

# ON THE FEASIBILITY OF USING THE CONCEPT OF MANAGEMENT AS A CATEGORY OF ADMINISTRATIVE LAW

Artem Solomaha<sup>1</sup>, Liudmyla Borovyk<sup>2</sup>

**Abstract.** The article is devoted to administrative law terminology and the feasibility of involving the concept of management in its composition. It has been found that legal science was subject to repeated attempts to introduce the relevant concept into its terminology. It is stated that the concept of management is widely used in scientific literature to explain the properties of administrative law phenomena and processes and in national administrative legislation. It is proved that most works available in specific literature: a) do not reason why the management category is essential for administrative law; b) what internal problems of administrative law science it helps or hinders to solve; c) how the category will correlate with other concepts close in meaning – administrative management, public administration, good governance, etc. It is substantiated the conclusion that representatives of economic sciences have not yet reached agreement on how to interpret the concept of management. However, they shall do it, firstly, for the further development of management science and secondly to clarify the content of the relevant educational programs in management, because Ukraine keeps implementing "knowledge standardization" for all levels of education. It was established that the imbalance of scientific approaches to the content of the management concept negatively affects the final definition of the object and subject of management science and the relevant teaching-learning materials intended for university students majoring in the specialty concerned. Based on the analysis of the concept of management and cases of its use in studies on administrative law phenomena, it was concluded that management is an economic category used by representatives of economic sciences to explain the peculiarities of internal organizational activities within public authorities and local self-government. At the same time, the range of issues and problems that are raised and solved are of an exclusively "managerial" nature and hence do not echo or partially echo ones of administrative law regulation of internal organizational relations within public authorities. The concept of management has no methodological significance for administrative law terminology and, thus, studies on administrative law phenomena.

**Keywords:** science of administrative law, terminology, economic sciences, management, public management, management in public administration, management in governance, administrative and public management, public administration.

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## Introduction

Legal science, namely the science of administrative law of Ukraine (in the form of an alternative view of the processes taking place in public administration), was subject to repeated attempts to introduce the concept of management into its terminology. However, they were unsuccessful as long as the concept of governance remained a system-forming category of administrative law, around which all other categories and institutions of the relevant law branch were

formed. The evolution of public relations, which has been taking place in our country for objective reasons since 1991, has also influenced the transformation of administrative law. It changed scholarly views on the subject of administrative law, its system, the classification of law subjects and administrative law relations, the role of administrative law in regulating public relations, and its system-forming category – "governance". Since 2000, more and more scientists have stated in their publications that the concept

<sup>1</sup> Taras Shevchenko National University of Kyiv, Ukraine (*corresponding author*)

E-mail: [solomaha.artem@gmail.com](mailto:solomaha.artem@gmail.com)

ORCID: <https://orcid.org/0000-0001-9305-7898>

<sup>2</sup> International University of Economics and Humanities named after Academician Stepan Demianchuk, Ukraine

E-mail: [milabogush@mail.com](mailto:milabogush@mail.com)



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of governance failed to fulfill its important role. Moreover, the mentioned concept lost its methodological significance for research on administrative law phenomena. Thus, it was a period when efforts to find a new "system-forming" category for administrative law became more intense. Among the insignificant number of alternative views on the problem under consideration, it is worth mentioning a group of scientists who consistently and systematically justified in their comprehensive contributions the need to involve "management" in the terminology of administrative law (Pietkov, 2005, 2001).

In this regard, it seems relevant to substantiate the expediency or in expediency of using the concept of management in the administrative law of Ukraine.

## 1. Research Methodology

### 1.1. Theoretical and Regulatory Grounds for Using the Concept of Management in Studies on Administrative Law Phenomena

The role of the category of management in law and administrative law was considered in the works of such scientists as Yu. Bondar, N. Hvizava, K. Buhaichuk, O. Yevtushenko, L. Nalyvaiko, S. Pietkov, H. Sabadosh, and others.

However, most of available works: a) do not reason why the concept of management is essential for administrative law; b) what internal problems of administrative law science it helps or hinders to solve; c) how the specific category will correlate with other concepts close in meaning – administrative management, public administration, good governance, etc.

As for the current legislation, "management" is used in administrative law sources:

– In some cases, as a concept characterizing some management processes in public law. For example, on December 2, 2021, the Cabinet of Ministers of Ukraine approved the Regulation on the software and hardware complex "Automated Information Complex of Educational Management" (The Cabinet of Ministers of Ukraine, 2021), which emphasizes that the present information complex is introduced to ensure effective management of higher education institutions;

– in other cases, as a concept characterizing management processes which take place in business or are on the verge of public law and private law regulation. For example, the Law of Ukraine "On the Principles of the State Anti-Corruption Policy for 2021–2025" (The Cabinet of Ministers of Ukraine, 2022), among the expected results of the Anti-Corruption Strategy, determined that "the system of state quality assurance for defense goods, works and services in Ukraine must comply with international requirements and

standards for assessing the management system's conformity with the quality of manufacturers and suppliers" (The Cabinet of Ministers of Ukraine, 2022).

Thus, it can be stated that the concept of management is widely used in scientific literature to explain the properties of administrative law phenomena and processes and in national administrative legislation.

### 1.2. Methodological Particularities of Studying the Feasibility of Using the Concept of Management as an Administrative Law Category

Methods of scientific knowledge helped comprehensively elucidate the topic concerned and offer substantiated conclusions. In particular, it refers to the dialectical method (used to cover trends in the development of administrative law terminology at a time when the concepts of governance lost the status of a system-forming category), the comparative legal method (used to compare different scientific and worldview approaches to management and its place in administrative law terminology), the formal legal method (used in the analysis of national legislation involving the concept of management), the historical method (used to render the development particularities of scientific thought regarding the content of "management"), the logical-semantic method (used to study such definitions of administrative law as "governance" and "public administration"), the system analysis method (contributed to the formulation of scientifically substantiated conclusions on the issues implied by the article's topic). Other methods of scientific cognition were also applied during the study.

## 2. Scientific and Worldview Approaches to Defining the Concept of Management, its Application Scope, and the Feasibility of its Implementation in Administrative Law Terminology

### 2.1. Management as an Economic Category

Management is undoubtedly an economic category that emerged, first of all, to explain the management processes taking place within business entities and ensure their maximum profit. The scientific literature on economic issues has shown publications which, based on the contrast between the concepts of administration and management, concluded that the main difference between them is the object of organizing influence (Kuznietsov, 2015):

– management primarily exerts its influence on people (company staff) and by proxy on other background objects (hardware, production processes, etc.);

– administration primarily exerts its influence on unconscious background objects. And this influence is carried out, among other things, with the help of people or by proxy.

Such an interpretation of "management" makes it possible to expand its influence as a science not only on private law, which includes the activities of business entities, but also on public law, which includes the activities of public administration entities.

However, the same publications emphasize that, firstly, scientists, analysts, and management practitioners hold different opinions about many management concepts and, secondly, in some areas of public relations, "management" and "administration" are used interchangeably (for example, professional management system) (Kuznietsov, 2015).

Thus, representatives of economic sciences still have not found agreement on how to interpret the management concept. But they shall to do it, firstly, for the further development of management science, and secondly, to clarify the content of the relevant educational programs in management because Ukraine keeps implementing "knowledge standardization" for all levels of education. The imbalance of scientific approaches to the content of management negatively affects both the final definition of the object and subject of management science and the content of teaching-learning materials intended for university students majoring in the specialty concerned.

The "imbalance of knowledge" of economic sciences about the meaning of "management" significantly affects the cognition of administrative law phenomena of those scientists who strive to explain their nature and properties through the prism of the "management" concept.

## **2.2. The Use of the Management Concept in Studies on Public Law Phenomena**

As administrative law is one of the main public branches of national law, we propose to consider this issue more widely, namely, by analyzing scientific approaches to determining the place of management in public law and the activities of public authorities.

For example, K. Buhaichuk, examining the place of public administration in administrative law terminology, states: "Public administration should be regarded from the standpoint of public management as an activity carried out within the system of a public administration entity and be aimed at optimizing its organizational structure, developing and making managerial decisions, planning and coordinating the work of all stakeholders, rational distribution of powers, and maintenance of information, personnel, documentary, psychological, scientific and financial support" (Buhaichuk, 2020).

Thus, K. Buhaichuk recognizes the existence of public management, hinting that management today should be divided into two types depending on the application scope – private and public. This fact indicates that "management" as a category that was previously limited to commercial relations, subjects of economic sciences, and the private sphere of public relations, which was not always regulated by law, has gone beyond these limits and began to characterize similar "managerial processes" in public law. We fully accept and share such views because, in our opinion, a professional manager will be able to increase the efficiency of any organization, regardless of whether he heads a public agency or a commercial organization. As the manager works with people, not with tangible objects, he surrounds himself with assistants (professional specialists) who help him navigate the specifics of the organization's profile, and his chief task is to unite (group) all subordinates in achieving corporate goals and solving existing tasks. This can be realized by a person who has a sense of character, not objects of managerial influence.

On top of that, we also have some remarks about K. Buhaichuk's ideas. First, if the scientist himself recognizes the existence of the concept of public management, why is it replaced with the synonymous concept of public administration? Moreover, in modern publications on administrative law, most scholars recognize the concept of public administration as a system-forming category of administrative law, which should unite around all other categories and institutions of the relevant branch of law (Bevzenko, 2014; Kolpakov, 2012). Public administration cannot unite other categories around nor reveal the logical connection with other institutions of administrative law as is in the form (content) offered by K. Buhaichuk. This is explained by the fact that internal organizational relations within executive and local self-government bodies regulated by administrative law are insignificant to public relations, which are part of the subject of administrative law. They are so specific that general knowledge of such relations cannot be applied to all other relations of administrative law regulation.

Consequently, instead of using the concept of public management, K. Buhaichuk selects a synonymous concept, which is used in the further study on administrative law phenomena as a central scientific category.

Secondly, the artificial transformation of the category of public management into a category for studying public law phenomena – public administration – did not yield any positive outcomes for the science of administrative law. Moreover, K. Buhaichuk emphasizes that the main task of his dissertation research was "to render the essence of public administration as a management category"

(Buhaichuk, 2020), not a legal category. The science of administrative law often borrows categories of other sciences for analyzing administrative law phenomena and processes, and this happens only when there are no relevant conceptual analogs in administrative law terminology. As for internal organizational relations in public authorities and local self-government bodies, the science of administrative law has always had appropriate "scientific tools". Such relations were studied by using the concepts of "management relations", "service relations", "subordination relations", etc. All of the above concepts could easily be applied in administrative law to clarify the specifics of internal organizational relations in public authorities and local self-government bodies. The involvement of economic or management categories in legal research without complying with the above requirements leads to the fact that research findings contribute to developing economic or management science and are useless for legal science.

Another scientific and worldview approach is proposed by L. Nalyvaiko in a textbook "Management in Governance in Test Tasks" (Nalyvaiko, 2017). Please note that the title of the learning-teaching publication and individual sections focuses on the term "management in governance". However, the analysis of the relevant contribution shows that, firstly, there was an identification of "management" and "governance", and secondly, the entire content of the textbook was reduced to clarifying the concept of governance, its features and types, management decision-making, etc., while there are no definitions of "management" and "management in governance". This is a vivid example when representatives of administrative law for a long time characterized administrative law as a management branch of law, and therefore, they are currently confused in choosing terminology for their research and writing learning-teaching contributions. The connection between the science of administrative law and management sciences, among which public administration theory took a pride of place, has long been broken. It was driven by the fact that since 2000, Ukrainian administrative law began to be reformed and transformed from post-Soviet administrative law into European-style national administrative law. Accordingly, it started orientating not on "governance" and "priority of state interests" but "public-partnership relations" between public administration entities and individuals, human and civil rights and freedoms in the public law sphere, and protection and defense of rights via administrative law means. All these processes required giving up on management categories in administrative law and the introduction of new legal categories. However, as the above example shows, some representatives

of administrative law keep conveying administrative law phenomena through management categories and quite specifically use the concepts of "management" (as an economic category) and "management in governance".

In the publication "Management in Public Administration" (Hvazava, 2016), N. Hvazava tries to logically combine the content of the two concepts – "management" and "public administration". It should be emphasized that the author also draws attention to the multidimensional content of the concept of management, namely: "The key challenge of defining "management" is that it can be considered from different points of view: as a phenomenon, as a process, as a system, as a branch of scientific knowledge, as art, as a category of people engaged in managerial work, or as a management body" (Hvazava, 2016).

N. Hvazava names the following main differentiating criteria for "management" and "public administration":

- a) the concept of governance unifies management and public administration since they both characterize certain aspects of manifesting the management process inside and outside the organization;
- b) management is characterized by the fact that the subject of managerial influence is a manager, the object of such influence is a person (a collective of people);
- c) public administration is characterized by the fact that the subject of managerial influence is a subject endowed with public authority, and the object of managerial influence is various kinds of organizations as subjects of private law (Hvazava, 2016).

It is possible the above explanation about the correlation of "management" and "public administration", as well as similar ones, has some positive effect on the development of management science but does not allow revealing the legal nature of internal-organizational relations within state bodies and local self-government and their external organizational activities in relation to private law entities (individuals and legal entities). Management comprises a large set of the manager's organizational means of influence on subordinates, among which legal means are minor. Therefore, when representatives of "management" science analyze processes in public governance, they do not focus solely on the analysis of legal means but try to cover the whole range of means of influencing people, including psychological, moral-ethical, etc. Instead, when administrative law representatives deal with processes within public governance, the scope of their interests includes either public relations that have already been regulated by administrative law or public relations that can be regulated by administrative law because they are covered by the "object of administrative law regulation" (that is, potential interests of administrative law). As a result, even if the peculiarities



of implementing public management become the subject of administrative law research, it happens only in terms of existing or potentially possible administrative law regulation.

Further, N. Hvizava states: "Management lays the groundwork for public administration" (Hvizava, 2016). The conclusion is correct from the standpoint of the science of management. From the standpoint of administrative law, another conclusion should be drawn: "Management is always present in the activities of any head of a public authority and a public administration entity but is not a legal means of his activities." Administrative law regards the head of public authority not as a manager but as a person entrusted with the appropriate scope of competence, who must ensure the effective operation of the relevant state body (its structural unit) or local self-government agency (its structural unit). Representatives of administrative law can find reasons why a particular manager implements his competence poorly and ineffectively and offer "legal" solutions. However, they cannot interfere in the problems of management as a science and give advice on improving its provisions.

In the publication "Administrative State Management as a Tool for Reorganization of State Staffing" (Sabadosh, Konstantinova, 2014), H. Sabadosh and A. Konstantinova proposed to use the concept of "administrative state management" when characterizing management processes in public authorities. The scientists argue that "administrative-state activities can be defined as the process of achieving national goals and objectives through the effective organization of the operation of state organizations. Administrative-state activities may extend to legislative, executive, and judicial authorities" (Sabadosh, Konstantinova, 2014). In fact, the above statement is the only argument regarding the use of the term "administrative-state management" in the study of internal organizational issues in public authorities. We have already defined "public management", "management in public administration", and "management in governance", which are aimed at

rendering the specifics of the same relations. It seems that the authors of the relevant publications are fond of experiments with the terminological definition of internal organizational relations in public authorities and pay less attention to the content of the proposed concepts.

From the perspective of the science of administrative law, the opinions expressed by H. Sabadosh and A. Konstantinova are meaningless and represent a mere collection of unrelated words. After all, the concept of "administrative" in administrative law automatically means "public authority", which means that it covers the power manifestations of the state (its bodies) and local self-government. Consequently, we believe that the term "public administration" is not entirely about authority, because "administration" is an economic and managerial category. Using the word "public", we just emphasize its application scope in the correlation of private and public relations. However, it is comforting that the interpretation of "public administration" has been significantly revised to meet the needs of the science of administrative law, and therefore, can be considered a law concept in legal science.

## Conclusions

Based on the analysis of the concept of management and cases of its use in studies on administrative law phenomena, it can be concluded that management is an economic category used by representatives of economic sciences to explain the peculiarities of internal organizational activities within public authorities and local self-government bodies. At the same time, the range of issues and problems that are raised and solved are of a purely "managerial" nature, and therefore, do not echo or partially echo the problems of administrative law regulation of internal organizational relations within public authorities. The concept of management has no methodological significance to the terminology of administrative law and, accordingly, to studies on administrative law phenomena.

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