



Наук : спец. 12.00.01 «Теория и история права и государства; история учений о праве и государстве»/В.В. Чевычелов. – Нижний Новгород, 2005. – 26 с.

8. Шутак І.Д. Юридична техніка : [навч. посібник для вищ. навч. закл.] / І.Д. Шутак, І.І.Онишук. – Івано-Франківськ, 2013. – 496 с.

9. Шутак І.Д. Дефекти дефініцій міжнародного права: теоретико-методологічні й техніко-юридичні аспекти / І.Д. Шутак // Вісник Національної академії прокуратури України. – 2009. – № 3(15). – С. 85–91.

10. Шутак І.Д. Дефекти дефініцій міжнародного права: теоретико-методологічні й техніко-юридичні аспекти / І.Д. Шутак // Вісник Національної академії прокуратури України. – 2009. – № 4(16). – С. 84–89.

11. Шутак І.Д. Доктринальні основи юридичної техніки / І.Д. Шутак // Європейські перспективи. – № 4. – 2013. – С. 5–9.

12. Шутак І.Д. Застереження міжнародних нормативно-правових актів (загальнотеоретичні й типологічні аспекти) / І.Д. Шутак // Вісник Національної академії прокуратури України. – 2008. – № 2(10). – С. 104–110.

13. Шутак И.Д. Общая теория правовых оговорок : [монография] / И.Д. Шутак. – СПб : Санкт-Петербургский университет МВД России, 1998. – 205 с.

14. Шутак И.Д. Теория и практика оговорок в праве: система понятий. Терминологический словарь / И.Д. Шутак. – СПб : Санкт-Петербургский университет МВД России ; Алетейя, 1999. – 203 с.

15. Шутак І.Д. Техніко-юридичні методи узгодження національного і міжнародного права / І.Д. Шутак // Вісник Національної академії прокуратури України. – 2009. – № 1(13). – С. 91–100.

16. Шутак І.Д. Юридична техніка : [навч.-метод. комплекс для бакалаврів] / І.Д. Шутак, І.І. Онишук. – Івано-Франківськ, 2014. – 114 с.

17. Шутак І.Д. Юридична техніка : [навч.-метод. комплекс для спеціалістів і магістрів] / І.Д. Шутак, І.І. Онишук. – Івано-Франківськ, 2014. – 144 с.

ANALYSIS OF SCIENTIFIC VIEWS ON THE PROVISION OF ADMINISTRATIVE SERVICES IN THE FIELD OF MARITIME TRANSPORT

Oleh BONDAR,
Degree Seeking Applicant,
National University "Odessa Law Academy"

Summary

The article is devoted to the generalization and systematization of scientific views on the problem of provision of administrative services in the field of maritime transport. The following groups of theoretical developments in the following areas are determined: a) doctrinal, concerning the nature of administrative services; b) determining the peculiarities of legal regulation of maritime transport; c) devoted to the study of certain problems of permitting and registration activities in the sphere of maritime transport.

Key words: administrative service, administrative law doctrine, maritime transport, permits, registration.

Анотация

Статья посвящена обобщению и систематизации научных подходов ученых к проблеме предоставления административных услуг в сфере морского транспорта. Выделены следующие группы теоретических исследований: а) доктринальные, которые касаются содержания административной услуги; б) в которых определены особенности правового регулирования морского транспорта; в) посвященные исследованию отдельных проблем разрешительной и регистрационной деятельности в сфере морского транспорта.

Ключевые слова: административная услуга, доктрина административного права, морской транспорт, разрешения, регистрация.

Statement of the problem.

Modern development of maritime transport should be relevant to strategic European prospects of Ukrainian economic development. This concerns the field of administrative services, inherent to public and service nature of public authorities' activity aimed to promote the functioning of maritime transport. One of the main tasks of the State Inspectorate of Ukraine for Safety of Maritime and Inland Water Transport (SISMIT) is the provision of administrative services for the maritime and river transport in cases enshrined in the law [1]. Implementation of such a basic task requires a range of administrative services, establishing procedures of their provision, competence of officials of the inspectorate, identification of forms of the decisions taken on the results of administrative services. However, current legislation provides registration activities, issuance of permits by SISMIT, in particular – keeping the State Register of Ships of Ukraine and Ship's Log, maintaining the register of exemptions from the State Register of

Ships of Ukraine and Ship's Log, the right of navigation under the State Flag of Ukraine and the issuance of shipping documents, maintenance of register of bases for harboring of small ships, register of foreign navigation line, the issuance of licenses and permits.

SISMIT has offered information cards of administrative services relating to licensing only (receipt of duplicate and copy of the license, a license for business of providing services for passenger transportation, license renewal). However, the Law of Ukraine "On Administrative Services" [2] does not clearly define the concept of administrative services, because appropriate definition in Clause 1, Part 1, Article 1 contains no evidence of services and establishes purely authoritative character of the relevant powers of subjects of their provision. The consequence of the absence of a clear definition of administrative service features in a field-specified law is the development of an approach, according to which administrative services include any activity of public authority carried out in declarative manner, avoiding



the public nature of service and, thus, leveling the very idea of changing priorities in the activities of state bodies from power to service ones.

The need to ensure a clear legal status of SISMIT should also be specified, because, in addition to the resolution of the Cabinet of Ministers of Ukraine of 17.07.2014 № 300, which approves the corresponding provisions, valid is the Decree of the President of Ukraine of 08.04.2011 № 447/2011 "On Approval of the Provisions of the State Inspectorate of Ukraine for Safety of Maritime and Inland Water Transport" [3].

Thus, the necessity to analyze the problem of improving the legal regulation of administrative services in the field of maritime transport is determined primarily by relevance of the problem of forming democratic foundations for management activities in this area, which includes the introduction of administrative services within the meaning relevant to this basis, and amendment of current legislation in this area.

Theoretical study of models of administrative services provision in the maritime transport involves, first of all, analysis of current theoretical developments of scholars.

Review of recent publications.

The theoretical basis of scientific research consists of works of leading scholars in the field of administrative law: V.B. Averianov, D.M. Bakhrah, Y.P. Bytiak, I.P. Holosnichenko, Y.V. Dodin, S.V. Kivalov, V.K. Kolpakov, A.O. Selivanov, and others. Methodology of administrative law formed and presented in scientific papers of the mentioned and other scholars is the basis for the analysis of applied problem of essence of administrative services in the field of maritime transport and peculiarities of legal regulation of relations on their provision.

Purpose of this paper is to conduct a review of the scientific achievements of researchers on the issue of the nature of administrative services and features of administrative services in the field of maritime transport, as well as to conduct their systematization.

Results of the research. Systematization of scientific developments will

facilitate the application of the scientific approach "from general to specific", which will enable to take into account the specifics of the subject of research and conduct such a research based on doctrinal provisions of administrative law, based on which it is possible to provide clear limits of theoretical analysis. The need of the specified approach is based on consideration of the legal nature of the phenomenon of "service", doctrinal study of which is carried out in civil law. At the same time, the introduction of the principles of the discretion in regulation of public activity determines the possibility, at least theoretically, to consider the problem of expediency of application of categorical system of civil law in order to adapt its content to the public and legal matter or justify another scientific category, reasonable and appropriate to the specifics of the mentioned activity.

The above necessitates recourse to the doctrine of administrative law in that part relating to the nature of the administrative and legal relations. In this sense, invaluable are doctrinal provisions set forth by V.B. Averianov, prospects of which for science are time-proved. The scholar in his works proves a public and service nature of the executive authorities and appropriateness of the use of terms such as "administrative service", "executive service". Rationalizing the feasibility of using the category of "service" regarding executive authorities' activities, V.B. Averianov emphasizes that the service should be determined as a purposeful activity aimed to secure the obligations of the state to individuals and legal entities, in particular – those aimed at the legal arrangement of the conditions necessary to ensure proper implementation of their rights and legal interests [4, p. 379].

Emphasizing the obligation of the state to arrange conditions for realization of their rights and interests by non-authoritative subjects, the scholars distinguish one of the functions of the state represented by its authorized entities, calling this function "service". The use of attributes "administrative" or "executive" allows emphasizing the kind of state activity within which the corresponding function is realized (implemented).

Describing democratic foundations of public law relations' development, it

is impossible not to mention scientific achievements of V.V. Tsvietkov, devoted to theoretical, methodological and practical problems of democracy and governance. The scholar emphasizes the need for a new system of public institutions, decentralization of management, necessity of the development of process of state administration not only on democratic principles, but also on the principles of efficiency and competence [5, p. 317]. V.V. Tsvietkov reveals the nature of the functional performance of the state apparatus, which is mainly manifested in ensuring maximum compliance of structures, forms, methods, management forces of influence with the goals and requirements of different spheres of social life [5, p. 318].

The theoretical provisions formed by V.V. Tsvietkov, should be the bases for the provisions of the institute of administrative service in general and in the field of maritime transport in particular. Such an assessment of these provisions is determined by specific content of administrative services as the management of a certain sense, the effectiveness of which is determined by the degree of compliance with the goals and requirements of the spheres of social life, where the administrative services are used. The consideration of public and service nature of management, emphasized by V.B. Averianov, gives rise to the conclusion that the activities of authorized state agencies to provide administrative services must be relevant to the purposes and requirements of the spheres of social life where the service is provided.

Among the scientific papers on the issue of the nature of administrative services and legal regulation of relations on their provision, the monograph of V.V. Petiovka, devoted to the characterization of the legal nature of administrative services and its place in administrative law, should be mentioned [6]. Problems of administrative services provided by local self-governments are considered by S.L. Dembitska [7], Z.V. Zavalna, O.O. Ilnytska, H.M. Pysarenko [8] and others. Thus, V.V. Petiovka proves that activities of subjects on providing services in the field of public law acquired organizational attributes and their nature transformed from



management to the activity aimed to consolidate the mutual rights and obligations in public law sphere [6, p.106]. Identification of administrative services as a function of local government justified by Z.V. Zavalna, O.O. Ilnytska in the relevant monograph is of a great interest [9].

Indeed, given the scientific and other provisions, problem of the nature of administrative services considered by the researchers demonstrate the relevance of further analysis of the problem, especially determined by the use of legal structure of "service" for public and legal activities. However, this approach is questionable because of thorough elaboration of the nature of this category in civil law as universal legal category that establishes its want-satisfying quality [10]. Consideration of such a content of this category proves irrationality of its attribution to administrative services in administrative law permits, licenses and so on. This approach is already established but false. In this context, the view of O.P. Riabchenko on manifestation of want-satisfying quality of administrative services in administrative and legal relations is of a great interest. Such a quality of service is manifested in the activity of the executive authorities, local self-governments and their officials as providers of services to assess consumer in obtaining specific permit, create conditions for the legalization of certain rights to acquire a permit by consumer of administrative services, registration or other actions [11, p. 36]. The approach of O.P. Riabchenko is questionable, but it best reflects the nature of services, doctrinal position on which is established in science of civil law. At the same time, recognizing the need to refer to different types of permits by the single term, as well as activity of state bodies undertaken according to the established procedure, it is possible to raise a questions about the elaboration of a term other than "administrative services", as such activity relates to implementation of specific management functions of these bodies.

The logical continuation of scientific exploration based on the use of scientific approach "from general to

specific" needs to appeal to scientific developments in administrative law on the problems of legal regulation of maritime transport. In this context, it is advisable to highlight the achievements of such scholars as O.O. Zotenko devoted to the problem of optimization of customs clearance for maritime transport [12], D.A. Ivanov, who studied informative and legal basis for maritime safety [13], A.P. Kalinichenko, who analyzed the oversight and monitoring of safety of navigation [14], V.O. Serhiichyk concerning administrative and legal regulation on monitoring vessels' technical condition [15], V.V. Serafimov, who studied the problem of administrative enforcement in the field of merchant shipping [16] and other scholars. The dissertation researches on international law, including V. Boiovych [17] Cao Lipin [18] and others should be emphasized.

These separate scientific developments testify the complexity and multidimensionality of problems of legal regulation of maritime transport. However, every researcher forms his/her own contribution to the development of scientific thought, and their theoretical works may be the subject of critical analysis.

The latter group of researches includes studies on certain problems of permitting and registration activities in the selected area. Lack of research papers in this area should be noticed. However, there are works of M.V. Nykytiuk regarding the analysis of the legal basis and procedures for the registration of ships on the territory of Ukraine [19].

Conclusions. The analysis of the scientific works on the issue of administrative services in the maritime transport has proved insufficient elaboration of the problem of administrative and legal regulation of permitting and registration activities in the field of maritime transport. It should be noted that the problem of administrative services in this area have not been the subject of scientific research. Systematization of scientific results allows determining the following groups of theoretical developments in the following areas: a) doctrinal, concerning the nature of administrative services; b) determining

the peculiarities of legal regulation of maritime transport; c) devoted to the study of certain problems of permitting and registration activities in the field of maritime transport. The result of the analysis is manifested in the determination of a promising topic of research on administrative law in the maritime transport: control proceedings, administrative and jurisdictional activity in this area, organization of maritime transportation, the role of administrative justice in resolving public disputes in this area and so on.

Application of theoretical suggestions on the nature of administrative (executive) services (V.B. Averianov) and correlation of democracy and governance (V.V. Tsvietkov) to the area of functioning of maritime transport makes it possible to form the following conclusions. Firstly, the limits of the area as a subject of administrative services provision are defined by public management activities of authorized providers of maritime transport. Secondly, the purpose of administrative services provision should be defined as support of the functioning of maritime transport, guaranteed by its efficient management (N.B. the term "effective management" is used in the sense justified by V.V. Tsvietkov). Thirdly, the effectiveness of governance on the part of provision of administrative services is manifested in the structure, forms and methods of management influence. Fourthly, democratization of management activities provided by its public and service nature defines the primacy of interests of non-authority subject (individual or entity) in the implementation of management functions. Fifthly, the primacy of the interests of non-authority subject is guaranteed by service nature of administrative services, which may mean minimization of participation of non-authority subject in procedures related to the provision of administrative services. Application of these theoretical positions to the existing procedures for provision of administrative services in the maritime transport indicates at least two facts. First, the analysis of the problem of improving the activities in this area is



feasible and the compliance of activity of providing administrative services with its service nature should be ensured.

List of reference links:

1. Про затвердження Положення про Державну інспекцію України з безпеки на морському та річковому транспорті : Постанова Кабінету Міністрів України від 17.07.2014 № 300 // Офіційний вісник України. – 2014. – № 63. – Ст. 1740.
2. Про адміністративні послуги : Закон України від 06.09.2012 № 5203-VI // Відомості Верховної Ради України. – 2013. – № 32 (09.08.2013). – Ст. 409.
3. Про Положення про Державну інспекцію України з безпеки на морському та річковому транспорті : Указ Президента України від 08.04.2011 № 447/2011 // Офіційний вісник України. – 2011. – № 29 (26.04.2011). – Ст. 1255.
4. Авер'янов В.Б. Вибрані наукові праці / [упоряд. О.Ф. Андрійко та ін.] ; за ред. Ю.С. Шемшученко, О.Ф. Андрійко. – К. : Інститут держави і права ім. В.М. Корецького НАН України, 2011. – 448 с.
5. Цветков В.В. Демократія і державне управління: теорія, методологія, практика : [монографія]. – К. : ТОВ «Видавництво «Юридична думка»», 2007. – 336 с.
6. Петьовка В.В. Надання адміністративних послуг в Україні: теорія і практика : [монографія] / В.В. Петьовка. – К. : Логос, 2014. – 214 с.
7. Дембіцька С.Л. Правові засади діяльності з надання адміністративних послуг населенню України органами місцевого самоврядування : дис. ... канд. юрид. наук : спец. 12.00.07 / С.Л. Дембіцька ; Львівський державний університет внутрішніх справ. – Львів, 2010. – 184 с.
8. Писаренко Г.М. Адміністративні послуги в Україні: організаційно-правові аспекти : автореф. дис. ... канд.юр. наук. – О., 2006. – 20 с.
9. Завальна Ж.В. Адміністративні послуги як функція органів місцевого самоврядування : [монографія] / Ж.В. Завальна, О.О. Ільницька. – Суми : «ПоліГраф», 2012. – 188 с.
10. Цивільне право : [підручник] : у 2 т. / [В.І. Борисова (кер.авт. кол.) та ін. ; за ред. В.І. Борисова та ін. – Х. : Право, 2011. – Т. 2. – 2011. – 816 с.
11. Рябченко О.П. Концептуальні проблеми застосування диспозитивного методу публічно-правового регулювання відносин у сфері економіки : [наукова доповідь] / О.П. Рябченко. – К., 2013. – 38 с.
12. Зотенко О.О. Митне провадження на морському транспорті : дис. ... канд. юрид. наук : спец. 12.00.07 / О.О. Зотенко ; Одеська юридична академія. – О., 2011. – 256 с.
13. Іванов Д.А. Інформаційно-правові основи забезпечення безпеки мореплавства : автореф. дис. ... канд. юрид. наук : спец. 12.00.07 / Д.А. Іванов ; Одеська національна юридична академія. – О., 2008. – 19 с.
14. Калініченко А.П. Адміністративно-правові засади нагляду та контролю за безпекою судноплавства : автореф. дис. ... канд. юрид. наук : спец. 12.00.07 / А.П. Калініченко / Державний науково-дослідний інститут МВС України. – К., 2011. – 21 с.
15. Сергійчик В.О. Адміністративно-правові засади виконання Україною обов'язків держави прапора щодо контролю технічного стану морських суден : автореф. дис. ... канд. юрид. наук : спец. 12.00.07 / В.О. Сергійчик ; Одеська національна юридична академія. – О., 2010. – 20 с.
16. Серафимов В.В. Адміністративний примус у сфері торговельного мореплавства : автореф. дис. ... канд. юрид. наук : спец. 12.00.07 / В.В. Серафимов ; Одес. нац. юрид. акад. – О., 2000. – 22 с.
17. Бойович В. Міжнародно-правові аспекти забезпечення безпеки мореплавства в СР Югославії : автореф. дис. ... канд. юрид. наук : спец. 12.00.11 / В. Бойович / Інститут держави і права ім. В.М. Корецького НАН України. – К., 2003. – 21 с.
18. Цао Липин. Международные публично-правовые проблемы регулирования морских перевозок грузов: дис. ... канд. юрид. наук : спец. 12.00.10 «Международное право; европейское право» / Липин Цао ; Российский университет дружбы народов. – М., 2011. – 212 с.
19. Никитюк М.В. Правові підстави та процедури реєстрації суден на території України : автореф. дис. канд. юрид. наук : спец. 12.00.07 / М.В. Никитюк ; Національний університет біоресурсів і природокористування України. – К., 2011. – 20 с.