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Foreign Science of Administrative Law and Possible Areas of Its Adaptation in Ukraine*

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Abstract
The purpose of the article is to study the foreign science of administrative law and to determine certain areas of its adaptation in Ukraine. To achieve this purpose, we have used such methods of scientific cognition as dialectical, historical, formal and logical, system, and structural. The authors of the article have studied the content and specific features of foreign administrative and legal science, as well as have suggested possible ways to implement it into the scientific and legal system of Ukraine. It has been stated that the effective development of the national system of public administration is impossible without the quality functioning of science, which deals with studying forms and methods of administration, and an effective management system is essential for the success of any country. It has been noted that to achieve high results in the work of state agencies, their staff must be well educated on the use of optimal forms and methods of administration activity. Professionals who represent the state or local self-governments while performing their professional duties must have all the necessary skills (means) to achieve the tactical and strategic objectives set before them. The leadership of such agencies must be able to think globally and be able to set specific and objective tasks, as well as to provide the most effective means for their implementation. The historical aspects of the formation and development of administrative and legal science as a key element of the administrative system in different countries have been studied.
Keywords: Administrative Law, Legal Regulation, Administrative, and Legal Science, Administrative Activity, Legislative Provision.

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Ilmu Hukum Administrasi Asing dan Kemungkinan Area Adaptasinya di Ukraina

Abstrak:
Tujuan artikel ini adalah untuk mempelajari ilmu asing dari hukum administrasi dan untuk menentukan area tertentu dari adaptasinya di Ukraina. Untuk mencapai tujuan ini, penulis menggunakan metode kognisi ilmiah seperti dialektis, historis, formal dan logis, sistem, dan struktural. Penulis artikel telah mempelajari konten dan fitur khusus dari ilmu hukum dan administrasi asing, serta telah menyarankan cara yang mungkin untuk diterapkan ke dalam sistem ilmiah dan hukum Ukraina. Telah dinyatakan bahwa pengembangan yang efektif dari sistem administrasi publik nasional tidak mungkin tanpa fungsi ilmu pengetahuan yang berkualitas, yang berkaitan dengan mempelajari bentuk dan metode administrasi, dan sistem manajemen yang efektif sangat penting untuk keberhasilan negara manapun. Perlu dicatat bahwa untuk mencapai hasil yang tinggi dalam pekerjaan lembaga negara, staf harus dididik dengan baik tentang penggunaan bentuk dan metode kegiatan administrasi yang optimal. Profesional yang mewakili pemerintah sendiri negara bagian atau lokal saat menjalankan tugas profesional mereka harus memiliki semua keterampilan (sarana) yang diperlukan untuk mencapai tujuan taktis dan strategis yang ditetapkan sebelumnya. Pimpinan lembaga tersebut harus mampu berpikir secara global dan dapat menetapkan tugas yang spesifik dan obyektif, serta menyediakan sarana yang paling efektif untuk pelaksanaannya. Aspek historis pembentukan dan perkembangan ilmu administrasi dan hukum sebagai elemen kunci dari sistem administrasi di berbagai negara telah dipelajari.
Kata Kunci: Hukum Administrasi, Peraturan Hukum, Tata Usaha, dan Ilmu Hukum, Kegiatan Administrasi, Ketentuan Legislatif.

Зарубежная наука административного права и возможные направления ее адаптации в Украине

Аннотация
Целью статьи является изучение зарубежной науки административного права и определение направлений ее адаптации в Украине. Для достижения поставленной цели использованы следующие методы научного познания: диалектический, исторический, формально-логический и системно-структурный. В статье исследуется содержание и особенности зарубежной науки административного права, а также предлагаются возможные пути ее внедрения в научно-юридическую систему Украины. Указывается, что развитие отечественной системы публичного управления невозможно без качественного функционирования науки, занимающейся изучением форм и методов администрирования, а действенная управленческая система является крайне необходимым для успешной жизнедеятельности любой страны. Отмечается, что для достижения высоких результатов в работе государственных органов их кадровый состав должен быть хорошо образованным по вопросам использования оптимальных форм и методов управленческой деятельности. Специалисты, которые во время выполнения своих профессиональных обязанностей представляют государство или органы местного самоуправления, должны обладать всеми необходимыми навыками (средствами) для достижения поставленных перед ними тактических и стратегических задач. Руководство таких органов должно быть способным к глобальному мышления и уметь ставить конкретные и объективные задачи, а также предоставлять для их выполнения наиболее эффективные средства.
Ключевые слова: Административное право, Правовое регулирование, Наука административного права, Управленческая деятельность, Законодательное обеспечение.

A. INTRODUCTION

In terms of an in-depth study of current issues of administrative and legal science, it should be noted that its development is quite different depending on the country. The countries of the world with different quality have implemented certain provisions of administrative law into their state mechanisms. Ukraine, like any other country, has its history of development and formation as a modern state governed by the rule of law, including the genesis of administrative law. Thus, not every, even successful, provision of foreign administrative and legal science should be implemented in Ukraine.

The integration of Ukraine into the European legal, political, and economic environment was identified as a strategic priority for Ukrainian policy. Achieving this goal requires meeting the Copenhagen and Madrid criteria developed for the candidate countries for membership in the European Union. As a result, in the science of administrative law, the issue of the need to develop the scientific foundations for adaptation of both scientific provisions and the normative array of domestic administrative legislation, taking into account European principles and standards, becomes relevant (Ivantsov, 2020).

R. S. Melnyk (2010) has rightly noted that the reform of administrative law is one of the most important tasks in the field of national law, which is being addressed by administrative scholars, representatives of the legislative, executive, and judicial branches of power, the public. Such an interest in improving administrative and legal norms, as well as administrative and legal institutions in Ukraine, is since administrative law is one of the most important areas of public law, the perfection of its provisions depends on the effectiveness of both public administration activities and welfare, social and legal protection of individuals. Moving in the direction of reforming this area of law, researchers now have a considerable amount of interesting and extremely useful material focused on studying various administrative and legal problems (Melnyk, 2010).

Considering the above stated, the purpose of the article is to characterize and classify the most relevant foreign areas of the development of administrative and legal science, to determine the feasibility of their introduction into the system of administrative and legal science of Ukraine.

Taking into account the whole diversity and complexity of administrative and legal science, it should be emphasized that decisions to adopt a certain new element (a norm or a provision) to its system must be properly analyzed and pre-adapted in the form of a certain experiment before being introduced into

the general structure of the science. It should be noted that the introduction of a new direction into the Ukrainian administrative and legal system, supported by successful international experience, primarily depends on the legal system of those countries, whose experience we are going to adopt. For example, it is known that it will be much easier for Ukrainian legal science to adopt one or another foreign "novelty" if this foreign country is part of a joint legal system with Ukraine. And Ukraine, according to the unanimous points of view of most experts, is part of the Romano-Germanic legal system. Instead, interaction with the legal realities of other legal systems will be much more difficult.

In general, it should be noted that the essence of foreign administrative and legal systems and the directions of their introduction into the science of administrative law of Ukraine have been studied by a large number of national scholars, in particular Averianov V. B., Babych O. M., Cooper C. A., Ivantsov V. O., Ladychenko V. V., Martyniuk R., Melnyk R. S., Onupriienko A., Pukhtetska A., Xuan Wang and other scientists.

B. METHODS

The methodology of science can be considered as part of science studies, which research the structure of scientific knowledge, means, and methods of scientific cognition, ways for grounding and developing the knowledge (Methodology of the Current Constitutional Law of Ukraine). The methodology of researching the problems of foreign science of administrative law and determining possible areas of its adaptation in Ukraine is an orderly unity of mutually agreed worldview principles and methods that allow comprehensively study of legal properties and qualities of national administrative law system and determine the essence and content of legal relations between its main constituent elements.

In the course of the conducted research general scientific and special scientific methods have been applied. In particular, dialectical and historical methods are used in studying the origin and development of the science of administrative law. The dialectical laws of unity and opposition, the accumulation of a certain number of relevant facts, and their transition to a new quality of the form and content of the science of administrative law are applied. The historical method of the research has assisted to clarify the stages of the development of the science of administrative law within the following limits: 1) the origin and development of the science of administrative law in the ethnic

territory of modern Ukraine; 2) the development of the science of administrative law in independent Ukraine.

Formal and logical, system and structural methods have been used in the process of clarifying the types of research sources, which include monographs, textbooks, manuals, scientific articles, reports and communications, scientific commentaries, etc.

C. RESULTS AND DISCUSSION

Any administration system in its essence and content has always relied on a certain amount of administrative and legal knowledge, i.e. on the basic provisions of legal science. Social relations connected with administrative activity and interaction of authoritative (administrative, governing) entities with all other subjects have begun to receive the systematized written fixing in the form of relevant scientific and theoretical provisions since the period of existence of the developed countries of the ancient world, such as the Athenian state and Ancient Rome.

Certain classification has been given to such above stated provisions. This classification differed in the type and nature of the impact of newly created legal norms on a particular subject of the social hierarchy of that time. For example, the most important at that time were those legal methods and means that allowed to establish a clear system of government, based on the social realities of that time. Subsequently, the need for flexible and relevant at the time administrative and legal provisions was necessary to maintain the functioning of the state and social system at a sufficient level of efficiency (Martyniuk, 2010).

While studying the ancient Roman state, it can be found out that the norms of administrative and legal regulation became more complicated with each subsequent stage (period) in its development. Thus, in the early stages of Rome's existence, all its subjects (citizens and the ruling elite) were able for a long time to be satisfied with rather primitive forms of regulation of their own relations. That was based on the fact that they all had many features in common in their origin and existence; were brought up in almost the same customs and traditions. Instead, as the size of the Roman Empire and the number of its subjects began to grow, Roman society, and especially its ruling elite, faced significant difficulties in governing its own state (Averianov, 2004).

Attempts to regulate administrative relations were especially difficult in those administrative and territorial units, whose population had the most

serious differences in socio-political character from the citizens of the ancient Rome. These are the former state formations which before being conquered by Rome, already had their own strong system of social hierarchy and state system. The representatives of the state leadership in order to regulate such situations needed to introduce new, more complex and diverse administrative norms. At the same time, the encounter with similar practical situations in the management process provided a solid basis for further development and enrichment of administrative and legal science.

Later, during the following centuries of existence and development of society, the state systems of different countries supplemented the science of administrative law with new and more advanced methods of legal regulation and introduction of administration activity. In this context, it should be added that a significant contribution to the construction of a modern system of administrative law was made by special legal regimes that were created for the functioning of local self-government agencies.

The so-called "Magdeburg Law" should be especially noted among them. Its essence and content was the fact that there was almost absolute self-government of the locals in those cities, where it operated. Thus, they were able to independently choose the leadership of local self-government agencies among other things, as well as independently (or through their chosen local government) to dispose of city property (Babych, 2009).

Therefore, the Magdeburg Law became one of the first foreign "novels" for the administrative system of the Ukrainian lands of that time. A significant number of Ukrainians were able to be sure according to their own experience in the useful properties of such an independent and self-sufficient system of local self-government with the help of the Magdeburg Law.

Taking into account the analysis of the above, it can be stated that the Magdeburg Law should not be considered as adapted to the legal system of Ukraine. After all, it is known that there was already a "territorial civic self-government" in the days of the Kievan Rus on the lands of modern Ukraine, which developed based on customary law, and its elements, instead, appeared in veche (popular assembly of citizens in the Kievan Rus).

In turn, the Magdeburg Law, which came to us from Western Europe, namely from the German lands, brought us much closer to the democratic model of European governance. It has become a kind of prototype, the foundation for the formation of the system of local self-government that currently exists in Ukraine.

The above-mentioned models of local self-government often become the starting point, the basis for many scholars in their studies of the administrative and legal system of Ukraine. It follows that any confirmed sources of information about the essence and subtleties of the administrative system of the past become a good basis for researchers who prefer to analyze the structure of administrative law of Ukraine (including the interaction of society with the authoritative entities) (Onupriienko, 2010).

European administrative law is an independent science and branch of law that began to stand out in the late '80s of the XX century as a natural result of European administrative convergence processes aimed at reducing differences and inconsistencies in the administrative structure and establishing the relationship between formally separated public administrations of European countries (Pukhtetska, 2012).

It is worth emphasizing that it has always been useful for national jurisprudence to study the influence of developed democratic Western states on Ukrainian relations in the field of administrative law. It is explained by the fact that such influence has always enriched the Ukrainian legal system with various methods and means that it did not previously possess. This state of affairs is applied to all branches of Ukrainian law without exception, including national administrative law. In particular, the European traditions of decentralization of public administration are recognized as extremely effective. According to them the subjects of small and medium-sized public administration are empowered to make decisions independently on a wide range of issues within their competence.

In general, experts in the administrative and legal field state that the institution of election is one of those elements of the Western political and state system, the adaptation of which is considered necessary. Thus, it is done only if several mandatory factors are met. Among them we, first of all, distinguish the transparency of the election process, ensuring equal rights for all its subjects, both voters and those who are candidates, as well as guaranteeing the granting of power to elected officials instead of those appointed.

Another no less useful feature of the administrative system of the developed countries is the institution of positive competition between individuals – candidates for certain leading or simply important positions. Typically, it is an impartial competitive selection between entities claiming public authority in practical terms. Researchers in this field note that the tradition of holding "competitions" for the position arose as a result of a compromise between several socially important circumstances.

Taking into account the fact that, although the election of a person to the official position by citizens in transparent and open elections is more desirable to maintain democracy and freedom of expression in public administration, this principle cannot be applied to all types of state positions. But at the same time, well aware that the mass appointment to administrative positions can somehow lead only to abuse, as well as to the criminal loyalty of the appointed persons only to the one who appointed them, the institution of competitive selection to the position was suggested and later implemented.

It is frequently claimed within the politicization literature that while governments around the world are increasingly politicizing senior public service appointments, the nature and extent of this politicization varies across administrative traditions (Cooper, 2020).

Among other things, the transparent and independent competitive selection is special, since it allows only the best of the best to hold state positions, i.e. those who have demonstrated the best results of all others in various interviews and tests. It also "protects" a candidate in a certain way from the biased assessment of the future manager. It turns out that it is not the manager who chooses his subordinate at will, but an independent competition, giving the manager only a formal right to appoint to the position those persons, who passed the competitive selection better than others.

Studying the general state of affairs in the administrative and legal system of foreign countries, mostly related to European ones, we can see that almost the entire local administrative system is based on the principles of transparency, equality, and competition. Also, one of its most important elements is to ensure the protected rights and freedoms of entities and their protection, if necessary. Concerning competitive selection and competition, it is emphasized that such methods are used in a large number of public and private-public relations. As an example, we can cite all kinds of tender procedures between legal entities, which are held on the terms of transparency and equal participation of many entities (Ladychenko, 2006).

As the Chinese researcher Xuan Wang noted, the relationship between constitution and administrative law is the closest, and the analysis of the relationship between the two has always been an important topic of common concern and controversy among jurists in various countries. In particular, with China's social transformation, new situations and new problems are emerging, and the continuous development of China's administrative law, towards rationality and maturity, it is still of great theoretical and practical significance

to re-examine the relationship between the Constitution and administrative law (Wang, 2020, p. 107).

D. CONCLUSIONS

Therefore, it should be noted that the foreign science of administrative law has currently a huge amount of administrative methods and means of legal regulation, which can be considered extremely useful for the state system of Ukraine. Thus, most of them will demonstrate effective functioning only if they are properly adapted.

The introduction of those principles that are developed by the science of administrative law is of great importance in modern conditions of the development of the state system. First of all, it is explained by the fact that to achieve successful results in the national administration sphere, the authoritative entities must make some important amendments to the current legislation of Ukraine, in particular, following the example of some developed countries, but taking into account the Ukrainian specifics of administration activity and state form of government. Making such amendments is necessary to provide national legislation with the required level of flexibility, the introduction of some powerful foreign methods of administration. It is obvious that the probability of success of any administration system, as well as the issue of the feasibility of its implementation in general, should be studied by professionals (experts) in the field of administrative law.

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