

CHARACTERISTICS OF PUBLIC SERVICE IN THE LEGISLATION OF UKRAINE

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Статья посвящается правовой характеристике публичной услуги в законодательстве Украины.

Широкое понимание публичной услуги связано с акцентом на управленческую деятельность, имеющая определенного потребителя, им заказана, в том числе с определением качества и других характеристик, и этого потребителю подконтрольна. В этом случае появляется возможность говорить о результативности деятельности публичной власти, определении приоритетов.

Предоставления публичных услуг в любом случае направлено на удовлетворение различных общественных потребностей, под которыми понимают необходимость в регулировании общественных отношений, руководстве отраслями государственного и коммунального хозяйства; различные потребности граждан, удовлетворение которых осуществляется за счет средств бюджетов различных уровней; потребности граждан, удовлетворяются за их собственный счет, но при организационной помощи публичной власти; потребности хозяйствующих субъектов в связи с организацией их экономической и социальной деятельности на соответствующей территории.

В статье исследуются научные подходы к пониманию публичных услуг, а также законодательные определения публичной услуги в нормативно-правовых актах Украины.

Ключевые слова: публичная услуга, управленческая деятельность, регламентация, классификация публичных услуг, правоприменительные полномочия, административная услуга.

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The article deals with the legal characterization of public service in the legislation of Ukraine.

A broad understanding of public service is associated with an emphasis on management activities that have a specific consumer, they are commissioned, including the definition of quality and other characteristics, and this is controlled by the consumer. In this case, there is an opportunity to talk about the effectiveness of public authority activities, prioritization.

The provision of public services in any case is aimed at meeting the various social needs, which means: the need for regulation of public relations, management of the branches of state and public utilities; different needs of citizens, which are met at the expense of budgets of different levels; the needs of citizens who are satisfied at their own expense, but with the organizational assistance of public authorities; needs of business entities in connection with the organization of their economic and social activities in the respective territory.

The article explores scientific approaches to the understanding of public services, as well as the legislative definitions of public service in the legal acts of Ukraine.

Keywords: public service, administrative activity, regulation, classification of public services, enforcement powers, administrative service.

Formulation of the problem. 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 reference to the personal data of the individual.

Public processes play the role of a 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 an officially required confirmation of the right to own property or professional skill.

State of the study. The definition of the term «administrative service» in the legislation of Ukraine, the legal nature of the concept of «service» and its relation with the concept of «administrative service», administrative service as a function of public administration, the concept of administrative service in the context of administrative reform in Ukraine, and its relation with other concepts a number of domestic scientists [1-5]. At the same time, the issue of public service characteristics in Ukrainian legislation remains poorly understood.

Presenting main material. At present, there are objective prerequisites for approval in the legal system of the Institute of Public Services (Services of General Importance) precisely in the sense that is generally accepted in the countries of continental law and above all in the EU.

Analyzing the position of the individual in the rule of law and the concept of the science of administrative law, he distinguished the category of public services. The latter were considered from the point of view of public administration: the scientist included military, financial, ecclesiastical, medical and other fields of public administration among public services. The concept of public services, based on the achievements of Western scholars and having a clear connection with European legal traditions, simply did not have time to establish itself in the science of administrative law [6, c. 46].

Everything changed rapidly after 1917: centralization of the key branches of the economy in the state power, determination of the system of governing bodies, expansion of the state economy, war years, repression, etc. - these and other reasons did not allow the Soviet administrative law to develop and formulate the basis for the realization and protection of citizens' rights in cooperation with the state administration.

Over time, the stereotype of public authority as a means of coercion remained in domestic doctrine and practice [7, c. 135].

Under these conditions, the adoption of the Constitution of Ukraine and the commencement of administrative reform breathed new life into the concept of public services, although in itself the concept of public service did not receive its legislative regulation [8, c. 140].

In 2000, with the adoption of the Law of Ukraine «On State Social Standards and State Social Guarantees», a narrower concept of state and

municipal services was enshrined through social standards and social guarantees [9].

Yes, in Art. 1 of this Law determines that state social standards - statutory, other normative legal acts, social norms and norms or their complex, on the basis of which the levels of basic state social guarantees are determined, and state social guarantees - statutory minimum amounts of remuneration, income of citizens, pension, social assistance, other social benefits, statutory and other legal acts that provide a standard of living below the cost of living of the minimum.

In 2010, with the adoption of the Budget Code of Ukraine, state social standards and guarantees were introduced into the text of the code [1].

The provision of state and municipal services within the meaning of the legislation is guaranteed and, as a rule, funded by the state, while the recipient of the service can provide it free (full funding, for example, with free preschool education), partially paid (part of the services is financed by the budget, and the rest at the expense of the recipient) and fully paid (for example, additional education). In the first case, there is clearly a public-law regulation (wholly or mainly administrative-legal), since the financial basis is either the budget of the appropriate level or - in the case of payment of a state duty or other levy - a public fiscal payment paid to the budget by virtue of communications established by law. In the second and third cases, the payment is made by the recipients of the services and has a civil legal nature, so there is mixed (public-private) regulation.

In the process of administrative reform, the Law of Ukraine «On Central Executive Bodies» was enshrined in Article 2 as one of the tasks of central executive bodies. 17 the function of providing administrative services, and part two of this article provides If most functions of the central executive body are functions of providing administrative services to individuals and legal entities, the central executive body is formed as a service [11].

Following the adoption of this Law, the Law of Ukraine «On Administrative Services» was adopted in 2012, which defined the concept of administrative service as a result of exercising its powers by an entity providing administrative

services at the request of a natural or legal person, aimed at acquiring, changing or terminating rights and / or such person's duties under the law [12].

In fact, this law plays a key role in the development of the Institute of Public Services, and it contains, in our view, provisions that establish the peculiarities of the provision of administrative services and reflect the specifics of the studied public service institute in Ukraine.

First, the law reflects the concept of administrative reform and introduces the concept of administrative service.

Second, determining the amount of the public service fee (if it is not free of charge) within the meaning of the Act is out of competition.

Third, the Law focuses on entities providing administrative services - the latter can be provided both by public authorities directly and through subordinate state institutions or organizations.

Thus, the Law establishes two-subject and three-subject model of legal relations (complex of legal relations) for rendering public services.

In the course of administrative reform, further attempts are being made to legislate the concept of public services. Thus, the Decree of the President of Ukraine «On Some Measures to Provide Quality Public Services» provided a number of instructions to the Cabinet of Ministers of Ukraine to approve the functioning of the service state - the state for citizens and business, to ensure the proper realization of the rights of individuals and legal entities in the sphere of public, including administrative, services, creation of modern infrastructure, convenient and accessible electronic services for providing such services [13].

We can state the peculiarities of the provision of public services, which are as follows: 1) the purposeful nature of the services - the realization of rights, fulfillment of the responsibilities of citizens and organizations; 2) initiator of legal relations - an individual; 3) the entity providing the service - only public administration bodies; 4) object of legal relations - committing an administrative influence or adopting an administrative act.

In its turn, the approach laid down in the basis of the Law of Ukraine «On Public-Private Partnership» in which Art. 1 defines socially sig-

nificant services as services aimed at ensuring the public interest and needs provided to an unlimited number of users (consumers) and / or providing which should be provided by public authorities, local self-government bodies or state, municipal enterprises, institutions, organizations, business associations, 50% or more of shares (shares) belonging to the state, territorial community or the Autonomous Republic of Crimea [14].

The distinctive features of the above definition are: 1) the purpose of providing services is to meet the needs and needs of citizens and legal entities, to assist in the exercise of their subjective rights; 2) shifted emphasis from the initiator of the legal relationship - a situation was allowed where the legal relationship for the provision of the service could be initiated by a public entity; 3) entities providing services - not only bodies of executive power and local self-government, but also legal entities.

The listed entities are supposed to provide services directly, whereas the authority to provide them rested solely with the authorities.

On the whole, this approach reflects the specifics of public services in a sense that correlates with the mainstream models adopted in the countries of continental law and could be used in part by analogy with German legal doctrine.

In fact, from the above Law we can provide the following characteristics of a public service: 1) the purpose of providing services is to satisfy the interests of applicants; 2) initiator of legal relations - only applicants, ie individuals and legal entities; 3) entities providing services - bodies of government, institutions, other legal entities subordinated to them; 4) object of legal relations - committing an administrative influence or issuing an administrative act.

Thus, returning to the Law of Ukraine «On Administrative Services» we can say that the said law, as adopted in order to improve the quality of administrative services, provides interaction with citizens or organizations, as well as to increase the efficiency and effectiveness of government and local authorities self-government, of course, contributes to the development of the Institute of Public Services, but only those provided by public authorities and local self-government at the request of individuals and in the main part of it in

writing. Such administrative services act as one of the functions of public administration and apply the widespread foreign formulation practice reserved for the state, while remaining part of the collective concept of public services.

Finding their way into industry law and social services. Thus, the Law of Ukraine «On Social Services» defines basic social service as a social service, which is provided by recipients of social services under this Law to the Kyiv and Sevastopol city state administrations, district, district in the cities of Kyiv and Sevastopol by state administrations, executive bodies of regional importance, as well as the executive bodies of rural, settlement, city councils of united territorial communities, created in accordance with the law and prospective plan the formation of territories of communities and recognized by the Cabinet of Ministers of Ukraine as capable in the manner established by law (hereinafter referred to as the Councils of United Territorial Communities) [15].

Most approaches to the understanding of public services existing in the legal literature are based on the following point. Public services recognize the specific actions, day-to-day activities of public authorities and employees in relation to individuals or legal entities, during which a citizen or legal entity receives certain benefits. Examples of public services are the issuance of various certificates, consulting, registration of individual entrepreneurs and legal entities, library services, education services and more.

The analysis of the approaches in the legal science and the legislation approaches allows to distinguish three main aspects to the understanding of public services:

First, public service as a management activity of public authorities and local self-government bodies, as well as their officials within the framework of their activity in relations with citizens and organizations. Some authors see this as a realization of various enforcement powers.

Secondly, public services are the managerial functions of state structures, but they are viewed in a different way: as related to actions to serve the population or to organize services in the form of providing him with vital goods, with the organization of economic activity of public entities,

with their relationship with other business entities.

Third, public services are services of a publicly significant nature that are provided by public entities for which the latter are responsible. The provision of these services to commercial organizations is performed on the basis of a public contract (within the meaning of Article 633 of the Civil Code of Ukraine), the cost of providing these services is determined by a public entity [16].

At the same time, the powers of public authorities to provide public services are justly differentiated from the powers exercised in vertical power relations. The provision of services in a strict sense is carried out in horizontal relations, where the public entity acts as the service provider and the citizen or organization as its consumer. This narrow understanding of public services coexists with its broad understanding (as well as other human-centered management activities).

Thus, the real meaning of the category of public services is not limited to the economic side, it has a broader socio-legal content. The analysis makes it possible to conclude that the essence of public service is the public-obligatory protection of human and citizen's rights and freedoms, first of all - social rights. Taking into account the nature and peculiarities of legal relations that arise between citizens and the state, public services are a basic type of daily public-power activity aimed at providing socially significant benefits to a specific person, in the process of obtaining which the fundamental rights and legitimate interests of citizens are realized.

Public services are a set of two subsystems - state and municipal services. Accordingly, there is a combination of two interconnected channels of provision of services, the characteristics of which are determined by the peculiarities of state and municipal authorities, their interaction with the aim of pursuing a unified social policy of the state at all levels of the territorial organization of public power.

Conclusions. Thus, in Ukraine, the legal regulation of public services is inconsistent: 1) beyond the scope of regulation, the general concept of public services remains; 2) the same concept of administrative (social) services is filled with

substantially different content for the purposes of a sectoral normative act; 3) there is no separate classification of public services; 4) and, finally, all activities that de facto meet the criteria of public services are carried out under different legal regimes in the absence of any unbearable differentiation.

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