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Melnyk Ya.Ya.,
Candidate of Juridical Sciences, Doctoral Student,
Legislation Institute of the Verkhovna Rada of Ukraine

Savenkova V.H.,
Master of Laws,
Lecturer at Department of Legal Science,
PHEI «Financial and Legal College»
Graduate of Postgraduate Studies,
Department of Financial Law, Faculty of Law,
Taras Shevchenko National University of Kyiv,
Kyiv

THE ANTHROPOLOGICAL DIMENSION OF ADMINISTRATIVE LAW AND JUSTICE AS A SECURITY CONCEPT OF THEIR DEVELOPMENT

Summary

The article considers issues related to the doctrinal analysis of the development of the science of administrative law and procedure, court practice. Based on the conducted analysis of the state of doctrinal works and court practice, it is concluded that the situation is anthropological-crisis. It is proved that in order to overcome crisis state in administrative law and court practice, anthropological approach and its tools should be used in doctrinal studies. It is due to this that it becomes possible not only to find out the real causes of conflicts and collisions in the law and identify

the causes of violations of rights, freedoms, and interests but also to develop an appropriate methodology to overcome the problems in the law. At the same time, it is an anthropological approach that allows evaluating the real state of the problem, and in combination with security aspect – determining and forecasting (predicting) vulnerable states of administrative law and justice. Finally, the authors conclude that the study of administrative law and procedure with the anthropology of law in modern conditions is not only possible but also overarching and necessary.

Introduction

Analysis of new laws, which have got its expression in connection with the modernization of administrative law and administrative justice by virtue of the Agreements aimed at bringing the legislation of Ukraine closer to the EU legislation, requires a balanced, coherent, and detailed approach.

In such a way, there is a clear need for a scientific explanation of the real state of administrative law and justice. However, not all the doctrinal and sectoral tools in modern conditions are acceptable for answering such important questions for evaluation and analysis as: finding out the origins, achievements, and prospects of the development of administrative law and justice.

The qualitative and full-fledged provision of the result in terms of clarifying the state of administrative law and justice becomes possible due to the use of such a universal methodological and legal tool that, by its doctrinal characteristics, would be able to identify the actual problems of administrative law and justice, as well as the possibility of their qualitative elimination.

Scientists in the field of administrative law noted that the administrative science at the doctrinal level faces a question of profound rethinking of both the subject-matter of administrative law and its connection with international standards. And what seems interesting in the development trend, today there is not only the expansion of administrative and legal regulation but also the transformation of methods used in the field of administrative law. For example, an attention is paid to «dualism» of administrative law that is traditionally noted by scientists in the field of administrative law. Indeed, today, without adequate legislative regulation, it may prove to be a significant barrier to effective administrative activity [27, p. 243].

In addition to this, more attention should be paid to the methodological concepts and developments under the prism of general theoretical jurisprudence.

So, Yu. M. Obotrotov, to the concept of the general theoretical jurisprudence as a science on the brink of a fleeting world of the contemporary postmodern age, quite rightly notes that today the theoretical jurisprudence also constantly replenishes its categorical framework and tools. Indeed, it more often than all legal sciences uses the principle of legalization to include research in other fields of human knowledge in its research area. Therefore, along with hermeneutics and synergetics, the scientist finds place and anthropology and its legalization [26, p. 202].

In such circumstances, the position of O. L. Kopylenko and O. V. Zaichuk is quite justified, who accurately point out that indeed, modern research should be based on understanding the issues of the formation and development of scientific views on lawmaking. This is related to the fact that only on the basis of a retrospective analysis in the context of the evolution of legal scientific thought, it is possible to determine

the initial idea of this legal phenomenon, its genesis, study the peculiarities of its development, reveal the essence of the phenomenon, and substantiate the theoretical and methodological potential [26, p. 798]. However, sharing their opinion, it becomes obviously necessary to carry out such a retrospective analysis not only in the context of lawmaking. It becomes possible and methodologically the only correct way and in any other modern variation (including in relation to administrative law and justice), the formation of this or that sectoral concept on the way to overcome modern globalization, transformation, adaptation, and unifying challenges.

Therefore, the introduction of certain foundations (principles) by virtue of the abovementioned circumstances is important. In particular, V. V. Zavalniuk rightly comes to the conclusion on this issue that in many concepts of the world countries the principles of decent living, freedom, equality of rights are fixed based on the anthropological principle of law. The scholar also advocates the position that the principle is clearly manifested in such theoretical and legal directions as neopositivism, the theory of restored natural law, Neo-Kantianism, the intersubjective direction, the phenomenological-hermeneutic philosophy of law [12, p. 27].

A. P. Kravchenko finds that the anthropological principle actually determines the realization of law in the full sense and promotes the humanization of the existing law and order [15, p. 5]. Yu.Yu. Shturtsev notes that the development of the anthropology of law leads to the need to analyse the empirical and theoretical state of this scientific discipline. Determination of the ratio of empirical and theoretical in law anthropology will allow more objectively assessing the significance and identifying the features of this discipline, the nature of the conclusions derived therefrom [37, p. 196].

Developing the anthropological foundations of law, it is appropriate to point out the opinion of S. I. Maksymov that the connection of law with anthropological foundations, due to its multifunctionality, manifests itself in different ways. Where, according to the scholar, the law belongs to social institutions, then the rule of law is a compensator for the lack of instinct-based orientation, that is, the absence of a complete and frozen behavioural program; and also adds that sometimes the law... serves *to curb aggressive impulses and primitive instincts*. That is, in this case, it is no longer a compensator of insufficiency, but a limiter of the excessiveness of some instincts (italics added – *Ya. M.*) [17, p. 152].

The thesis by S. I. Maksymov also becomes relevant that the analysis of anthropological foundations of law allows us to see that at the present stage of development of society, possibilities of technological interference in human nature can reach the same *level of danger* as interference in the natural environment, that is, can *threaten the existence of mankind or the way of human existence that has emerged* (italics added – *Ya. M.*). … If the classical (Kantian) anthropology came from the maxim: «the proper assumes the possible» (that is, the proper is limited by the possible), then modern anthropology – from the fact that we should not do all that we can (that is, the possible should be limited by the proper) [17, p. 154].

It also seems obvious that the use of such a sphere of human knowledge as the anthropology of law and the legal instruments (methods, principles, conditions, etc.) in it predetermine the genesis of the scientific potential, which is characterized by the elucidation of the sequence of origin of one or another problem in law from the beginning (the state of its manifestation) to the end (the state of its origin) and vice

versa.[*] After all, it is functionally endowed with the ability not only of critical analysis (separation) and synthesis (connection), analytical (logical analysis of terms) and synthetic (beyond logical considerations – imperial experience) judgments but essentially – the ability to hold *a particular problem under doctrinal control*.

So it seems that the achievement of this result will be possible due to the very anthropological approach, or rather the study of administrative law and justice under the prism of one of the facets of legal anthropology. Therefore, it is in this way that it will be possible to assess the real state and predict the prospects of the law-enforcement process, the movement of legal matter, to find out «possibility» and «reality» in the current legislation, and in fact all of this is subject to administrative law and legal proceedings in the turbulence of globalization and transformation processes of law, its matters, properties, and functions.

The anthropological approach in law as a basic concept of identification of reasons of doctrinal problems of administrative law and justice

In the legal encyclopaedia, legal anthropology is explained by the fact that it is defined namely as a sphere of legal knowledge and a system of theoretical approaches aimed at highlighting human relations with *legal reality*. The thesis is also supplemented there that legal anthropology studies not only systems and approaches to various cultures and societies but also those oriented to the aspect of *the arrangement of conflicts among people and provision of social control* [39, p. 34].

Thus, «legal reality» and «conflict resolution» constitute the anthropological dimension of administrative law and justice and, therefore, the research should proceed through the prism of at least the identification, assessment and, if possible, recommendations to overcome (eliminate) the conflict (legal (juridical), procedural, and actually doctrinal).

Analysing the state of development of the doctrine of administrative law and procedure, it should be pointed out that its development indicates a certain imbalance and domination over other sectoral developments. Actually, doctrinal developments lack the close connection with the general theoretical jurisprudence.

In confirmation of this, worthy attention is the work by O. L. Kopylenko and O. V. Zaichuk that one of the indicators of the development of legal science is the defence of thesis works. Monitoring of indicators of defended theses for obtaining a scientific degree of a doctor and a candidate of sciences makes it possible to draw certain conclusions regarding the growth of the indicators of defended theses. For example, in the specialty 12.00.07 («Administrative Law and Process, Financial Law, Information Law»), «... *(a)* for the degree of Candidate of Legal Sciences – 1421 works (85.68% of the total number of defended theses); *(b)* for the degree of Doctor of Legal Sciences – 113 works (27.43% of the total number of defended theses).» Therefore, in the specialty 12.00.07, there is the largest number of defended theses for 2000–2012 [26, p. 777, 775, 776]. However, in the following years, the

[*]*Note*: Anthropology – the science of the origin of human, the origin of races, the formation of its physical structure, in general, it explains the human nature. It is believed that its founder was J. Rousseau. He considered the problems between nature and civilization. His statement: «The whole earth is covered with nations of which we know only the names, and yet we pretend to judge mankind!» *See*: [2, p. 28]. Here, from a legal point of view, in order to realize the complexity of legal reality and law, it is appropriate to add a thesis by E. Spektorskyi «…It seems to lawyers that they know with what reality they are dealing, only until they are asked about it…» *See*: [10, p. 5].

situation has not changed, so (a) in 2013, most of the topics were approved by the specialty 12.00.07, namely – 318 topics (20.8% of the total number of topics). The least of them was approved by the specialty 12.00.12 – Philosophy of Law – 24 topics (1.6% of the total number of topics) [29, p. 4]; (b) in 2015, most of the topics were approved by the specialty 12.00.07 – 252 topics (20.61% of the total number of topics) [30, p. 4]; etc.

Eventually, from 2012 to 2017 the situation is almost unchanged. In particular, the biggest number of topics were approved by the specialty 12.00.07 – 252 topics (20.79% of the total number of topics) and 12.00.09 (Criminal Process and Criminalistics; Forensic Examination; Operational and Search Activities) – 203 topics (16.75% of the total number of topics) [16].

Proceeding from this, it is probably necessary to think a little about the status of the transitional period in the country (as *«transitional justice»*). Today, it really reflects the transition from a democratic to a totalitarian, police state, or vice versa?

Because, given the presented statistical data, scientific interest in the jurisprudence is not obviously concentrated (focused) on «philosophy of law» or «civil law, labour law, social security law» but is evidently covered by administrative aspect (administration from lat. «administratio» – management, control [38, p. 59]).

Given the above, it is also appropriate to follow the opinion of O. L. Kolylenko and O. V. Zaichuk who significantly draw attention to the fact that the analysis of author's abstracts (their total volume for all branches of law), on the contrary, indicates that the choice of thesis research areas does not fully reflect the needs of modern theoretical and legal development of new theories, concepts of state and law development that would correspond to modern realities [26, p. 781].

At the same time, despite such an opinion, one cannot but point out that in general theoretical jurisprudence (the theory of law and state), nevertheless, there are new approaches to solving the pressing issues of the theory of law. In particular, attention to the anthropological approach increases. Among researchers whose scientific developments are one way or another aimed at identifying and overcoming problems in law, it is possible to distinguish the scientific works of various legal schools, as well as approaches to anthropological problems.

In particular, one cannot but mentions the creative contribution of V. V. Zavalniuk («Principle of the anthropology of law in theoretical and legal studies of the present» (scientific article), 2012, Odesa; and others), S.I. Maksymov («Anthropological fundamentals of law» (scientific article), 2012, Kharkiv; etc.), O. L. Kopylenko and O. V. Zaichuk («Relevant theoretical issues of legal science» (a part of the chapter of the scientific publication), 2013, Kyiv), N.I. Satokhina («Understanding in the exercise of right: hermeneutic approach» (Ph.D. thesis), 2010, Kharkiv), Yu. Yu. Shturtsev («Anthropology of law as a form of scientific activities» (scientific article), 2006–2007), Ye. Bulyhin («To the problem of objectivity of law» (Argentina), scientific article, 2005), Barak Aharon («Judicial Discretion» (USA), monograph, 1991) etc.

In addition, it is entirely justified to draw attention to one of the works already carried out on the issues of legal proceedings in the context of general theoretical jurisprudence, the latest scientific paper by S. V. Shevchuk («Ensuring the unity of judicial practice in terms of the existence of specialized jurisprudence», a part of the

chapter of the scientific publication, 2013, Kyiv); as well as the works of Ye. H. Lukianova («Theory of procedural law» (monograph, RF), 2003. For example, the work of S. V. Shevchuk is characterized by problematic issues focused on overcoming dichotomy in law enforcement practice, the need for developing common approaches, and accentuation of attention on relevant instruments; and the scientific work of Ye. H. Lukianova significantly relates to the theoretical basic tools of procedural law.

Separately one should highlight the creative work of V. S. Bihun, which was conducted in the field of the philosophy of justice («Philosophy of justice: idea and implementation» (monograph), 2011). The scientific work is characterized as the first domestic attempt to understand the problems of justice from a philosophical and legal point of view. At the same time, it should be noted that the researcher, while considering the anthropological aspect of justice, focuses primarily on issues of justice and the rule of law, which are extremely important since they determine the positive point of reference for the meaning of justice. However, there are no issues that would be associated with the other side of the legal reality – the reverse derivative (additional), faces of anthropology of law on «conflict resolution», their state, complications in the administration of justice, or the characteristics of ways to overcome them [5, p. 36-41, 86].

The same can be said with respect to other researchers in legal anthropology. After all, they consider the problems of law somewhat «externally», creating the illusion of «flowing round» of real problems and, therefore, their overcoming. It seems to be primarily associated with the fact that the «conflict states» are not given due consideration and, moreover, in the context of administrative justice. Preferably, researchers seem to «sidestep» these issues. Instead, both in theory and in practice, «problems» and «conflicts» are more than sufficient and manifested.

True, one cannot but point out the thorough and essentially fundamental research in the aspect of the anthropology of the «legal conflict» – scientific work by S. V. Bobrovnyk («Compromise and conflict in law: anthropological and communicative approach» (monograph), 2011). Although the scholar has proved the issue of the decline of legal means of overcoming the legal conflict, it is also grounded that the legal conflicts within positivism from the standpoint of etatism and normativism are after all associated with the knowledge and theory of the process of implementing the rules of law in practice, etc. [6, p. 331, 332]. On the other hand, it is obvious that due to the purpose of the study, the problems that are directly related to administrative legal proceedings in the anthropological dimension and those of this particular area of conflicts and problem as well have not been considered.

A significant influence on the further development of legal anthropology was made by H. V. Nastavna's paper («Anthropological and communicative approach to the study of law: nature, content, functional purpose», PhD thesis, scientific supervisor – S. V. Bobrovnyk, 2018). However, based on the analysis of the research results, unfortunately, the lack of a prism of research should be noted specifically over the problems of procedural conflicts, which is explained by a broad approach to problems in terms of «communications» [25, p. 4-6]. However, to be fair, it should be pointed out that the researcher finds the importance of integrating legal thinking for the application of anthropological and communicative methodological approach to

the knowledge of the law, because this also occupies the appropriate place in the applied aspect [25, p. 9] in relation to administrative justice.

Instead, some works were still carried out at the junction of general theoretical jurisprudence and legal proceedings or administrative legal proceedings. Their quantitative and qualitative nature is rather fragmentary in relation to anthropological meaning. In particular, it is necessary to point out creative contribution at the level of the doctoral thesis by H. P. Tymchenko («Principles of civil and administrative legal proceedings in Ukraine: problems of theory and practice», 2012, defended by 3 specialties).

Rather close to the anthropological dimension of administrative law and proceduralism are scientific studies that were aimed at the security aspect. It is thought that this is related to the fact that when we speak about such a verge of legal matter (its anthropological essence) as «reality» and «overcoming conflicts» then it becomes apparent that the phenomenon of security exists and manifests itself as a certain state of security, predictability, etc., which conceptually cannot be recognized without finding out the nature of the legal conflict and its overcoming, without analysing and assessing the vulnerable state of legal matter in one or another legal area.

In particular, the creative contribution of O. O. Bryhnits «Legal groundwork for Ukraine's financial security» (doctoral thesis, Irpin, 2017) should be mentioned. The researcher finds out that financial security of the state should be considered as «a state, in which the proper functioning of all parties in financial legal relations in the state is ensured, characterized by resistance to any real or potential, external and internal negative influences, and is able to ensure the effective functioning of the national financial system, as well as its sustained development…» [7, p. 6] So, there is the criterion of «resistance to any negative challenges».

When analysing security laws, one cannot but pay attention to *the function of court control* (Article 9 of the Law of Ukraine «On National Security», 2018) where the very phenomenon of «control» determines the state of security. From here it follows that the function of controlling the status of the doctrine of administrative law and justice (including administrative and judicial practice) is an important part of the formation of a qualitative concept of security. The latter cannot be comprehended without the anthropological measure of law, without assessing the state of the anthropological crisis as a real source of searching for real problems in administrative law and justice.

In turn, we (Ya. Melnyk) support the idea that security phenomenon manifests itself rather as a principle (basis) [18, p. 19-28], and also as a regime [19, p. 78-83], as a right (both in the procedural meaning and in the material sense of manifested good) [20, p. 97-107], which determine a special type of legal relations – security legal relations [21, p. 20-25]. Such a regime is characterized by a certain system of security guarantees [22, p. 68-73], factors of complications in legal regulation [23, p. 120-132]. Following this, for example, in the legal proceedings, the position is maintained that a judicial security policy should be developed [24, p. 32–39].

At the same time, on the approaches to the research of the anthropological dimension of administrative law and justice, it is worth listening to O. L. Kopylenko and O. V. Zaichuk stating that *the efficiency criterion* of the methodological basis of research in the field of lawmaking is precisely its applied value, that is, the methods

used should enable not only to identify problems, to reveal their essence, but also to find out the causes of differences, to facilitate the search for solutions to problem issues. And in essence, they can bring results that are *adequate to the modern legal reality* [26, p. 808]. It is «adequacy», in this sense, that is a manifestation of «legal reality». Moreover, as it seems, in agreeing with the position of scientists, it should be added that the anthropological character and the basis (principles), methods, which should be taken into account and used as the basis for those researches aimed at overcoming problems, conflicts, and contradictions in legal consciousness, law enforcement, regulation, etc. can be traced here.

As to the administration of justice in the anthropological section, it is worth noting the following.

So, P. M. Rabinovych notes the importance of the anthropological aspect of the «judicial conflict» that arises precisely in the context of judicial law-making and formation and distinguishes this state as «needs-oriented understanding of the law».

The scholar quite accurately draws attention to the final result of the question of the law on judicial lawmaking in the context of the decisions of the ECHR. He, first of all, asks: «what is right» in the modern period? In his opinion, first of all, one should pay attention to the fact that today one of the most promising ways to find an answer to a given question is to study the practice of the European Court of Human Rights on the application of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms [31, p. 238]. And therefore, on the basis of this, the scholar proposes to recognize the Court as the bearer of *the needs-oriented understanding of law* [31, p. 239]. Also, the scholar comes to the conclusion that with the European understanding of law, the right – objectively determined by biological and social factors concrete and real opportunities to meet the needs (interests) of the subjects of society, fairly balanced with the abilities to meet the needs (interests) of other subjects and the whole society. If one takes into account the decisive conceptual (socio-philosophical) approach, on which the interpretation of the phenomenon of law is based, then such understanding of the law can be considered an *instrumental-need*. And since it is about human needs, then it is fundamentally *anthropological* [31, p. 242].

Quite a significant fact of the expression of anthropological problems is the state of the domestic legal proceedings, which manifests in the statistical data arising from the court practice of the European Court of Human Rights (hereinafter – ECHR).

Thus, O. Ovcharenko, while worrying about the research on transitive justice, points out that the statistics of the ECHR concerning directly appeals of Ukrainians for the protection of their rights is characterized by a steady tendency to increase. After all, year by year, the ECHR issues a growing number of decisions on the merits against Ukraine. For example: in 2002 – 1 decision; in 2003 – 8 decisions; in 2004 – 14 decisions; in 2005 – 120 decisions; in 2010 – 109 decisions; in 2011 – 105 decisions; in 2012 – 71 decisions; and in 2013 – 69 decisions [41; 3, p. 121]. Moreover, with regard to the latter, it should be considered that from 2013 onwards an armed conflict continues in Ukraine.

Indicative of legal proceedings are the data that the investigator points out that the total number of violations of the Convention by Ukraine is 477 – this is exactly the acknowledged by the ECHR violations of the right of a person to a fair trial,

enshrined in paragraph 1, Article 6 of the Convention [41; 3, p. 121]. According to the statistics of the ECHR, violations concern such rights in relation to justice as: exceeding reasonable time limits for consideration of cases by courts, the right to a fair trial in terms of executing a court decision, namely with regard to payment of arrears of wages, pensions, etc. [34; 35; 3, p. 122].

In this regard, let us focus on the following statistical data. In particular, O. Ovcharenko, relying on the data of the judge of the ECHR from Ukraine, Anna Yudkivska, gives the facts of the ECHR, which testify that in 2011–2013, Ukraine made the top five in terms of the number of citizens' complaints. *For example*, in 2012 Ukrainians filed about 10 thousand complaints, in 2013 there were 13284 applications under consideration by the ECHR, representing 13.3% of the total number of applications in the Court (which is almost 100 thousand) [1; 3, p. 122]. There in January 2013, for 211 decisions, the compensation amounted to 1.1 million euros (equivalent to 11.7 million hryvnias), which should be paid from the State Budget [14; 3, p. 122].

Under these circumstances, the legal doctrine states that administrative courts should use as benchmarks the administrative standards and standards of justice defined at the international level. Otherwise, the relevant analytical work will not meet the established requirements and, therefore, the court decision may be revised by the relevant international judicial instances [27, p. 253]. Given the abovementioned statistical data, their consequences are obvious.

From here, one should ask the following questions: Is the issue of legal security, procedural, financial security of Ukraine monitored in such circumstances? Do its financial stability and capacity increase? Of course not. But the option to protect the rights and the development of a law-governed state «without justice» is not acceptable.

It is also evident that the problems with the protection of social rights in Ukraine have a slightly different aspect of manifestation, as situations are not limited to statistical data of cases of human rights' violations in Ukraine and their statement in the ECHR.

For example, from the viewpoint of «financial security» and «security of social rights», Yu.H. Barabash's concern should be given. Thus, considering the issue of the phenomenon of «defenceless rights» against the background of the decisions taken by the Constitutional Court of Ukraine (decisions № 20-рп/2011 of December 26, 2011, and № 3-рп/2012 of January 25, 2012) [32; 33], the scholar notes that in 2010–2011, under the influence of a variety of circumstances, there was a radical change in the doctrinal approaches of the Court on the issue of guaranteeing social rights. In these decisions, the Court firstly preferred the principle of *«financial security»* (more precisely, «the balance of the state budget»), in contrast to the impossibility of revision of the system of guarantees of social rights, *denying* in the latter (rights) the character of absolute (italics added – *Ya. M.*) [4]. By the way, the protection of social rights, which was analysed by Yu.H. Barabash, just concerns the administrative justice. But in addition to this, the analysed Decision deals with not only law-making, law enforcement, or understanding of law, but more systematic detection of problems, problems of different levels of administrative justice and administrative law, constitutionalism, and in fact – different vectors and orientation towards the

stabilization of law and order, etc. Essentially, the existing problems indicate an additional, supposedly two-dimensional world of the law, where the problem of public and private law, substantive and procedural law remains unresolved.

It is no wonder that under similar circumstances S. V. Shevchuk expresses a certain concern.

The scholar sees the systematic nature of problems with participation/or because of judicial law-making during the protection of civil rights by a court.

For example, the scientist-practitioner pays attention to the need to ensure the unity of judicial practice. The unity of judicial practice is defined by him as one of the main values of the legal system, to which all must be incarnated. After all, confidence in «legal future» *forms a state of legal security* (italics added – *Ya. M.*) since, under these conditions, the subjects of the law have the conviction that the judicial system protects people from the state's arbitrariness, in a qualified manner and fairly solves conflicts in the private sphere. Also, as the scholar-practitioner notes, the constant adoption of opposing decisions on similar issues transforms the appeal to a court into a kind of «lottery», undermining confidence in judges and faith in justice, which in turn threatens the foundations of statehood. Therefore, the position of the scholar that the requirements of the principle of legal certainty are not only that the provisions of the laws and regulations are clear and understandable not only to the subjects of law enforcement and all other participants in the legal process, but also are applied equally in similar situations [26, p. 559].

However, in all of the above cases, it should be noted that in essence, in manifested states, threatening facts, it is obviously about a certain process. This process is one way or another connected with the phenomenon of «law-making». And in essence – the process of law-making in a specific sector-legal field (as the theory of law, the theory of administrative law and justice, as well as the security aspect of both the faces and meaning in the above cases).

On this issue, the thought of T. O. Didych should be noted, who, studying the theoretical and methodological foundations of law-making, sees it necessary to allocate certain *«factors»* in such a way. These factors he proposes *to understand* as «…a complex of conditions for the life of society, the content of which is a real relationship between its actors who generate and define the content of the objective necessity of changing their legal regulation, determine the formation of law, identify its content, the process of implementation, effectiveness, as well as the content and nature of law-making acts…»; its sign is procedurality. Moreover, procedurality, as a sign, is given by the researcher in a broad term, namely, the content of which is «…the sequence of law formation determined by the time limits and periodization in separate stages (phases), reflecting the dynamics of the factors of law-making, the sequence of their identification, analysis, understanding, drafting of legal norms, providing them with an appropriate form of consolidation, spread on social relations, and so on…» [11, p. 8]. On the other hand, in our opinion, it is appropriate to specify also the narrower content of the signs of law-making – this is the formation of the law in administrative and judicial practice (administrative justice).

At the same time, such a sign of law-making as «effectiveness», highlighted by T. O. Didych, also deserves attention due to the fact that it manifests itself in «…the ability to form new rules of law, to amend or abrogate existing ones, which is

potentially aimed at achieving the relevant legal result…» [11, p. 9]. Therefore, we believe that it has not only anthropological meaning, but also an axiological deep sense precisely for the development of the administrative and administrative procedural form; it is also important for doctrinal achievements in this area. After all, in essence, the procedure for the defence of thesis research (as a process for the establishment of doctrinal concepts) is in one way or another covered in a large part by the legal regulation of administrative law. In the anthropological sense, «effectiveness» for both science and practice is a condition for overcoming the problem, resolving the crisis, etc., because it is covered by the idea of achieving the foundations of law, the status of legislation, practice, as well as characterize the quality of the very legal matter of administrative law and justice in a broad sense.

Financial security as a concept of the effectiveness of European adaptation processes of law-making in financial law

The essence of systemic reforms taking place in Ukraine today is the affirmation of European values in all spheres of public life.

Section III of the Association Agreement between Ukraine and the EU as of 27.06.2014, specifically Articles 14 and 24, clearly defines the parties' obligations in the security sector, where: *(a)* within the framework of cooperation in the field of justice, freedom, and *security*, the Parties attach particular importance to the establishment of the rule of law and the strengthening of institutions of all levels in the field of general administration and law enforcement and judicial authorities in particular. And cooperation is aimed, in particular, at strengthening the judiciary, increasing its effectiveness, ensuring its independence and impartiality, and fighting corruption. Cooperation in the field of justice, freedom, and security should take place on the basis of the principle of respect for human rights and fundamental freedoms; *(b)* the parties agreed on the further development of *judicial* cooperation in civil and criminal cases, making full use of relevant international and bilateral documents and based on *the principles of legal certainty and the right to a fair trial*.

Thus, Ukraine's integration into the economy of the European Union and the positioning of our country as a worthy competitive producer require the observance of national interests. Ukraine's integration into the EU has important economic benefits for Ukraine, namely: macroeconomic stability, increased productivity of the economy, increased trade volumes between Ukraine and the EU, ensuring the free movement of production factors within the EU, guaranteed protection of workers' and consumers' rights [40, p. 227]. On the basis of this, there is a problem in determining the differences between the need to integrate the Ukrainian economy into the European Union economy and to ensure the protection of the internal market and national security.

The new Law of Ukraine «On National Security» was adopted, according to which «integration of Ukraine into the European political, economic, security, legal space, membership in the European Union and the North Atlantic Treaty Organization, the development of equal, mutually beneficial relations with other states are defined as fundamental national interests of Ukraine [28].

In our opinion, the main criterion for ensuring the national security of the state is the level of development of its economy. The stable level of development of the

state's economy provides a basis for national interests. The issue of financial and economic security is very controversial and relevant, there are several approaches to the interpretation of economic security as an integral part of national security, for example, «...the protection of the vital interests of the individual, society, state in the economic sphere from internal and external threats…» The second approach reveals the essence of economic security as a «state of the economy», that is, economic security is the state of the economy and institutions of power, which guarantees the protection of national interests, the social orientation of politics, and sufficient defence potential even under adverse conditions of the development of internal and external processes. The third approach to determining the essence of economic security interprets economic security as a combination or set of conditions and factors that provide a certain level of economic development of the country. The fourth approach defines economic security as «...the qualitative state of the aggregate of the main factors of social production in conjunction with the state's ability to ensure their effective protection in the national interest and to implement an economic strategy that is adequate to the challenges of its changing economic space in order to achieve a stable, sustainable development and self-improvement of the entire society» [13].

At the present stage of the national state-building process in Ukraine, the need to give a real value to the generally recognized world's democratic values and ideals is growing naturally and systematically. However, building Ukraine as a democratic, social, and law-bound state will be effective and fruitful only if the theoretical provision of relevant state-building and law-making processes and phenomena is properly provided. One of them is the financial security of Ukraine, which plays a special role in the national security system, on the level of which the realization of national interests and the stable development of the state depend. Problems of legal provision of financial security of the state are not completely resolved, as shown by the statistical data of international organizations, where in many world rankings Ukraine occupies the last places [8].

In the scientific literature, there is a variety of approaches to defining the concept of «financial security», its interconnection and interdependence with the concept of national security. Some scholars consider financial security as the basis of the national one, while others represent financial security as the main component of the national security system of the country.

The concept of «financial security of the state» was not properly reflected in jurisprudence, because domestic scholars and practitioners paid only fragmentary attention to it. The studies conducted in this area did not clearly formulate a balanced and consistent approach to the disclosure of the basic components of this problem. The recent events are a direct consequence of the slow realization of the state's own financial and legal interests, while the issue of legal groundwork for its financial security has become a key factor in ensuring Ukraine's existence and its successful confrontation with new threats. The problem of legal support for the financial security of the state arose even at the beginning of the formation of our statehood but has never been as relevant as at present [9].

Summing up the opinions of scholars, one can say that the financial security of the state includes: budget security, debt security, tax security, monetary security,

currency exchange rate security, the financial security of the banking system, investment security, etc.

Scholars propose to consider the financial security of the state in the narrow and broad sense. We are inclined to believe that financial security is best disclosed through a narrow definition, namely, the financial security of the state is a state in which the proper functioning of all subjects of financial legal relations in a state characterized by resistance to any real or potential external and internal negative influences that can ensure the effective functioning of the national financial system, as well as its development.

The legal groundwork for Ukraine's financial security is based on a certain mechanism supported by the system of organizational and legal measures of influence aimed at preventing, minimizing, and eliminating threats to the financial security of our state.

In our opinion, in the modern realities of the development of society, the system of state security plays a key role. The negative processes taking place today in Ukraine determine the urgency of financial security of the state as a key factor in the development of society. And the legal support for financial security is determined through the activities of the state apparatus side by side with society.

To date, the domestic economy has not yet succeeded in creating a national effective economic system that would be able to ensure the progressive development of the state, to strengthen the levers of the country's external and internal policies. However, today it is possible to talk about positive changes in the process of ensuring the financial security of the state. In this context, it should be noted that a thorough analysis of the European experience in shaping and providing the country's economic security undeniably indicates the need to improve domestic legislation and strategic provision of Ukraine's economic security mechanism.

At the same time, there is the adoption of the Law of Ukraine «On the National Bureau of Financial Security of Ukraine» (Draft Law of Ukraine on 19.03.2018, which was recognized as urgent by the President of Ukraine).

The purpose of the draft law is to create the organizational and legal framework for the activities of the National Bureau of Financial Security of Ukraine, the main goal of which is to ensure the financial security of the state by building new risk-oriented methods of criminal analysis of the system of timely detection and elimination of systemic threats in the field of public finances, prevention of their occurrence in the future [28-a].

The new Law proposes to establish the National Bureau of Financial Security of Ukraine as the state law enforcement agency, which on the basis of criminal analysis and risk analysis relies on the elimination of threats to the financial security of the state, including by preventing, detecting, terminating, investigating, and disclosing criminal offenses in the sphere of economic activity that are directly related to its jurisdiction, which directly or indirectly cause damage to public finances and prevent their commission in the future [28-a].

Therefore, it can be stated that the threats to the financial and economic security of Ukraine, unfortunately, have become *permanent* in nature: they provoke the crisis phenomena of the economy, raise issues of proper or inadequate provision of national security, and so on. Therefore, the task of all subjects of state power is to create a

reliable and effective system of blocking and preventing crisis phenomena. At present in Ukraine, the role of issues of ensuring national security is growing; the foundations of civil society and the new law-bound state of the European level are being laid. This is all confirmed by the desire to adopt new laws and regulations that will ensure the financial and economic security of Ukraine of a new level.

Conclusions

Based on the foregoing, we can draw the following conclusions: *(a)* the doctrine of administrative law and procedure requires new approaches and a reassessment of the validity of established approaches; *(b)* the origins of administrative law and procedure in modern conditions should be considered through the prism of the anthropological dimension of law. It is its principles and methodological tools that provide an opportunity to find out the completeness, real state, real causes, conditions, factors, and complications in the legal regulation of administrative legal relations, as well as legal relations that arise in administrative justice; *(c)* the state of financial security depends not only on the development of legal doctrines, or the statutory consolidation of national security, or the sectoral concept of administrative law, financial law, but rather depends on the state of administrative, criminal, and civil procedural legislation, the state of coherence and the ability of domestic courts to apply standards of the European law.

Within the framework of the development prospects, it seems to be noted that only by following the European integration requirements it is possible to develop uniform and stable administrative standards since because of their dual nature one way or another they should be based on fundamental European values.

The doctrine of administrative law and procedure should rather reorient to develop a security concept of the law. This is determined not only by globalization processes but also by the instability in the transition period of law and the state of the system of law itself, by the strengthening of vulnerable states of law and order, etc. Therefore, for this purpose, it is more appropriate to give doctrinal attention to such legal phenomena as a «threat» (the legal facts that create them), «conflicts» in procedural and substantial terms, and so on. Actually – to develop a single universal security concept that would be characterized by clear methodological and doctrinal instruments, which would provide a real opportunity to quickly overcome legal risks or to minimize them. The achievement of this result is impossible without taking into account theoretical (anthropological surveys) and intersectoral (joint) studies, and all in order to go beyond the formalized approach to administrative law and justice.

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