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THE TERM "PUBLIC SERVICE" IN EUROPEAN UNION ADMINISTRATIVE LAW: A COMPARATIVE ANALYSIS

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SUMMARY

The article explores the issue of public service in European Union law. It is emphasized that public processes play the role of motivational editor, reflecting the need to control a particular area of public relations in administrative law. It is with the development of theoretical aspects of jurisprudence that the concept of public service is formed as an officially required confirmation of the right to own property or professional skill (accreditation). It is emphasized that the term «public services» in its current sense is relatively new, it appeared as a result of a change in the role of the state in society, the establishment of new values and priorities on the basis of the principle of human centrism.

Key words: public service, human-centrism, administrative law, social nature of the state, human rights.

ПОНЯТИЕ «ПУБЛИЧНАЯ УСЛУГА» В АДМИНИСТРАТИВНОМ ПРАВЕ СТРАН ЕВРОПЕЙСКОГО СОЮЗА: СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ

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АННОТАЦИЯ

В статье исследуется вопрос публичной услуги в законодательстве Европейского Союза. Подчеркивается, что общественные процессы играют роль мотивационного редактора, отражающего потребность контроля той или иной сферы общественных отношений в административном праве. Именно с развитием теоретических аспектов правоведения формируется представление о публичной услуге как официально востребованном подтверждении права владения имущественным благом либо профессиональным навыком (аккредитацией). Отмечается, что сам термин «публичная услуга» в нынешнем его понимании является относительно новым, он появился в результате изменения роли государства в обществе, утверждения новых ценностей и приоритетов на основе принципа человекоцентризма.

Ключевые слова: публичная услуга, человекоцентризм, административное право, социальная сущность государства, права человека.

Relevance of the topic. The lack of research on this topic and the need for additional scientific research underline the concept of public service, taking into account the legislation of the European Union countries.

The issue of public service as a category and object of scientific research was investigated by T.V. Seryogina [1], some problems of definition of the term "administrative service" were investigated by V.V. Petyovka [2]; administrative service as a legal form of administrative and jurisdictional activity of law enforcement agencies were considered by L.Yu. Ivanova [3]; A.G. Tsyganov considered the questions of the categorical-conceptual apparatus of the legal institute "administrative service" [4]; theoretical and methodological approaches to the definition of the term "administrative service" were investigated by K.A. Fuglevich [5]. But comparatively-legal analysis of the concept of public service with the administrative law of EU countries is practically not explored.

The purpose and objectives of the article are to research the administrative law of EU countries regarding the terminological concept of administrative service.

Results and discussion. Control and legal regulation is a kind of guarantor of the existence of a legal society with its implementation of legal principles, the construction of rules of law that ensure the stable functioning of the mechanisms of regulation of public relations.

The presence of patterns in the formation of social relations allows civilly to develop the social system within the framework of institutional regulation of legal relations.

The motivational division of individual interests into private and public interests makes it possible to distinguish a category that describes public interests in a more general way, taking into account the position of the majority.

From the point of view of the process of formation of public relations within the rational concept of ensuring the existence of a stable mechanism for their regulation is the result of the need to create a centralized body, which accumulates the functions of control, implementation and information accessibility for all members of the public system. The first prototypes of the form of modern statehood were born. The need to create a state is determined by the need for objective fixation and confirmation of facts, events that have occurred that affect the sphere of relationships between individuals. Relations are increasingly beginning to take the form of public relations with the emergence of the notion of ownership, and the question of recognition and confirmation of rights to the property good arises.

In modern jurisprudence, there is no universal way of accounting for the relations of every participant in the civil turnover, state control violates only the fundamental indicators of the existence of regimes of ownership and accounting of events and objects of property with an attachment to the personal data of the individual.

Public processes play the role of motivational editor, reflecting the need to control a particular area of public relations by public law.

With the development of theoretical aspects of jurisprudence, the idea of a public service is formed – in the form of officially claimed confirmation of the right to own property or professional skill (accreditation) [7].

In addition to the term "public services", the term "public services" is often used in the context, but often both terms are identified, which in turn is related to the synonymous translation into English of the following categories: "public services", "public services" [8].

Significant differences between the above categories can be distinguished by considering the nature of these relationships [9].

Usually, citizens do not apply to state bodies for obtaining personally beneficial and necessary benefits, the motive is to receive documents or carry out permitting actions against them. These actions are caused not by the interest of the citizen, but by the fulfillment of obligations and are forced actions. For example, a license is of no interest to the citizen as such, he is forced to apply for it, otherwise he will not be able to carry out the licensed activity. Thus, licensing is an action in the public interest and represents its interests to the state. There is no interest of the citizen that has the ultimate purpose in obtaining a license (and not in carrying out a licensed activity). If the state artificially creates this interest by imposing obligations on the citizen or establishing a legal fact without which there will be no legal relationship, then it is possible to impose forced service [10].

Based on the origins of forming the ultimate goal of the citizen, it is possible to determine the need to receive a "compulsory" service from the state authorities.

The term "public services" in its current sense is relatively new, it emerged as a result of changing the role of the state in society, the establishment of new values and priorities. The social purpose of the state, which determines the main directions of its activity, goals and objectives at this stage of development, is at the forefront. In this case, the functions of the state depend on the economic capacity of society, the level of its development, as well as the needs and interests of the population.

State activity in recent years has come to be regarded as providing services to citizens within the concept of a "service state", which was recognized in Western Europe, the United States in the 80–90's of XX century. For example, in Germany this concept was considered within the framework of Ernst Forsthoff's theory, in Great Britain – it was recognized during the formation of the "new managerialism" under M. Thatcher. The essence of this concept is to acknowledge the possibility of using public administration methods of private business management. In such a situation, the state is seen as a servicer providing public services to citizens. Therefore, the primary purpose of developing such public administration will be to improve the quality of government services.

These provisions formed the basis of the concept of "public management". The meaning of administrative reform is to move from the idea of serving the community to the idea of delivering services to it. All of this is aimed primarily at increasing the efficiency of the state's implementation of its functions. Recognition of the basic purpose of the state for satisfying the needs of citizens stems from the universally recognized principle of the priority of human rights and freedoms as the highest value [11].

Due to the great attention to the social essence of the state, there are changes in the scope, content and methods of management. The social sector is becoming the most important for the implementation of the State-Man formula. In such circumstances, the activity of the state acquires a pronounced social orientation: it aims to ensure the guarantee of legal freedom and decent life, to ensure the welfare of society and the prosperity of the state, to support civil peace and social harmony [12].

The proof of the above is the emergence of other constitutional characteristics of the institutions of society and the state. The most important aspects of socio-economic development are given attention in the post-war constitutions and constitutions of the late XX century, such as the constitutions of Portugal, Spain, Czech Republic, Switzerland, Finland of the 70–90's public services.

Constitutional provisions on human rights, health care and health care are interconnected with the rules on public services. For example, the Swiss Constitution derives the concept of "public service" from the point of view of social goals (art. 41, paragraph 4). Item 2 of art.

92 establishes that the Union takes care of a sufficient and affordable price for the provision of basic postal and telecommunication services in all localities of the country, and that tariffs are imposed on a uniform basis. Item 1 art. 102 is dedicated to the task of the Union in securing the supply of countries with vital goods and services in special cases [13].

Comprehensive concern for man is at the heart of the concept of the welfare state. The social state is defined as the highest evolutionary stage of the development of a democratic and rule of law with a socially oriented market economy, whose main tasks are to ensure a decent life and free development of each person and guarantee his rights and freedoms.

The social nature of the state determines the social inclination of its internal and external functions. Within the framework of social statehood, all its institutions are ultimately focused on a high level of social protection and free development of a person, have a deeply personal meaning. At the same time, an effective welfare state is possible only if the developed structures of civil society are created. And harmonious interaction existing in a single society of the state, local government and civil society is necessary for the consolidation of universal ideals, the revival of faith in the justice of state institutions and their own power, both individuals and their associations [14].

It is important to note that the concept of social statehood is much broader and deeper than the concept of social state. Independent components of social statehood are not only the state itself as the central link, but also its legal system, social system of society, socio-economic rights and freedoms of the economic system, etc. The welfare state actively implements the social function, develops and implements an extensive social policy, as well as guarantees socio-economic rights, including through the provision of public services. Thus, public services are one of the constituent and relevant elements of social statehood today.

In such circumstances, the concept of "service" gradually evolves from understanding only in the civil legal sense to services provided by public authorities, local governments and other structures. Thus, French professor J. Fournier, in his report at a seminar at the Higher School of Economics in 2003 on the topic "Public services of the state", noted that the former concept of "public authority" gives way to the concept of "public service", which includes all activities that are implemented for the benefit of the whole community. However, not all activities in the public interest are public services. To become so, they must be taken under the auspices of a public authority. This requires a political decision. "To take auspices" does not necessarily mean to "exercise". The provision of public services, where necessary, may be entrusted to a private operator. Then it is about "delegation" of public services.

The Institute of Public Services occupies a rather specific position: on the one hand, the effectiveness of its functioning depends on the efficiency of the work of public authorities, on the other – the development of this institution may affect existing population attitudes related to the transition to new views, more equal style of relations with the state.

The law institute of public services in Ukraine is quite new. There should be no doubt that the theoretical innovations in this field and their normative implementation should take into account the experience of foreign countries, especially those in which the institute under consideration has appeared and has been operating for a long time.

European science has offered completely different interpretations of the doctrine of public services, it is important to say that the French and German approaches can rightfully be considered competing. Therefore, a consistent comparative legal analysis of the concept of public services, their regulatory system, types of public services, subjects and forms of their provision is of interest.

French understanding of the publicly significant activity of the state is connected with the concept of so-called public services (fr. service public), meaning activities dictated by the general interest.

The concept of public services is based on the theory of the emergence of the state from the public contract and is associated primarily with the name L. Dugy, who preferred to abandon the concepts of "sovereignty" and "public power" in favor of the concept of "public service" – the only for him the criterion of the French rule of law.

Contrary to the view then formed that the peculiar character of the state is embodied in the public power, which is opposed to the citizens, the state should be conceptualized with reference to its "function" as the basis of legality.

Any kind of state activity and state intervention in society under this approach can only be legalized in accordance with the functions of serving the needs of the society ("public services"). Rethinking in science the role of the state in terms of legitimizing the principles of its activity had an unprecedented impact on French theory of law and public law, which led, in particular, to the emergence of the so-called "school of public services". The basic tenets of the concept, however, changed over time, and approach was soon refuted within the school of public services itself. Proceeded from the assumption that the function of the concept of public services was not in limitation of state activity, but rather in making public, public interest a compulsory goal. According to him, only public services of public, public interest should be provided through the use of public services.

By the nature of their activities, public services were initially differentiated from those providing exclusively state interest and economic, social and other services [15].

In 1921, in the jurisprudence to distinguish models of legal regulation of relations between private and public entities introduced the concept of "traditional" public service, which became known as the state administrative service (SPA), and introduced the concept of public service commercial and industrial character (SPIC).

Subsequently, science and, most importantly, law enforcement practices began to assume the possibility of delegating to the non-governmental organizations some of the powers to provide public services (services). Such a trend is highly anticipated, given the targeted and limited nature of funding for public-territorial entities, as well as the wide range of activities the responsibility for which is vested in the state.

However, with the ability to adapt to social, political and other changes, the concept of public services has spread extremely widely and touched virtually all areas of government. As a consequence, there were some difficulties in

differentiating existing legislation, deficiencies in the functioning of different legal structures were identified, especially among public services with a "double face".

Notes that public service has traditionally been defined by its two components: 1) organizational, which is related to entities performing public service, and 2) material, which is related to the nature of activities carried out for the public benefit.

Thus, "French public services" is a fairly broad concept that includes both the activities of providing, on behalf of the State, services to an indeterminate range of persons and the entities themselves carrying out the relevant activity [16].

According there are currently three main categories of public services in France: 1) public services (sovereignty services) – justice, public finances, national defense; 2) social and cultural services – education, health care, social protection, cultural and sports activities; 3) services of an economic nature (public trade and industrial services).

Conclusions. Public services may be provided either directly by the authorities or by using the organizations involved, both subordinate (public institution) and private (outsourcing concessionaire, public interest group).

Regarding the traditional administrative activities of public authorities to meet the needs of individuals (registration of citizens, acts, rights, objects, permitting and providing information, etc.), it falls within the concept of public administration (SPA) and is implemented only public authorities.

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