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Theoretical and legal approaches regarding the administrative activities of the public authority in safeguarding rights of persons with disabilities

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Abstract

The purpose of the scientific research was to examine the essence and content of the modern human-centered concept in the theoretical-applied interpretation of management activities of state authorities, in connection with the implementation and protection of fundamental rights and freedoms of persons with systemic disorders of body function. The following research methods were used in the scientific work: systematization, generalization; analysis and synthesis of the developed ideas. Definitely, it is substantiated that significant reform changes in the system of state authorities of Ukraine and changes in the direction of their activities somehow mean the creation of conditions for the construction of a democratic, social and legal state, as well as the guarantee of subjective rights, in particular of persons with disabilities. The conclusions argue the priority of the formation of administrative and legal doctrine, built on the basis of a humanistic ideology that permeates the Convention on the Rights of Persons with Disabilities in the daily life of society as a whole.

Keywords: administrative activity; public administration; guarantee of rights and freedoms; persons with disabilities; public authority.

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Planteamientos teóricos y jurídicos sobre las actividades administrativas de la autoridad pública en la salvaguardia de los derechos de las personas con discapacidad

Resumen

El propósito de la investigación científica fue examinar la esencia y el contenido del concepto moderno centrado en el ser humano en la interpretación teórico-aplicada de las actividades de gestión de las autoridades estatales, en relación con la implementación y protección de los derechos y libertades fundamentales de las personas con trastornos sistémicos de función del cuerpo. En el trabajo científico se utilizaron los siguientes métodos de investigación: sistematización, generalización; análisis y síntesis de las ideas desarrolladas. Definitivamente, se fundamenta que los cambios de reforma significativos en el sistema de autoridades estatales de Ucrania y los cambios en la dirección de sus actividades, significan de alguino modo la creación de condiciones para la construcción de un Estado democrático, social y legal, así como la garantía de los derechos subjetivos, en particular de las personas con discapacidad. En las conclsuiones se argumenta la prioridad de la formación de doctrina administrativa y jurídica, construida sobre la base de un ideario humanista que permea la Convención sobre los Derechos de las Personas con Discapacidad en la vida cotidiana de la sociedda en su cinjunto.

Palabras clave: actividad administrative; administración pública; garantía de derechos y libertades; personas con discapacidad; autoridad pública.

Introduction

The implementation of the basic provisions of the Concept of administrative and legal reform in Ukraine led to the formation of a new administrative and legal status of public authorities, forms and methods of their activity. These objective changes are determined by the principles of the distribution of power, and therefore by the expansion of the administrative powers of the public authorities.

Most of the tasks of the researched bodies are carried out in the process of administrative activity during the implementation of the prescriptions of administrative legislation, the use of administrative and legal means of influence on the organization of the activities of officials and officials to ensure the rights and freedoms, in particular, of persons with disabilities.

The variety of tasks and functions of state authorities and local self-government bodies determines the use of various modernized forms of their activity, which are specified in laws and other regulatory legal acts that regulate the competence of subjects of power. At the same time, to this day, there are constant discussions among scientists about the main direction of the functionality of these organs in a theoretical and applied sense.

That is why proper clarification of the current legal content of the administrative activities of public authorities will contribute to the creation of optimal and proper conditions for the realization and protection of the rights and freedoms of persons with disabilities in society by the state.

Taking into account the above, it is worth stating that the level of effectiveness of administrative and legal provision of the subjective rights of the specified category of people directly depends on the qualitative formation and application of appropriate legal means at the national and regional levels. The key role belongs to the construction of administrative legislation on disability issues and legitimate activities of public administration subjects, taking into account international human rights standards. They should be implemented in the context of the spread of human-centric ideology on the development of the national doctrine of administrative law.

1. Objectives

The purpose of the article is to formulate the concept and definition of the content of the administrative activities of state authorities and local self-government bodies in ensuring the rights and freedoms of persons with disabilities, due to the priority of the formation of a new administrative-legal doctrine built on the principles of a human-centered ideology, in accordance with the provisions of the Convention on the Rights of Persons with Disabilities.

2. Materials and methods

The article is based on a legal analysis of the key provisions of the Convention on the Rights of Persons with Disabilities, the Concept of Administrative and Legal Reform in Ukraine, the current legislation of Ukraine, which define the competence of national state authorities to ensure the implementation and protection of rights, fundamental freedoms and legitimate interests people with persistent disorders of body functions.

Scientific publications, the key idea of which is the need to develop a new concept of legal means to ensure an appropriate social environment for persons with disabilities, are reviewed and summarized. It should be

based on the provisions of the human rights model of disability, organically combined with a human-centered approach in public administration.

The methodological basis of the article is formed by a number of general scientific and special methods of scientific knowledge. The dialectical method and the formal-legal method were aimed at revealing the essence and general features of the implementation of the administrative activity of public authorities through the application of a set of legal means in the field of ensuring the rights and freedoms of persons with disabilities in various areas of the social sphere. Synergistic and system-functional methods contributed to a broader disclosure of theoretical and methodological approaches to understanding the specifics and features of the application of human-centered ideology in the doctrine of administrative law.

The structural-analytical method, the methods of analysis and synthesis, system analysis were aimed at revealing the generalization of the essence of the practice of public service use by public authorities of legal means of ensuring the rights and freedoms of persons with disabilities. In this case, the priority component of the public service activity of the public administration, along with the managerial one, where, in addition to the dispositive principle, the administrative-legal method should have an equal, and in some directions priority, value.

3. Results and discussion

The modern definition of the concept of administrative activity is mostly considered by scientists as the general implementation of the competence of state bodies, regulated by the norms of administrative law, their specific law-making and law-enforcing activities.

However, for many decades, it has been associated with the functioning of law enforcement agencies in the form of organizational-management and executive-authority activities regulated by current legislation, aimed at ensuring the personal safety of citizens, protection of their rights and freedoms, legal interests, rights and interests of legal entities, public order , public safety, fight against crimes. According to this approach, administrative activity was reduced to the executive activity of the relevant state bodies aimed at the formal protection of the rights and freedoms of citizens.

In the aspect of the above, a number of scientists believe that the administrative direction of activity is identified exclusively with police activity, which begins to manifest itself when the task of ensuring compliance with the norms of social behavior goes beyond the control of law-abiding citizens of society and is redirected to those members who are authorized

as a result of the distribution of social duties to perform this function and act on behalf of the society itself.

Implementation of this type of activity takes place in the case of preventing the violation of some rules and norms of society, with the necessity of coercive intervention and the use of force (Melnyk, 2013).

The police orientation of the activities of the subjects of power presupposes public administration in a narrow sense, i.e., the work of executive authorities at various levels. This understanding of administrative activity takes into account only its managerial nature, and therefore does not fully, and most importantly, does not accurately reflect the purpose of this type of activity. Moreover, the focus of views on the use of such a limited approach to the implementation of the law enforcement mechanism of the state remains unclear to the end.

The outlined interpretation is more characteristic of states with a totalitarian regime, however, the priority of the modern direction of activity should be the effectiveness of ensuring individual rights. Let's consider the current interpretation of the term «administrative activity», where the administration (from the Latin administratio - management) is an institution that performs administrative functions in various spheres of social life. Activity is a system with numerous and diverse functional and material components and connections between them.

The internal content of the «activity» category covers the constituent components of the system, which include the process, etc.In scientific works, the concept of administrative activity is often equated with public administration. Thus, it is a type of state-authority activity of executive authorities and covers a wide range of social relations that are formed both within the system of state authorities and outside of it.

The existence of such a position can be explained by the fact that administrative activity is only a separate subtype of state-authority activity; secondly, the presence of internal and external system activities, primarily aimed at the settlement of organizational issues within the relevant structural departments regarding the realization and protection of the rights of persons with disabilities. At the same time, not all actions of the executive power bodies are properly managerial, but the main, profile direction is proper managerial activity, that is, public administration as a special type of state activity.

In general, the activity of subjects of power is broader than management and consists in performing many other powerful or public actions - such as concluding administrative contracts, conducting explanatory work, implementing state regulation, etc. These areas of activity, which go beyond administrative ones, significantly affect the implementation and protection of the rights and freedoms of persons with disabilities (Kondratenko, 2020).

The identification of administrative activity with state administration is refuted by some scientists by defining common and distinctive features of public administration and state executive power, distinguishing areas of activity that are carried out outside the scope of the activities of executive authorities.

Summarizing, we should note that public administration is a broader category than executive power, since the latter originates from public administration, and the effectiveness of its activity depends on the level of organization of public administration. At the same time, as state management can be realized within the scope of activities not only of executive power bodies, so executive power can be realized not through state management.

In addition, in modern administrative and legal doctrine, the tendency to reduce the use of the term «state administration» and, on the contrary, the active introduction of the term «public administration» is increasingly visible. At the same time, there is not an unjustified emphasis on the implementation of public administration by scientists, but a renewal of approaches to the activities of subjects of public authority, aimed at the implementation of public authority and the implementation of current legislation in the public interest, where publicity is interpreted as common, accessible to all, serving all , combines state national and self-governing territorial openness (Fedoruk, 2019).

Public administration is a type of socially useful activity, which is carried out by a certain set of subjects, in particular by state authorities, among the subtypes of which are favorable, providing, executive, administrative, delegated public administration. The priority goal of these types of public administration is to assist private individuals in realizing their rights, freedoms, and legitimate interests.

This activity involves the delegation of certain powers to local self-government bodies, public organizations of persons with disabilities, the adoption of subordinate legal acts aimed at the implementation and protection of their rights and freedoms, the payment of social benefits, the provision of benefits, the restoration and conversion of transport infrastructure taking into account special needs, creating access to social infrastructure, ensuring equal opportunities in the context of the European formula: human rights and freedoms are equal to equal opportunities to realize the rights and freedoms of persons with disabilities, taking into account their special needs (Sobol, 2017).

Therefore, the views of scientists regarding the identification of «administrative activities of public authorities» with state management actually coincide with the Soviet approach to administrative law, which was mainly characterized as administrative law, that is, as a means of the

power-organizing influence of the state on social relations and processes and «jurisdictional law». which ensured the application of administrative responsibility and coercive measures in relations with citizens.

However, significant reformed changes in the system of authorities and modification of their activities, creation of conditions for the construction of a democratic, social, legal state, affirmation and provision of human and citizen rights determined the priority of the formation of a new administrative-legal doctrine built on the principles of human-centric ideology (Concept of Administrative of Legal Reform in Ukraine, 2006). Moreover, the advantage of the transformation of administrative law should be given to its non-management orientation, which covers the relationship between public administration and persons with disabilities.

It is expedient to define this non-management component of the subject of administrative law as «public service», which will be a priority component of the public service activity of the public administration, along with the managerial one, where, in addition to the dispositive principle, the administrative-legal method should have equal, and in some areas, priority value (Sobol *et al.,* 2020).

It is about the fact that the conceptual foundations of the new role of administrative law, which serve the interests of man, does not deny its focus on the regulation of management relations. On the contrary, the managerial orientation is preserved, along with this, the regulation of relations between the public administration and individuals acquires a new meaning. Optimization of management and legal regulation are ultimately aimed at securing human interests.

Currently, the main characteristics in the understanding of administrative law should not be administrative, but such new functions as law enforcement, which is related to the provision of human rights and freedoms, and human rights protection, which is related to the protection of violated rights. They most fully reproduce the public purpose of administrative law in the context of the administrative activity of the public administration regarding the implementation and protection of the rights and freedoms of persons with disabilities.

Therefore, taking into account the practical orientation of these functions of administrative law, it is expedient to determine not only the consolidation of their subjective rights and freedoms, but also the provision of their implementation and the creation of appropriate protection in cases of violation, as a priority area of activity of the public administration. Only through these aspects does the constitutional definition become clearer: «the establishment and provision of human rights and freedoms, their legitimate interests, is the main duty of the state».

It is worth noting that today the consolidation of the rights and freedoms of persons with disabilities in normative legal acts, their list and content, the proper implementation of rights and freedoms in relation to equality and non-discrimination, accessibility, the right to life, equality before the law, access to justice, freedom from torture and cruel, inhuman or degrading treatment and punishment, freedom from exploitation, violence and abuse, freedom of movement, adaptation and rehabilitation, etc. does not mean that such a person can actually exercise these rights and freedoms, i.e., that they can actually be implemented by public authorities.

In the conditions of reforming domestic administrative law and changing approaches to public administration, more and more attention of scientists is directed to the practice of wide application in these processes of the principles of people-centrism, which has been used for a long time in the functioning of European public institutions. It is planned that the new administrative-legal doctrine will be aimed at changing the understanding of the social value of the specified field of law.

Currently, in the generally accepted sense, the main thing for public management is to achieve the most rational way of planned results of power and organizational influence on managed objects. At the same time, ensuring the subjective rights of citizens is not one of the priority tasks. Therefore, administrative law should acquire the status of the main regulator of harmonious relations between public administration and citizens. Comprehensive provision of the priority of human rights and interests, guarantees of their effective implementation and protection will come first.

Therefore, in this case, the key is the partnership interaction of civil society institutions and subjects of power, which are obliged to promote and create the necessary conditions at the normative and law-enforcing levels for the realization of the rights and freedoms of a person and a citizen, to implement democratic procedures of public service activity.

It is natural that the most active strata of the population, within their legal status, seek to influence the processes of state formation, the fair redistribution of budget funds for social needs, and the proper performance of official duties by subjects of power at the national, regional, and local levels. Persons with disabilities are full-fledged members of society, who also wish to properly exercise and protect their rights and freedoms, directly be the main participants in the management of state affairs (Convention on the Rights of Persons with Disabilities, 2006).

In general, we share our views on the functioning of public power, taking into account a people-centered position, close and equal interaction with the population, since the need to completely depart from the Soviet administrative-legal heritage and reform domestic administrative law has

come. In fact, there are no remaining valid outdated legislative acts in this area, instead, the state approach regarding the secondary nature of citizens as subjects of law still resides in the sphere of activity of subjects of public administration.

Instead, the democratic development of public administration also requires respect for the rights and freedoms of a person and a citizen, not of a formalized nature, but with real consideration of international human rights standards and official recommendations regarding the appropriate functioning of public structures (Kondratenko *et al.,* 2022).

Conclusions

Taking into account the above, it is worth concluding that the administrative activity of public authorities in ensuring the rights and freedoms of persons with disabilities must be understood as the power-organizing and power-management activity of state authorities and local self-government bodies regulated by the norms of administrative legislation, which is based on a people-centered, humanistically oriented ideology and is aimed at affirming, ensuring and realizing the rights and freedoms of people with systemic physical, mental or sensory disorders of body functions. Administrative activity in terms of ensuring the rights and freedoms of persons with disabilities is carried out through specific actions of officials and officials of public authorities.

Taking appropriate actions and making management decisions is carried out within their competence and corresponds to the forms and methods of administrative activity of public authorities, as well as in the system of organizational measures carried out by public authorities to create conditions for the realization and protection of the rights and freedoms of the specified category of persons at their individual request or by the initiative of a competent subject of authority in terms of providing administrative services.

Administrative and legal support for the realization and protection of the rights and freedoms of persons with disabilities is based on two interrelated theoretical and legal ideas. First of all, we are talking about the relevant law-making and law-enforcement activities of executive authorities and executive bodies of local self-government, which express the national specificity of the development of the legal system, as well as historically formed socio-economic and humanitarian traditions in key areas of public life.

This allows to implement the mechanism of legal protection of a person at the national and regional levels, which has absorbed only those specific

measures, means, ways and methods of power influence that are inherent in a specific country. As a result, the risk of creating an ineffective legal instrument, which will be difficult to use in practice, is reduced.

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