

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.40

N° 72

Enero

Junio

2022

The ratio of electronic and public services: legal aspect

DOI: <https://doi.org/10.46398/cuestpol.4072.34>

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Abstract

The purpose of the research. *The scientific article is devoted to the coverage of the category of electronic and public services.* Main content. The categories “administrative service”, “public service” and “municipal service” are compared. The main approaches to the definition of the concept of electronic services by public administration authorities and the identification of the characteristics of the above concept are considered. Methodology: Consideration of materials and methods based on the analysis of documentary materials for the provision of electronic and public services in Ukraine. Conclusions. Electronic services are a type of public service and are related as a private to the whole, that is, despite the common features of the above services, public services have a large scope of implementation by the population in public administration.

Keywords: public service; administrative service; government service; municipal service; electronic service

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La relación de servicios electrónicos y públicos: aspecto legal

Resumen

El contenido principal del artículo está dedicado al estudio de la categoría de servicios públicos y electrónicos. En este contexto, se comparan las categorías «servicio administrativo», «servicio público» y «servicio municipal», del mismo modo se consideran los principales enfoques para la definición del concepto de servicios electrónicos por parte de las autoridades de la administración pública y se avanza, además, en la identificación de las características de este concepto. Para lograr los objetivos trazados se hizo uso de la metodología documental. Los resultados obtenidos permiten concluir que los servicios electrónicos son un tipo de servicio público y, al mismo tiempo, se relacionan con la dimensión de lo privado, es decir, a pesar de las características comunes de los servicios en general, los servicios públicos tienen un amplio alcance de implementación por parte de la población en la administración pública.

Palabras clave: servicio público; servicio administrativo; servicio gubernamental; servicio municipal; servicio electrónico.

Introduction

The European choice of Ukraine means, in particular, the active introduction of electronic services in the activities of public administration, without which entrepreneurial, scientific and public activities, other forms of public activity of citizens, international relations, etc., cannot develop normally.

Human, his rights and freedoms in Ukraine are recognized as the main value, and the main task of the executive authorities is defined exactly as providing quality services to citizens. The provision of administrative (management) services to the population by executive authorities, including bodies of internal affairs is a priority area of their activities, as it should be required to rethink the role and purpose of the state in society and a radical change in relations between the government and citizens, namely from purely administrative to servicing, in which, as correctly, in our opinion, V.P. Tymoshchuk and A.V. Kirmach note, “citizens are not applicants, but consumers of administrative services” (Tymoschuk, 2005). Thus, one of the directions of democratization of activity of internal affairs bodies is their wider provision of so-called administrative electronic services to individuals and legal entities

1. Literature review

In Ukraine, when using the category of “services”, the main emphasis is on legal aspects, and in particular, on the administrative procedure for their provision. This can be explained by the fact that the main ideologists of the introduction of the theory of services in Ukraine are, first of all, representatives of the science of administrative law. Since the main opponents of this theory are also representatives of legal science, who question the very possibility of using the category of “services” on the activities of public authorities and local self-government (Garashchuk, 2001), this has led to especially lively discussions on this issue in jurisprudence.

In English, the term “public services” is used to denote the category of public services. But due to the peculiarities of the translation, just as the term “public administration” is mistakenly translated as “public administration”, instead of the term “public services”, the term “public services” has first caught on in Ukraine. In the Concept of Administrative Reform in Ukraine, the terms “public services” and “management services” are used in parallel. At the same time, there is no special border between them. Recently, the term “administrative services” has become the most used, since it is rightly considered that the category of “management services” has already its load in economic science. The definition of “administrative” is more apt because it indicates the entity that provides such services - the administration, administrative bodies. In addition, the adjective “administrative” characterizes the power-public (administrative) nature of the activity for the provision of these services (Tymoschuk, 2003).

2. Materials and Method

Research of materials and methods based on the analysis of documentary sources and regulatory legal acts for the provision of electronic and public services. The dialectical method of cognition of the facts of social reality is the basis on which the formal and legal and, rather, legal approaches are largely based. The formal dogmatic method contributed to the development of the author’s explanation of the current state, problems, issues and the practical role of legal technologies for the further development and improvement of the provision of electronic and public services. The formal and legal method made it possible to propose directions and types of use of legal technologies as prospects for the provision of electronic and public services.

3. Results and discussion

Public services are all services provided by the public sector or other entities, the responsibility of the public authorities and at the expense of public funds.

According to the characteristics of the entity providing public services, the following types of services are distinguished:

Government services are services provided by public authorities and public enterprises, institutions and organizations. Public services also include services that are provided by non-governmental organizations in the exercise of delegated powers. In this case, the first place for determining the nature of the service is not the direct entity of its provision, but the entity that is responsible for the provision of this service, and the source of funding for the provision of this type of service, i.e. the type of budget.

Thus, the term “government” is quite common, but it does not define the specifics of the institution, being considered.

Municipal services are services provided by local governments, public utilities, institutions, and organizations. The term “municipal” is also not fully defined, since it does not take into account one of the main actors in the provision of relevant services (Kolomoyets, 2002).

Government and municipal services together constitute the scope of administrative (public) services.

The Concept of Administrative Reform in Ukraine proposes such a new function of the executive power as the provision of “management services”, and “management services” are defined as “services on the part of executive authorities, which are a necessary condition for realization of rights and freedoms of citizens, in particular, registration, licensing, certification, etc.

To date, this issue has revealed somewhat opposite approaches, and scientists have not yet developed a generally accepted interpretation of the concept of “management services”.

Thus, V. Averyanov, confirming the legitimacy and terminological definition of the concept of “services” on the part of the executive authorities, draws attention to a certain inappropriateness of the characterization of these services as “management”. But he focuses attention not on the “power-organizational” aspect of the relevant actions (since “management” is a power-organizational influence), but on the fact that they are carried out by public (government and self-governing) administration bodies. That is, the most appropriate term is “administrative services (Averyanov, 2003).

The scientist proposes an explanation that the specified terminological replacement is based on the recognition of the obvious fact that state power is the implementation of not only the powers that bind a citizen, but also the fulfillment of certain responsibilities of the state to the citizen, for the state of which (performance) it is fully responsible to him. The number of such responsibilities is the main feature of a true democratic state (Averyanov, 2002).

In particular, I. Koliushko and V. Tymoshchuk consider it expedient to use the definition of “administrative services”, drawing attention to the fact that the so-called “broad” understanding of the concept of management services is actually identical to the concept of “public services”, which actually also covers services for the provision of which state authorities and local governments are indirectly responsible, although directly providing them (for example, medical care) (Tymoschuk, 2003).

The introduction of the concept of “administrative services” significantly affects the rethinking of the content of the subject of administrative law and gives grounds to define this category through the appropriate legal relationship.

Pisarenko G.M. notes that an administrative service is a legal relationship arising from the implementation of the subjective rights of an individual or legal entity (at their request) in the process of publicly power activities of an administrative body to obtain a certain result (Pisapenko, 2006).

Such well-known scientists as V. K. Kolpakov, A. V. Kuzmenko, Y. V. Ischenko, V. P. Chaban give in a broad and narrow concept of administrative services, namely:

Administrative service - 1) legal registration by a subject of public administration of the results of the consideration of a case that arose at the request of a physical, legal or other collective person for the exercise of their rights, freedoms, legitimate interests; 2) the result of the exercise of power by the authorized entity, in accordance with the law, ensures the legal formalization of the conditions for the exercise of rights, freedoms and legal interests by individuals and legal entities upon their application (issuance of permits (licenses), references, certificates, registration, etc.) (Kolpakov, 2010, p. 14).

In the report prepared by the Main State Service in Ukraine on its official website, the following meaning of the category “administrative service” is given, this is the activity of the administrative body carried out at the request of a private (natural or legal) person and its result on the legal registration of the rights, freedoms and legitimate interests of an individual (for example, issuance of permits, licenses, references, certificates, registration, etc.), as well as the performance of duties.

Let us consider the coverage of the category of administrative services in the legal sources of Ukraine.

According to the Concept for the development of the system for the provision of administrative services by the executive authorities, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 15.02.2006 No. 90-p, an administrative service is a result of the exercise of powers by an authorized entity, in accordance with the law, provides legal registration of the conditions for the exercise of rights by individuals and legal entities, freedoms and legitimate interests upon their application (issuance of permits (licenses), references, certifications, registration etc.) (Law of Ukraine, 2006).

In accordance with the Resolution of the Cabinet of Ministers of Ukraine dated 17.07.09 No. 737 "On measures to streamline government, including administrative services", an administrative service is a government service, which is the result of the implementation of powers by the entity to adopt, in accordance with the regulatory and legal acts on the application of an individual or legal entity an administrative act aimed at the implementation and protection of its rights and legitimate interests and/or for the performance by a person of obligations determined by law (obtaining a permit (license), certificate, reference and other documents, registration, etc.) (Law of Ukraine, 2009).

The draft of the Concept of reforming public administration in Ukraine defines an administrative service as aimed at providing (legal registration) conditions for the realization of subjective rights, fulfillment of duties of an individual or legal entity, a "positive" public service activity of administration body, is carried out at the request of this person (Leheza *et al.*, 2021).

Indicative of the imperfection of modern rule-making activity is the Law of Ukraine "On Administrative Services" dated 06.09.2012 No. 5203-VI, in which the definition of administrative services is given then in the preamble, namely: "administrative service is a result of the exercise of powers by the subject of providing administrative services at the request of an individual or legal entity, aimed at the establishment, change or termination of the rights and/or obligations of such person in accordance with the law" (Law of Ukraine, 2012). In our opinion, in accordance with the rules of lawmaking practice, in the preamble it is necessary to note not the definition of concepts, but the coverage of the main content of the law (Leheza *et al.*, 2018).

Agreeing with the scientist Leheza E.A., who understands under an administrative service - the activities of public administration bodies that are regulated by legal acts to consider an application of an individual or legal entity for the issuance of an administrative act (permission (license), reference, certificate, etc.) aimed at ensuring its rights and legitimate interests and/or fulfillment by a person of certain legal obligations (Leheza *et al.*, 2021).

Having considered those provided by the executive authorities in Ukraine, we will give the author's definition of the concept of "electronic services".

Unfortunately, there is no definition of the term "electronic services" in the current legislative regulations of our state, so let's turn to the study of the views of scientists on this subject (Leheza *et al.*, 2020).

"Electronic services are various types of tangible and intangible services in electronic form using information and communication technologies (hereinafter - ICT), including the Internet" (Vyshnyakova, 2007). Or, electronic services are understood as government and municipal services, as well as information services, for the provision of which ICTs are used (Zagaetska, 2010).

Or, electronic services are understood as state and municipal services, as well as information services, for the provision of which ICT is used (Zagaetska, 2010).

According to the scientist Kuspalyak I.S., it is more appropriate to use the term "electronic services", that is, in digital form, associated with the use of document management (Kuspalyak, 2012).

Electronic services are services provided using the "Electronic Government" system due to the fact that "one of the priority tasks for the development of the information society is the provision of information and other services to citizens and legal entities through the electronic information system "Electronic Government", which provides information interaction of executive authorities with each other, with citizens and legal entities on the basis of modern information technologies "(Law of Ukraine, 2003).

Thus, according to Tishchenkova I.A. an electronic service means the activity of public administration bodies regulated by legal acts using modern information communication technologies for considering an application of an individual or legal entity for the issuance of an administrative act (permit (license), reference, certificate, etc.) aimed at ensuring his rights and legitimate interests and/or for the performance by a person of obligations specified by law. (Tishchenkova, 2015).

Conclusions

Thus, electronic services are a type of public service and are related as a private to the whole, that is, despite the common features of the above services, public services have a large scope of implementation by the population in public administration.

The definition of public services is proposed as the activity of public administration bodies regulated by public law to satisfy public interest in considering an application of an individual or legal entity for the issuance of an administrative act (decisions, permission, license, reference, act, certificate, etc.) aimed at ensuring his rights and legitimate interests and/or in order to fulfill the obligations determined by law by a person through funding from public funds.

The expediency of systemic consideration of services with the allocation of elements in the system of public services, which represent direct types of public services (administrative, municipal, social, government, housing, and utilities, etc.), the links between them (vertical - between different types of public services) has been substantiated.; horizontal - within one type of public services) and the subjects that provide public services.

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DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 N° 72

*Esta revista fue editada en formato digital y publicada en enero de 2022, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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