

Administrative procedure axiology

Аксіологія адміністративної процедури

Olena Markova

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Nowadays the current policy of relations between the governmental authorities and citizens, which exist and function for a long period of time in the sphere of rights and interests enjoyment, undergoes fundamental changes and trials. Social researches have shown that significant decrease of the credibility level to the government, its capability to manage with global crisis manifestations, inherent instability and increase of proneness to conflicts in interrelations in the course of rights enjoyment by population is indicative of the present day¹. The problem of interconnection and cooperation between controllability and self-organization of the society and the government authorities comes to the foreground (including also value-based aspect of controllability). In the modern times authorities' capability and competency to implement control and organize it referring to the population mean to create a comprehensive conception of legal regulation of an administrative procedure in the country. The existence of an administrative procedure allows the state to create conditions for citizens to exercise their rights and freedoms, to participate in decision-making, to obtain greater openness from government, to create appropriate legal mechanisms, which protect the rights and freedoms of citizens on the part of state government bodies and to create a long-awaited "communication platform" for the dialogue formation in the state authorities relations with citizens in the case of public and law conflicts arising between them and maintaining the balance of interests in the relationships of the process of appropriate solutions adoptions by the state authorities. Today for our country with its established legal and administrative culture, the idea of legal regulation and legitimization of administrative procedures is more urgent than ever, because in our country with a high level of bureaucracy, the traditions of serving on the part of the state institutions and bodies to the society, its interests and needs are very poorly developed. The disagreement of ethos, especially of political and managerial one and social one, is fraught with serious conflicts and crises of the entire administrative system. Unfortunately its signs can be found in Ukraine, and moreover the crisis of the governmental system has got both technological and value-based aspects. The first one lays in the crisis of the established governmental methods which don't correspond to the dynamism of the modern society; the second one is expressed as the absence of clear ideals and goals of social development. The authors record the presence of conflict-generating potential, which is expressed in negative attitude of the population towards the activities of the executive branch of the government.

Our country has also set a course for the management system of public administration since the signing of the Association Agreement between Ukraine and the European Union in 2014². Ratification by the Verkhovna Rada of Ukraine and the European Parliament in 2014 of the Association Agreement between Ukraine and the EU has defined a qualitatively new format of relations between Ukraine and the EU in the following directions. Taking into account the above-mentioned information, the Ukrainian government has immediately started implementation of reforms exactly in the sphere of public administration, since its current state requires a rather radical change of priorities in the legal regulation of the relations between the citizen and the state authorities and their officials. In accordance with the 2016–2020 Public Administration Reform Strategy in Ukraine, the adoption of the law on the general administrative procedure according to European standards is a top-priority task for the country. European standards of proper administration are formulated in the SIGMA document "Principles of Public Administration", which contains a system of principles and criteria for public administration assessment. One of the essential criteria, the assessment by this Program's specialists of the efficiency of the

¹ Kopylova Yu.N. *Doverie naseleniya kak faktor povysheniya socialnogo statusa organov gosudarstvennoj vlasti* : avtoreferat na dissertatsiyu kandidata psihologicheskikh nauk : 19:00:05. Moskva, 2003. 22 p.

² Uhoda pro Asotsiatsiiu mizh Ukrainoiu ta Yevropeiskym Soiuzom. URL: <https://eu-ua.org>

general administrative-legal system functioning in any country is availability and quality of the general law on the administrative procedure³.

Today in Ukraine, as it is known, the procedural part is least developed in the current administrative law, because there is still no general law on the administrative procedure, and the existing legal regulation is fragmented, contradictory, and in general subordinate, which is aimed primarily at protecting interests of the state and its bodies, but not interests of citizens. In most European countries, administrative procedures are already institutionalized; the relevant European standards for legal regulation of the general administrative procedure are worked out. This is definitely a positive point for us, as on the one hand it is easier to carry out analysis and research of specific aspects of the administrative procedure legal regulation, but on the other hand it complicates analysis and research, while our task is not just to import the norms of European procedural laws, but to make out our own norms, which will regulate the administrative procedure, taking into account our legal system, the legal consciousness of our citizens and state authorities represented by public officials and officers, as well as considering the legal ideology of the union countries. The numerous works of the prominent scientists were dedicated to the problematique related to the consideration and analysis of administrative procedures in modern domestic and foreign administrative-legal science. The works, presented by foreign scientists were examined in this article, in particular such researchers as I. Koprić, Willemien Ouden en, Ymre E. Schuurmans, T. Barkhuysen, H. Pünder, J. Barnes, McCubbins, D. Mathew, Roger G. Noll and Barry R. Weingast, R. Edward, Edward J. Eberle, F. William, Marek Wierzbowski, Janis Načičionis, Hans Christian Roil, Herwig C.H. Hofmann and others. International administrative and procedural legislations of such countries as France, Germany, the USA and Poland were examined.

The objectives of the article are to investigate the axiological significance of the administrative procedure for the society and the state in general and in particular for public administration; to demonstrate on the example of a value-based approach the importance of the administrative procedure in the case of legitimation at the legislative level. Just on the basis of value disclosure it is possible to show how it is important in our country to create legitimate fundamentals for the administrative procedure functioning. In modern social studies, in research related to the evaluation of new institutions and procedures, which are of a high importance for the society and the country, an "axiological renaissance" always happens, which tangibly transforms modern field-specific science and public administration system in particular. In this article examining and considering are conducted from an axiological viewpoint, what provides us with a unique opportunity not only to highlight the administrative procedure value orientation, but also allows us to take into account various factors, which in one way or another distort the value through the artificial administrative barriers creation. Changes in the Ukrainian public administration system actualize the problem of adequate relations between the state and society, setting the task of determining such value parameters that would enhance the efficiency of the government bodies and citizens activities in their interrelationships. There is an increasing need to focus on the system of collaborative values, on the ways how to emphasize them and include them in the decision-making process. That is the reason why the axiology of the administrative procedure will be considered by us in an integrated manner in this research, taking into account the best international practices and the mindset of our society and state. Modern political science concludes that "the value system cannot be cultivated "in a test tube"; it must be accepted by society, it must correspond to its cultural and historical traditions and it must be organic"⁴.

Among other issues, our attention to values is caused by the global processes, which objectively erode existing value orienteers. On the other hand, the fundamentalist powers, defending themselves from global winds, are fiercely trying to preserve an accustomed, convenient system of values, which justifies the authoritarian political practices. Modern responsible politicians often have to make very difficult choices between national and global values. In the introduction to the peer-reviewed monograph, the professor L.V. Smorgunov rightly notes that the current appeal to culture and value problematique "has turned out to be momentous not only in terms of recognizing the significance of culture ("an axiological turn"), but also as an intention to isolate its influence among other determinants of the sociopolitical process"⁵.

³ Rozporiadzhennia KMU vid 24.06.2016 № 474-r Pro skhvalennia Stratehiyi reformuvannia derzhavnogo upravlinnia Ukrainy na 2016–2020 roky. URL: <https://zakon.rada.gov.ua>

⁴ Volkova A.V. 2013. Publichnye cennosti i sistema gosudarstvennogo upravleniya v Rossii. Sankt-Peterburg : Izd-vo SPbGU. 383 p. Publichnye cennosti i gosudarstvennoe upravlenie : kollektivnaya monografiya / pod red. LV. Smorgunova, AV. Volkovoj. 2014. Moskva : Aspekt Press. 400 p.

⁵ Volkova A.V. Formirovanie sistemy gosudarstvennogo upravleniya v Rossii (politiko-aksiologicheskij podhod) : dissertaciya doktora politicheskikh nauk : 23.00.02. Sankt-Peterburg, 2014. 339 p.

We will reveal the axiology of the administrative procedure from the point of view of its value, which it represents for legislation and communication with the society. Also we will examine it through the lens of the blocks of values, which are determined by the author: **1) administrative and legal value, 2) political value; 3) economic value; 4) public-social value.** We will start with administrative and legal value of the administrative procedure. An important stage in the development of Ukraine as a democratic and law-governed state is the consolidation of normative and law-enforcement administrative procedures in the current legislation. Their main task is to regulate the activities of public authorities, local government, their officials and officers, as well as other subjects of administrative and legal relations, what is one of the main factors for increasing of the efficiency and quality of state authorities work concerning ensuring of a proper and regulated implementation of their own tasks and functions. The availability of legal regulation of the administrative procedure is an indicator of the democratic legitimacy degree in relations between the state and citizens in the country. The administrative procedure will become the only mechanism, which will create an effective system of consistent realization and protection of citizens' rights and freedoms in our country and will act as an effective counteracting mean against subjectivity and arbitrariness on the part of public officials and officers of the state authorities, when they make administrative decisions. For a long time, the domestic administrative law was focused primarily on the needs of the state, while in Europe it has always been and remains focused on the human rights and interests, their effective protection with the help of legal procedures. Therefore it is no coincidence that codified acts and laws are adopted in a lot of European countries (in Germany it is Federal Administrative Procedure Act 1976, in the USA it is Administrative Procedure Act 1946, in Poland it is the Code of Administrative Proceedings 1960, in France it is the Law on the Rights of Citizens in their relations with state bodies 2000), which are devoted to an extremely detailed regulation of administrative procedures. Moreover, such laws form the basis of administrative law and determine the level of democratic governance in these countries.

Consequently, now one of the fundamental and urgent issues for the state and society is creation of such a mechanism for the administrative procedure legal regulation, which will be based on the "anthropocentric conception".

In sum the administrative and legal value of the administrative procedure consists of the following componential characteristics: "an honest control", which is executed in order to ascertain how many of the state authorities exercise their powers within the scope and in the manner, which are enshrined in the Ukrainian Constitution, and at the same time provide citizens with an opportunity to exercise their rights; 1) the formation of a platform for a dialogue between the authorities and citizens concerning their rights exercising, as well as in cases of conflicts; 2) maintaining of a balance of interests in the relations in the course of a decision-making process with respect to citizens; 3) establishing of discretion balance and formal positive legal regulation; 4) the procedure helps to optimize governance by fixing the most reasonable variant of the managerial decision in the procedural rules; 5) a clear differentiation of procedural rules in relation to adjacent powers between bodies of authorities, in other words, each body will be clearly regulated by a procedural approach in its powers exercising in a particular sphere, in the sphere of environment, and so on; 6) legal certainty in implementation of related scope of competences and powers; 7) right-wing institutionalization of the procedure conditioned upon the adoption of "The Act on Administrative Procedures of Ukraine"⁶.

The political value of the administrative procedure (AP) allows to conduct an assessment of this procedure "necessity and importance" for the country and its political course to European integration. This is a normative assessment of an ideal political object in terms of "good" and "bad", an idea of what is desirable and necessary in the political life. The verification of the citizens' distrustful attitude towards the state can logically bring authors to the matter of those, who inhabit political institutions and participate directly in the development and adoption of state decisions. This refers to understanding of the place and role of public values in the political and administrative elite activities⁷. The first aspect enunciates the public values role in ensuring of institutional and organizational efficiency of political and administrative elites; the second one is related to their communicative and legitimizing value concerning agreement obtaining in relations with other participants of public policy. The projection of these approaches on Russian realities leads authors to the conclusion that corporate ideas and principles, goals and objectives of the elite groups are often dominant in modern Russian public policy. Administrative procedure is an indicator of: 1) the degree of stability and comfort in the relationship between

⁶ Zakonoproekt „Pro administrativnu protseduru“. URL: <http://w1.c1.rada.gov.ua>

⁷ Ashin G.K., Ponedelkov A.V., Starostin A.M., Kislicyn S.A. Osnovy politicheskoy elitologii. Izd. 3-e, dop. Moskva : LENAND, 2015. Porter L.W. Factors Affecting the Context for Motivation in Public Organizations. The Academy of Management Review. 1982. Vol. 7. No 1. P. 89–98.

authorities and citizens; 2) transparency of relations between procedural legal relations between these two parties in the process of their powers exercising by the first party and their rights exercising by the second one; 3) the level of harmonization of relations. For the domestic and international policies of our state, the existence of a functional administrative procedure is an important condition for a further European cooperation, for formation of confidence and trust on the part of our political allies to our governance, its quality and efficiency. The administrative procedure is a kind of filter for politics, with the help of which the political culture of the country is formed, which is represented on all levels of government bodies⁸. **The economic value of the AP.** In order to determine what the economic value of the AP is exactly, it is necessary to determine criteria and methodology for its efficiency assessing, which is generally accepted by world community. Two methods for efficiency assessing both of legislation and its components in particular are widely held in the world, they are: 1) CBA – Cost-Benefit Analysis; 2) Regulatory analysis – this is a method of a regulatory impact assessment⁹. The second method of assessment is the most suitable for us, as only it will allow us to evaluate the efficiency of the administrative procedure, taking into account economic consequences of the adopted decisions. This method contributes into a rational procedure of legal regulations development and adoption, requiring carrying out some or other appropriate procedures at those stages when they are necessary and effective; it limits and controls authorities as enacting and law enforcing bodies in ineffective decisions adoption as a form of social control. **There are several criteria used for economic efficiency determining: 1) Pareto efficiency; 2) Caldor-Hicks criteria.** We will interpret these criteria contents through the lens of law. According to Pareto efficiency the general economic task of law is to create institutional conditions for executing the maximum number of different Pareto procedural micro-optimizations by eliminating all administrative barriers in such a way that citizens become able to exercise their rights and interests, thereby ensuring a more efficient procedural system for their rights exercising, trying to simplify this procedure by all means and to make it as efficient as possible due to availability of functioning¹⁰. Authorities of all levels need to adopt constitutive administrative acts, taking into account the principle of proportionality between degrees of happiness and pleasure, which decisions bring to those who benefit from them with an amount of suffering and unhappiness experienced by those who lose because of such decisions adoption. We are talking about creation with the help of the administrative procedures introduction in relations to build them in such a manner that each of the parties of the procedure. The second criterion is interpreted through law in the following manner: the task of the law is to create conditions for maximizing the gap between total benefits and costs leaving out of account that those who are charged with costs cannot receive adequate compensation and restore a violated status quo. In order to determine a legal decision based on this criterion, the rule-maker must make an analysis of material costs and benefits. The decision, which produces a larger amount of net material gain throughout society as a whole, is the most effective one.

The social value of the AP. Our society is a product of human interaction, which represents a complex, self-sustaining system of connections between individuals, united by economic, family, group, ethnic, class and other similar relations and interests¹¹. Taking into account the whole complexity of the society structure and the diversity of its constituent parts, society cannot exist without the procedural aspect of settled relations, without regulating and stabilizing at least of those relations, which are connected with division of labor and economic activity. Such a phenomenon, which organizes controls and regulates social relations, is law. These values “penetrate” the legal consciousness of a given society, play the role of high ideals and thus become the basic values of law. Legal values and assessments in the legal awareness sphere are of regulatory significance. Legal norms, in their turn, acquire a meaning of values and become the object of evaluation. Moreover, “an individual’s conscious behavior always proceeds in various degrees from the influences of the social norms, which were learned and assessed by him or her”¹².

The main following manifestations of the social value of the procedure can be noted: 1) The procedure has got, above all, an instrumental value. It adds to the activities of authorities and to people organization, stability and consistency, and ensures their controllability, and thereby introduces order elements into relations

⁸ Stone W.F., Schaffner P.E. *The Psychology of Politics*. 2nd ed. New-York; Berlin : Springer-Verlag, 1988. P. 63.

⁹ Inglehart R. *The Silent Revolution in Europe: International Change in Post-Industrial Societies*. *American Political Science Review*. 1971. Vol. 65. P. 991–1017; Inglehart R. *Post-Materialism in an Environment of Insecurity*. *American Political Science Review*. 1981. Vol. 75. P. 880–900.

¹⁰ Dalton R.J. *Responsiveness of Parties and Party System of the New Politics*. *Politische Klasse und politische Institutionen*. Opladen : Westdeutscher Verlag, 1991. P. 40.

¹¹ *Effektivnost zakonodatelstva: voprosy teorii i praktika : monografiya / Yu.A. Tihomirov, V.P. Emelyancev, A.A. Ayurova i dr.; otv. red. Yu.A. Tihomirov, V.P. Emelyancev*. Moskva : Institut zakonodatelstva i sravnitel'nogo pravovedeniya pri Pravitelstve Rossijskoj Federacii : INFRA-M, 2015. 336 p.

¹² *Ekonomicheskij analiz prava*. Moskva : Statut, 2016. 528 p.

between government bodies and citizens, making them civilized; 2) The highest social value of the procedure is that it affects the behavior and activities of people through the coordination of their specific interests; 3) The value of the procedure is determined by the fact that it is the exponent and determinant of legitimate freedom in relations between authorities and citizens, individuals in society. At the same time, the value of the procedure is that it defines limits and measure of this freedom for each participant in the procedural relationship. The procedure most fully manifests itself as personification and bearer of social freedom, social activity united with social responsibility, and at the same time it represents such an order in social relations, which aims to exclude arbitrariness, willfulness, lack of control of individuals and groups from people's lives.

Conclusion. Complication of relations between citizens and authorities requires from the legislator to carry out the reform in the field of public administration, in particular, to create procedural relations legal regulation, primarily in terms of its completeness, efficiency and compliance with modern public relations, which must be organized and ordered with the help of these procedures; taking into account the widespread use of administrative procedures and participation in them of many individuals and legal entities.

The deduced and analyzed value characteristics from various perspectives: sociological, economic, political and legal, allow us to assert that administrative procedures, in the widest sense of the word, ensure the efficiency of public administration. However, the social value of administrative procedures has got a broader meaning. The creation and use of administrative procedures will allow the government to form the right administrative sense of consciousness at the level of administrative rule-making and in the course of law enforcement.

Summary

In the article, the author examined the axiology of the administrative procedure for Ukrainian society and state through the prism of values: administrative, legal, political, social and economic. Ukraine declared itself a democratic, social and legal state committed to creating a legitimate mechanism for the society to realize its rights and interests in relations with the state through an administrative procedure.

Анотація

У статті автор дослідив аксіологію адміністративної процедури для українського суспільства та держави крізь призму цінностей: адміністративно-правових, політичних, соціальних та економічних. Україна, проголосивши себе демократичною, соціальною і правовою державою, взяла на себе зобов'язання створити для суспільства легітимний механізм реалізації громадянами своїх прав та інтересів у взаєминах із державою через адміністративну процедуру.

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Olena Markova,

*Candidate of Legal Science, Associate Professor,
Associate Professor at the Department of Legal Disciplines
Sumy Branch of Kharkov National University of International Affairs*