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The problem of understanding the types, areas and limits of legal regulation by public servants in Ukraine

(Проблема розуміння типів, сфер та меж правового регулювання публічними службовцями в Україні)

According to generally accepted approaches in legal science, legal regulation is an authoritative influence on public relations, which is carried out by the state through special legal means to regulate, consolidate, protect and develop these relations [1].

Within the framework of legal regulation there are:

1) Types of legal regulation – ways to combine general legal permits and general legal prohibitions on entities whose relations are governed by legal norms. There are the following types of legal regulation:

a) General permitting, which establishes clear prohibitions, and the scope of permits is not defined (everything is allowed, except for a direct prohibition in law);

b) Special permit, which allows to carry out only actions that are directly defined by law, all other actions are prohibited (everything is prohibited except direct permission) [1];

2) Spheres of legal regulation – the social space to which legal regulation extends or may extend. o the sphere of legal regulation includes various groups of social relations, in particular: relations of people with the exchange of values; relations of power management of society; law enforcement relations arising from violations of established rules governing the behavior of people. The scope of legal regulation is not constant and constant. It can expand due to new relations (in the field of ecology, for example) or narrow if there is a refusal to use the law in a

particular area of public relations. The correct definition of the scope and limits of legal regulation is necessary in order to exclude the use of legal instruments in the areas of interaction of people who need other means of social regulation. Depending on the level of regulation, the following areas of legal regulation are distinguished:

a) The sphere of possible (potential) regulation – part of social relations, which in principle can be regulated by law, its boundaries are determined by certain objective properties of public relations, subjects of law, and also the legal norms themselves;

b) The scope of the necessary legal regulation - that part of the social space where the influence of law is required due to the action of social laws, the needs of society and the state. Its boundaries are determined by the general social needs and interests of the leading part of society, which are reflected by the state;

c) The sphere of legislative (legal) regulation - that part of the social space, which is actually regulated by legal norms.

The boundaries of this area are the basic principles of the relevant legal system; d) the sphere of realization (including application) of law - and the area of social life in which legal norms are actually implemented (applied). Its boundaries are determined by current legislation [1];

3) the boundaries of legal regulation – the framework that outlines the scope of legal regulation.

The current Constitution of Ukraine defines the above aspects within the framework of Section 1 "General Principles". In particular, in Art. 19 of the Basic Law of Ukraine defines:

1) General-permit type of legal regulation, according to which the legal order in Ukraine is based on the principles according to which no one can be forced to do what is not provided by law;

2) Special permit type of legal regulation, in accordance with which public authorities and local governments, their officials are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine [2].

From the above wording, follow the areas of legal regulation, where the main ones are:

1) The sphere of public legal relations – the sphere within which the special-permit type of legal regulation of legal regulation is mainly realized. Within this area, public servants and public authorities exercise the powers conferred on them and perform the tasks and responsibilities assigned to them. In this area, the above entities provide maximum management of public affairs under Sections 4 - 6, 8, 11, 12 of the Constitution of Ukraine in compliance with the special permit type of legal regulation;

2) The sphere of private legal relations – the sphere within which all without exception of a person, regardless of citizenship status, belonging to a public service or public authority, as well as outside the time of their official or official duties provide their private (personal, family) and other non-public) interests.

However, the most important role in the context of our research belongs to the boundaries of legal regulation, which follow from the general-permitting and special-permitting types of legal regulation, as well as from the sphere of legal relations (private or public). It is here legal awareness, legal culture, level of intellectual development or legal behaviour of public servants are most often manifested. Most often, the practice of public servants in Ukraine proves the fact that the vast majority of them are completely incompetent in these matters (regardless of political affiliation).

The practice of deputies of the Supreme Council of Ukraine of various convocations proves that they often confuse general-permit and special-permit types of legal regulation, as well as public and private spheres of regulation (for example, allow themselves to call while working in private affairs, order intimate services or in public), touching their own intimate parts of the body).

Instead, outside working hours, people's deputies, the President of Ukraine, judges, civil servants of local executive bodies and local governments, being within the scope of general permitting type of legal regulation, in the field of private law do not miss the opportunity to use their public legal status. In order to obtain certain benefits, privileges or avoid legal liability. This is manifested in numerous violations of traffic

rules, violation of the rules of order of service in trade, recreation, etc. The main arguments are the wording: "how dare you stop me?", "You know who I am", "I civil servant and I have the right to benefits ".

Similar anti-legal phenomena are most often observed in the adoption of the State Budget of Ukraine and local budgets, when public servants are set unreasonable surcharges, allowances and other benefits. However, the worst form of violation of the types, areas and limits of legal regulation is the so-called phenomenon of continuity, in which the experienced ("older") generation of civil servants teaches the new ("younger") generation of public service to the above aspects of deviant behavior (including their "corruption traditions" and "traditions of collective guarantee"). This is the so-called "negative succession".

All the above, in our opinion, is the main threat to the statehood of Ukraine, the effectiveness of reforms in various spheres of public life, the threat to international relations with civilized European and other states that have long overcome corruption, oligarchy and governance not in general, but family or family interests.

This situation is also complicated by the presence in public authorities of state and party cadres of the former USSR, who are not ready to provide governance in the new conditions for the needs of a modernized society and state, but are latent supporters of the former Soviet order and the special status of the ruling elite, were in the Soviet period.

References:

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