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Methodological Bases of Research of Essence of a Category »Administrative Act«

1. Introduction

In the domestic administrative and legal tradition there is no single conceptual approach to determining the role and place of the category of administrative act in the dogma of the science of administrative law. As in many similar cases, the existence of many names, different approaches and contradictory interpretations of the same concept is explained primarily by the historical features of the formation of Ukrainian administrative law. Its emergence – as a branch of law and as a science – in Ukraine took place a little over a century ago, and at first its formation and development followed the development of administrative law in European countries. However, the Soviet period with its inherent understanding of Marxist-Leninist methodology as the only possible and the announcement of all theoretical attempts to look at the problem from a less ideological standpoint “bourgeois worldview”² maximized the lag of Ukrainian legal science from European counterparts. Theoretical at-

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² Studenikin S.S. (1938), O nekotoryh voprosah sovetskogo socialisticheskogo administrativnogo prava [On some questions of Soviet socialist administrative law]. *Sovetskoe gosudarstvo*, no. 1, pp. 125–128 [in Russian].

tempts to catch up with the western neighbors result in the presence of different, sometimes opposing views and approaches, none of which has yet received the status of academically recognized.

This conclusion, in our opinion, further actualizes the current need for additional research on the institute of administrative act in Ukrainian administrative law. And here we inevitably face the need to draw a certain theoretical and methodological framework around which to build our own conceptual model of administrative act as an institution of administrative law, in particular the establishment of the feasibility of using a dialectical method of scientific knowledge in determining the essence of the category.

The state of scientific development of the problem. Ongoing activities to improve the current administrative and procedural legislation results in a controversial understanding of the category of “administrative act”. Thus, scientific and theoretical developments are devoted to defining the essence of the administrative act, its procedural aspects are the result of the activities of such scientists as V. Averyanov, O. Andriyko, A. Berlach, Yu. Bytyak, V. Bevzenko, V. Garashchuk, I. Golosnichenko, V. Zuy, T. Kolomojets, V. Kolpakov, N. Nyzhnyk, S. Stetsenko, Yu. Fritsky, V. Shamrai, V. Shkarupa and others. Ongoing processes of reforming administrative-judicial and administrative-procedural legislation require the definition of methods of scientific knowledge, which will address the needs of law enforcement practice.

The purpose of the scientific article is to establish the methodological foundations of the study of the essence of the category “administrative act”.

2. Philosophical approach to understanding the essence of the category “administrative act”

In the domestic administrative and legal tradition there is no single conceptual approach to determining the role and place of the category of administrative act in the dogma of the science of administrative law. As in many similar cases, the existence of many names, different approaches and contradictory interpretations of the same concept is explained primarily by the historical features of the formation of Ukrainian admin-

istrative law. Its emergence – as a branch of law and as a science – in Ukraine took place a little over a century ago, and at first its formation and development followed the development of administrative law in European countries. However, the Soviet period with its inherent understanding of Marxist-Leninist methodology as the only possible and the announcement of all theoretical attempts to look at the problem from a less ideological standpoint “bourgeois worldview”³ maximized the lag of Ukrainian legal science from European counterparts. Theoretical attempts to catch up with the western neighbors result in the presence of different, sometimes opposing views and approaches, none of which has yet received the status of academically recognized.

This conclusion, in our opinion, further actualizes the current need for additional research on the institution of an administrative act in Ukrainian administrative law. And here we inevitably face the need to sketch a certain theoretical and methodological framework, around which we will build our own conceptual model of an administrative act as an institution of administrative law.

The methodological component is a set of research methods by which science achieves its fundamental goal – the acquisition and growth of new knowledge about the studied phenomena and processes. The arsenal of scientific methods used in administrative law is extremely wide and includes both empirical methods – measurement, observation, comparison – and purely theoretical. The latter are not even purely methodological tools, but rather theoretical and methodological frameworks that provide a certain scientific explanation of the object under study, in our right; in other words, it is associated with many other administrative and legal categories. The similar significance of administrative acts makes this theoretical issue complex and multifaceted, the study of which requires the combination of scientific tools of different theoretical constructions. According to the established tradition in administrative and legal research, we propose to use a three-level methodological model consisting of philosophical, general scientific and special legal levels⁴.

³ Studenikin S.S. (1938), *O nekotoryh voprosah sovetskogo socialisticheskogo administrativnogo prava* [On some questions of Soviet socialist administrative law]. *Sovetskoe gosudarstvo*, no. 1, pp. 125–128 [in Russian].

⁴ Kerimov D.A. (2001), *Metodologiya prava* (predmet, funkci, problemy filosofii pra-

The philosophical level is the start, the beginning of all legal knowledge, because it is within its framework built a system of knowledge about the basic principles, categories, concepts, functions and tasks of law (including administrative), and their relationship with the principles, categories, concepts, functions, tasks of society, culture and civilization⁵. Speaking about the general philosophical principles of understanding the administrative and legal phenomena and processes, first of all we consider it necessary to pay attention to the question of belonging of the science of law to the ontological or epistemological component of philosophical knowledge. Modern experts answer this question in different ways; so, for example, O. Danilyan, O. Beak, E. Manuylov denies that the legal sciences belong to the category of ontological, because, in their opinion, law is an unnatural phenomenon and no foundations of law can be found in nature, because nature is the realm of objects, and law is the realm of subjects. Also, in their opinion, the substantial basis of law can not be considered society: although law arises in society, associated with it and has a social essence, but it is not the essence of law, but only its manifestation (rights)⁶.

The opposite position is taken by M. Kostytsky, noting that it is through the prism of the ontology that one can see the connection of law and related ethics with the general principles of existence on the basis of physical laws that determine the connection of objects and phenomena, living and inanimate, material and spiritual, subjective and objective⁷.

For our part, we note that we support the position of D. Kerimov, who postulates the unity of ontological and epistemological in legal theories. In his opinion, law can not be primitively understood only as a sim-

va) [Methodology of law (subject, functions, problems of philosophy of law)]: monograf. 2-ge vid. Moskva: Avanta+. 560, p. [in Ukrainian].

⁵ Kostytskyi M.D. (2013), *Filosofski ta naukoznachni problemy yurysprudentsii* [Philosophical and scientific problems of jurisprudence]. *Filosofski ta metodolohichni problemy prava*, no. 14, pp. 3–10 [in Ukrainian].

⁶ *Filosofia prava* (2002), [Philosophy of law]: navch. posib. / za zah. red. O.H. Daniliana. Kyiv: Yurinkom Inter. 272 p. [in Ukrainian].

⁷ Kostytskyi M.D. (2013), *Filosofski ta naukoznachni problemy yurysprudentsii* [Philosophical and scientific problems of jurisprudence]. *Filosofski ta metodolohichni problemy prava*, no. 14, pp. 3–10 [in Ukrainian], p. 7.

ple reproduction in the normative-legal form of the basic conditions of material existence (which, we recall, insisted on historical materialism). Law is at the same time connected with this material being by historical conditions, and is independent of it, being a system of principles, ideals, and aspirations developed by the human mind. Modernity puts on the agenda such global ontological problems of the legal sphere, which at the same time are essential for further legal knowledge. To such questions DA Kerimov refers to the problems of the essence and relationship of law and legislation, freedom, equality and equal rights, consciousness, legal awareness and intelligence, law and order⁸.

This methodological position, in our opinion, is best illustrated by the history of administrative law. This science is a product, a social construct, the result of intellectual work; its emergence was preceded by a rather long process of rationalization of human thinking, inherent in the New Age as a special period of history. That is, the roots of administrative law are rather epistemological in nature; the very desire of man to understand the environment – both natural and socio-cultural – was the root cause of administrative law. However, the existence of this knowledge is accompanied by practical actions that transform the usual socio-cultural landscape; A clear example is the history of the administrative act we have already considered as a legal phenomenon and a scientific concept: the need of the community to control the actions of public authorities was objectified in the administrative act as an instrument of control, which in turn helped increase the responsibility of the authorities for their decisions. That is, purely epistemological aspects of the existence of administrative and legal phenomena can not be considered; they actively influence social life, modernize it, that is, are an active part of it. Such ambivalence of the phenomenon suggests that for the completeness of its study, classical philosophical schemes are unacceptable; requires a diverse view and multi-conceptual analysis.

⁸ Kerimov D.A. (2001) *Metodologiya prava (predmet, funktsii, problemy filosofii prava)* [Methodology of law (subject, functions, problems of philosophy of law)]: monograf. 2-ge vid. Moskva: Avanta+, p. 560 [in Ukrainian].

Application of the dialectical method of scientific cognition in the development of the essence of the category “administrative act”

However, this thesis does not mean that classical cognitive schemes should be rejected out of necessity. On the contrary, neoclassical methodology has great respect for the dialectical method as a reliable basis for heuristic research. First, it is dialectics that gives the researcher a number of categories without which the process of cognition cannot be method, categories of dialectics are key concepts of other philosophical systems, axiomatic foundations of any scientific worldview, serve as a theoretical foundation and conceptual framework of the methodological consciousness of the modern researcher, including the researcher-jurist⁹.

Second, dialectical principles of cognition remain key to epistemological developments. Thus, the principle of general connection directs the knowledge of a specific administrative-legal phenomenon or process through the prism of other phenomena and processes that they affect or that affect them. For example, even on a superficial examination it becomes clear that an “administrative act” does not matter as a phenomenon in itself and for itself; it finds meaning and content only in connection with such legal phenomena as “human rights”, “public authority”, “legal fact”, “legal consequences”, etc. Closely related to this principle is the principle of development, which is manifested in the movement of objects in time and space and expresses regular, directed, irreversible changes in the quality of objects¹⁰.

System method to define the concept of administrative act

The universality of the dialectical method of cognition, its focus on all phenomena and processes in the development and relationships with

⁹ Shevchuk R.M. (2012) Dialektychnyi metod u pravoznavstvi: okremi aspekty [Dialectical method in jurisprudence: some aspects.]. *Filosofski ta metodolohichni problemy prava*, no 2, pp. 25–31 [in Ukrainian].

¹⁰ *Filosofia prava* (2002) [Philosophy of law]: navch. posib. / za zah. red. O.H. Daniliana. Kyiv: Yurinkom Inter. p. 272 [in Ukrainian].

other phenomena give it a priority position in the list of tools of administrative and legal epistemology. However, the final picture of the world could look somewhat one-sided if modern methodologies of law did not complement the cognitive capabilities of dialectics by using other heuristic constructions. An important place among them belongs to such a direction of philosophy and methodology of science as a systematic approach.

A key tenet of a systems approach is to understand the object of study as a system or an element of a system. Thus under system, according to general scientific interpretation of this concept, it is offered to understand set of the interconnected elements which are in relations and communications with each other which make a single whole characterized by new integral quality which cannot be reduced to properties. none of the elements (Kemerov, 1995: 908). From this understanding it logically follows that the system approach involves the analysis of a specific legal phenomenon (in our case – an administrative act) within the general system and identify those substructures of the system that it generates and which, in turn, determine its emergence and change, taking into account of these substructures with each other and with the studied phenomenon¹¹.

Legal studies usually use several versions of the systems approach. For example, for the analysis of legal phenomena in a social or historical context often use the version of the systems approach reflected in the works of T. Parsons. According to Parsons's theory of social systems, society as a system is created and determined by the states and processes of interaction of subjects functionally aimed at adapting to the external environment (including natural), internal social integration, achieving goals and maintaining existing order of things¹². This allows us to identify the main subsystems of society aimed at performing these functions: the economic subsystem performs the function of adaptation, cultural and value – integration, political – achieving goals, and legal – the function of maintenance. Social development causes some difficulties in the

¹¹ Kriminologiya (2013) [Criminology]: uchebnik dlya yuridicheskikh vuzov / pod obsh. red. A. I. Dolgovoj. 4-e izd., pererab. i dop. Moskva : Izdatelskaya gruppa INFRA M-NORMA, p. 1008 [in Russian].

¹² Batygin G. S. (2003) Strukturnyj funkcionalizm T. Parsonsa [Structural functionalism by T. Parsons]. *Vestnik RUDN. Ser. Sociologiya*, no. 4–5, pp. 6–34 [in Russian].

mutual coordination of these subsystems, which do not always change at the same time; the norms of one of the subsystems may contradict the norms of the other, causing conflicts. It is on this basis that changes occur in the behavior of individuals – members of society; some of these changes over time become the norm, accustomed to society, others, on the contrary, are recognized as deviations¹³. For example, the current legal norms do not meet the cultural and value needs of society in preserving the honor and dignity of the average citizen in cooperation with the government – and to meet public requirements in legal practice introduces a tool that ensures the dependence of public authorities on the law. In addition, the understanding of the system as a phenomenon characterized by dynamics, allows us to consider the procedural aspects of the interdependence of the level of development of society and the emergence of a specific legal phenomenon.

3. Conclusion

Thus, an administrative act as a legal institution is understood as one that appeared in certain conditions of development of society as a social system. The main elements of the social system in this model are economic development, political system, cultural and value attitudes prevailing in society at a particular historical moment, and the legal system. As a component of the subsystem of law, the administrative act as a legal phenomenon simultaneously interacts with other elements of the legal subsystem and feels the position in the legal system, establishing the dependence of the production of influence on other elements.

Thus, the methodological model of the study of the administrative act is a complex multi-level structure. Only a set of diverse tools and methods of cognition makes possible productive analytical work on the description and understanding of the studied administrative and legal institution. The methodological tools of our study belong to the neoclassical paradigm and include both purely theoretical and applied methods, which, in our opinion, will be the key to the fullest coverage of various aspects and features of the administrative act.

¹³ Kasyanov V.V., Nechipurenko V.N. (2001) *Sociologiya prava* [Sociology of law]: ucheb. posobie dlya vuzov. Rostov-na-Donu: Feniks, p. 480 [in Russian].

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Summary

The purpose of the work is to establish the methodological foundations of the study of the essence of the category «administrative act». In the course of the research it was established that the methodological component is a set of research methods by which science achieves its fundamental goal – the acquisition and formation of new knowledge about the studied phenomena and processes. It is emphasized that the arsenal of scientific methods used in administrative law is extremely wide and includes both empirical methods – measure-

ment, observation, comparison – and purely theoretical. It was found that the administrative act, being the main form of activity of public authorities, is the basic, central concept of the science of administrative law; which is correlated with many other administrative and legal categories (administrative procedure, public-power relations, etc.). Based on the presence of polysemantic research links of the studied category with other administrative and legal institutions, the difficulty of choosing the appropriate methodological basis is emphasized, which requires a comprehensive approach to the choice of scientific tools of various theoretical constructions. Taking into account the established tradition in administrative and legal research, the expediency of using a three-level methodological model of scientific knowledge of the essence of the concept of administrative act, consisting of philosophical, general and special legal levels. It is concluded that the high heuristic potential of dialectical and systemic approaches is characterized by the possibility of considering the system of administrative law, which is an administrative act, on several levels: as a subsystem of society, as a component of modern law, as a separate system. It is emphasized that depending on the objectives of the study, their refinement and specification in the course of analytical work, the optics of the system approach can be changed, relatively speaking, by scaling the individual elements of the system as objects of study.

Keywords: administrative act, dialectical method, methodology, polyaspect, system method, philosophical method of scientific knowledge