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RESEARCH OF THE MODERN STATUS OF THEORETICAL AND NORMATIVE CLOSURE OF THE CONCEPT OF PUBLIC-SERVICE ACTIVITY

Джафарова О. ДОСЛІДЖЕННЯ СУЧАСНОГО СТАНУ ТЕОРЕТИКО-НОРМАТИВНОГО ЗАКРІПЛЕННЯ ПОНЯТТЯ ПУБЛІЧНО-СЕРВІСНОЇ ДІЯЛЬНОСТІ. Автором приділено увагу з'ясуванню категоріального апарату, яким оперує діюче законодавство щодо вдосконалення нормативного закріплення такої категорії як «публічно-сервісна діяльність».Доведено, що публічно-сервісну діяльність доцільно розглядати через призму категорії «сервісна держава», з цією метою було проаналізовано різні підходи щодо виділення принципів формування моделей сервісної держави. Обґрунтовується, що викладені принципи моделі сервісної концепції держави є підґрунтям для глибокої наукової дискусії, оскільки їх запровадження потребує сформованого європейського громадянського суспільства. В статті аргументується підхід, що «публічно-сервісна діяльність» виходить за межі категорії «надання адміністративних послуг», визначення якої надано в Законі України «Про адміністративні послуги», та розкриває соціальне призначення держави її вторинну роль в порівнянні із правами та свободами людини. Надано авторське визначення публічно-сервісної діяльності в широкому та вузькому розумінні.

Ключові слова: *публічно-сервісна діяльність, державна політика, адміністративні послуги, органи публічної адміністрації.*

Formulation of the problem. The adoption of the Ukraine-2020 Sustainable Development Strategy, which consolidated the four key vectors of our country's development, is an important prerequisite for the introduction of European standards of life in the state, the emergence of Ukraine's leading positions in the world, ensuring a qualitatively new level of rights, freedoms and legitimate interests of physical and legal entities. One of these vectors is the «vector of security», which envisages a range of actions of legal and organizational character, which are usually reflected in the need for a particular reform. Mentioned vector of development of our country involves nine separate, but related to one and the same objective of reform. It is interesting that the proposed and carried out gradually reform of the law enforcement system, which provides for adjustment tasks and functions of law enforcement, changing attitudes of law enforcement people to fulfill their duties towards its realization as for public services paid by country primarily to ensure the safety of each person, his/her personal and property rights, public and state interests.

In general, supporting these changes in the ideology of the work of all law enforcement bodies, we consider it appropriate to refer to the scientific literature on the definition of these categories in order to formulate its own categorical apparatus, which is necessary for the practice of law enforcement [1, p. 45-51].

Analysis of recent research and publications. The importance of this problem was drawn to the attention of leading specialists in the field of administrative and other branches of law: V.B. Averyanov, O.M. Bandurka, O.I. Bezpalova, D.S. Denisyuk, R.A. Kalyuzhnyy, S.V. Kivalov, V.K. Kolpakov, A.T. Komzyuk, D.M. Lastovych, R.V. Myronyuk, O.M. Muzychuk, A.O. Selivanov, O.F. Skakun, V.V. Sokurenko, M.M. Tishchenko, S.O. Shatrava and others.At the same time, by many scholars and practitioners a lot of questions regarding the definition of a categorical apparatus by which operates the current legislation, areresearched fragmentarily and need comprehensive work, and the development of a conceptual approach to improving the regulatory consolidation of such a category as «public-service activity».

Presenting main material. Having examined the modern legal literature, in the presence of a clear notion of «public-service activity», we can conclude that there are currently no systematic developments regarding the content and significance of this category. Let us turn to the terminological definition of these categories. Yes, public, that is, intended for a wide visit, use; public, derived from the Latin «publicus», that is, public, state; popular, national [3].Service – maintenance of the population, maintenance of his domestic needs, derived from the English «service» – service, employment, work, public service, servicing, provision of services [3]. Recently, the adjective «service» is used when defining the meaning of «service state». M.V. Dzeveliuk notes that in the foreign literature the idea of service reorientation of the state has long been discussed in connection with several problems.Firstly, the state must be competitive in terms of providing these services, and therefore the system of public administration should be guided by the latest management technologies. Secondly, the state should refuse to monopolize those functions that can be implemented more effectively by private structures. Thirdly, the provision of services should be a priority form of the implementation of most state functions [4, p. 61]. The service idea of the development of public administration is based on the classical economic scheme «service provider – consumer», where the stability and legitimacy of public institutions are connected with the effectiveness of identifying, modeling and implementing individual and group interests and needs [5, p. 3; 6]. O. Gryshnova has another point of view, which observes that the conception of the service state can only be realized in those countries where the executive power, prior to the introduction of modern information technologies into its activities, was structurally and ideologically «serviceable», that is, limited in rights and duties [7].In the opinion of P.S. Klimushin and D.V. Spasibov service approach to the change as a paradigm of managerial thinking and management technologies is at the stage of conceptual and legal comprehension, theoretical and categorically-conceptual formation. The first thing that arises during the analysis of certain doctrines, strategies, programs of service modernization – is the conceptual and legal fuzziness, the blurriness of the used terms, concepts, etc. [6, p. 7]. O.V. Karpenko in general proposes the introduction into the scientific circle of the definition of «service-oriented state policy», which provides for a focused course of actions of the authorities and a set of tools (mechanisms, tools, levers, methods), which they practically implement to create, ensure the functioning and development of a service state [8, p. 12]. But mentioned definition does not give a concrete answer to the content of the service state.

In order to formulate our own approach to the problem, let's analyze the today existing thoughts that are contained on the pages of scientific publications.

If to study this concept in a more legal plane, then academician V.B. Averyanov noted that public-service activity is activities of the relevant state and non-state bodies in order to ensure, during its relations with the population, by concrete physical and legal persons the conditions, for which the latter are capable of effectively implementing and protecting their rights, freedoms and legitimate interests [9]. At the same time V.B. Averyanov notes that the public-service direction of the functioning of executive bodies was formed due to activity related to: 1) the consideration and solution of various individual appeals of private (physical and legal) individuals regarding the implementation of their subjective rights and interests protected by law; 2) provision of administrative (management) services to specific individuals in the form of permit-licensing, registration and other similar actions;3) the adoption of individual binding decisions on individuals in relation to the fulfillment of their various responsibilities provided by law, as well as the resolution of so-called «public» cases (for example, on resettlement of people during the construction of roads, bridges, energy networks, land allocation for national needs, etc.); 4) the implementation of an out-of-court consideration of administrative legal disputes in the procedure for administrative review of complaints of individuals; 5) applying to citizens the measures of administrative coercion, in the first place measures of administrative responsibility [10, p. 243-244].

O.V. Karpenko considers the service activity of the state government and local self-government bodies as a priority direction of the development of public administration in Ukraine, the essence of which is the provision of management services to citizens who are their recipients – the customers of the state (beneficiaries), and public servants and officials of bodies of local self-government – providers (executors), implementing these services on behalf of the state [8, p. 11]. In the context of this definition, we note that local self-government bodies are not subjects of state administration, they have a different nature – self-governing.

In turn, V.R. Bila notes that the public-service activity is to provide administrative (managerial) services. It is in this way that the administrative-legal science determines the ac-

tivity of public administration bodies in meeting certain needs of the individual, which is carried out upon his/her request, that is, the realization of the subjective rights of subjects not possessing powers of authority [11]. The same position is observed by I.Fedotova, who provides definition of public-service activity in the field of customs business as activity of the bodies of incomes and fees for the provision of administrative services in the customs field, which is carried out on the application of individuals and legal entities and is aimed at acquiring, changing or terminating rights or duties in the field of customs [12, p. 51].

According to our personal conviction, the identification of public-service activity only with the provision of administrative services is very narrow today.

It is an interesting position of B. Petyovka that is based on academic achievements of V.B. Averyanov who pointed to the need for emphasis on the definition of «public-service law», along with the usual definition of «administrative law» in certain public purpose and nature of administrative law. The definition of «public-service law» emphasizes the critical focus of this industry to serve the needs of the most complete software implementation and protection of adequate individuals rights, freedoms and lawful interests in their dealings with public authorities (government and self-management) [13, p. 99]. The analysis of this position shows that scientists are inclined to a broader interpretation of this category. In support of this position, we will give the opinion of B.M. Gooke, who notes that the introduction into the legal circle of such a concept as «public-service activity» has long been the cause of discussion in scientific circles, since it is based on the constitutional position of the social orientation of the state and is content of the activity of the state, its duty to ensure the rights and freedoms of man [14, p. 119]. We do not support the position that the service concept of the state is realized in the technology of e-government and e-democracy as inextricably linked institutions [6, p. 8], because the emphasis is put on the technical means of achieving the rights of individuals, and not on the role of the state in its implementation.

At the same time, V.D. Shcherban, notes that, having established the institution of public-service activity, the state represented by the executive authorities ensured establishing direct contact with the population [15, p. 14]. This position is interesting, but we believe that the latter is narrowed at the expense of the subjects, namely, the executive authorities. Because this category of «public-service activity» makes it possible to unite all actors involved in the implementation of state functions and move away from the monopoly of power and to emphasize the priority role of a person and his/her rights in the activity of the latter.At the same time, the researcher formulates his own position on understanding the concept of «public-service activity of executive bodies», which suggests to understand the activities of state bodies of executive power, which is the provision of public services of different size, nature and significance to individuals or legal persons, with the aim ensuring the realization of the rights, freedoms and legitimate interests established for them, as well as for the purpose of supplementing or extending their legal personality in connection with the provision of a certain public service [15, p. 10]. We see the approach of V.D. Shcherban somedebatable, that the content of the latter includes public services of different size, nature and significance for individuals or legal persons. The question is that the researcher does not indicate in this case that the latter are implemented within the competence of one or another executive body and accordingly can not go beyond the latter.

Also, the opinion needs attention that public-service activity, despite the interpretation of its content by many scholars as a permissive activity, is still characterized by an imperative nature, since most public services are aimed at the implementation of rights not specified by the administrative and other branches of legislation, namely the realization a duty that may be obtaining a passport, a mandatory exercise of a certain activity after obtaining a license, permit or other legal document, etc. [15, p. 22]. Expressing his own position on this matter, we would like to emphasize that V.D. Shcherban is mistaken in the fact that the latter is aimed at fulfilling the duty, since according to the Constitution of Ukraine, today a citizen has only two responsibilities: to protect the state (for men) and pay taxes and file an appropriate tax return. Everything else is a person's right, the realization of which involves the implementation of a certain «obligation», which is an independent legal remedy for the settlement of legal relations, has a secondary and original character, etc.In our opinion, it is a public-service activity that is not characterized by imperativeness, in this it is its peculiarity and the need to rethink the role of the latter.

In connection with this, we believe that in determining this category it should focus on the analysis of categories of more general manner, such as the state, the rights and freedoms of citizens and the mechanism of its providing, as the latter relationship is central to jurisprudence

and for understanding the above category [1]. It is interesting, in our opinion, is the definition of the state as the highest form of social organization that provides protection and coordination of individual, group and general public interests through the law in a particular area. [16]. The authors of the book «Private Life and Police. Conceptual approaches. The theory and practice»understand the state as an instrument that provides the best conditions for the development of the individual, society and the state itself, and the generalized solution to the problem of national security at the reached level of development of its theory is based on three basic elements: interests – threats – protection [17, p. 27]. Security is a condition for the existence of a state, society or person that allows them to preserve accumulated values [17, p. 33].According to Article 3 of the Constitution of Ukraine, person, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value [18]. At the same time, the state undertakes to provide the latter with certain legal instruments and state institutions. On the basis of the foregoing, it should be concluded that the basis of the organization and functioning of the modern Ukrainian state is a social contract, which provides that the state is formed by the expression of the will of free and independent persons, and undertakes to contribute in every way to the realization of human rights, and in cases of violation of it to defend the last. At the same time, the other side of the social contract also has certain obligations among which are: payment of taxes, observance of the established rules of conduct, the duty to protect the integrity of the state, etc. It should be noted that the priority and opportunities for individuals to exercise their rights, including in relation to public administration, are given.It is in this approach that the modern view of the state as an institution that provides certain services to individuals who, so to speak, «order» them, is revealed. The range of these «services» directly derives from the public functions of the state, which are content, the basis for the identification and consolidation of the specific rights and obligations of the subjects of the relevant relations [1].In support of this position, we will give a view of V.Y. Misyura, who emphasizes that the concept of a socially oriented service policy of the state should be based on the following four dimensions – the principles of a modern democratic state: 1) the state-guarantor (that is, the system of institutions providing quality public services); 2) the state-partner (institutionally provides favorable conditions for public activity and encourages citizens to independent solving problems according to the current legislation, political system and economic conditions); 3) the state-supervisory authority (on the basis of established rules of the public and, above all, economic activity); 4) the state-executor of services for the society (first of all, the task of security and the state's ability to do something for society at a lower cost) [19].In this case, M.V. Dzevelyuk notes that it seems that it can distinguish the following key characteristics of the service state: 1) the service state tends to the minimum state, but is not identical to it. In a service state, most of the functions are implemented «on request», that is, the service state is passive. However, at the same time, these functions that require constant public participation of the state – law enforcement, migration, border protection, etc. – can combine traditional active forms of implementation of functions with the provision of appropriate services to society; 2) the service state operates on a competitive basis.Demonopolization of functions leads to the emergence of alternative providers of services, which previously had the exclusive status of state functions. At present, developedcivil societiesare gradually institutionalizing the state; 3) the service state should first of all provide services that society as a whole or separate social groups can not receive independently from other institutions. First and foremost, the state provides services to vulnerable groups of population in order to compensate for the inequality of access to services; 4) the service state is a «modest» state in the sense that its operation should be subject subordinated to rational market logic.The service state should take into account all significant economic circumstances when rendering services in order to fit into the general structure of public expenditures: no service may be provided at the expense of other services; 5) in terms of the subject content, the service state is a state of highly specialized specialists, and not necessarily managers. As part of the service functional model of management, this goes astray, while the efficiency and speed of decision-making and achievement result in the foreground;6) the functioning of the service state occurs in a situational mode, which allows for faster adaptation of the decision-making algorithm to a particular case. Hence the departure from global comprehensive strategies and action plans, which is today becoming increasingly visible in public administration [4, p. 65-66]. Expressing our own thoughts on this subject, we note that the principles outlined in the model of the service concept of the state are the basis for a profound scientific discussion, since its implementation requires a prevailing European civil society.

Conclusions. Based on the foregoing, it can conclude that «public-service activity» goes beyond the category of «rendering administrative services», the definition of which is provided in the Law of Ukraine «On administrative services», and reveals the social purpose of the state of its secondary role in comparison with person's rights and freedoms.

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Summary

The article outlines the principles of the model of the service concept of the state, which are the basis for a deep scientific discussion, because its implementation requires a prevailing European civil society. It was emphasized that «public-service activity» goes beyond the category of «providing administrative services» and reveals the social purpose of the state, its secondary role in comparison with human rights and freedoms.

Keywords: *public-service activity, state policy, administrative services, public administration bodies.*