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# Methodological principles of studying the essence of public administration bodies as subjects of administrative procedural law

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***Oleksandr Morhunov*** *
***Ihor Artemenko*** **
***Yevhen Sobol*** ***
***Lilia Bobryshova*** ****
***Serhiy Shevchenko*** *****

## Abstract

The purpose of the study was to clarify the methodological foundations of the essence of public administration bodies as subjects of administrative procedural law. The methodology of scientific work is determined by the optimal combination of general and special methods of scientific knowledge, which made it possible to form a holistic understanding of the legal form of social phenomena accompanying the development of the state. It is proved that administrative procedural law has its own system, the primary element of which is the administrative procedural norm, so that its normative impact coincides with the purpose of administrative procedural law, namely the practical implementation of administrative and legal norms in the field of public law and, by extension, public administration, i.e. the transformation of substantive administrative law norms at the level of practical implementation of a particular right of a person. The system of administrative procedural law, consisting of rules, institutions and administrative procedural sub-sectors, stands out. Everything leads to the conclusion that the system of administrative-procedural law is in the formative stage and is structurally composed of administrative-procedural norms, institutions and sub-branches and is essentially related to the substantive norms of administrative law.

* Kharkiv National University of Internal Affairs, first vice-rector, Doctor of Law, Professor, Kharkiv, Ukraine. ORCID ID: https://orcid.org/0000-0003-2259-3620

** Kharkiv National University of Internal Affairs, research officer, Doctor of Law, Professor, Kharkiv, Ukraine. ORCID ID: https://orcid.org/0000-0002-9144-1500

*** Volodymyr Vynnychenko Central Ukrainian State University, Rector, Doctor of Law, Professor, Kropyvnytskyi, Ukraine. ORCID ID: https://orcid.org/0000-0002-0804-8354

**** Dnipropetrovsk State University of Internal Affairs, Head of the Department of Quality-Ensured International Activities, Doctor of Philosophy. ORCID ID: https://orcid.org/0000-0003-1022-4027

***** Director of the E ducational and Scientific Institute of Correspondence Education and Advanced Training of the Dnipropetrovsk State University of Internal Affairs, Candidate of Legal Sciences, Associate Professor Serhii Shevchenko. ORCID ID: https://orcid.org/0000-0003-4133-8860

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# Principios metodológicos del estudio de la esencia de los órganos de la administración pública como sujetos del derecho procesal administrativo

**Resumen**

El objeto del estudio fue esclarecer los fundamentos metodológicos de la esencia de los órganos de la administración pública, como sujetos del derecho procesal administrativo. La metodología del trabajo científico está determinada por la combinación óptima de métodos generales y especiales de conocimiento científico, lo que hizo posible formar una comprensión holística de la forma jurídica de los fenómenos sociales que acompañan el desarrollo del Estado. Se prueba que el derecho procesal administrativo tiene un sistema propio, cuyo elemento primordial es la norma procesal administrativa, de modo que su impacto normativo coincide con la finalidad del derecho procesal administrativo, a saber, la aplicación práctica de las normas administrativas y jurídicas en la materia de derecho público y, por extensión, de la administración publica, es decir, la transformación de las normas de derecho administrativo sustantivo en el plano de la implementación práctica de un determinado derecho de una persona. Se destaca el sistema de derecho procesal administrativo, constituido por normas, instituciones y subsectores procesales administrativos. Todo permite concluir que el sistema de derecho administrativo-procesal se encuentra en fase de formación y se compone estructuralmente de normas, instituciones y subramas administrativo-procesales y está esencialmente relacionado con las normas sustantivas de derecho administrativo.

**Palabras clave:** derecho administrativo; derecho procesal administrativo; administración pública; sujetos de derecho; administración pública.

## Introduction

The Ukrainian state has entered a new stage of its development, which is connected with many factors of a legal and social nature that have recently occurred in the country. Such factors should include: 1) the formed civil society, which has recently become an active participant in decision-making in the state and a driving force in the management of state affairs;

2) a change in the ideology and role of the state in the realization of human and citizen rights and freedoms; 3) the aspiration of civil society to become a part of the European community and to introduce standards of state functioning institutions at the level of developed countries of the world; 4) the emergence of an active citizen position regarding the fight against corruption in state authorities; 5) adoption of a number of normative legal acts, which oblige to adapt the national legislation to the legislation of the European Union and a number of others.

All this necessitates the revision of established legal positions and categories that determine the principles of the functioning of state institutions and the procedural regulation of their activities, taking into account the changes taking place in our country. The above is the basis for summarizing scientific developments regarding the essence of public administration bodies as subjects of administrative and procedural law.

## 1. Purpose and objectives of the research

The main goal of the article is the need to clarify the methodological foundations of the study of the essence of public administration bodies as subjects of administrative and procedural law, which makes it necessary to focus on the analysis of categories of a more general order, such as "state administration", "public administration", "sub "object of state administration", since the interrelationship of the latter is central to legal science and to understanding the need for fundamental changes regarding the introduction into legal circulation of categories used by EU law.

## 2. Literature Review

The scientific-theoretical basis for solving the questions within the scientific work is the scientific works of domestic administrative scientists, in particular: Averyanov, Bandurka, Bevzenko, Chernov, Voronin, Hayduchenko, Gulac, Demsky, Dzhafarova, Koliushko, Kolpakov, Kramarenko, Kuzmenko, Melnyk, Mykolenko, Mosyondz, Muza, Muzychuk, Paterylo, Selivanov, Streltsov, Tyshchenko, Tymoshchuk, Tsybulnyk, Shatrava, Yastremska and other authors. their works are a scientific foundation for further research of the mentioned issue.

## 3. Research Methodology

The methodology of a scientific work is determined by the optimal combination of general and special methods of scientific knowledge, which allows to form a coherent scientific idea about the legal form of social phenomena accompanying the development of the state. The logical-semantic method is the basis for the formation of categories and concepts, in particular: "state administration", "public administration", "administrative-procedural law", "procedural forms", "administrative acts".

The system method was used when determining the general principles of the functioning of the public administration of Ukraine. The comparative legal method was used to study the peculiarities of the administrative-procedural legal personality of public administration bodies. The method of documentary analysis was used to illustrate the achievements and shortcomings of the modern doctrine of building a new model and system of public administration bodies in Ukraine.

## 4. Results And Discussion

To solve the tasks, we will turn to theoretical developments. Let us emphasize that the state, as a "social phenomenon", is created for the purpose of organizing society to ensure and protect individual, collective and general societal interests by establishing universally binding rules of conduct (legal norms) in a certain territory. At the same time, the fulfillment of the above is possible only under the condition of a social contract, which consists in the fact that the state undertakes to maintain the balance of private and public interests in society, and citizens, in turn, undertake to comply with the established rules of conduct.

That is, in a broad sense, the functions of the state can be divided into three large groups: 1) establishment of universally binding rules of conduct, 2) provision of a mechanism for the implementation of the above rules; 3) the function of resolving disputed issues (justice). The combination of these basic functions of the state found its consolidation in the Constitution of Ukraine. So, in Art. 6 of the Constitution of Ukraine it is stated that state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial (Law of Ukraine, 1996).

To establish their content, it is necessary to proceed from the forms of state activity. Thus, legislative activity consists in the adoption of laws, executive activity - in their direct implementation, and judicial activity - in the resolution of disputed issues. The question arises whether modern forms of state activity of the Ukrainian state meet public demand. The answer to this question, as we see it, lies in the definition of the essence of

the activity, which implies the direct implementation of laws and is called "state administration".

Let us emphasize that the category "public administration", taking into account the transformational processes taking place in our country, is currently too narrow, since it does not take into account a large number of subjects involved in the realization of public interest. Accordingly, the category "subject of state administration" also cannot meet the needs of law enforcement practice and needs its revision and introduction into legal circulation of a category that would unite all subjects involved in the realization of public interest.

In this aspect, the experience of European countries is useful. Taking into account the Action Plan "Ukraine - European Union" approved by the Cabinet of Ministers of Ukraine dated 12.02.2005 and the Council on Cooperation between Ukraine and the European Union dated 21.02.2005 (Plan, International document on February, 2005), work on the convergence of legal terminology in national legislation.

Also, the Law of Ukraine "On the Nationwide Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union" defined the goal of adapting the legislation of Ukraine to the legislation of the European Union, which consists in achieving compliance of the legal system of Ukraine with the acquis communautaire, taking into account the criteria put forward by the European Union (EU) to the states, who intend to enter it.

In order to implement the Plan, a working group was formed to prepare a draft of the concept of reforming public administration by order of the Cabinet of Ministers of Ukraine dated March 26, 2008 No. 531-r, the result of which was the corresponding project (order of the Cabinet of Ministers of Ukraine, 2008).

In the project of the Concept of reforming public administration in Ukraine, there was an attempt for the first time at the legislative level to establish the category "public administration", which was proposed to mean executive power bodies, local self-government bodies and other entities that, in accordance with the law or administrative agreement, have the authority to ensure the implementation of laws , to act in the public interest (performance of public functions) (Koliushko and Tymoshchuk, 2006).

The definition of administration that was laid out in the book "Science of Administration and Administrative Law" is interesting. Thus, it is: 1) the broadest concept: every planned activity of an individual and a private person, which competes to achieve the specified goals; 2) more closely: every planned activity of the state competing to achieve state goals; 3) even more closely: executive powers of the state, i.e., the entirety of state functions minus legislation; 4) most closely: the entirety of state functions minus

legislation and the judiciary (Bevzenko and Koliushko, 2016). Professor V. Yavorsky notes that administration is the activity of the state, covering all areas, with the exception of legislation and the measure of justice (Bevzenko and Koliushko, 2016). These definitions were formed back in the 18th-19th centuries, but have not lost their relevance even today.

Thus, public administration is the activity of public administration entities regulated by laws and other legal acts, related to the implementation of management functions in the ways specified in instructions, regulations and procedures, which focuses on the implementation of directives, orders, etc. (Kramarenko, 2022). The proposed definition is too narrow, as it does not take into account the service basis of the modern state and does not correspond to the human-centered concept of the latter's development.

Chernov and Hayduchenko give the following definition of public administration. As regulated by laws and other normative legal acts, the activity of public administration subjects is aimed at implementing laws and other normative legal acts, by making administrative decisions, providing administrative services established by law (Chernov and Hayduchenko, 2014).

According to Yastremska and Majnyk, the concept of "public administration" has become widespread in recent years and involves the provision of European-level administrative services by implementing the principles of democratic governance into practice (Yastremska and Majnyk, 2015). We only partially agree with the proposed definitions, because we believe that public administration has a wider range of legal relations that are not taken into account by researchers. Thus, relations related to work with citizens' appeals, control-supervisory and tort relations were left out of consideration.

According to I. V. Paterilo, it is appropriate to include the following characteristics of public administration under the law of the European Union: 1) the concept of public administration covers public authorities of various levels, other public institutions, as well as subjects of delegated powers; 2) the recognition by individuals or certain institutions of the legal status of public administration is directly related to their performance of public functions of the state; 3) classifying certain persons as subjects of public administration, and therefore their performance of tasks and functions of the state, is possible only under the condition that this is provided for and regulated by state regulations (Paterylo, 2015).

The position that was formed by S. O. Masyondz, who considers public administration as a legal category that has two dimensions: functional and organizational-structural, needs attention. According to the functional approach, this is the activity of the relevant structural entities for the performance of functions aimed at realizing the public interest. According

to the organizational and structural approach, public administration is a set of bodies that are formed to exercise public power (Mosyondz, 2013).

We believe that the most key features of public administration bodies are the implementation of public interest, as well as the endowment of the latter with public-authority powers. At the same time, the implementation of the public interest does not always involve the endowment of public administration with powerful powers, we are talking about the service component of the functioning of the state.

In this context, the scientific work of O.V. Dzhafarova, who understands the public administration bodies as subjects of permitting activity as a system of separate state bodies, primarily executive power, local self-government bodies, legal entities of public and private law, endowed with their own or delegated powers to carry out permitting activities, which were created for the purpose of implementing public functions in all spheres of society functioning, the activities of which are aimed at realizing the rights, freedoms and legitimate interests of a certain group or individual natural and legal persons enshrined in the Constitution of Ukraine, ensuring life, human health, safety of the environment and national interests (Dzhafarova , 2015).

To the main features of the public administration body as a subject of permitting activity, the scientist includes: 1) the purpose of the activity is to maintain a balance of public and private interest (the effort to ensure benefits that have a general societal weight, that is, benefits that are important not only for one individual, and for a significant number of people – communities, societies); 2) have organizational separation; 3) vested with authorization powers; 4) the organization, grounds and procedure of permitting activities are regulated by the norms of administrative law; 5) connectedness with the limits, grounds and method of implementing the authorization powers defined in the legislation (Dzhafarova, 2015).

In their turn, scientists determine the criteria for the activity of public administration bodies through the appropriate forms of public power implementation, which plays an important role in maintaining the effectiveness of the management system: issuance by authorized persons of certain decrees and orders; provision of administrative services to individuals and legal entities; implementation of control and supervision activities; handling complaints, etc. (Shatrava *et al.*, 2020).

The analysis of scientific works, in which questions were raised about the criteria for the effectiveness of public administration bodies, provides an opportunity to indicate: the effectiveness of the internal management activity of public administration bodies; public trust in the relevant bodies of public administration; indicators of the provision of quality public services, timeliness of the provision of public services, the economic component of the provision of public services, etc. (Streltsov *et al.*, 2021).

The analysis of existing scientific developments allowed us to come to the conclusion that the content of the category "public administration" is broader compared to the category "bodies of public administration", as it covers all subjects whose activities are aimed at the implementation of public functions of the state, including physical ones and legal entities of public and private law with delegated powers on the basis of national legislation, as well as on the basis of relevant agreements.

It should be noted that the need to introduce a unified category into legal circulation, which designates subjects implementing public interest, namely «public administration bodies», is overdue.

This is due to a number of circumstances: 1) the formation of a theoretically grounded model of unified rules and procedures for the activities of entities that perform public-authority functions on a conceptual basis; 2) the need to adapt the national legislation to the legislation of the European Union, but at the same time, the European experience of understanding public administration should be applied in the part that does not contradict the Constitution of Ukraine and allows to improve (rather than change) the system and mechanism of public administration in accordance with the best European practice and European standards; 3) ensuring the balance of "humanitarian" and "sociocentric" concepts of state development, which involves depriving state institutions of the "monopoly of power" and introducing a mechanism for delegating public-authority powers to other institutions of civil society; 4) the active civic position of modern Ukrainian society regarding participation in the implementation of public functions of the state, provided that this is provided for and regulated by normative acts.

Summarizing the above positions, we will single out the signs that determine the belonging of subjects to public administration bodies, namely: a) the purpose of creation is the implementation of the public interest of the state and territorial communities, as well as guaranteeing the rights and freedoms of natural persons, the rights and legitimate interests of legal entities; b) the competence of a power-administrative nature is established by the current legislation; c) predominant organizational separation.

Within the scope of this study, we will try to define the concepts, peculiarities of activity and system of public administration bodies, which are subjects of administrative-procedural law. To define the system of public administration bodies, we would consider the general provisions of legal science. To do this, we will analyze the existing views on the essence of the "system" category.

But the system cannot exist by itself, because the latter exists in a certain environment of interaction with this environment and fulfills its purpose by operating with its properties. R. S. Melnyk formulates his own definition of a system - it is a whole complex of separated, interconnected and interacting

elements, which forms a special unity with the environment and is at the same time an element of a higher order system (Melnyk, 2010).

In turn, V.K. Kolpakov notes that the system is characterized by certain features, among which are the unity of the system in relation to the environment (integrity) and the diversity of connections with the environment, the nature of which makes it a subsystem of another, more complex system (Kolpakov, 1989). Y. G. Voronin understands the "system" as a set of united, interconnected and interacting elements, the purpose of which is to achieve a socially useful result, welfare. That is, all elements of the system, each fulfilling its purpose, work for the overall result that the system faces (Voronin, 2016).

Summarizing the given definitions, we emphasize that the definition of the «system of public administration bodies» should be carried out through a systemic approach, since it provides an opportunity to reveal its essence through its elements, relationships, connections, integrity, etc. Therefore, the elements of the system of public administration bodies should include: executive power bodies, local self-government bodies, enterprises, institutions and organizations in cases where the latter have delegated part of their powers and other subjects performing public management functions.

Taking into account the fact that the purpose of our research is public administration bodies that, performing tasks related to the implementation of the public interest of the state and territorial communities, as well as guaranteeing the rights and freedoms of natural persons, the rights and legitimate interests of legal entities, are assigned the corresponding rights and obligations recorded in administrative and legal norms, it is necessary to determine the question how the process of implementing the relevant norms takes place.

It is obvious that many material norms of law in the sphere of public administration cannot be fully implemented without the improvement of the corresponding procedural mechanism (Bandurka and Tyshchenko, 2002). All this determines the need to review the existing scientific positions on the procedural regulation of the activities of public administration bodies, since this activity is the main content of their functioning.

For this purpose, we will analyze the existing scientific approaches to understanding "administrative process", "administrative procedural law", "administrative procedure", "administrative procedural form". But first, it is necessary to note that today there are lively discussions about the separation of the branch of law that defines the principles of direct implementation of the norms of substantive law. Each material rule of law is essentially "static" because it contains the consolidation of a certain right.

Its implementation always involves the implementation of a set of consecutive actions, which also have their own legal regulations and which lead to a change in the position of a certain object. Such a complex of actions is called "process". Turning to the dictionary of the Ukrainian language makes it possible to determine the interpretation of the "process" category. Thus, "process" (lat. processus - movement) means: 1) a sequential change of states or phenomena that occurs in a natural order; the course of development of something; 2) a set of consecutive actions, means aimed at achieving a certain result; 3) consideration of a court case; the court case itself (Bilodid, 1977).

Analysis of the content of the specified category allows us to distinguish the characteristic features of this phenomenon, which should include: 1) a complex of actions; 2) all actions are sequential and interconnected; 3) the process has its beginning and end in the form of a certain result; 3) the process is always a certain period of time from the beginning to obtaining the result; 4) a change in the state of the object (phenomenon) in relation to which the last one was initiated. Yu. S. Shemshuchenko, in turn, notes that the process in law is:

> A legally defined procedure for the application of material legal norms (election process, budget process, law-making process, etc.). From this follows the presence of procedural law as a set of legal norms that regulate the order (procedure) of the implementation of material norms of constitutional, civil, criminal, administrative and other branches of law. Procedural law gives energy to substantive law, is a procedural form of implementation and protection of the latter (Shemshuchenko, 2003: 187).

O. V. Kuzmenko understands the legal process as a system of interrelated and mutually determining legal forms of activity of competent bodies, officials, which are manifested in the implementation of consecutive operations, clearly defined by procedural norms, for the resolution of legal cases that determine the corresponding legal consequences (Kuzmenko, 2013). At the same time, O. I. Mykolenko says that any legal process is a legal procedure, but not every legal procedure is a legal process (Mykolenko, 2010). Without plunging into theoretical controversy, we will express our own position on this matter.

We believe that the category of legal process involves a set of legal procedural forms of activity of the relevant subjects on the basis of which a certain activity is carried out, which is regulated by the norms of the law of the relevant branch. We emphasize that, depending on the scope of social relations, which require their own procedural regulation, criminal, civil, administrative, constitutional, budgetary, election process, etc. are distinguished. We will analyze existing approaches to understanding the category "administrative process".

According to A. O. Selivanov:

> The administrative process includes a set of sequentially implemented stages of proper behavior of subjects - participants in administrative legal relations, according to which rights and obligations are distributed between them in relation to the normativity of the fact as a special property of reality. Substantive administrative law reflects the desire of the parties to achieve the goal established by law, which acts as a means of knowing the fact and constitutes the essence of the process. This conclusion creates a prerequisite for a broad understanding of the administrative process, which allows us to avoid excessive fixing of the terms of legal science, and as a result, to prevent the narrowing of the interpretation of the process in its narrow jurisdictional understanding (Selivanov, 2000: 14-15).

As Muza notes, the "broad" concept of the administrative process is the most recognized doctrinal approach in the science of administrative law, since its authors illuminate the essence of the administrative process through various spheres of implementation of the administrative substantive legal relationship using procedural and legal means. Using the theoretical foundations of the "broad" concept of the administrative process, it is possible to avoid scientific inaccuracies regarding the characteristics of certain types of procedural legal relations in administrative law. At the same time, such a doctrinal approach also has its shortcomings (Muza, 2016).

Another group of scientists interprets it in a narrow sense, i.e. it is associated only with the consideration of administrative cases. Thus, V. M. Bevzenko emphasizes that what distinguishes administrative procedural law from the rest of the branches of national law is its main idea, purpose - and regulation of the joint activity of administrative courts, individuals and legal entities - participants in public legal relations - in connection with the protection, restoration or recognition of public rights, freedoms and legitimate interests of these persons (Bevzenko, 2011).

The analysis of the mentioned position shows that the scientist considers administrative procedural law from the standpoint of the implementation of administrative proceedings. At the same time, in scientific works of a later period, the scientist talks about the "administrative process".

We support of the "broad approach", but we consider it expedient to talk not about "administrative process", but about "administrative procedural law". According to E. F. Demsky, the social purpose of administrative procedural law is expressed in the construction of legal norms aimed at ensuring the real possibility of implementation and protection in the administrative (instance) and, in necessary cases, in the judicial procedure, the rights and legitimate interests of private (physical or legal) person (Demsky, 2008).

The researcher stipulates the presence of administrative procedural law as follows: 1) administrative procedural norms mediate the functioning of public power in the state, since the subject of procedural branches of law is derived from the subject of legal regulation of material branches of

law; 2) administrative affairs make up a significant part of public relations in the sphere of public administration; 3) consideration and resolution of administrative cases always bears the imprint of management practice (Demsky, 2008).

According to Kuzmenko, "administrative-procedural law is a system of legal norms that regulate state-authority organizing social relations that arise in connection with the implementation of the administrative-procedural form on the application of the norms of the relevant material branches of law" (Kuzmenko, 2004: 168).

We emphasize that it is impossible to formulate the author's definition of administrative-procedural law without knowing the essence of its subject. However, the specified task can be solved again only after clarifying the subject of administrative law, since administrative procedural law determines the procedural form of implementing the norms of administrative law. Thus, according to V. B. Averyanov, the subject of administrative law should be understood as managerial relations, but not all, but only those that arose in connection with the performance of executive and administrative functions by bodies of public, first of all, state power.

The peculiarity of these relations, the author notes, is that: they arise only as a result of power activities, activities on behalf of the state; the relevant executive authority always participates in them. The specified relations arise in various spheres of state administration: economic, social, political, but all of them are connected by the protection of public interest (Averyanov, 2002). The position of the outstanding scientist, which was formulated later, also needs attention. He notes that in the subject of administrative law, two main components should be distinguished: power-coercive and public-service (Averyanov, 2007), within which, in fact, appropriate ways of implementing management powers are manifested.

Transforming the above into tasks that are within the limits of scientific work, we will formulate the subject of administrative and procedural law. Thus, the latter should be understood as a set of administrative-procedural relations that arise in the field of public administration in connection with the implementation of the administrative-procedural form for the application of the norms of the relevant material branches of law. This conclusion regarding the subject of administrative-procedural law reveals a "broad approach" to its understanding and is currently the most acceptable, as it reveals the functional purpose of the latter as an independent branch of law.

## Conclusions

It should be noted that administrative-procedural law has its own system, the primary element of which is an administrative-procedural rule, the regulatory influence of which coincides with the goal of administrative-procedural law, namely the practical implementation of the norms of administrative law in the field of public administration, that is, the transformation of the norms of substantive administrative law into a plane practical implementation of a certain right of a person. The system of administrative-procedural law is at the stage of formation and consists of administrative-procedural norms, institutions and sub-branches and is essentially related to substantive norms of administrative law.

So, administrative-procedural law is a branch of national law under which it is expedient to understand a set of administrative-procedural norms, institutions and principles of regulation of the procedure for solving individual-specific cases in the sphere of public administration. The resolution of an individual-specific case in the field of public administration is transformed into an administrative-procedural form, which is always connected with the implementation of a material administrative-legal norm.

Taking into account the broad approach to the definition of administrative procedural law, we consider it expedient to single out the following structure of administrative procedural law from the standpoint of division into three sub-branches: 1) management administrative-procedural law, which consists of positive law enforcement activities of public administration bodies, which is divided into external management administrative-procedural law and internal management administrative-procedural law; 2) administrative-delict procedural law, which is related to the administrative-procedural form of protection against violations of the established rules (proceedings in cases of administrative offenses, disciplinary proceedings and proceedings on citizen complaints); 3) administrative-judicial law as justice in matters of administrative jurisdiction, which is regulated by a separate procedural code - the Code of Administrative Justice of Ukraine.

Summing up, let us emphasize that we clarified the degree of scientific development of the problem of defining the concept and characteristics of public administration bodies as subjects of administrative-procedural law, which made it possible to formulate the author's approach to the definition of public administration bodies as subjects of administrative-procedural law.

Thus, the latter represent a system of bodies of executive power, local self-government, enterprises, institutions and organizations in the event that they are delegated by the bodies of executive power and local self-government part of their powers and other subjects performing public

management functions, as well as a set of organizational actions and measures, which are carried out by them within the limits determined by the administrative and procedural law, with the aim of realizing the public interest and reliably ensuring the rights and freedoms of a person and a citizen.

Among the special features that characterize public administration bodies as subjects of administrative-procedural law, it is appropriate to include the following: a) granting a certain amount of administrative-procedural competence necessary to realize the purpose of creation; b) the presence of close ties with other subjects of administrative and procedural law; c) normative-legal consolidation of the ability to be a subject of administrative-procedural relations.

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