the information society require the management of the system of providing administrative services to use modern information and management technologies that allow networking of the three sectors in management to solve systemic problems, harmonize different and conflicting approaches to institutional, organizational, information technology and resource support for the system of providing administrative services.

The European Union, in order to stimulate a more active participation of national governments in the implementation of the concept of e-government, is testing the level of development of e-services for public administration in all member states. In recent years, there has been an increase in the development of electronic services and an increase in public interest in them. Thanks to e-Administration, cooperation is developing between employees of public administration institutions at various levels with individuals or legal entities to address their needs. The computerization of public administration has produced tangible results [37]. Currently, services are provided, the possibility of which does not depend on the place of residence of the consumer, thanks to which a citizen or an employee of a company is not obliged to leave his home or office to resolve any issue that requires contact with the state administration. As a result, the efficiency of the services provided has significantly increased, and the costs of their implementation have become lower [30].
It was within the framework of New Public Management (NPM) that the concept of “public services” was formed, which the authorities, by analogy with private companies, are obliged to provide to the population, which in turn has turned from citizens into consumers. In order to improve the quality of these services, and, consequently, the efficiency of management, it was recommended to radically rebuild the traditional bureaucratic system by decentralizing and increasing the autonomy of its individual links (up to the transfer of certain state functions to outsourcing to private companies), sharply strengthening its focus on the citizen/consumer [46-49]. For the same purpose, it was recommended to create a competitive environment in public administration and more actively stimulate officials financially for a high end result, instead of using a reward system based on the ethics of “service to society”. In other words, it was about the transfer of technologies developed within the framework of corporate governance to state structures.

Conceptually, the ideology of NPM was based on some provisions of microeconomics and the theory of organizational management [13, 37]. Hence the desire of the supporters of this management program to optimize administrative processes (“process above hierarchy”), focus on the final result (“results not processes”), principled apoliticality (“production not politics”) and the result of an effective manager who is able to recharge his energy and vision of ordinary people-performers.

It was such a progressive manager, who mastered all modern management technologies, who was called upon to replace the “traditional” managers focused on the ethics of public service and corporate responsibility” [15]. According to E. Samier, the cult of a leader who is able to knock officials out of a well-trodden rut and force them to work in a new way can be seen as an attempt to oppose rational legitimation typical of traditional bureaucracy with charismatic legitimation. However, the charisma of effective managers was based not on the mysterious magic of power, but on the knowledge acquired in courses on managing people, and in this sense was “kitsch” in nature. In fact, it came down to the ability to clearly formulate goals, motivate subordinates and reduce costs [1].

Reliance on effective managers was harmoniously combined in NPM with a pronounced technocratic orientation, so the introduction of information technologies into public administration became its most important component. It is no coincidence that the term “electronic government” itself was introduced in 1993 by US Vice President A. Gore as part of the preparation of the “National Performance Review”, which contained a sharp critical assessment of the state of federal administrative structures and recommendations for their radical restructuring in the spirit of “new public administration”. At the same time, A. Gore called for “changing the very culture of public administration”, calling “optimism” and “effective communications” the key to success [23]. If a new type of manager was responsible for optimism, then effective communications were designed to provide information technology. It was assumed that with their help it would be possible to dramatically improve management efficiency and reduce costs [51-53]. Thus, the managerial management model is characterized by a radical revision of the traditional place of the state in the life of society, since it gives priority to the approach to the state as an employee, whose main function is the production of socially significant services.

As an ideology, the “new state management” quickly acquired a global character, although it was most actively implemented in the countries of the Anglo-Saxon tradition, where the professional bureaucracy of the German type never took root. The model of a “customer-oriented” state lays a new meaning in the concept of “efficiency”. In the traditional bureaucratic management model, a decision made according to a rationalized procedure is recognized as effective. In the managerial management model, another – economic – interpretation of efficiency is laid. It is she who “is what distinguishes public management as a set of principles and practices from the more familiar public administration” [16]. Supporters of the new public management, of course, recognized that the activities of state structures could not be assessed using a single criterion (by analogy with profit in the private sector), but they believed that the very search for such criteria could have a beneficial effect on the state of public administration.

A number of researchers have expressed doubts about the applicability of management methods in the private sector to the public sphere. Opponents of convergence rightly noted that the state, unlike the market, is focused on satisfying collective interests, and the goals of its activities are defined very vaguely (to serve society, maintain law and order, reduce inequality, improve the welfare of citizens, etc.). In other words, the state is not an earning, but a service system; it is more characterized by cooperation and paternalism than competition.

While in the private sector there is a direct relationship between commercial success and the quality of the service provided to the client, the provision of services by public institutions is not dependent on the operation of market mechanisms, but rather is determined by law and the political assessment of socio-economic priorities [54; 55]. Obviously, state institutions are subject to more pressure from political forces, interest groups, taxpayers and voters than private companies. For this reason, the state cannot have one single rationality – the economic one. It cannot organize the production and sale of public services according to market rules; on the contrary, it is forced to reconcile conflicting values: justice, efficiency, democracy, equality. The artificial imposition of competition, on the other hand, may lead to the orientation of state structures towards making profit and maximizing indicators to the detriment of the provision of those services that do not bring the desired effect, but are nonetheless socially significant.

Pushing public administration into the sphere of market relations leads to the erosion of values among civil servants and the erosion of the essence of public service as an institution of service to society. Technologies of private management in the pursuit of financial and economic efficiency of management overshadow the “social mission” of the public service.

The shortcomings of the managerial approach to public administration provoked the emergence of a new management model, called “Good Governance”, or “decent management”. Basically, the new paradigm is focused on overcoming such shortcomings of the new public management as the secondary importance of solving social problems and, as a result, increasing the level of social inequality and poverty, especially in developing countries; erosion of the role of the state and civil servants in public relations; emphasis on the universality of the proposed reform methods instead of taking into account the institutional context of each country. Good Governance emerged as a new paradigm in the practice of administrative reform in the late 1990s-2000s [29].

As a separate management model, along with the new public management, Governance took shape in 1997, when the United Nations Development Program “Governance for the Sustainable Development of Human Resources” was published. In accordance with the Program, Good Governance is understood as “participation, transparency, responsibility, efficiency, equality and the rule of law”. In addition, this model aims to maximize the scope of public participation in governance and “ensures that political, social and economic priorities should be based on common consent in such a way that the voices of the poorest and most socially excluded groups of the population are heard in public decision-making” [13]. Obviously, Good Governance in this sense goes beyond the managerial context, where society was assigned the role of a consumer of public services, but not a co-producer.

A peculiar slogan of this paradigm was the expression “from Government to Governance” (from government to management), which marked the transition to mostly decentralized collaborative communities (networks) in which the state, business and civil society equally participate in the division of power. And if Government (government) meant differentiation,
on the one hand, of performers, civil servants, and on the other hand, political leadership, then Good Governance is outside this dichotomy and involves an institutionalized dialogue between the state and civil society. This model focuses on partnerships in which politicians and civil servants make decisions jointly with other sectors of society. It should be noted that it is Good Governance that attaches great importance to the promotion of computerization of government processes and the transition to fully digital operations.

The specificity of Good Governance is also manifested in the fact that, within the framework of this management model, the need to focus on the institutional context of the state in which it is implemented is emphasized. Thus, it seeks to overcome the fact that, within the framework of this management model, the recipient state factors are in the successful integration of Good Governance into the administrative practice of European states, for which historical and national specificity plays an important role.

4 Conclusion

In contrast to the new public management, in the model of good governance, the state is characterized by a greater degree of presence. If the managerial paradigm considers the state only as a “steering” political process, then Good Governance assigns it the role of a full partner and participant in the adoption and implementation of managerial decisions.

Proponents of the concept of decent governance rightly believe that in any case, in any interaction, the state cannot be excluded from participation: even in the interaction of citizens and business, it must have complete information in order to perform a monitoring and regulatory function, which is observed today in most EU countries and can be taken as a basis for reforming the system of providing public administrative services in other regions of the world. The combination of NPM and Good Governance is flexible enough to fit into almost any system of government.

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