

LEGAL REGULATION OF ADAPTATION OF THE NATIONAL LEGISLATION OF UKRAINE TO THE EU LEGISLATION (ACQUIS COMMUNAUTAIRE) IN THE FIELD OF PUBLIC SERVICE

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Abstract. The purpose of the paper is to analyse the concept of a system, to consider the essence of systems theory in lawmaking. *Methodology.* On the basis of the analysis of components of legal relations in the field of public service and functions of the latter, the specificity of its implementation in the process of adaptation of the national legislation to the EU laws in the field of public service is determined. Task-solving related to the development of laws of adequate quality in terms of the guarantee of their effectiveness, system nature and completeness of the actions, which relies on the legislator, is possible only on conditions that systems theory is applied. *Results* of the paper showed that a key feature of legal relations in the field of public service is manifested through their functional purpose – the satisfaction of public interest. This particular feature allows us to refer to them as to a system rather than a complex of separately existent objects. *Practical implications.* The application of systems theory during the implementation of adaptation of the national legislation to the EU in the field of public service implies the necessity to cover all, without any exceptions, components of legal relations in the field of public relations by such processes. *Value/originality.* The research defined that an adequate application of systems theory during the implementation of the adaptation of national legislation to the EU laws in the field of public service is able, quite predictable, and lead to the codification of legal norms, which regulate legal relations in the field of public service.

Key words: system, systems theory, public service, adaptation of national legislation, EU legislation.

JEL Classification: P19, H83, D72

1. Introduction

Any legislative amendments, including those, which are performed through the adaptation of national legislation to the EU one, have to be based on compliance with the requirements of key principles of lawmaking. Thus, the legislator has the task of development of laws of the proper quality in terms of the guarantee of their effectiveness, consistency and completeness of the actions, gaps' absence, elimination of conflicts of law, etc. (Nediukha, Hladkova, 2014). Their solution during the implementation of the adaptation of national legislation to the EU one in the field of public service is possible solely upon conditions of the application of systems theory.

A.M. Rysheliuk reveals the significance of adherence to the principle of system nature in lawmaking in more detailed and comprehensive way, dividing it into internal and external one. According to the scientist's definition, the concept of internal system nature covers the existence of a certain system of disclosure of the normative material within the law, in particular, thematic logic and consistency, the lack of gaps between content-related provisions, the absence of repetitions, a clear structure of the law, density and logical completeness of regulation of issues covered by the law, an internal coherence of its provisions. A.M. Rysheliuk offers to comprehend an external systems theory as a harmonious

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inclusion of an appropriate law in the current system of legislation and its occupation of a logical place in this system, as well as an informative consistency of the provisions of a new law with the provisions of other laws. An element of the external system nature is the requirement for compliance with a sector division of the legislation during development and adoption of the law (Rysheliuk).

Some aspects of the application of systems theory in lawmaking were also studied by the following scholars: Bakhrakh D.N., Hladkova T., Nediukha M., Fomitska N.V., Shlonska O.O., however, in the context of implementation of the adaptation of national legislation to the EU one in the field of public service, this issue is considered for the first time.

Taking into account the obvious importance and relevance of the determined problem, we set a goal to consider within this article the essence of systems theory on lawmaking and the specifics of its implementation in the process of adaptation of national legislation to the EU legislation in the field of public service.

2. Analysis of the concept of the system

We think it expedient to start solving the above tasks with the analysis of an original concept – the concept of a system. The Academic Explanatory Dictionary of the Ukrainian Language includes about twenty definitions of the notion “system”, however, in the context of this issue, the following are the most acceptable for the purposes of our study: system – a set of any elements, units, parts, united according a common basis, purpose; a construction, a structure that composes a unity of naturally located and functioning parts; an order caused by the correct, systematic arrangement and reciprocity of parts of something (The Academic Explanatory Dictionary of the Ukrainian Language).

Fomitska N.V. in case study, devoted to the methodology of systems theory, proposed an author’s definition of the concept of system, which allows us to define the list of key features of the latter: “System is a collection of objects of free form and content, mutually interconnected to each other and united by some regular interaction”. The scholar identifies such characteristics as follows:

1. Cohesiveness is a feature that lies in the fact that a system is, first of all, an integral set of elements, that is, components don’t form a unit (system), but conversely, the components of the system are discovered during the unit separation.

2. Conventionality of boundaries. The author writes that based on the understanding of a systemic nature of the world, it is not always possible to clearly define the boundaries of this system, separate from the objects of the external environment, which largely determine the quality of the system operation.

3. Emergence is the phenomenon of the acquisition by a system of new properties, characteristics, qualities that are alien to any of the objects, which compose it.

4. Homeostasis is the ability of a system to function without a significant decline in efficiency for a long time.

5. Defined order, interconnection, interaction. In addition, Fomitska N.V. identifies the property of the emergence as the most important property of the system (Fomitska, 2015).

Besides these features, the system also has a feature of integrity, due to which it is possible to speak about the emergence of the system itself, which is manifested in acquiring the characteristics that are inherent in the system but not specific to each of its individual components outside of interaction with others. Integration is a process and mechanism of unification and cohesiveness of elements, which are characterized by integrity, system-forming variables, factors, connections, etc. (Don V.A. (ed.), 2006).

On this issue, Bakhrakh D.N. notes that all features of a complex system are important, significant, and closely interconnected, besides their interconnection form an integral property of the whole system – system-forming, integrative secondary feature, the existence of which is affected by each of the primary features in a special way. This is one of the properties of complex systems: the interaction of parts of the whole generates such special characteristics, which parts don’t have (Bakhrakh, 1989).

Thereby, the ability of the components to integrative mutual influence has its natural consequence of their unity, which reflects in the unity of the functional purpose of the system, and vice versa: when the system implements its purpose, its components interact as a cohesive whole. Thus, the system-forming feature is manifested in its functions, and the very functional purpose of public service is its most essential, key feature.

3. The nature of systems theory

Based on the above statements, we turn to the consideration of the nature of systems theory. Thus, the term “systems theory” covers a group of methods, due to which a real object is described as a set of interacting components. In this case, the general tasks of system researches, as scientists emphasize, are analysis and synthesis of systems. In the process of analysis, the system is separated from the environment, there is determined its composition, structure, functions, integral characteristics, as well as system-forming factors and interconnections with the environment. The synthesis process creates a model of the real system, raises the level of abstract description of the system, and determines the completeness of its composition and structures, description basis, regularities of dynamics and behaviour. The systems theory is applied to a

multitude of objects, the study of individual objects and their components, as well as the properties or integral characteristics of objects (Shlonska).

In such a way, at the current stage, we have already found a system-forming property that defines the functional purpose of public service as a system. To conduct a proper analysis, we also should, as follows from the above, determine the structure of public service and specify its functions. In turn, in order to determine the structure of public service, first, we will turn to its concept.

The legal doctrine has developed two main approaches to the disclosure of the nature of public service: institutional and functional. In accordance with the institutional approach, public service is determined by the specifics of the legal status of entities that carry out activities in a specific area and is considered broadly and narrowly. Public service in the broad sense can be carried out by employees of all organizations of the public sector: public authorities (not only executive but also legislative and judicial); state enterprises and institutions; local self-government bodies; public utilities and institutions. That is, the concept of public service includes the activities of employees of all institutions that perform public tasks including the activities of state or municipal doctors, teachers, etc. Public service is considered in the narrow sense in the institutional dimension as an activity, primarily, of employees of the bodies of state executive power and executive bodies of local self-government (Tymoshchuk, Shkolyk (ed.), 2007).

The institutional approach is clearly monitored in the definition of public service consolidated in the Code of Administrative Legal Proceedings of Ukraine: "Public service is an activity in state political positions, professional activity of judges, prosecutors, military service, alternative (non-military) service, diplomatic service, another civil service, service in the ARC authorities, local self-government bodies" (The Verkhovna Rada, 2005). At the same time, the legislator totally ignores the key feature of public service – its functional purpose.

4. The functional aspect of public service

As we have been defined above, the function for the existence of a system is a key feature that ensures the unity and interrelation of its parts, for this very reason, it is more appropriate to turn to the functional aspect of public service. From this point of view, public service involves activities of many institutions as the tasks of public administration in many countries are performed not only by the bodies and organizations of public (government and municipal) sector but also delegated by public organizations and even by private entities. That is, it is about the extension of the circle of subjects involved in the implementation of public functions

and about the determination of boundaries of public service through the implementation of public tasks (Tymoshchuk, Shkolyk (ed.), 2007).

Popova O.V. formulated an appropriate, from the standpoint of the functional approach, author's definition of a public service: "Public service should be defined as the realization of power by the people through the fulfilment of tasks and functions of the state, aimed at ensuring public interests by persons on a permanent professional paid basis at the expense of budgetary funds in executive bodies, the apparatus of all branches of government, local self-government bodies on the basis of administrative-legal act of appointment to a post" (Popova, 2011). Based on this definition, it is possible to identify the key determinant of public service immediately that lies in its purpose, – "the realization of power by the people through the fulfilment of tasks and functions of the state, aimed at ensuring public interests by persons ..." and only then the author refers to the specific features of such subjects, however, as the above definition illustrates, the first and decisive thing is to outline the purpose of public service.

Consequently, many definitions of public service, developed for today by domestic scholars of administrative issues, can be divided into two groups depending on whether its nature is determined by the nature of activities of entities or the specific legal status of such. After all, the determination of an object (phenomenon, process) means to define a list of features, typical of the genus or species, to which it belongs, and particular or several ones, which allow delimiting the determined object (phenomenon, process) from close or similar to it. From this perspective, the key distinction of public service is absolutely its purpose, which is specified in its functions. That is why we consider the functional approach allows discovering its nature more complete.

On the basis of the analysis, we can conclude that public service is considered as a professional activity of subjects with a specific legal status, which allows solving the tasks facing public servants in order to achieve the ultimate goal of satisfaction of the public interest. However, activity is not the only component of public service as a phenomenon, which is a system itself.

5. Application of systems theory in the adaptation of national legislation to the EU legislation

In turn, adaptation, from the point of view of systems theory, is the process of adjustment of a system to the environment without losing its identity. Adaptation has a number of dimensions: social, political, state-management. Adaptation in public administration is related to the adjustment to the environment of subjects, institutes, methods, and technologies of public administration (Don V.A. (ed.), 2006).

In such a manner, the application of systems theory in the adaptation of national legislation to the EU legislation requires that it will be done during determining the legal status of all entities (both public and private) without exception, by defining the order of their activities (taking into account all directions of activity of its subjects without exception) and on the basis of conceptual foundations defining the purpose of public service. Consequently, the application of systems theory during the implementation of national legislation adaptation to the EU laws in the field of public service implies that it should cover all, without any exceptions, manifestations and forms of legal relations in the field of public service, which are a unified system and not only public service as a professional activity of public servants. In other words, we should discuss legal relations in the field of public service as a complex system that will allow implementing systems theory in the adaptation of national legislation to the EU laws in the field of public service in full measure. The integrative feature of this system, as we have defined above, is its purpose – satisfaction of public interest.

Melnyk R.S. interprets public interests as conscious interests of the whole society or its part (territorial communities, state, etc.), which reflect the economic, social, and law-enforcement needs of the population.

Public interests are not simply a set of individual interests of members of a society or its part. They are a kind of quintessence (combination) of the interests of members of society, that is, they combine only those interests, which are equally important for every member of a society (the interest to breathe clean air, the interest to use safe public transport, the interest of access to urban infrastructure objects, interest to in a safe (non-criminogenic) city, etc.). Under a public interest, it is necessary to recognize such an interest, which is “accessible” for any person on an unconditional basis. The public interest is a relatively sustainable category as the belonging of one or another interest to the category of public interest depends on economic, political, social factors that may vary from time to time (Kolomojets, Kolpakov (ed.), 2014).

Ways and directions of the satisfaction of public interest are reflected in the functions of public service, the detailed consideration of which will enable us to disclose the essence of the system-forming feature of the legal relationship in the field of public service – its functional purpose.

Karpa M.I. carries out a profound analysis of the concept of the post of public service from the position of the functional approach stressing that it is expedient to consider the activity of public authority only taking into account a system nature as its basic characteristic. The author proposes to divide the functions by the forms of activity into: 1) organizational; 2) permissive-regulatory; 3) technologically-enforcement; 4) authoritative; 5) information; 6) control; 7) rulemaking;

8) representative, and others. Karpa M.I. proposes to distinguish such functions by the subjects of implementation: 1) the state service and its officials; 2) local self-government and its officials; 3) state enterprises, institutions and organizations and their officials; 4) other institutions, organizations, enterprises authorized to perform the functions of public service and their officials. According to legal forms of a service career, the researcher defines: 1) law-making; 2) control; 3) organizational; 4) law enforcement functions. Along with this, in the context of the implementation of the main objective functions of the public authorities, Karpa M.I. defines the following: political, economic, social, cultural, environmental, and humanitarian (Karpa, 2013).

Such a multiplicity in the direction of public service and its appointment is conditioned by the multiplicity of participants in the legal relationships in the field of public service and the specifics of their legal status. All these facts allow us to speak about the plurality of varieties of legal relationships that are in the public service.

For example, Bednyi O. proposes to mark the following types of public-service relations: 1) the basic public-service relation, within which a public official performs his official duties as defined by the status of a corresponding public service position, and a public authority creates the proper conditions of service activity for an employee and pay for it; 2) public-service relations connected with the involvement of persons in the public service and their dismissal from the public service; 3) public-service relations related to the assessment of professional knowledge and skills, as well as other characteristics of candidates for posts of public service and civil servants; 4) public-service relations related to the submission and disclosure by applicants for posts of public service and civil servants of information about property, income, expenses, and financial obligations regarding them and their family members; 5) public-service relations related to the conferment of ranks, class ranks, special ranks etc. to public servants; 6) public-service relations related to professional education and advanced training of the level of professional competence of public servants; 7) public-service relations related to the application of disciplinary measures to a public servant; 8) public relations, which are not directly public-service but closely related to their public purpose and content (for example, internal organizational relations in public authorities with regard to the creation (establishment) of posts and the determination of official powers and relations relatively to the consideration and decision in the administrative procedure of public-law disputes on public service matters) (Bednyi, 2016).

Without denying in any way the value of such a scientific approach, it should be emphasized that the above classification reveals the “internal” activity

component of only one category of subjects, public servants, and other institutions belonging to the sector of public relations related to the acceptance of a person to public service, its career and termination, outside of one's interaction with such subjects as a person and a citizen, a territorial community, the nation of Ukraine, whose interests must be satisfied in the process of professional activity of public servants and other institutions that contribute to it.

That is why the application of systems thinking during the implementation of the adaptation of national legislation to the EU laws in the field of public service implies that all components of legal relations in the field of public service should be covered, only under this condition it will be possible to achieve the ultimate goal of professional activity of public servants – realization of public interest.

The structure of legal relations in the field of public service includes all the components, which are typical for any legal relations: 1) a subject or subject body is a group of people involved in legal relations; 2) an object, that is, it provokes appearance and performance of activity of subjects; 3) a content, that is, legal rights, duties, powers, responsibilities of subjects of legal relations, as well as the structure of content – a way of interconnection arising on the basis of legal rights, duties, powers, responsibilities. The structure of the content of legal relations does not form a connection of its content elements (rights, duties, powers, responsibilities) but forms the legal connection that arises on their basis about claiming something. In other words, this is the legal mutual status of subjects, which determines, shapes their behaviour through corresponding to one another rights and obligations for the satisfaction of their interests; 4) a legal fact, which is the basis for the

emergence, change, and termination of legal relations (Skakun).

6. Conclusions

Summarizing our research, we emphasize once again that the key, integrative feature of legal relations in the field of public service is revealed through their functional purpose – the satisfaction of public interest. This very feature allows us to speak about them as a system, rather than a complex of individually existing objects (phenomena, processes), which we have been listed above in the framework of the structure's consideration.

Thus, the application of systems theory during the implementation of national legislation adaptation to the EU laws in the field of public service implies the necessity of coverage by such processes, without exception, of legal relations in the field of public service: all entities without exception (not only public servants and public authorities but also those segment of the population whose public interest is realized in the process of professional activity of public servants and other subjects contributing to it), a proper and profound determination of the legal status of each of them (and not just the legal status of public servants), order, reason, and conditions of interaction within relations that are formed due to the satisfaction of public interest (including professional activity of public servants).

Based on the above, we also consider it quite justified to state that the proper application of systems theory during the implementation of the adaptation of national legislation to the EU one in the field of public service legislation is able quite naturally to lead to the codification of the legal norms regulating the legal relations in the field of public service.

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