

# CONCEPTUAL FUNDAMENTALS FOR REFORMING DOMESTIC LEGISLATION ON LEGAL ENTITIES

Pavlo Liutikov<sup>1</sup>, Mykhailo Vikhliaiev<sup>2</sup>

**Abstract.** The article highlights the need to adopt an integrated program act, which would determine not only scientific and theoretical fundamentals of the institute of legal entities as actors of administrative law but also would stipulate, based on elaborated and unified scientific provisions, the basic vectors of reforming and developing administrative legislation on a legal entity. Through the prism of particular fundamentals of administrative doctrine, the current legislation, and its practical application, the authors propose to introduce a possible option of the structure and the most general and important provisions of the Concept of reforming the domestic administrative law on a legal entity.

**Key words:** legislation, legal capability, concept, legal capacity, subject, legal entity.

**JEL Classification:** K15, K19, K39

## 1. Introduction

Active updating of the domestic legislation, which has taken place in Ukraine over recent years, demonstrates a rapid tendency towards the approximation of domestic principles of legal regulation to the best European standards. Moreover, such reformation processes also cover administrative law regulating the legal status of individuals in the relations with public authorities.

Today, there is a successful and system-related reforming in administrative law of our state that is impossible without the creation of new administrative law doctrine, the main task of which is to ensure the focus of administrative law on the priority of the rights of natural and legal entities, the observance of constitutional principles in all areas of public life without exception and to give up an outdated dogma of Soviet administrative law completely. In this context, V. B. Averianov has repeatedly emphasized that, unfortunately, today the domestic administrative law is oriented, first of all, to meet the needs of the state (Averianov, 2008) that was peculiar to the so-called Soviet period of formation of administrative law.

The modern development and transformation processes of administrative science require fundamentally new approaches to the study of the problems of public administration institutes, the parties of administrative-legal relations, problems of the civil service, different aspects of administrative and judicial procedures for appealing decisions, actions and inactivity of actors of public administration and their officials, etc. aimed at

establishing the principle of rule of law. Such conditions became a prerequisite for reviewing not only the essence of administrative law but also its subject-matter and method. Thus, it had an effect not only on the system of subjects of administrative law which tends to increase the number of its elements but also on the principles and approaches of scientific research of the problem under consideration. For this reason, it is beyond argument that the issue of the analysis of the legal status of subjects of administrative law, including reconsideration of their role and significance in the modern realities and in the nearest future, come to the force.

In different historical periods of formation and development of administrative law doctrine, the problems of the parties of administrative law caught the attention of many scholar lawyers. In particular, the issues were studied by V. B. Averianov, O. M. Bandurka, V. M. Bevzenko, Yu. P. Bytiak, N. V. Halitsyna, V. M. Harashchuk, I. P. Holosnichenko, S. T. Honcharuk, V. M. Horshenev, I. S. Hrytsenko, Ye. V. Dodin, Yu. A. Dorokhina, O. F. Yevtykhiiev, A. I. Yelistratov, O. T. Zyma, D. M. Lukianets, O. Ie. Lunov, V. L. Kobalevskyi, L. V. Koval, T. O. Kolomoiets, V. K. Kolpakov, A. T. Komziuk, M. V. Kostiv, O. V. Kuzmenko, T. O. Matselyk, R. S. Melnyk, A. V. Pasichnyk, I. I. Slubskyi, Yu. O. Tykhomyrov, O. M. Yakuba, Ts. A. Yampolska and others.

As a rule, the scientific search of the above scholars covered certain subjects, their groups,

*Corresponding author:*

<sup>1</sup> Zaporizhzhia National University, Ukraine.

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

<sup>2</sup> Publishing House "Helvetica", Ukraine.

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

general characteristics of the whole set of subjects of administrative law, etc. However, unfortunately, only individual papers paid sufficient attention to the problems related to the participation of legal entities or their particular types on one or other administrative-legal relations (for example, papers of N. V. Halitsyna (Halitsyna, Kolomoiets, 2011), E. E. Dodina (Dodina, 2002), Yu. A. Dorokhina (Dorokhina, Kolomoiets, Lukashevych, 2011), I. H. Petrova (Petrova, 2014), O. L. Zhyltsov (Zhyltsov, 2006), O. T. Zyma (Zyma, 2001), D. M. Lukianets (Lukianets, 2006; 2007), T. O. Kolomoiets (Kolomoiets, 2004), M. V. Kostiv (Kostiv, 2005), A. V. Pasichnyk (Pasichnyk, 2012), I. I. Slubskiy (Slubskiy, 2008), I. O. Fedotova (Fedotova, 2012), V. A. Kryzhanovska (Kryzhanovska, 2016) et al.) but the issues of administrative-legal status of legal entities and their place in the general system of subjects of administrative law have not been studied thoroughly. Due to this fact, it is worth mentioning the lack of generally accepted or even unified approaches to covering the mentioned range of problems.

The article is devoted to the solution of the following main tasks.

1. To emphasize the relevance of scientific research of the problems under consideration.

2. To formulate the conceptual principles for reforming domestic administrative legislation.

Taking into account the above, as well as the practice of law enforcement, one can argue that there is a need to adopt an integrated program act, which would determine not only scientific and theoretical fundamentals of the institute of legal entities as actors of administrative law but also would stipulate, based on elaborated and unified scientific provisions, the basic vectors of reforming and developing administrative legislation on a legal entity, such as more general program documents including the Concept of Administrative Reform (the President of Ukraine, 1999) or the Concept of Administrative Law Reform (the Verkhovna Rada of Ukraine, 2000), etc. In our opinion, it would be logical, in the context of the development of the general Concept of Administrative Law Reform, to elaborate and consolidate a corresponding umbrella document at the regulatory level, which would determine not only scientific and theoretical foundation of the institute of legal entities as subjects of administrative law but also would stipulate specific ways for reforming legislation in this area by applying developed and unified scientific approaches. The proposed title of such a document is the Concept of reforming the domestic administrative legislation on a legal entity.

On the basis of certain principles of the administrative law doctrine, the current legislation and practice of its application, we are going to propose a possible option of the structure and most general and important provisions of the Concept of reforming the domestic administrative law on the legal entity. In addition, the structure of such a Concept may look in the following way.

## **2. General provisions on a legal entity as a subject of law**

Within this section, it is necessary to outline and cover the content of the general features and the concept of a legal entity as a subject of law in general that allows us to identify the position of a legal entity in the system of subjects of law. In particular, we propose to define a legal entity as a subject of law in the following way: it is a subject of legal relations, which has a corresponding organizational and legal form (enterprise, institution, organization, unit, etc.) of any form of ownership created and registered in accordance with the procedure established by law, possesses the necessary volume of legal capacity and capability (including passive dispositive capacity), enters into a legal relationship on its own behalf, has a sufficient degree of solitary property for participation in the legal relationship, may be the plaintiff and defendant before the court.

## **3. General provisions on a legal entity as a subject of administrative law**

Within this section, it is essential to consolidate and define the essence of features and concept of a legal entity as a subject of administrative law. In particular, we can mark alternative characteristics of the subjects: legal procedure for the establishment and state registration of legal entities; administrative legal capacity and administrative legal capability as characteristics of administrative personality of a legal entity; the participation of legal entities in administrative legal relations is usually mediated by the realization of public interest, in particular, by its protection, provision, etc.; the ability of a legal entity to be a plaintiff and defendant in an administrative court (administrative procedural legal personality); organizational unity of a legal entity; business legal structure.

The Concept also should stipulate a unified origin moment of administrative legal capacity for all subjects of such a form of incorporation – the moment of their official registration (entering relevant data into the Unified State Register of Legal Entities and Individual Entrepreneurs) legally specifying the provision that all actions committed by persons prior to the state registration of a legal entity are committed on behalf of certain subject of legal relations (shareholders, founders, participants, etc.), which at that time act on their own behalf or on behalf of a group of such entities but not on behalf of the legal entity which has not yet been created. Moreover, the Concept should provide that administrative legal capacity originates along with administrative legal capability – at the moment of registration of a legal entity, and their range depends on some factors and conditions. It seems fundamental since, in our opinion, administrative legal capacity and administrative legal capability are dynamic, varying terms (for example, the scope of the administrative personality of a legal entity depends on the availability or

receipt of licenses, permits, etc.). In addition, the scope of administrative legal capacity and the system of the so-called opportunities to exercise rights and obligations (administrative legal capacity) also depends on a number of other factors and conditions external (caused by legal requirements and provisions) and internal (conditioned by the norms of constituent documents of a legal entity) nature – the purpose, tasks, functions, internal structure, and composition of the entity, the procedure and way of its establishment, reorganization and liquidation, forms and methods of activity, form of ownership and funding sources, etc. Therefore, the conclusion that legal capacity is stable and the legal capability is a dynamic feature of legal personality is not really logical as it is stated in a large number of scholarly papers (for example, theses of Yu. M. Kozlov (Kozlov, 1999), T. O. Matselyk (Matselyk, 2011) and other scholars).

It should be noted that the above general principles of the administrative and legal status of legal entities should be the basis for considering the legal entities as subjects of administrative law and determine the vectors for the formation of legislation in this area.

#### **4. Special aspects of the implementation of the administrative-legal status of legal entities in public administration**

Under the framework of Section III, it seems logical to determine the peculiarities of participation of legal entities and their kind in relevant administrative legal relations arising in public administration, in particular: while exercising the state and local self-government powers, state registration, licensing, monitoring, and attestation procedures. In addition, it is necessary to determine the general aspects of the administrative and legal status of public administration bodies with an emphasis on their operating and service orientation when providing various administrative services (including in the process of registration, permitting, monitoring, attestation procedures), administrative-legal status of private legal entities, limits of the exercise of their rights and obligations (powers), increase of non-mandatory principles in forming and developing public relations, etc.

Among specific proposals to the current legislation, the Concept may include the need to fix, at the legislative level, the administrative-legal status of the Cabinet of Ministers of Ukraine, Executive Office of the President of Ukraine, and the Verkhovna Rada of Ukraine with their indication as the legal entities according to the form of incorporation that is not available in the modern legislation of Ukraine today. In terms of legislation, it is also essential to consolidate a norm concerning the fact that administrative legal capacity and administrative legal capability of central executive bodies take place simultaneously because their origin is not always in step today.

Within the section, the Concept has to centre around administrative contract as a special form for establishing horizontal links between legal entities in public administration, the institute of which, unfortunately, has not yet been sufficiently regulated in terms of legislation. In particular, in this regard, the Concept has to propose the idea that the institute of administrative contract with its legal definition, principles of the implementation of its provisions, clear and unified procedures for its conclusion, modification and break is subjected to consolidation within the framework of the future Administrative-Procedural Code – in its separate section. The very approach seems the most logical and reasonable and can simplify the practice of concluding administrative contracts in public administration.

#### **5. Special aspects of the implementation of the administrative and legal status of legal entities in respect of the application of the measures of administrative enforcement and administrative liability**

In this section, the Concept has to fix the general issues concerning the participation of legal entities the sphere of legal relations under consideration. Moreover, within Section IV, the Concept has not only to specify characteristics of administrative-legal status of legal entities and its implementation but also to identify the fundamentals for unification of the measures of administrative enforcement, which can be applied by authorised subjects, as well as to define in a clear way the very system of jurisdictional bodies endowed with the authority to use such measures of influence. At the same time, the Concept has to provide the peculiarities of the implementation of the administrative and legal status of both jurisdictional bodies and legal entities, which are subjected to the measures of administrative enforcement, including subjects of an administrative misdemeanour, and consequently, to propose concrete ways of reforming the institute.

In particular, in the content of the Concept, it is important to consolidate the unified principles of administrative liability of legal entities with a clear definition of the guilt of a legal entity, penalties that can be applied to such entity, the system of jurisdictional bodies, which will be authorized to consider cases of administrative misdemeanours committed by a legal entity and to adjust these provisions to the normative legal acts establishing the administrative and legal status of the bodies of public administration, including their powers to impose an administrative penalties.

#### **6. Conclusions**

It is essential to mark that in this case we offer only an alternative model of the structure of such a Concept and present it for discussion and consideration of its content. As it has been mentioned, the purpose of the

Concept is to unify both doctrinal and legal provisions on a legal entity that makes it possible to reform the domestic administrative legislation on a legal entity systematically and gradually by virtue of the so-called clearly written “roadmap”. Reforms provided by the Concept must be implemented consistently and in

compliance with the deadlines for the implementation of a specific measure. Indeed, as rightly pointed out by legal scholars and experts in the theory of rulemaking, a solid reform of the law will be real and effective only if it is conducted solely on the basis of the developed and statutory concept of the implementation of reforming.

## References:

- Averianov, V. B. (2008). *Pryntsyp verkhovenstva prava u diialnosti derzhavy ta v administratyvnomu pravi* [Principle of the rule of law in government activities and administrative law]. Kyiv: Konus-Yu. (in Ukrainian)
- Halitsyna, N. V., Kolomoiets, T. O. (2011). *Administratyvno-pravove rehuliuвання poriadku stvorennia i diialnosti tovarystv z obmezhenoiu vidpovidalnistiu v Ukraini: monohrafiia* [Administrative-legal regulation of the procedure for establishing and activities of limited liability companies in Ukraine: a monograph]. Zaporizhzhia: Zaporizhyya National University. (in Ukrainian)
- Dodina, Ye. Ie. (2002). *Administratyvno-pravovyi status hromadskykh orhanizatsii v Ukraini* [Administrative-legal status of non-governmental organisations in Ukraine] (PhD Thesis), Odesa. (in Ukrainian)
- Dorokhina, Yu. A., Kolomoiets, T. O., Lukashevych, V. H. (2011). *Zabezpechennia prav yurydychnykh osib v administratyvnykh provadzhenniakh: monohrafiia* [Provision of the rights of legal persons in administrative proceedings: a monograph]. Kyiv: Istyna. (in Ukrainian)
- Petrova, I. H. (2014). *Administratyvna vidpovidalnist yurydychnykh osib u sferi okhorony ta vykorystannia pryrodnykh resursiv* [Administrative liability of legal persons in the sphere of protection and use of natural resources] (PhD Thesis), Kyiv.
- Zhylytsov, O. L. (2006). *Administratyvna vidpovidalnist yurydychnykh osib: protsesualno-pravovyi aspekt* [Administrative liability of legal persons: procedural-legal aspect] (PhD Thesis), Zaporizhzhia. (in Ukrainian)
- Lukianets, D. M. (2006). *Administratyvno-deliktni vidnosyny v Ukraini: teoriia ta praktyka pravovoho rehuliuвання: monohrafiia* [Administrative-tort relations in Ukraine: theory and practice of legal regulation: a monograph]. Sumy: VTD «Universytetska knyha». (in Ukrainian)
- Lukianets, D. M. (2007). *Rozvytok instytutu administratyvnoi vidpovidalnosti : kontseptualni zasady ta problemy pravorealizatsii* [Development of the institute of administrative liability: conceptual fundamentals and enforcement challenges] (PhD Thesis), Kyiv. (in Ukrainian)
- Zyma, O. T. (2001). *Administratyvna vidpovidalnist yurydychnykh osib* [Administrative liability of legal persons] (PhD Thesis), Kharkiv. (in Ukrainian)
- Kolomoiets, T. O. (2004). *Administratyvnyi prymus u publicnomu pravi Ukrainy: teoriia, dosvid ta praktyka realizatsii: monohrafiia* [Administrative coercion in public law of Ukraine: theory, experience and implementation practice]. Zaporizhzhia: Polihraf. (in Ukrainian)
- Kostiv, M. V. (2005). *Administratyvna pravosubiektnist yurydychnykh osib ta osoblyvosti yii realizatsii v administratyvno-deliktnykh vidnosynakh* [Administrative identity of legal persons and special aspects of its implementation in administrative-tort relations] (PhD Thesis), Kyiv. (in Ukrainian)
- Pasichnyk, A. V. (2012). *Pravovi zasady nabuttia i pryypynennia administratyvnoi pravosubiektnosti yurydychnymy osobamy pryvatnoho prava* [Legal fundamentals for acquisition and termination of administrative legal identity by legal persons of private law] (PhD Thesis), Kyiv. (in Ukrainian)
- Slubskiy, I. I. (2008). *Administratyvna vidpovidalnist yurydychnykh osib* [Administrative liability of legal persons] (PhD Thesis), Kyiv. (in Ukrainian)
- Fedotova, I. O. (2012). *Yurydychni osoby yak subiekty mytnykh pravovidnosyn* [Legal persons as subjects of customs legal relations]. *Mytna sprava*, 2(80), 9–14. (in Ukrainian)
- Kryzhanovska, V. A. (2016). *Administratyvna vidpovidalnist v administratyvnomu pravi Ukrainy* [Administrative liability in administrative law of Ukraine] (PhD Thesis), Lviv. (in Ukrainian)
- State Statistics Service of Ukraine. *Kilkist subiektiv YeDRPOU za pravovym statusom* [Number of subjects of USREOU with the legal status]. Retrieved from: <http://www.ukrstat.gov.ua/>
- The President of Ukraine (1999). *Kontseptsiiia administratyvnoi reformy v Ukraini: Ukaz Prezydenta Ukrainy vid 22 lypnia 1998 roku* [Concept of Administrative Reform in Ukraine: the Decree of the President of Ukraine as of July 22, 1998]. *Ofitsiinyi visnyk Ukrainy*, 21, 32. (in Ukrainian)
- The Verkhovna Rada of Ukraine (2000). *Proekt Postanovy pro Kontseptsiiu reformy administratyvnoho prava Ukrainy vid 11 veresnia 2000 roku* [Draft Decision on the Concept of Reform of Administrative Law in Ukraine as of September 11, 2000]. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb\\_n/webproc4\\_2?skl=4&pf3516=6054](http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_2?skl=4&pf3516=6054)
- Kozlov, Yu. M. (1999). *Admynstratyvnoe pravo: uchebnyk* [Administrative law: a textbook]. Moscow: Yuryst. (in Russian)
- Matselyk, T. O. (2011). *Administratyvna pravosubiektnist yak ontolohichna zdattnist osoby buty subiektom administratyvnoho prava* [Administrative legal identity as an ontological human capability to be a subject of administrative law]. *Naukovyi visnyk Chernivetskoho universytetu. Pravoznavstvo*, 597, 90–94. (in Ukrainian)