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# *ON THE QUESTION OF THE CONCEPT "ADMINISTERING" IN THE LEGAL-ADMINISTRATIVE AND LEGAL-FINANCIAL DOCTRINE*

*SUMMARY. This article is devoted to the analysis of one of the fundamental categories of legal-administrative and legal-financial theories: administration. Based on the provisions of the Constitution, administrative and financial law, application and progress in legal-administrative and legal-financial doctrine, we define the concept of "administration", as well as the concepts of the administrative and financial activities of the State. Based on detailed analysis of the content of scientific categories, the relationship between them is stated. A historical background is provided, which allows the author to outline the features of the administrative and financial activities of the state in our country. The institutions of Administrative Law and Financial Law which govern administration are analyzed.*

*The management features which best reflect the approaches to the definition of the whole concept and some of its parts (budgetary, tax, customs, etc.) allow us to state that they are merely varieties of the administrative and / or financial performance of the state. Accordingly, public relations occuring in this process should be limited in accordance with the general rules of delimitation of administrative and financial law elaborated by modern legal science.*

*KEY WORDS. Administrative law, financial law, administration, administrative activities of the state, financial activities of the state, legal-administrative doctrine, legal-financial doctrine, executive and administrative powers, executive bodies.*

Administrative and financial law have appeared quite recently. In fact, their status as an independent branch of law (also as the relevant sciences and disciplines) can be traced to the middle of the nineteenth century*. The question of defining their

* Administrative and financial law have a common origin connected with cameralistics (Germ. Kameralistik, Latin camera — treasury). A course in cameralistics was taught in European Universities in the 16th-18th centuries. Cameralistics was developed by European monarchs and the aristocracy for housekeeping purposes. Cameralistics gave rise to most modern economic theories, including administrative and financial law.

In Russia, cameralistic studies were introduced only in the 18th century after the establishment of the Sciences Academy and Moscow University. However, the national tradition in this field of knowledge has a rich background. In the middle of the 16th century, Domostroj (full title: "The book called Domostroj") [1] gained recognition among representatives of the Moscow nobility. It contained a set of rules for traditional family life and housekeeping attributed to the archpriest Sylvester, one of the closest persons to Ivan IV Vasilyevich (the Terrible). At the turn of the 17th-18th centuries, I.T. Pososhkov created his work of paramount importance About Poverty and Wealth [2], on a par with the study by Adam Smith The Wealth of Nations" [3]*.

subjects arose only in the middle of the last century, when theoretical understanding of these branches of law became necessary [4, 27], [5, 38].

In today's reality, establishing effective government administration is a complicated multi-level process aimed at the modernization, improvement and adaptation of Russian legislation concerning the means, methods and schemes of work of public authorities. At the same time, together with the development of public relations and the democratic state, the objective to reform the administrative and financial legal domains is becoming more topical, due to the necessity to transform the functions, structure and powers of public authorities to enhance their efficiency.

Today in most countries, legal doctrine has lost its meaning as a source of law, although it is preserved partially in some countries (Great Britain [6; 23], Muslim countries [7; 65-79]).

The provisions of legal science in general, including the legal-administrative and legal-financial branches, serve as a reference tool, which does not lessen the importance of legal doctrine. Legal doctrine is actually introduced in the acts which later become the main source of law.

Considering modern legal doctrine from a functional point of view, it should be noted that: 1) it is a cultural phenomenon, which reflects the current paradigm of social development, the prevailing system of political and legal realities and social needs. In this way, legal doctrine serves as a connector between law and culture, law and society, law and moral principles, as well as between the state, law and politics, and 2) serves as one of the basic elements of the legal system. As such, it enables the simulation of existing or developing social relations, and 3) serves as a practical implementation of the political and legal paradigms that meet certain ideals and principles. Thus, we should single out three functional aspects of the analysis of legal doctrine: cultural, common law and legal practice. Administrative law and financial law doctrine is mostly practice-oriented, which serves their development and implementation.

Development of administrative legal doctrine and financial legal doctrine is influenced by the following factors: legal knowledge of public state administration; social values; legal jurisprudence; legal ideas; legal practice and legal traditions. A key factor affecting development of legal doctrine is the authority of the researcher who ensures their applicability in practice.

The issue of determining the subjects of administrative and financial law, though half a century old, remains still topical today. In many ways, the cause of the continuing uncertainty in defining the subjects of administrative and financial law is the subjectivity that is inherent in both administrative and financial doctrine. The use of the category "the subject of a legal area" in research language should ensure objectivity in research, including the peculiarity of legal relations between particular subjects of law. However, analysis of numerous works in the field of public administration and public finance law suggests otherwise. We can say for sure that interpretation of the subjects of administrative law and financial law by different researchers follows a variety of models. The representation of social relations in these models depend on

the understanding of the concept, level, type of classification, type of regulation and standards required (sometimes even "adjusted") to achieve the goals and objectives of the researcher.

This very fact explains the difference in the definitions and categories of notions used by representatives of legal administrative and legal financial science.

When considering all kinds of methodological problems, primarily related to the development of concepts and categorical systems in legal research (i.e. delimitation of administrative and financial law), close attention should be paid to the link between legal theory and practice (legislative, law application, etc.), as an object of scientific study. This link gives rise to uncertainty when clarifying some legal phenomena, due to the fact that legislators and law enforcers follow the provisions of legal science, and the latter is based on current law and practice.

This problem of the Humanities was firstly mentioned by foreign researchers*. Reference should be made to the conclusions of K.R. Popper, first of all in «Logics of scientific research» [8], where the author argues that even scientific knowledge is not absolute truth. Scientific theories cannot be verified (confirmed by facts), as they are only hypothetical. Even when confirmed experimentally, the theories may be considered true only to some extent, since no confirmation excludes the possibility of contradictions in future. Between verification and falsification there is always a certain asymmetry, due to which absolute truth remains elusive [8, 102]. In addition, the achievement of "consensus" in scientific theories mainly diverts researchers towards "facts nomination": who gave a name to this or that phenomenon or described its properties. Proponents of this "naturalistic" approach do not notice that by revealing a fact they simply propose a convention [8, 49]. Various social phenomena can be described, the descriptions can be logically grouped together, classified in structures that appear and disappear depending on the rise of new social phenomena [9, 18].

This problem of research with regard to the financial sphere was addressed by George Soros, who suggested the term "reflexivity" [9, 50-51] to characterize the inverse connection between the researcher and the object of study.

Russian researchers have also paid attention to this interdependence, noting that an increase in the self-reflexivity of modern research is becoming an increasingly important characteristic in scientific development. The concept of reflection is commonly accepted as denoting acts of self-awareness, self-knowledge, self-reflection and self-assessment, which might be called "thinking about thinking". Reflexivity as a scientific concept denotes the introspective nature of knowledge, the existence of a mechanism and rules of conscious control over the process of its growth and functioning [10, 3.6], [11, 448-449].

* The attention of the author was first drawn to this problem in summer 1998, thanks to the book The Alchemy of Finance [9] by George Soros, which examines the influence of the beliefs of a researcher on the subject of research through the example of the investment activity of Soros. Furthermore, the problem of reflexivity (the term used by Soros to refer to this interdependence) has repeatedly drawn our attention in the analysis of various aspects of the legal regulation of public finance and administration.

It should be pointed out that legal theory cannot operate only with ideas. Otherwise, it will inevitably lose its connection with the practice of law, which in its turn will result in the loss of the value of the science itself. Due to this, the analysis of administrative and financial law is possible only on the basis of actual social relations, legislation theory and its practice. On the other hand, research claiming to have novelty and value cannot confine itself to simply commenting on current legislation and its practical application. Deep analysis of factual legal precedents should lead to a summary of the fundamental trends of their development, to establish their connection with the needs of the individual, community, society and state. New views and ideas arising in legal science are inevitably reflected in legislation and practice, which in turn modifies the object of study and gives rise to new scientific ideas.

This endless process allows legal science to develop. At the same time, it creates some difficulties related to the instability of scientific concepts and definitions. But this instability is a condition ensuring that both the law and legal science are self-developing systems capable of adequate responses to the changes taking place in today's society. The permanence of law, its closed nature is the distant past of social development. It was the Romans who abandoned *legis actio* procedure for *stricti juris* action, and praetorian law introduced in law the aforesaid uncertainty which saw the beginning of legal science as a self-developing system.

In the Soviet tradition, the subject of administrative law was defined as a set of social relations that arise in the process of state administration or executive activities [4, 27], [12, 62], [13, 3-4]. Modern administrative legal science states that the subject of administrative law is a set of social relations arising in the field of executive power, which is implemented by public administration [14, 51], [15, 68], [16, 33-34]. Thus the approach to defining the subject of administrative law is basically the same as in the Soviet era, though corrected. As before, the overwhelming majority of modern Russian legal scientists believe that administrative law regulates relations arising in the process of government administration.

A similar situation exists in finance law. During the Soviet period in financial legal science, the subject of financial law included the financial activities of the State. Drawing attention to the independent nature of financial law, R.O. Khalfina stressed that financial law derived from constitutional and administrative law as an independent legal branch, due to the characteristics and social significance of its subject which is the financial activities of the State*. An approach defining the subject of financial law through the financial activities of the State and its municipalities was, until recently, shared by all researchers in national financial legal science [19 4-521], [20, 12], [21, 15], [22, 11] .

Indeed, the financial activities of the state and the municipalities is a specific subject of legal pressure. The specific nature of this influence and its importance in

* This view was shared by representatives of financial and legal science such as M.I. Piskotin and S.D. Tsipkin [17, 40-41], [18, 14-15].

today's society has been constantly noted by all experts in the field of finance and financial law for the past two hundred years.

Recently researchers in both legal branches concluded on the necessity to change the approaches defining the subjects of these branches of law.

In the field of administrative legal science, such a necessity is pointed out by A.V. Nesterov [23], P.I. Kononov [24] and others. In their opinion, the subject of administrative law should be reconsidered due to the institutional approach to state and municipal services, which apparently has a legal and administrative nature, but does not fit into the framework of government administration.

In the field of financial legal science, the problem of the changing approach to the definition of the subject of financial law arose earlier, owing to A.N. Kozirin. It should be noted that Western jurisprudence used to develop in conditions similar to those in present-day Russia. Representatives of European financial law science consider public finances as its subject. Thus the French researcher P.M. Godme argues that the subject of financial law is public finances, i.e., public wealth in the form of money and credit at the disposal of the State bodies [25; 37]. Developing the idea that public finances are the subject of financial law, A.N. Kozirin notes: "public finances are the sphere of conflict of different contradictory interests: those of the state, of groups, of the individual. In this case, the possibility of finding 'the resulting vector' of these interests will shape socio-economic and political stability in the country and possibility for all social institutions."

Public finances have retained their value throughout history. That is why in the constitutions of many countries, special attention is given to public finances and in some countries (Belgium, Germany, Sweden, etc.), financial issues represent a separate section in general law [26; 3–4].

At the border of legal administrative and legal financial science, the definition of the subject in these areas of law is relevant to the topical problem of positioning various types of administration. The legitimacy of the term "administration" is undisputable in legal administrative and in legal financial science [23, 20], [27, 41], [28, 32]. Nowadays this term is widely used in budget, tax and customs law. On the level of doctrine it is also applied in other areas of functioning of the state and local governments. However, its content is not defined in regulatory acts, and there is neither a unified approach to its definition in the doctrinal sources nor even a satisfactory interpretation of this phenomenon. It opens up the question of relations between the public administration on the one hand and the administrative and financial activity of the state on the other, as well as related issues of public relations.

If we speak of defining the subject of administrative law, the key scientific categories here are state management and administrative work. Their detailed study in the field of the legal administrative began at the end of the 1950s [29]. A most complete and generalized study was conducted for the first time in the book *The forms and methods of state management* [30]. In subsequent studies, the scientific terminology was formalized at the level of understanding the external expression of the practical implementation of the functions and methods of management, the impact of

management, specific actions taken by the executive authorities, official means of administrative pressure [31, 305], [32, 181] [33, 369].

In the scientific literature it is correctly stated that state management is a substantial basis for administrative work [34, 48].

In the theory of financial law, the characteristics of the financial activity of the state begin with its organizational nature. Typically, this is expressed in the actions of an empowered body (authoritative bodies of the state and municipalities) in terms of accumulation, distribution and use of centralized and decentralized funds which ensure the smooth functioning of the state and / or local government for a specific time period. Thus, financial activity is a deliberate process of accumulation, distribution and use of funds by the state and local government for task performance [35, 31], [36, 32], [37, 25], [38, 10].

This implies that the study of state management and the administrative and financial activities of the state has a rich and long history with certain developed scientific traditions and schools. In turn, the term "administration" was introduced into scientific language relatively recently and has been most widely spread among legal financial researchers, as well as at the border of the administrative and financial law (for example, customs law).

In legal doctrine, even within separate areas of legal research where the term "administration" is widely used (budget law, tax law, customs law), there is no single definition of this scientific category. Some researchers give a most detailed, descriptive definition, while others confine themselves to a more general "outline", pointing to the main purpose of the relevant type of administration. The following definition may illustrate the first approach: "tax administration is a deliberate planned complex management activity of the system of authorized bodies and their representatives concerning law enforcement, supervision of calculation, imposition of taxes, complete and timely payment of taxes and duties, organization of activities aimed at optimizing management processes under the legislation on taxes and fees" [39]. The second approach presumes that tax administration is the daily routine of tax authorities and their officials, which ensures timely and full payment of taxes, fees, and other charges by taxpayers [40]. In this regard, it is questionable whether the administration is an independent scientific category with its own content, or should be considered as a synonym for government management or the administrative and financial activity of the state.The analysis of scientific publications devoted to specific types of amnesty allows us to state the most common characteristics inherent to all of them:

1. Purpose-oriented activity of authoritative bodies which is expressed in reaching goals set by state policy in a certain sphere and in accordance with the related law;

2. Proceduralized nature of activity regulated by legal procedural norms;

3. Law-regulated nature of activity since it is governed by legal norms in order to implement the requirements of law;

4. The secondary role of activity when compared to the primary importance of the legislature;

5. The regular and permanent character of activity;

6. Authorized bodies are vested with administrative powers, therefore, existence of legal inequality in relations with other entities and the possibility of independent use of administrative enforcement, and the implementation of legal responsibility;

7. Power to control the actions of the inspected.

Administration is carried out in order to implement state policy, to use effectively various methods, forms and instruments of state control, to fulfill state management in a particular area, to achieve certain goals, to establish discipline.

These characteristics of administration that fully reflect the approaches to the definition and content of certain types of management (budget, tax, customs, etc.) enable us to state that they are only variants of the administrative and financial activities of the state. Thus, the social relations that arise during these activities should belong to corresponding sectors in accordance with the general rules of division of the subjects of administrative and financial law established by modern legal science.

## REFERENCES

1. Domostroy (a monument of Russian 16th century literature). - Saint-Petersburg, 1994 (in Russian).
2. Pososhkov I.T. A book about poverty and richness. - Moscow, 2010 (in Russian).
3. Smith A. An Inquiry into the nature and causes of the wealth of nations. - Moscow, 2009 (in Russian).
4. Petrov G.I. The concept of the Soviet administrative law. - Leningrad, 1959 (in Russian).
5. Halfina R.O. Issues of the Soviet administrative and financial law. - Moscow, 1952, Pp.38–64 (in Russian).
6. Dzhenks Je. The English law. - Moscow, 1947 (in Russian).
7. Sjukijajnen L.R. The Muslim law. Theoretical and practical issues. - Moscow, 1986 (in Russian).
8. Popper K.R. The Logic of scientific research. - Moscow, 2004 (in Russian).
9. Soros J. The alchemy of finance. - Moscow, 1998 (in Russian).
10. Bazhanov V.A. Science as a self-studying system. – Kazan, 1991 (in Russian).
11. Ogurcov A.P. New encyclopedia of philosophy, Vol. 3. - Moscow, 2001. Pp.448-449 (in Russian).
12. The Soviet administrative law. State government and administrative law. - Moscow, 1978 (in Russian).
13. The Soviet administrative law. - Ed. By P.T. Vasilenkova. - Moscow, 1981 (in Russian).
14. Kozlov Ju. M. The Administrative law. - Moscow, 2005 (in Russian).
15. Rossinskij B.V., Starilov Y.N. The Administrative law: Coursebook for higher educational insitutions. - Moscow, 2009 (in Russian).
16. Dmitriev Ju.A., Poljanskij I.A., Trofimov E.V. The Administrative law: Coursebook. - Moscow, 2009 (in Russian).
17. Piskotin M.I. The Soviet budget law, Vol.9. – Moscow, 1967. Pp. 40-41 (in Russian).
18. Cipkin S.D. Income of the state budget of the USSR. - Moscow, 1973 (in Russian).
19. Rovinskij E.A. The main issues of the theory of the Soviet financial law. - Moscow, 1960 (in Russian).

20. Karaseva M.V. Financial law: general part. - Moscow, 1999 (in Russian).

21. Financial law. Ed. by N.I. Himicheva. - Moscow, 2001 (in Russian).

22. Financial law. Ed. by O.N. Gorbunova. - Moscow, 2002 (in Russian).

23. Nesterov A.V. Administrative and municipal law. - 2012, No 3, Pp. 18-24 (in Russian).

24. Kononov P.I. Concerning the modern Russian administrative law// Administrative law and process, 2011, No 3. Pp. 23-31(in Russian).

25. Godme P. Financial law. - Moscow, 1978 (in Russian).

26. Kozyrin A.N. Public finances: interaction of state and society. - Moscow, 2002 (in Russian).

27. Sokolova O.S., Sokolova E.D. Information and analytical support of management process in the municipality of Copenhagen// Legislation and economy, 2009. - No 12, Pp. 38-46 (in Russian).

28. Jalbulganov A.A., Sharapova O.A. Refund of overcharged taxes in the system of administering tax payments. — Financial law, 2009. No 8. Pp. 29-37 (in Russian).

29. Starostyak E. Legal forms of administrative activity. - Moscow, 1959 (in Russian).

30. Forms and methods of state management. - Moscow, 1977 (in Russian).

31. Bahrah D.N., Rossinskiy B.V., Starilov Y.N. [Administrative law. - M, 2004 (in Russian).

32. Konin N.M. The Administrative law of Russia. - Moscow, 2004 (in Russian).

33. The Administrative law of Russia. General part. Coursebook. Ed. P.I. Kononov. Moscow, 2006 (in Russian).

34. Osincev D.V. Forms of state management// Russian legal journal, No 1. Pp. 44-52 (in Russian).

35. Financial law. Coursebook. Ed. by E.M. Ashmarina, S.O. Shohin. Moscow, 2009

36. Financial law of the Russian Federation]. Coursebook. Ed. M.V. Karasev. Moscow, 2007 (in Russian).

37. Financial law. Ed. by S.V. Zapol'skij. Moscow, 2006 (in Russian).

38. The Soviet financial law Ed. by G.S. Gurevich. Moscow, 1985.

39. Legal regulation of taxation in the Russian Federation: Notes of lectures on Part One of the Tax Code of the Russian Federation - Ed. by A.N. Kozyrina. SPS «Konsul'tantPljus», 2007.

40. Abramchik L.Y. Tax administration in the system of financial supervision//Financial law, 2005. No 6. Pp. 37-44.