

# Administrative Law- Legal Basis of Public Governance implementation

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**Abstract**— The article analyses the administrative law as a legal basis for the implementation of public administration, based on whose convictions of the authors that the public administration is the management of private, and, therefore, is the subject of legal regulation of private law. The authors argue that in the conditions of constant development of normative acts regulating the activity of governing bodies in Ukraine, the urgent problem in building a scientific approach to public administration is to understand the essence of public administration as a public administration process. Therefore, public administration should be analysed as a legal, managerial, and social category. It is substantiated that the application of public administration requires taking into account the basic principles of distinguishing political and administrative issues; comparative analysis of national, political, and economic problems and interests and the problems and interests of business organisations; increasing the efficiency of managerial service by introducing business administration practices to public administration. All this actualises the novelty of the article, which provides for the study of administrative and legal support for the implementation of public administration

**Index Terms**— society, state, public authority, public administration, administrative law.

## I. INTRODUCTION

In general, during the consideration of public administration, a wide range of statements and definitions are often offered, which reveals separate aspects of this concept and approaches to his understanding. The most widespread consideration of public administration in the aspect of its organisational and structural structure and analysis of functional purpose in the system of state and local authorities. Public administration should be a comprehensive and complete process of managerial activity based on the separation of the essence of centralisation and decentralisation of the administrative branch of government. The essence of the subject of public importance lies in its role and authority in public administration, as well as managerial capabilities arising from its authority and the dynamic interaction of all elements of its competence.

Competence is considered as a complex of interrelated elements (goals, tasks, subject to authority, and powers), which characterizes the features of the particular subject of public administration, due to its place in public administration. In this aspect, it is important to emphasize the structuring of public administration as a type of management activity, distinguishing such components of segments (blocks) in the administrative-legal status of executive bodies, as targeted, structural and organisational, and competent (competence). At the same time, publicity of administration is not only awareness of the actions of power, not only the transfer of authorities at the level of local self-government. This is primarily about the change in managerial competencies and status characteristics of public authority bodies, which makes the need for their conceptual clear definition and development of new mechanisms of public administration to ensure the legal and structural, and organisational functioning of public administration subjects. Such an approach to the construction and implementation of power in the public administration system should be aimed at ensuring the solution of the following administrative tasks: formation of the system of state power at different levels of centralisation and decentralisation, local government, and improving mechanisms for their integration; improving the management model of rational interaction of public authorities with local governments, providing these relations with legal signs of publicity, in particular, through the provision and implementation of rights and freedoms of citizens in the field of public administration.

Thus, the purpose of the article is to study the administrative and legal provisions of the implementation of public administration. The article is constructed in such a way that: firstly, theoretical principles and approaches to the definition of public administration are proposed. Secondly, the norms of administrative and legal provision of managerial activity are described. Thirdly, the influence of public administration in practice implementation of state policy is investigated. In the end, scientific generalization is proposed and outlined prospects for future research on this issue.

## II. PUBLIC ADMINISTRATION: THEORETICAL PRINCIPLES AND APPROACHES TO DEFINITION

Public administration is the activity of subjects of public administration regulated by laws and other normative-legal acts, directed on the realisation of laws and other normative-legal acts by acceptance of administrative decisions, rendering of administrative services established by-laws (Matiukhina, 2018, pages 8–9). Public administration is carried out by the public administration, a system of certain public institutions consisting of state and non-state subjects of public power, the key structural elements of which are the executive authorities and executive bodies of local self-government. The essence of the subject of public importance lies in its role and authority in public administration, as well as managerial capabilities arising from its authority and the dynamic interaction of all elements of its competence. Competence is considered as a complex of interrelated elements (goals, tasks, subject to authority, and powers), which characterizes the features of the particular subject of public administration, due to its place in public administration. According to the competence of the subject of public administration, executive bodies can be divided into bodies of general competence; bodies of branch competence; bodies of intersectoral competence; bodies of functional competence; bodies of subject competence (Halunko & Dikhtievskyy, 2018, p. 82). For example, O. Jafarova considers the permitting competence of public administration bodies as a set of rights and responsibilities (legal obligations), as well as their focus on ensuring life, human health, environmental safety, national interests, and maintaining the balance of private and public interests in a particular area of public relations (economic, environmental, cultural) (Jafarova, 2018, p. 44). However, as noted by the German philosopher and sociologist J. Habermas, the population must have sufficient information about the activities of the leadership, since the information is key to solving problems or conflicts in society and helps to discuss and teach its needs before the authorities and accordingly exercise control of the process of the realisation of the issue delivered to the authorities. But since, as J. Habermas notes, "the public (independent citizens) can not rule itself, it can only control the actions of administrative power, government institutions and direct them in the necessary racing (channel)" (Habermas, 1992, p. 461), It remains important in the management of public affairs to pay considerable attention to the publicity of the adoption and implementation of government decisions to ensure the general public interest.

In a broader sense, public administration includes a system of public administration represented by existing administrative institutions within the accepted power structure in Ukraine. At the same time, it is possible to consider a narrower definition of public administration, which is associated with the executive branch of power at the level of central, local administration, or local self-government, and thus a connection with the professional activity of civil servants of all types of civil service and representative bodies and local self-government aimed at realising executive decisions. Here it is possible to include studying, developing, and implementing the state practices of state policy in various spheres of public life. Thus, public

administration is most often associated with the functions of the executive branch, with the exercise of professional functions by civil servants to implement the management decisions proved to them, the implementation of public policy.

By translating English Terms related to public administration in English-speaking literature, Kilievych O. distinguishes related concepts of Public Sector, Public Policy, and Public Administration, emphasizing that the term "Public Administration" should be considered as public administration, or as a state policy implementation mainly by the executive branch of power (Kilievych, 2003).

Analysing the term "management process", K. Buhaychuk, in particular, indicates the presence of approaches to its understanding: as a management process through a set of certain stages (actions, operations) that exist in social systems and are cyclically repeated; as a management process through the performance (or associated with the performance) of management functions; as a management process through the activities of certain entities (managers) (Buhaychuk, 2019, p. 138).

Can agree with the understanding of the concept of "public administration" as a complex conscious and purposeful activity associated with the implementation of the powers of management entities to develop, adopt and implement public administration decisions or consistent implementation of the management cycle, consisting of classical management functions, such as planning, organisation, motivation, control, and influences the change of social processes and phenomena, bringing them closer to the desired state by the defined management goals of the organisation.

This formulation of public administration involves consideration of its functioning as a certain universal legal mechanism for managing a public organisation and making management decisions for participants in social processes, the formation of areas of responsibility. Insufficient level of legal regulation of government powers, especially civil servants, lack of transparency and openness in the adoption and implementation of public administration, imperfection of the mechanism of political, administrative, and public control in the public administration system can be significant negative factors in destroying the organisational system of public administration.

The result of this administrative activity is usually the implementation of a specially authorized entity of public administration of certain administrative actions that must be presented in a certain legal form, such as orders, directives, instructions, etc. (Administrative management system, 2021). Such administrative actions are carried out by these subjects of management within the limits of their assigned powers, as well as through the use of special forms and methods aimed at implementing the basic functions of public administration to achieve administrative goals and coordinate management resources.

In this case, an important indicator of the true publicity of government and the administration of public life is the very implementation of public administration. As you know, civil society operates most effectively at the regional and local

levels, namely at the levels at which the relationship between public authorities and citizens to manage the daily needs of society in the organisation of urgent life problems and interaction of various economic entities, ie the creation and functioning of a certain public space.

### III. ADMINISTRATIVE AND LEGAL SUPPORT OF MANAGEMENT ACTIVITY

As a rule, such publicity is carried out through the interaction of the state centralised government with the regional and local ones. I. Shumlyayeva emphasizes that at the local level territorial communities, as a part of society, influence the formation of legal statehood through public administration processes, in particular those related to public administration decisions, improving the legal framework for exercising the right to local self-government (Shumliayeva, 2018, p. 163.). The use of the principle of public administration is the application of the relationship of socio-political nature and other elements of public administration, expressed as a certain scientific position, enshrined in law and applied in theoretical and practical human activities in management through public administrations (Shpektorenko, 2018).

At the same time, the principle of legality is especially important for the public, which provides for the priority of the law and is aimed at establishing strong legal foundations not only in public administration but also in all spheres of state activity. It consists of the need to mainly define at the legislative level the main functions, goals, organisational structures, processes, principles of public administration, and administration. It is especially important to make management decisions in public administration based on current legislation and only taking into account their compliance with applicable legal acts. This is the basis of rule-making and law enforcement activities of the public administration, aimed at the legal regulation of legal relations arising in various areas of management decision-making. Management has great methodological importance, despite its external simplicity, because it occurs and is performed at all levels of management of the social system. The methodology of public administration should contain a set of methods and methodological links between the various institutions of public administration and public administration and with respect for the fundamental rights and freedoms of man and citizen. Public administration must maintain a balance between the interests of the state and the interests of citizens, territorial, public entities, social communities, in the field of public administration.

However, we should not forget that public administration is directed and focused not only on the individual citizen but also on the rights, responsibilities, and interests of a wide range of individuals and legal entities engaged in business and other activities in a particular area subject to particular public authorities. However, the publicity of the administration is not only awareness of the actions of the authorities, not only the transfer of power at the level of local self-government. It is primarily a matter of changing the managerial competencies and status characteristics of public authorities, which puts on

the agenda the need for their conceptual definition and development of new mechanisms of public administration to ensure regulatory and structural, and organisational functioning of public administration. O. Moloshna emphasizes that public administration involves the functioning of a universal organisational and legal mechanism for identifying, coordinating, and implementing public needs and interests, the formation of rights and responsibilities of participants in social processes and their relationships in the legal field (Moloshna, 2020). Such an approach to the construction and implementation of power in the public administration system should be aimed at ensuring the solution of the following administrative tasks: formation of the system of state power at different levels of centralisation and decentralisation, local government and improving mechanisms for their integration; improving the management model of rational interaction of public authorities with local governments, giving these relations legal features of publicity, in particular, through the provision and implementation of rights and freedoms of citizens in the field of public administration.

According to O. Zarichny, the European Charter of Local Self-Government enshrines the understanding of local self-government as a right and real ability of local self-government bodies to regulate a significant part of state affairs and exercise their powers following current legislation. In this respect, the local or regional government is a necessary element of public administration and cannot be considered less important or secondary than central government. An important feature of public administration at the local or regional level is the focus on the problems of a particular community given the mental and territorial characteristics of the citizens of a particular area (Zarichnyy, 2017, p. 23). The introduction of the model of public administration in the system of state power and administrative-territorial sation of the state requires consideration of public administration and public service as a single and integrated institution, which is built on common principles and which would comprehensively implement public power. It should be noted that the Ukrainian legislation does not form approaches to the appropriate understanding of public service. It also requires their appropriate legal registration and preparation of appropriate public administration staffing. Therefore, it is necessary to ensure the organisation of a modern system of training and retraining of managerial staff to ensure the functioning of mechanisms for regulating the activities of public authorities.

In our opinion, in the implementation of public administration, an important form of interaction between the public and the state is public authorities monitoring and analysis of public opinion, participation of civil society institutions in developing and discussing public administrative decisions, public organisations public control of public authorities and compliance management decisions for the interests of the general population, the creation of advisory, expert and advisory bodies, etc. Such public control and participation in public law management decisions will contribute to the transformation of administration into a transparent and public process, wider coverage of the interests of participants in public

administration, increase the responsibility and legal culture of public administration entities. Such publicity is especially important in solving socio-economic problems at the local and regional levels.

This makes it possible to argue that public administration, in contrast to public administration, will contribute to the realisation of the sovereignty of people's power, democratic management decisions, the realisation of public interests without replacing them with the state. Besides, public administration significantly expands the number of stakeholders involved in administration, as local governments are actively involved.

#### IV. THE INFLUENCE OF PUBLIC ADMINISTRATION ON THE PRACTICE OF PUBLIC POLICY IMPLEMENTATION

In general, public administration changes the practice of implementing state policy. For example, P. Petrovsky distinguishes two main paradigms of public administration - directive and participatory, the difference between which is in the plane of determining the subjects of political and legal decisions. According to the directive paradigm of management, such an entity is recognized as a single control center, for example, a public authority, and all other participants are executors. Unlike the directive approach in management, the participatory paradigm involves the active participation of performers in decision-making and implementation, the ability to show initiative, creativity, increase reflection in management decisions, solve current problems, and so on. Modern democratic governance seeks to incorporate both management paradigms, and public administration is largely based on the principles of the participatory paradigm. Their application depends on such important factors for management decisions as to the content of the management decision, the popularity of the problem or task it will solve in society as a whole, a particular community or individual, the preparedness of management to implement such a decision, the availability of organisational, material, financial, informational and other resources to implement and achieve a positive result from the management decision (Petrovskyy & Radchenko, 2011, pages 13–22). The level of application of the participatory paradigm in public administration will be determined, to a large extent, by the degree of state intervention in private and local self-government relations, the nature of state control and supervision in the face of its specially created state bodies, the level of public participation in local self-government.

Therefore, the expansion of public administration requires an appropriate systematization of the means of regulatory and legal support of public administration. In turn, this will allow adapting Ukrainian legislation to EU legislation on the implementation of public administration. Consequently, management decisions in the implementation of public administration are established, changed, and terminated necessarily based on administrative law, so they cause legal consequences for both public administration entities and in

general for other business entities, users social sphere, etc., directly or indirectly. Therefore, the forms of public administration are always legal, and therefore should be considered within administrative law only as those activities of the public administration, which lead to legal consequences.

Changing the emphasis of legal influence of authority, consideration of civil servants and local government officials as public employees, and public control and supervision of management functions in society by its citizens affects the expansion of management activities, distinguishing their common and distinctive features and characteristics in the new conditions of democratization of power. The same happens in the preparation and implementation of these decisions, the implementation of regulations by legal entities and individuals, public participation in the development of public policy proposals at the regional and local levels, and thus the influence of society on the implementation of public administration at the state level.

Modern trends in public administration indicate the need to delineate the management authorities through the transformation of the conceptual and categorical apparatus of public administration, identifying issues related to the management of public figures of state and local importance, consolidating features in solving methods (defining methods) of public administration in the legal field, delimitation of competencies of public authorities at the state, regional and local levels. Also, the modern legal concept of public administration and administration considers them as a consequence of efforts to open public administration, as "regaining the political authority of social entities" (Andersen & Burns, 1996, p. 228). As a result, public administration has ceased to be the only one, and therefore, a bureaucratic manner of governing society. Reducing, in this case, the dysfunctional ability of officials to individually influence the forms and methods of government interaction in society, determining the urgent need for a postmodern (post-bureaucratic) social model that would recognize the primacy of human interests over the state apparatus, the need for its active involvement conscious and educated population in the field of public policy and administration, improving the efficiency and effectiveness of public administration, defining the main criteria for the quality of state and public administration, etc. (Demchenko, 2019, p. 10).

Increasing the efficiency of public administration through the improvement of public administration is due to the decentralisation of power at the regional and local levels, which contributes to organisational and social effectiveness by clarifying public needs and resources at the territorial level, simplifying regulatory legislation in the economy, reducing bureaucratic pressure and burden on small and medium-sized businesses, as they are closely tied to different types of permits, certificates, orders. Publicity of administrative activity and administration at the local and regional levels will involve wider sections of the active population in managerial cooperation, and, consequently, the formation of an effective system of public administration.

The development of public administration contributes to the

permanent and active cooperation of the state, its bodies, and structures, civil servants with the non-governmental sector, allows to take into account the modern complex system of social relations, dynamic aspects of economic and social development, ie to take into account social development trends. This development takes into account not only horizontal but also multiple vertical connections and distribution of power through the formation of clear management powers and managerial responsibilities, given the multiplicity and interconnectedness of management concepts, programs, and projects at different levels of their implementation. The distribution of the legal basis, the design of authorities with the mandatory evaluation of social efficiency, and predictability of managerial decisions remain important.

Reforming the public administration system through the reintroduction of public administration should be carried out through the optimization of the functions of public institutions to build an effective model of management, definition, and distribution of areas of official authority and responsibility, publicity management structure of relations between government and the public administration of public life. Such restructuring of management through the adoption of the principles of publicity, democracy, taking into account the historical moment at this stage of social development of the country, should direct the priority areas of management to build an effective socially oriented system of public administration. The socially-oriented system of public administration should provide the subjects — consumers of management decisions with quality administrative services that must meet modern European and world standards, take into account and adequately respond to possible political, foreign policy socio-economic, cultural, and other challenges of the present.

Establishing a clear legal basis for public administration in Ukraine provides for the division of political and administrative spheres of activity of state bodies and local self-government bodies. But, in turn, such a clear legal basis for public administration should take into account the integrity and independence of the administrative judiciary, the creation of a system of effective financial management with clear regulation of responsibility for violation of managerial discipline, ensuring a high professional level of civil servants and local government personnel policy, improving the quality of services in the field of public administration and the ethical component of the system of public administration, ensuring publicity in the adoption and implementation of management decisions.

## V. CONCLUSIONS

Changes in theoretical approaches to understanding public administration and administration require an increase in the role of regional and local self-government, namely: focus on management initiatives by local self-government. Publicity helps the decentralisation process, which creates the conditions for expanding horizontal cooperation with a more detailed understanding of real local problems. This determines the importance of publicity in the process of public administration and the ability of subjects of public administration to ensure the

creation of an effective and efficient system of government, including raising its level of publicity. To do this, public administration should be based on a coherent apparatus of corresponding administrative impact (policies, elements of the legal system, rules, procedures, organisational structures, personnel, etc.), which should be focused on the transformation of management into public administration. The application of public administration requires taking into account the basic principles of distinguishing between political and administrative issues; comparative analysis of national, political, and economic problems and interests and problems and interests of business organisations; improving the efficiency of the management service by introducing the practice of business administration of public administration entities. Control by citizens, public organisations, and publicity in the work of governing bodies will promote the rule of law, human and civil rights, and responsibilities, and ultimately ensure the development of civil society and local and regional self-government. All these aspects of public administration and public administration in modern conditions through the implementation of certain management strategies, tactics, policies, development programs allow for a significant period to synchronize the dynamics of management, consistently direct different sectors of the national economy, human activities, local preferences and factors to improve the efficiency of administrative activity in the direction of the achievement of the generally significant purposes of the state in maintenance of effective functioning of all society. Possibilities for further research on public administration are to find functional features of public administration in the field of state-building process and public-private partnership at the local or regional level, which will ensure the development of the Ukrainian state through delegation and transfer of power to the local level. This will provide more opportunities for the implementation of a significant number of projects that are important at the local level or in the regions. Besides, public administration allows the development of different models of social governance by disclosing and detailing the local characteristics of each region.

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