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DOI

TRUTH OF THE NORM OF ADMINISTRATIVE LAW: ESSENCE AND CONTENT OF THE CATEGORY

The aim *is to determine the content and essence of such a property of the norms of administrative law as their truth on the basis of analyzing the opinions of individual legal scholars.*

Methods. *The validity of the theoretical claims, recommendations for further academic research into the topic, the reliability of the results are ensured by the use of a set of philosophical, general and special scientific methods applied in legal research. The dialectical method of scientific knowledge is used as the main general scientific method.*

Results. *It is noted that the truth of the norm of administrative law is a condition for its effectiveness. It is pointed out that the degree of effectiveness of the administrative-legal norm depends on the completeness and accuracy of reflection in it of the material and spiritual social conditions. The more adequately the rules of the administrative law reflect the combination of social and personal interests, the processes of social development, the higher the effectiveness of administrative-legal norms is.*

Taking into consideration the fact that efficiency is the property of the norm of administrative law, which is based on its truth, the author has assumed that the criterion of such truth will be the degree of effectiveness of the legal norm, and indicators will be specific statistical data, confirming or refuting its effectiveness and, respectively, the truth.

The opinion is expressed that the truth of the norms of administrative law, as a an absolutely evaluative category, does not have to imperatively reflect the interests of a particular citizen. This does not mean that in this case the author refuses the principle of the rule of law or interprets it somehow differently than other authoritative scholars. It is suggested when defining the essence of this category to start from identifying if the norm satisfies the needs of social development.

The author has determined the truth of the administrative-legal norm in terms of the initial data, which reveal the social needs at a certain stage of development of society, namely: the level of development of economic and industrial relations, the state of the natural environment and ecology in general, the state of social and political institutions (family, education and science, medicine, judicial and law enforcement systems, public administration system, etc.), the status of an individual in the society and the level of protection of their rights and interests by the state, mentality, consciousness, worldview of the society, etc.

Conclusions. *Based on the results of the analysis performed, the author proposes to understand the truth of the norm of administrative law as its property, which characterizes the degree of compliance of the norm with the needs of social development, the full reflection in it of the public relations, regulated by administrative law.*

Key words: *administrative-legal norm, property, truth, true, demands of social development.*

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1. Introduction

Recently, on the pages of the national academic legal-administrative literature, quite a lot of attention has been paid to the applied aspects of administrative-legal subject-matter. In particular, the public administration or administrative-legal support in one or another sphere of public relations – medicine, education, economy, entrepreneurship, agriculture, customs, administration of taxes and fees, etc. – has become the subject of dissertations. From time to time, the research has been focused on the problems of forms and methods of public administration (especially as regards control and supervision issues).

At the same time, the doctrine of administrative law tries to substantially modernize the theoretical foundations of this public sector (the so-called general part of administrative law), which form its basis. Among the modern scholarly inquiries of such kind (at the level of the theses for obtaining a scientific degree of a Doctor of Laws (Higher Doctorate)) it is especially worthwhile to mention relevant research by R.S. Melnyk "The system of administrative law of Ukraine" (Melnyk, 2010), O.I. Mykolenko "The place of administrative procedural law in the system of legal knowledge and the system of law of Ukraine" (Mykolenko, 2011), T.O. Matselyk "Subjects of administrative law" (Matselyk, 2014), Yu.V. Pyrozhkova "The theory of functions of administrative law" (Pyrozhkova, 2017), I.V. Bolokan "Implementation of administrative law: problematic issues of theory and practice" (Bolokan, 2017), V.V. Yurovska "Methods of administrative law: theoretical and legal and praxeological aspects" (Yurovska, 2018) and some other studies that analyzed the basic categories of administrative law.

Without understating the importance of highly specialized scholarly inquiries, we will note that the fundamental academic research not only lays the theoretical foundation for applied research papers, but also forms vectors of perspective law-making and directs the law-enforcement practice along the lines of the modern European standards of jurisdictional activity, takes the scientific approach as their basis, etc. Proceeding from the above, we believe that it is reasonable to further deepen the existing theoretical knowledge in the domain of administrative law, entering into a discussion with adherents of different approaches, and, within the limits of an academic dispute, meet the challenges with which the discipline of administrative law is tasked.

It is in the framework of the academic discussion that we would like to consider an issue highly relevant for the administrative-legal doctrine which concerns such a property of the norms of administrative law as their truth. We emphasize that the above-mentioned subject matter is insufficiently studied on the pages of administrative-legal literature, however, several papers by A.Yu. Kondratiev have come to our attention, where the researcher, as can be seen from their content, examines the effectiveness of the norms of administrative law and reveals the essence of the truth of the legal norms within the limits of the issues raised by him (Kondratiev, 2016; Kondratiev, 2018a; Kondratiev, 2018b). As a matter of fact, having got acquainted with the aforementioned works of the author, we came to the conclusion that it is necessary to discuss the question of the truth of the administrative-legal norm, to study the content and essence of this legal category and are ready to enter into an academic dialogue with him in this regard.

The aim is to determine the content and essence of such a property of the norms of administrative law as their truth on the basis of analyzing the opinions of individual legal scholars.

2. A generalized analysis of the category of "truth"

To begin with, we would like to emphasize that we fully share the idea that truth is the most important, permanent substantive characteristic of the administrative-legal norm. For the sake of the research completeness and the correct presentation logic, one should turn to the question of the etymology of the word «truth.» According to the modern Ukrainian dictionaries, "truth" is: 1) the same as veracity; 2) moral ideal, justice; 3) true knowledge that correctly reflects the actual reality in the minds of people; 4) provision, statement, judgment, verified by practice, experience. In turn, the word "true" means: 1) such that corresponds to the truth; right, truthful; 2) valid, authentic, genuine (Busel, 2001).

As can be seen even from the naïve linguistic understanding of these words, the content of the category "truth" holds a philosophical meaning, which is confirmed by a number of philosophical encyclopedic sources. For example, in some of them, it is indicated that truth is a philosophical gnosiological characteristic of thinking in its relation to its subject, and the thought is called true (or truth) if it agrees with the subject (Ivin, 2004). That is why, as A.Yu. Kondratiev rightfully points out, it should be recognized that the interpretation of the word "truth" as a category undoubtedly evaluative in its nature depends on the approach of the researcher both to the subject, the truth of which is being established, and to the criteria of truth, chosen by the author as a certain frame of reference (Kondratiev, 2018a).

In the legal sciences, in addition to the aforementioned A.Yu. Kondratiev, truth in the law is also investigated by other scholars, first of all, theorists of law. V.V. Tikhonova rightly argues that the existence of various evaluations of the importance of this problem, interpretations of the category of "truth" in relation to law in general, and the norms of law in particular led to the appearance of three main approaches to understanding this issue. A characteristic feature of the first approach is that most scholars, investigating the attributes, the nature, types of legal norms, leave the problem of their truth beyond the scope of their research. Representatives of the second approach, called differentiated, in particular L.F. Cherdantsev, believe that only some types of legal norms can be

considered in terms of the category of truth: norms which are tasks, goals, principles, definitions, while the attributing norms reflect the interests and will of the law-making body (Cherdantsev, 1973; Tikhonova, 2012).

The third approach, strictly speaking, entails considering the truth as a mandatory characteristic of the norm of law. For example, the detailed justification of this position is given by O.A. Lukasheva, who believes that when deciding on the application of the criterion of truth one must proceed from the whole set of characteristics of the norm, which always expresses an evaluation of the social reality, social relations and situations that are subject to legal effect; the existing and the proper are always dialectically combined in the essence of the norm. However, as the scholar rightly emphasizes, the inclusion of the norm in a normative legal act does not always testify to its truth, since an inaccurate and incomplete knowledge of objective reality is possible, as well as the loss of this property by the norm due to the fact that social relations are developing dynamically (Lukasheva, 1986).

In turn, V.K. Babaev, reflecting on the norm of law as a true judgment, writes that all legal norms, whether they are definitive, regulatory or protective, are true if they meet certain internal and external requirements. The essence of the requirements of the internal nature, which are the main, constitutive ones, cannot be considered in isolation from the intellectual and will content of the legal norm. The intellectual moment, as noted in the legal literature, is an ideal reflection in the legal norm of regulated social relations, the will moment represents the active ("executive") beginning (Alekseev, 1972).

Thereafter, according to V.K. Babaev, the norm of law has to: first, correctly reflect the state of social relations, which is the subject of legal regulation, and secondly, make a correct legal evaluation of them. In terms of the definitive norms, this is manifested in the fact that certain social relations are defined as lawful or unlawful, the attributes are indicated that characterize them as such. In the regulatory norms, legal evaluation is made of the rights and obligations of the participants of the jural relations, their scope and compliance are provided; in protective norms the scope of penalties is determined. External requirements are those that are applied to the publication of legal norms, their formatting, printing. A legal requirement that meets these requirements is true (Babaev, 1976).

V.V. Tikhonova, studying the problem of the truth of the legal norms, believes that its further elaboration involves, first of all, the identification of those conditions that lead to the maximum full and accurate reflection of social realities and demands of social development in the norms, which is the most important condition for the effectiveness of legal regulation and promotes improvement of the legal basis for the organization and functioning of the state structure (Tikhonova, 2012).

By contrast, V.M. Baranov points out that the truth is an objective property of the legal norm, expressing the proven by the practice of socialist construction degree of the aptitude of its content and form in the form of cognitive-evaluative image to adequately reflect the type, form, level or element of the development of progressive human activity (Baranov, 1989). Scientist claims: "That legal norm is true, which harmoniously reflects the activity that has reached the desired degree of maturity. At the same time, the very activity reflected by the legal norm must enjoy the harmony of purpose, motive, means and results. "Reunification" of these two types of harmony will necessarily lead to the cre-

ation of a true legal norm. And, on the contrary, disharmony in any of the above-mentioned constituents will necessarily lead to a "failure" of legal regulation" (Baranov, 1989). However, along with the above-mentioned altogether correct and convincing judgments, V.M. Baranov, in relation to the relationship of interest and the norm of law, argues that the latter is not only a measure of interest, but also a code by which interest is deciphered. The social significance of the legal norm, as the scholar writes, is a function that has given rise to the public interest. Proceeding from this, the theorist of law emphasizes that those legal norms are true, which correctly and fully express the objectively true interests of the state (Baranov, 1989).

In turn, A.Yu. Kondratiev writes that he is convinced in the opposite: "<…> the legal norm is true only when it reflects not the interests of the state, but the interests of the society as a whole and of an individual in particular. Of course, there are cases when the interests of the state or society and the individual do not coincide, but in this case the legal norm should ensure that the interests of the private individual are taken into account" (Kondratiev, 2016). As an example, the expert in the field of administrative law points out the relevant provisions of Law of Ukraine "On Alienation of Land Plots and Other Objects of Immovable Property Located on Them in Private Ownership for the Social Needs and on the Grounds of Social Necessity" on November 17, 2009 which provide for the corresponding amounts of compensation in cash or transfer to the ownership of another equivalent land or immovable property that has been alienated for public needs or for reasons of public necessity. Thus, according to A.Yu. Kondratiev, the general rule of the truth of the legal norm, from which there are certainly some exceptions, is a reflection in the legal norm of interests of both society as a whole and an individual in particular (Kondratiev, 2016).

In another publication, the expert in the field of administrative law emphasizes that the truth of the norms of administrative law is one of the key conditions for their effectiveness (Kondratiev, 2018b).

3. Content of the category of the truth of the administrative legal norms: criteria and indicators

First of all, we would like to emphasize that the above-mentioned reputable scholar should undoubtedly be supported in his claim that the truth of the norms of administrative law is a condition for its effectiveness, because the truth is an independent, separate characteristic of the legal norm that determines its essence. This idea is in a certain way congruent with the point of view of V.M. Baranov, who argues that truth is the determining primary property in relation to the effectiveness of the legal norm. Truth, as the scholar observes, implies finding out how the content of the legal norm meets the needs for progressive social development, how accurately it expresses social relations, universal human, national, personal interests, and, the effectiveness of the legal norm, in turn, makes it possible to establish the degree to which the legal norm fulfills its purpose, define the result of its action. According to V.M. Baranov's interpretation, with which one can generally agree, the effectiveness of the legal norm serves as one of the "indicators" of the degree of truth of the rule of law. At the same time, V.M. Baranov absolutely accurately emphasizes that the true norm of law can be both effective and ineffective. For example, one can hardly speak of the effectiveness of even an undoubtedly true norm, if the authorized person implements it not actively or does not apply it at all (Baranov, 1989).

While sharing the opinion of the renowned scholar, we would like to note that, in fact, the degree of effectiveness of administrative law depends on the completeness and accuracy of reflection in it of the material and spiritual conditions of society. The more adequately the norms of the administrative law reflect the combination of social and personal interests, and the processes of social development, the higher the effectiveness of administrative legal norms is.

However, while in general sharing the idea of the human-centrism in administrative law, we cannot unequivocally agree with the other beliefs of the esteemed author. We would like to emphasize that A.Yu. Kondratiev's view on the subject contains contradictions between the content of truth *per se* and the methods and results of its ascertainment (true/not true). In other words, if one proceeds from the formulation proposed by the scholar, the truth of a norm can be ascertained only if it concerns the interests of the society or a specific person. However, as is known, clearly not all the norms of administrative law based on the essence of their purpose concern the interests of the society or an individual citizen. For example, what truth (in the interpretation of A.Yu. Kondratiev) can one speak about in relation to those norms, which, for instance, only register certain legal facts, while not affecting the so-called operational legal arrangements[1]?

Furthermore, if we try to assess the truth of a specific norm of administrative law, we need to be guided by some indicators and criteria, but unfortunately, A.Yu. Kondratiev does not mention them. However, we will not take upon ourselves the responsibility for the unequivocal answer to this question either, instead we will only try to kindle the interest of the academic community in resolving the issue.

We would like to point out that the word "criterion" in the encyclopaedic literature is defined as the basis for the evaluation, definition or classification of something; measure (Kondratiev, 2018b), and an "indicator" means: 1) evidence, proof, an attribute of something; 2) representative data on the results of some work, a process; data about achievements in something. Data that indicates the amount of something; 3) phenomenon or event on the basis of which it is possible to draw conclusions about the course of some process; 4) quantitative characterization of the properties of the product (process) (Kondratiev, 2018b). In this context, O.M. Kurakin's view should be supported, according to which, in legal science, the term "criterion" serves as the basis for classification, and is a peculiar focus of evaluation. At the same time, if we consider this term as an attribute, then the category "indicator" should be determined as the absolute or relative value of this attribute, the degree of quality of its condition (Kurakin, 2016).

Proceeding from the above, and also considering the fact that efficiency is the property of the norm of administrative law, which is based on its truth, the criterion (one of them) of such truth will be the degree of effectiveness of the legal norm, and indicators will be specific statistical data, confirming or refuting its effectiveness and, consequently,

[1] As an example, we will give the provision of Article 3 of the Law of Ukraine "On Central Executive Bodies": The Ministry, the other central executive body has a stamp depicting the State Emblem of Ukraine and its name, its own forms, accounts in the bodies of the State Treasury Service of Ukraine. Placards (signboards) depicting the State Emblem of Ukraine and the name of the located bodies are displayed on the houses where the ministries, other central executive bodies are located, and the State Flag of Ukraine is raised (Verkhovna Rada of Ukraine, 2011).

the truth. Interestingly, in part this idea is congruent with the point of view of the Soviet scholar V.K. Babaev, who argued that the criterion of the truth of the legal norms is the enforcement of the rights and law-enforcement practice. At the same time, the true nature of the legal norm is manifested through its effectiveness (Babaev, 1976). A similar view can be found in the works of V.V. Tikhonova (Tikhonova, 2012) and R.O. Halfina (Halfina, 1974).

In addition to all the above-mentioned, it is obvious to us that the truth of the norms of administrative law, as a completely evaluative category, does not imperatively have to reflect the interests of a particular citizen. This does not mean that in this case we reject the principle of the rule of law or treat it somehow differently than other authoritative scholars. It should be emphasized that in this matter it is only necessary to place accents more properly. In particular, we propose, in determining the essence of this category, to rely on the compliance of the norm with the demands of social development. It is commonly known that social development is nothing more than a process which involves, on the one hand, people, social groups, social institutions, and, on the other hand, objective conditions that become the framework of their goals, activities and results. Social development is the process of an evolution of a unified social organism, characterized by irreversibility, purposefulness and consistency (Nekrasova et al., 2009). The objective conditions (demands) of the development of society include the territory, climate, the level of the economy, the state of social institutions (family, education and science, judicial and law enforcement systems, systems of public administration), mentality, consciousness, world outlook, etc.

In turn, it should be noted separately that social needs, as an integral part of human needs, include socio-economic (creating conditions for a competitive environment and business development, respect and protection of the private property institution, state and social concern for those members of society who are unable to realize the principle of self-sufficiency, etc.) as well as moral and spiritual needs (the human need for self-improvement, self-development, justice, etc.) (Silvestrova, 2006).

Thus, it is not unreasonable to determine the truth of the administrative legal norm in terms of such initial data that reveal social needs at a certain stage of the development of society, namely: the developmental level of economic and industrial relations, the state of the environment and ecology in general, the state of social and political institutions (family, education and science, medicine, judicial and law enforcement systems, public administration systems, etc.), the status of an individual in the society and the level of protection of their rights and interests on the part of the state, the mentality, consciousness, world outlook of the society, etc.

4. Conclusions

Thus, in our understanding, the truth of the norm of administrative law is its property, which characterizes the degree of compliance of the norm with the demands of social development, the full reflection in it of public relations, regulated by administrative law.

We would like to emphasize that the author of this publication will consider his task fulfilled if the content of the paper kindles a genuine academic interest in the reader and fosters a desire to enter into a discussion.

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ІСТИННІСТЬ НОРМИ АДМІНІСТРАТИВНОГО ПРАВА: СУТНІСТЬ ТА ЗМІСТ КАТЕГОРІЇ

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Мета *статті – на підставі аналізу думок окремих правників визначити зміст і сутність такої властивості норм адміністративного права, як їх істинність.*

Методи. *Обґрунтованість теоретичних положень і рекомендацій щодо подальшого наукового розроблення теми, а також достовірність результатів забезпечено використанням сукупності філософських, загально- й спеціально-наукових методів, які використовуються в юридичних дослідженнях. Як основний загальнонауковий метод використано діалектичний метод наукового пізнання.*

Результати. *Визначено, що істинність норми адміністративного права є умовою її ефективності. Зазначено, що ступінь ефективності адміністративно-правової норми залежить від повноти й точності відображення в ній матеріальних і духовних умов життя суспільства. Чим адекватніше відгукується в нормах адміністративного права поєднання громадських та особистих інтересів, процеси розвитку суспільства, тим вищою є ефективність адміністративно-правових норм.*

З огляду на той факт, що ефективність є властивістю норми адміністративного права, в основі якої лежить її істинність, автором зроблено припущення, що критерієм такої істинності слугуватиме ступінь ефективності правової норми, а показниками – конкретні статистичні дані, що підтверджують чи спростовують її ефективність і, відповідно, істинність.

Висловлено думку про те, що істинність норми адміністративного права, як категорія абсолютно оцінна, не зобов'язана в імперативі відображати інтереси конкретного громадянина. Це жодним чином не означає, що в такому разі автор відмовляється від принципу верховенства права або трактує його якось інакше, ніж інші авторитетні вчені. Запропоновано у визначенні сутності цієї категорії відштовхуватися від того, чи відповідає норма потребам суспільного розвитку.

Автор визначив істинність адміністративно-правової норми з позиції вихідних даних, що розкривають суспільні потреби на певному етапі розвитку соціуму, таких як рівень розвитку економічних і виробничих відносин, стан навколишнього природного середовища й екології загалом, стан соціальних і політичних інститутів (сім'ї, освіти й науки, медицини, судової та правоохоронної систем, системи публічного адміністрування тощо), статус окремої людини в суспільстві та рівень захищеності її прав та інтересів із боку держави, ментальність, свідомість, світогляд суспільства тощо.

Висновки. *У результаті проведеного аналізу автором запропоновано розуміти під істинністю норми адміністративного права її властивість, яка характеризує ступінь відповідності норми потребам суспільного розвитку, повноту відображення в ній суспільних відносин, що врегульовані адміністративним правом.*

Ключові слова: адміністративно-правова норма, властивість, істина, істинність, потреби суспільного розвитку.