2. Романов О. Зброя: законодавчий аспект / О.Романов // Юридичний журнал. – 2005. – № 2 (32). – С. 32–38.

3.Варивода В.І. Реалізація права громадян на самооборону: адміністративно-правовий аспект / В.І.Варивода // Науковий вісник Національної академії внутрішніх справ. – 2010. –№ 6. – С.109-115.

4. Чистоклетов Л. Г. Про зброю та правові підстави її застосування суб'єктами приватних охоронних підприємств в Україні / Л. Г. Чистоклетов, Т. Пастрюліна // Наукові записки Львівського університету бізнесу та права. – 2011. – Вип. 6. – С. 139-142.

5. Про вогнепальну зброю цивільного призначення : Проект Закону від 01.12.2014 // [Електронний ресурс]. - Режим доступу : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52560.

6.Про право власності на окремі види майна: Постанова ВРУ від 17.06.1992 № 2471-XII //[Електронний ресурс]. – Режим доступу: http://zakon4.rada.gov.ua/laws/show/2471-12.

7. Право на зброю – що несе в собі законопроект «Про вогнепальну зброю цивільного призначення»: [Електронний ресурс] // KOLO.POLTAVA. – 2014. – Режим доступу: http://kolo.poltava.ua/novini-poltava/pravo-na-zbroyu-scho-nese-v-sobi-zakonoproekt-pro-vognepalnu-zbroyu-tsivilnogo-priznachennya-24188.html.

8. Алгоритм придбання зброї : [Електронний ресурс] STRILETS.ORG. – Режим доступу: http://www.strilets.org/zbroya/algoritm-pridbannya-zbroji.

9. Про зброю: [Електронний ресурс] INFO.BEREZHANY. – 2014.-Режим доступу: http://info.berezhany.net/the-news/dovkola/3469-pro-zbroyu.

ВІДОМОСТІ ПРО АВТОРА

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PROBLEMS OF ADMINISTRATIVE AND LEGAL REGULATION OF CIVIL SERVICE PASSAGE BY SUBORDINATE LEGISLATION

ПРОБЛЕМИ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ПРОХОДЖЕННЯ ДЕРЖАВНОЇ СЛУЖБИ ПІДЗАКОННИМИ НОРМАТИВНО-ПРАВОВИМИ АКТАМИ

ПРОБЛЕМЫ АДМИНИСТРАТИВНО-ПРАВОВОГО РЕГУЛИРОВАНИЯ ПРОХОЖДЕНИЯ ГОСУДАРСТВЕННОЙ СЛУЖБЫ ПОДЗАКОННЫХ НОРМАТИВНО-ПРАВОВЫМИ АКТАМИ

Oleksii DROZD *(Kiev)*

У статті на основі аналізу наукових поглядів вчених та чинного законодавства України визначено проблеми адміністративно-правового регулювання проходження державної служби підзаконними нормативно-правовими актами. Доведено, що загальним недоліком усієї сукупності підзаконних нормативно-правових актів є їх велика кількість. Запропоновано першочергові заходи у сфері вирішення проблем адміністративно-правового регулювання проходження державної служби.

Ключові слова: *проблема, адміністративно-правове регулювання, проходження державної служби, підзаконний нормативно-правовий акт.*

The article based on an analysis of scientific views of scholars and current legislation of Ukraine, determines problems of administrative and legal regulation of passage of civil service by subordinate regulatory acts. It is proved that the general disadvantage of-totality of regulations is their large number. Priority actions in addressing problems of administrative and legal regulation of public service are proposed.

Key words: *problem, administrative and legal regulation, passage of civil service, subordinate legislation.*

В статье на основе анализа научных взглядов ученых и действующего законодательства Украины определены проблемы административно-правового регулирования прохождения государственной службы подзаконными нормативно-правовыми актами. Доказано, что общим недостатком всей совокупности подзаконных нормативно-правовых актов является их большое количество. Предложено первоочередных мерах в области решения проблем административно-правового регулирования прохождения государственной службы.

Ключевые слова*: проблема, административно-правовое регулирование, прохождения государственной службы, подзаконный нормативно-правовой акт.*

Formulation of the problem. The main role in the regulation of passage of the civil service is undoubtedly played by the Laws of Ukraine, because they have higher legal force in the country. But the content and meaning of subordinate legislation should be not underestimated, particularly

in the field of passage of public service. Each level of regulations has its own importance in determining the foundations of the legal status of public authority and in the implementation of its mandate. They help to consolidate organizational and legal foundations of the authority activity. Overall analysis of the Law of Ukraine "On Civil Service" leads to two contradictory conclusions: on the one hand, it is a large-scale legal act by the application of a number of its provisions to a wide range of public relations arising in the public service and, in addition, it defines principles of public service, legal and organizational foundations of ensuring the public, professional, politically impartial, effective, public-targeted state service, which operates in the interests of the state and society, and also procedure of enforcement by the citizens of Ukraine of the right to equal access to public service, which is based on their personal qualities and achievements etc. And on the other hand, at its certain complexity it has superficial nature, which is also confirmed by the blanket nature of its regulations. So now the public service is governed by many regulatory legal acts of various levels, including departmental acts of government on specific issues.

State research problems. To the problem of administrative and legal regulation of the passage of civil service by subordinate regulatory acts devoted attention in their studies: L.I. Pryhara, S.M. Husarov, M.S. Kelman, O.H. Murashyn, V.B. Averianov, V.M. Khropaniuk, V.H. Strekozova, V.M. Ryzhykh, S.M. Serohin, V.M. Soroko, A.O. Chemerys, V.V. Tsvietkov and others. However, not enough attention is paid to the problems of administrative and legal regulation of the civil service passage by subordinate regulatory acts.

The purpose of the article is to determine problems of administrative and legal regulation of the civil service passage by subordinate regulatory acts, and also to consider a way of their solution.

Presenting main material. The main condition that puts subordinate regulatory acts against the laws is that they (subordinate regulatory acts) are more departmental, if necessary can only specify some provisions of laws, but in any case not "improve", not "correct", not "change" the law [1, C.384].

As a part of the administrative law two types of subordinate legal regulation are conventionally distinguished: general legal regulation (external); departmental legal regulation (internal). The general legal regulation covers the majority of public relations, including in the field of public service. With these there are formed the legal status of relationships, defined rights and obligations, directions and guarantees of activity, general rules of behavior and so on.

Accordingly, departmental legal regulation, particularly in the field of the passage of civil service, regulates a specific area of public relations – a set of legal arrangements (departmental rules, individual acts), by means of which conducted its imperative and normative regulation, and on the basis of which service relationships arise, change and terminate.

Internal legal regulation today is the most substantial burden on the Law of Ukraine "On Civil Service". Despite the fact that it was adopted on December 2015, many provisions continue to be unregulated. It is caused by the fact that most subordinate regulatory acts were adopted to implement the previous law and, therefore, with the adoption of new, were expired. In these circumstances, considerable importance is given to regulatory acts of the National Agency of Ukraine on Civil Service taken to the Law of Ukraine "On Civil Service" on December 10, 2015 № 889-VIII.

Among the most important of them it is necessary to highlight the following.

1) On Approval of the List of Tests for Candidates who have passed the documents examination provided by the first paragraph of Article 26 of the Law of Ukraine "On Civil Service" on May 6, 2016 № 97/1328/5. This order contains issues that are brought to check the knowledge of the Constitution of Ukraine, civil service legislation, anti-corruption legislation and special legislation (the Laws of Ukraine "On the Cabinet of Ministers of Ukraine", "On Central Executive Authorities", "On Administrative Services", "On Local State Administrations", "On Citizens' Appeals", "On Access to Public Information", "On Principles of Prevention and Combating Discrimination in Ukraine", the Budget Code of Ukraine and the Tax Code of Ukraine) by candidates to take office in the civil service bodies [2].

2) On Approval of the Procedure of Determining Special Requirements for Persons Applying for Positions of Public Service of Categories "Б" and "В" on April 6, 2016 № 72. This Procedure establishes the procedure for determining, development and approval of special requirements for persons applying for positions of public service of categories "Б" and "В" [3].

3) On Approval of the Procedure for Management and Keeping of Personal Files of Civil Servants on March 22, 2016 № 64. This Procedure specifies requirements for administration and storage of personal files of civil servants, and the list of documents, which form personal files [4].

4) On Approval of the Standard Internal Regulations on March 3, 2016 № 50. These Model Rules determine the general provisions on the organization of internal service regulations of state authority, another public body, its apparatus, working hours, conditions of stay of public servant in state authorities and ensuring the rational use of its working time [5].

5) On Approval of the Procedure of Accounting and Handling Disciplinary Cases on March 3, 2016 № 49. This Procedure determines general requirements to the accounting and handling disciplinary cases formed during the disciplinary proceeding [6].

6) On Approval of the Civil Servant Internship Procedure on March 3, 2016 № 48. This Procedure determines general provisions concerning civil servants' internship, including abroad, as one of the forms of increasing the level of professional competence [7].

7) On Approval of the Standard Regulation on the Personnel Management Service of a Public Body on March 3, 2016 № 47. This Order establishes that in a public body, depending on the number of personnel, founded an independent structural unit or inaugurated a position of human resources specialist.

Thus, abovementioned orders are important for the process of organization and performance of public service. A common disadvantage of the whole mentioned regulatory legal acts is their great amount. Thus the systematization of administrative legislation in the field of public service is very relevant today. This process is a complicate enough. It is explained to a certain extent by the fact that, firstly, foregoing legislation consists today of a base legislation act – the Law of Ukraine "On Public Service" and also of many subordinate acts (Decrees of the President of Ukraine, Resolutions of the Cabinet of Ministers of Ukraine, departmental normative legal acts and soon); secondly, full-fledged systematization of this legislation in the previous period was not conducted (in the Soviet times there was no legislation in the field of public service) [8, p.312]; thirdly, today there still a lot of questions remains without proper legal regulation. Thus, for example, requirements to the public bodies for the establishment of state-service relations are not determined by current legislation. However, modern reality insistently need for the legislative consolidation of a certain list of these requirements.

In particular, a group of laws on certain forms of public service is applied either independently without taking into consideration the framework Law of Ukraine "On Public Service" (it concerns those forms as, for example, service in the Armed Forces of Ukraine and other armed forces, formed in accordance with the legislation, which are not recognized as such according to the Law in connection with the non-inclusion of them into the purview of law) or subsidiary: provisions of the framework Law are applied in that part where they are not regulated by the special legislation. And they, in turn, also need systematization.

Besides that, as V.B. Averianov rightfully mentions, certain statutory regulations on public service, which forced up to the adoption of the Low of Ukraine "On Public Service" in 2015 and not become invalid in the present, not correspond to many law's provisions of the Constitution of Ukraine, they are obsolescent, cumbersome, and inconsistent in many respects, etc. In particular, now (as it is stated above) the practice of attempts to regulate particular relations in the field of public service by different subordinate acts continues, in spite of the fact that the Constitution of Ukraine requires that the organization and activities of executive bodies, fundamental principles of the public service are to be determined solely by the laws (paragraph 12, part 1, Art. 92).

Significant disadvantage, as the scientist considers, is a conceptual orientation toward the regulation of state-service relations that arise on account of public service, mainly by private law means peculiar to the labour law and, in such a way, to the loss in value of public-private means peculiar to the administrative law. Thus, there is considered a non-systemic of the whole array of

different legal nature of acts devoted to the public service as a whole and the process of public service in particular, which has led to the simultaneous existence of different forms of public service, which development in conceptual terms should be based on the unified principles and approaches [8, p.311 – 313].

Abovementioned statements are absolutely correct and relevant. However, there arises an additional question concerning separate legal acts as results of law enforcement activities of officials of public authorities, which are being adopted as a consequence of the consideration of concrete cases and within the regulatory legal acts. Role and meaning of legal acts of public administration should not be underestimated. It is caused by the fact that in the law enforcement area they: 1) provide the enforcement (exercise) of legal rules; 2) determine the individual measure of possible and necessary behavior of subjects in concrete legal relations, in particular, in the area of public service; 3) provide the defense of legal rights and fulfillment of legal obligations by parties of legal relations [9, p.44].

In legal literature law enforcement act is in most cases considered as an instrument in due form that documented an adopted decision, official sing it, in a certain form that provides a realization of legal norm. In most cases, as S.M.Husarov notes, such an act is in operation only when it is written in due form [10, p.68]. Law enforcement acts are an important means for moving obligatory legal provisions to the field of concrete real-life situations and concerning concrete persons, including in the public service process [11, p.160 – 161].

Specified doctrinal provisions are reflected in the current Law of Ukraine “On Public Service”, in particular, the official must execute orders (instructions), assignments of the head issued within his powers. In the event of doubt that the head’s order (instruction), assignment is legal, he should be subject to the written acceptance of it and after the acceptance must to execute this order (instruction), assignment. At the same time along with the execution of such order (instruction), assignment the official is obligated to inform the head or authority of higher level about it in written form. In such a case the official exempt from responsibility for the execution of mentioned order (instruction), assignment if it is considered as illegal in accordance with the statutory procedure except cases of execution of manifestly illegal order, (instruction), assignment [12].

Such departmental rulemaking is utterly diversified. There are many regulatory legal acts, which are formally not repealed but practically not applied (fully or partly), since they are inconsistent with later adopted regulatory legal acts or acts of higher legal force, or ever not changed after the adoption of a new Law of Ukraine “On Public Service” and allocated as “valid” in online databases of legal information, in particular, on the website of the Verkhovna Rada of Ukraine.

Regulatory legal acts on public service in the development of legislative acts and acts of the Government are accepted randomly in the authorities. Moreover, in most cases they consider a great deal of legal information equal to the information of acts of higher legal force. Actually this is in reference to its doubling. It creates ac situation of practical application of solely departmental acts without appealing to legislative acts. Typically similar situations occur in the legal regulation of certification, probation, missions. We consider that such a situation is inadmissible and necessitates improvement and normative regulation.

It can be avoided by means of consolidation in due legal form of certain order of rulemaking. Their essence should be confined to the restraint of issuance of acts similar to the issued by the higher authorities of public administration based on a literal reproduction of text of the higher legal force act or with amendments, which have not a legal value. At the same time it is allowed to issue acts if they detail the established order, procedure, conditions concerning features of branches and areas. Original act rewriting should be prohibited.

Thus, it is necessary to stimulate practice of direct application in public service authorities of firstly issued acts having higher legal force in respect of departmental, down to the direct application of rules of laws. It will contribute to reducing futile, time and state funds consuming departmental rulemaking, which directly influence the efficiency of public service. Thereby it will

be possible to exclude possible cases of legal norms' conflict caused by alterations made in acts of higher legal force but insufficiently quickly edited in the departmental acts.

Conclusions. It can be concluded that the search for new optimal methods of building public service is a continual process. New norms, legal writings, implementation mechanisms, which must led to one common result – efficiency of public service. Today a lot of unsolved issues, which are connected with the statutory regulation and organization of public service, directly affect the efficiency of public administration and it, in turn, affects the improvement of vital activity of the state population.

Public service, if knowingly organized, serves as a guarantee that any questions from strategic to the smallest ones in the state apparatus will be considered rationally and exhaustively, duly and punctually, in accordance with the valid regulatory legal acts. And this requires appropriate procedures and institutional order of proceedings, control mechanisms, clear regulation of paper work and many others that will allows asserting that public service is implementing on the basis of modern informational and legal technologies.

Hence, first priority measures in the field of solving problems of the administrative legal regulation of public service should be the following:

1) optimize the system of statutory regulation of public service. Today it is an independent array of sources that has a set of problems;
2) unify the statutory regulation in order to overcome chaos and fragmentariness of legal regulation of public service by subordinate regulatory legal acts;
3) withdraw blanket and doubling regulations from administrative legal acts in the area of public service, improve and deepen conceptual framework;
4) develop scientifically grounded and approved methodology of application of regulations of legislation in the area of public service;
5) "open" state apparatus and public service mechanism for the public;
6) consolidate in regulatory order the development of intellectual constituent of senior executives and operational and executive personnel of public authorities in the public service.

Stated measures will give an opportunity to: create a unified integral system of institution of public service taking into account socio-political, economic, cultural and national peculiarities of our state; fundamentally increase the efficiency of the public service institution for the benefit of the statehood consolidation, development of a civil society and ensuring an adequate standard of living for every citizen of the country; form highly professional staffs of public servants managing modern administrative and informational technologies; establish a modern system of public service management.

BIBLIOGRAPHY:

1. Хропанюк В.Н. Теория государства и права : [учебное пособие для высших учебных заведений] / В.Н. Хропанюк ; под ред. В.Г. Стрекозова. – М. : Дабахов, Ткачев, Димов, 1995. – 384 с.
2. Перелік тестових питань на перевірку знання Конституції України, законодавства про державну службу, антикорупційного законодавства та спеціального законодавства : Наказ Національного агентства України з питань державної служби та Міністерства юстиції України від 6 травня 2016 року № 97/1328/5 [Electronic resource]. – Access mode : http://nads.gov.ua/page/perelik-testovyh-pytan.
3. Про затвердження Порядку визначення спеціальних вимог до осіб, які претендують на зайняття посад державної служби категорій «Б» і «В» : Наказ Національного агентства України з питань державної служби від 6 квітня 2016 року № 72 [Electronic resource]. – Access mode : http://nads.gov.ua/page/poryadok-vyznachennya-specialnyh-vymog-do-osib-yaki-pretenduyut-na-zaynyattya-posad-derzhavnoyi.
4. Про затвердження Порядку ведення та зберігання особових справ державних службовців : Наказ Національного агентства України з питань державної служби від 22 березня 2016 року № 64 [Electronic resource]. – Access mode : http://nads.gov.ua/page/poryadok-vedennya-ta-zberigannya-osobovyh-sprav-derzhavnyh-sluzhbovciv.
5. Про затвердження Типових правил внутрішнього службового розпорядку : Наказ Національного агентства України з питань державної служби від 3 березня 2016 року № 50 [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/z0457-16.
6. Про доступ до публічної інформації : Закон України // Відомості Верховної Ради України. – 2011. – № 32 – Ст. 314.

7. Про затвердження Порядку стажування державних службовців : Наказ Національного агентства України з питань державної служби від 3 березня 2016 року № 48 [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/z0439-16.

8. Адміністративне право України. Академічний курс : [підручник] : в 2 т. – К. : Юридична думка, 2004– . – Т. 1 : Загальна частина / ред. колегія: В.Б. Авер'янов (голова). – 2004. – 584 с.

9. Пригара Л.І. Юридична техніка актів правозастосування : дис. … канд. юрид. наук : спец. 12.00.01 «Теорія та історія держави і права; історія політичних і правових учень» / Л.І. Пригара. – К., 2008. – 200 с.

10. Гусаров С.М. Правозастосовна діяльність в Україні : [монографія] / С.М. Гусаров. – Х. : Золота миля, 2015. – 416 с.

11. Кельман М.С. Загальна теорія права (з схемами, кросвордами, тестами) : [підручник] / М.С. Кельман, О.Г. Мурашин. – К. : Кондор, 2002. – 353 с.

12. Про державну службу : Закон України // Відомості Верховної Ради. – 2016. – № 4. – Ст. 43.

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УМОВИ СПРАВЕДЛИВОСТІ КРИМІНАЛЬНОГО СУДОЧИНСТВА

Сергій ЗЕЛЕНСЬКИЙ (*Кропивницький*)

Стаття присвячена дослідженню справедливості в кримінальному правосудді. Необхідність такого дослідження обґрунтовується дією однієї з основоположних засад кримінального провадження та права людини на справедливий суд. У зв'язку із занепадом гуманістичних ідей, поглядів в суспільстві і праві, з'являється скептичне ставлення і до можливого досягнення справедливості в кримінальному провадженні. Однак, гносеологічна природа кримінального процесуального права дозволяє засаді справедливості і сьогодні проявляти свої неабиякі властивості в забезпеченні прав людини, встановленні рівного і неупередженого ставлення до людей.

Рівність перед законом і судом в кримінальному правосудді при наявності достовірних доказів, отриманих в передбаченому законом порядку, сприяє справедливому і законному вирішенню кримінальної справи по суті.

Концепт справедливості в кримінальному процесі означає впорядкованість, законність, сприяє зміцненню правових основ держави.

Ключові слова: *справедливість, засада, кримінальне провадження, права людини, закон, правосуддя*

Статья посвящена исследованию справедливости в уголовном правосудии. Необходимость такого исследования обосновывается действием одной из основополагающих принципов уголовного судопроизводства и права человека на справедливый суд. В связи с упадком гуманистических идей, взглядов в обществе и праве, появляется скептическое отношение и к возможному достижению справедливости в уголовном производстве. Однако, гносеологическая природа уголовного процессуального права позволяет на основе справедливости и сегодня проявлять свои незаурядные свойства в обеспечении прав человека, установлении равного и непредвзятого отношения к людям.

Равенство перед законом и судом в уголовном правосудии при наличии достоверных доказательств, полученных в предусмотренном законом порядке, способствует справедливому и законному решению уголовного дела по существу. Концепт справедливости в уголовном процессе означает упорядоченность, законность, способствует укреплению правовых основ государства.

Ключевые слова: *справедливость, принцип, уголовное производство, права человека, закон, правосудие*

The article investigates fairness in the criminal justice system. The need for such research is justified by the action of one of the fundamental principles of criminal proceedings and the right to a fair trial. In connection with the decline of humanistic ideas, attitudes in society and the law, and there is skepticism about the possible achievement of justice in criminal proceedings. However, the epistemological nature of criminal procedural law allows equitable basis and now shows its outstanding properties to ensure human rights, establishing equal and impartial treatment to people.

Equality before the law and justice in the criminal justice system in the presence of credible evidence obtained in the manner prescribed by law, promotes fair and lawful resolution of the criminal case on the merits.

The concept of fairness in the criminal process means orderliness, legality, strengthens the legal framework of the state. The idea of human rights represents humanistic trend in criminal procedural law, as honor and dignity in Ukraine are among the highest social values. Justice maintains a balance in society, contributes to the establishment of subordination between people. In the criminal justice principle of justice is the preservation of legal values while defining element of conflict with the dominant clash of values. The judiciary is the guarantor of the rights and legitimate interests. The basic idea of fairness in the criminal justice system is concerned. Legal assessment of human behavior, and the rules for the most of critical assessment, on which the assessment is based, are considered. The validity of the criminal justice is assessed by analyzing the circumstances and conditions in each particular case.

Key words: *justice, principle, criminal procedure, human rights, law, justice*

Постановка проблеми. Застосування норм права у кримінальному провадженні здійснюється публічно, тобто державними органами і посадовими особами. Самі громадяни