

PROSPECTS FOR IMPROVEMENT OF LEGAL REGULATION OF ADMINISTRATIVE SERVICES IN THE FIELD OF CIVIL STATUS REGISTRATION IN UKRAINE

The problems of legal regulation of administrative services in the sphere of registration of civil status acts in Ukraine are considered. The normative legal documents regulating of the activity of executive bodies and local self-government bodies in this sphere are analyzed and certain shortcomings in the legal field on these issues are identified.

Key words: administrative services; system of providing administrative services; state bodies; local self-government bodies; normative legal acts; bodies of registration of civil status acts.

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ПЕРСПЕКТИВИ УДОСКОНАЛЕННЯ ПРАВОВОГО РЕГУЛЮВАННЯ АДМІНІСТРАТИВНИХ ПОСЛУГ У СФЕРІ РЕЄСТРАЦІЇ АКТІВ ЦИВІЛЬНОГО СТАНУ В УКРАЇНІ

Розглянуто проблемні питання правового регулювання адміністративних послуг в сфері реєстрації актів цивільного стану в Україні. Проаналізовано нормативно-правові акти, якими регулюється діяльність органів виконавчої влади та органів місцевого самоврядування у цій сфері та сконцентровано увагу на недоліки у правовому регулюванні зазначених питань.

Однією з найактуальніших проблем розвитку сучасної адміністративної системи в Україні є вдосконалення процедурних відносин органів виконавчої влади та місцевого самоврядування з фізичними і юридичними особами. Частиною зазначених відносин є механізм надання адміністративних послуг у різноманітних сферах, адже його досконалість є критерієм ефективності діяльності органів публічної влади.

Сьогодні адміністративні послуги як сфера взаємовідносин органів публічної влади з громадянами набувають якісно нового змісту: людина все більшою мірою починає розглядатись як клієнт і споживач послуг, що надаються відповідними установами, у зв'язку з чим їх діяльність розглядається крізь призму задоволення потреб та конкретних запитів споживачів.

Мета статті полягає в узагальненні нормативно-правової бази щодо надання адміністративних послуг в сфері реєстрації актів цивільного стану України, виявлення основних проблем їх правового регулювання та обґрунтування шляхів їх вирішення.

Проаналізував владні повноваження органів виконавчої влади та органів місцевого самоврядування закріплених у законах України «Про місцеві державні адміністрації», «Про місцеве самоврядування», «Про дозвільну систему у сфері господарства», «Про адміністративні послуги» тощо, а також у спеціальних законах, що регулюють безпосередньо умови надання конкретних адміністративних послуг, наприклад «Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень», «Про реєстрацію актів цивільного стану», «Про громадянство України», та багато інших, ми прийшли до висновку, що в країні створено достатньо нормативно-правову базу для функціонування системи надання адміністративних послуг. Але відсутність Адміністративно - процедурного кодексу та не врегулювання окремих аспектів механізму надання адміністративних послуг є необхідністю проводити наукові напрацювання щодо удосконалення нормативно-правових актів для

покращення якості надання адміністративних послуг, забезпечення організації надання якісних адміністративних послуг виходячи з процесів адміністративно-територіальної реформи, об'єднання територіальних громад зокрема.

В Україні надання послуг орієнтується на процес. А поки що, необхідно терміново розробити та схвалити Закон України «Про адміністративний збір», який визначить правові засади справляння адміністративного збору, платників, розміри ставок адміністративного збору, порядок сплати, звільнення від сплати та повернення адміністративного збору. Відсутність на законодавчому рівні визначення поняття «стандарт адміністративної послуги» та розмір ставки адміністративного збору приводить до корупційних ризиків під час надання адміністративних послуг, як органами влади так і органами місцевого самоврядування.

З метою удосконалення діючого законодавства в сфері реєстрації актів цивільного стану підготовлено в лютому 2017 року законопроект «Про внесення змін до Закону України «Про державну реєстрацію актів цивільного стану» та деяких інших законодавчих актів України щодо децентралізації та наближення до громадян адміністративних послуг у сфері державної реєстрації актів цивільного стану» за № 6150. В зазначеному законопроекті передбачається передавання більшості повноважень у сфері реєстрації актів цивільного стану від Міністерства юстиції України до виконавчих органів місцевих рад, зокрема в містах обласного значення та районних центрах.

Ухвалення законопроекту в запропонованому вигляді, на нашу думку є недоцільним внаслідок того, що він не узгоджується із вимогами Сімейного кодексу України, Цивільного кодексу України, Цивільного процесуального кодексу України, Конвенції про права дитини, не визначає також порядку реєстрації актів цивільного стану жителям окремих районів Донецької та Луганської областей, а також Криму, що тимчасово не підконтрольні Україні. Ця надзвичайно складна ситуація потребує законодавчого врегулювання, адже за п'ять років не було навіть запропоновано концепту та законопроекту щодо порядку реєстрації актів цивільного стану жителями з окупованих територій та про використання архівного фонду відділів державної реєстрації актів цивільного стану територіальних управлінь юстиції, які знаходяться на не підконтрольній українській владі території.

З метою здійснення спрощення порядку надання адміністративних послуг у сфері державної реєстрації актів цивільного стану необхідно терміново розробити та прийняти новий Закон України «Про державну реєстрацію актів цивільного стану».

Ключові слова: адміністративні послуги; система надання адміністративних послуг; нормативно-правові акти; органи публічної влади; органи виконавчої влади; органи місцевого самоврядування; органи реєстрації актів цивільного стану.

Problem Statement. One of the most pressing problems in the development of the modern administrative system in Ukraine is the improvement of procedural relations between the executive authorities and local self-government bodies with individuals and legal entities. The part of these relations is the mechanism of providing administrative services in various spheres, because its perfection is a criterion for efficiency of activity of public authorities. The attitude of citizens to the system of public administration, and to the state as a whole, largely depends on completeness, timeliness and accessibility to receiving administrative services.

Administrative services are one of the system-forming elements of the relationship between the state and local self-government bodies. Today, administrative services, as a sphere of public authority relations with citizens, are getting a qualitatively new content: people are seen as clients and consumers of services provided by appropriate institutions, and therefore their activity is viewed through the prism of meeting the needs and specific requests of consumers..

Analysis of recent researches and publications. The methodological issues of organization of providing administrative services, mechanisms and theoretical foundations of their organizations are the subjects of researching for many scholars. Recent publications include:

V. Vakulenko, N. Vasilyeva, A. Vishnevsky, O. Gunenkova V. Danshin, I. Daragan, Y. Kamardin, P. Klimushin, I. Kozyura, I. Kravchuk, Y. Kutsa, Y. Solomko, V. Soroko,

Y. Onishchuk, O. Obleshchuk, L. Polishkevich, V. Telitskaya, Y. Sharov, and others. However, the complex of problems in the field of civil registration of Ukraine remains unexplored.

The purpose of the article is to summarize the legal framework for the providing administrative services in the field of registration of civil status acts in Ukraine, to identify the main problems of their legal regulation and justify ways to solve them.

Presenting of the main material. Article 3 of the Constitution of Ukraine defines that human rights and freedoms and their guarantees determine the content and orientation of the state's activities. Promotion and protection of human rights and freedoms is a major responsibility of the state. The state can fulfill this obligation to a large extent through the providing administrative services to the population, both through the executive authorities and through the local self-government bodies, and in some cases even through the private entities. According to the Article 19 of the Constitution of Ukraine, the state authorities, local self-government bodies and their officials are obliged to act only on the basis, within the powers and in the way provided by the Constitution and laws of Ukraine. Article 92 also states, among other things, that exclusively the laws of Ukraine determine the rights and freedoms of men and citizen, the guarantees of these rights and freedoms; basic duties of the citizen; organization and activity of executive bodies, principles of local self-government, etc. [9]. Therefore, in our view, the issue of providing administrative services should be regulated at the legislative level by applying a unified approach.

The Encyclopedia of Public Administration treats the category «administrative service» (hereinafter – AS) as a result of its powers implementation by an authorized entity, and it in accordance with the law provides legal registration of the conditions for implementation of rights, freedoms and legitimate interests by individuals and legal entities upon their application (issuance of permits (licenses), certificates, certificates, registration, etc.) [10, p.18].

Until 2006, the regulatory documents which regulated the activities of different authorities did not clearly define the concept of the services provided, and in various sources they were referred to as «administrative», «public», «state», «administrative» etc. The Decree of the Cabinet of Ministers of Ukraine of February 15, 2006 No. 90-p «On Approving the Concept of Development of the System of Provision of Administrative Services by Executive Bodies» [11] stipulated the major problems which should be solved to ensure the development of the system of AS providing. Among the problems in this area, the Concept defines: the presence of non-statutory types of AS; division of AS into several paid services; the demand from individuals and legal entities for the documents not specified by the legislation or in the form not provided by the legislation; shifting the responsibilities of administrative services to collecting certificates or coordinating documents for individuals and legal entities; unreasonable charging or large fees for providing of certain types of AS; establishment of the schedule for the reception of citizens in an administrative body at inconvenient for them time; unreasonably long term of providing of certain services; limited access to information required to obtain AS; improper legislative regulation of procedural issues in the providing of services; lack of service standards; treating individuals and legal entities as petitioners, organizing not to meet a person's needs, but to formally adhere to the procedure; the actual obligation on individuals and entities to receive related paid services.

Unfortunately, most of these problems have not been resolved today. The implementation of the main regulations of the Concept has introduced modern forms of providing AS, in particular, through the «universities of services». The principle of «single window» and «electronic administrative services» is provided too.

The executive powers and bodies of local self-government are enshrined in the laws of Ukraine «On Local State Administrations» [12], «On Local Self-Government» [13], «On the Permitting System in the Field of Economy», etc., as well as in special laws which directly regulate the conditions for providing specific administrative services, such as «On state registration of real rights to real estate and their encumbrances», «On state registration of legal entities, natural persons - entrepreneurs and public entities» «About registration of civil statu acts, «[14]» On freedom of movement and choice of residence in Ukraine «,» On Citizenship of Ukraine «land, forest and water codes Ukraine, and many others.

Despite the existence of such a great number of legal acts which regulate the function of providing administrative services, experts insisted on the necessity to develop and adopt legislative acts, which must determine the basic principles, features of procedures and requirements to the quality of activity of public authorities in this field.

An important step in the development of the AS sphere was the approval of regulation on the Register of Administrative Services [15] by the Cabinet of Ministers of Ukraine in May 27, 2009, No. 522. According to paragraph 1 of the decree, the register of AS is the only computerized database of AS provided by executive bodies, state-owned enterprises, institutions and organizations, as well as local self-government bodies in the process of implementing delegated them powers.

Introduction of the Register of administrative services helps to systematize the data on the AS: to account and analyse types of services, their number, efficiency of use; to inform individuals and legal entities about services provided by public authorities and local self-government bodies, to store and provide prompt access to full information about the registry objects [16,113].

The Law on Administrative Services (hereinafter - the Law) [17], which laid the foundations of a modern system of providing administrative services was designated to ensure the implementation of the tasks of introducing democratic principles of governance and eliminating of the existing deficiencies in the respective sphere. The law stipulates that an «administrative service» is the result of power implementation by the entity that provides administrative services at the request of a natural or legal person, aimed at acquiring, changing or terminating the rights and / or duties of this person in accordance to the law. The law also defines such concepts as «subject of treatment» It is a natural or legal person who applies for administrative services; «An Entity providing administrative services» means an executive body, another state body, an authority of the Autonomous Republic of Crimea, a local government body, their officials authorized under the law to provide administrative services. The law defines the legal basis for the implementation of rights, freedoms and legitimate interests of individuals and legal entities in the field of AS providing. This law actually introduced the institute of administrative service centers. The purpose of the administrative service centers (hereinafter referred to as ASCs) is to create convenient and accessible conditions for servicing of citizens when they seek the services.

Unfortunately, the Law does not contain the concept of «administrative service standard», but at the same time it states that the subject of providing administrative services for each administrative service, which it provides according to the law, approves information and technological cards, the content of which is specified in the Law. Besides that, the requirements for the preparation of the administrative service technological card were approved by the Resolution of Cabinet of Ministers of Ukraine of 30.01.2013 No. 44. The purpose of the cards is to regulate the procedures of providing individual administrative service and to convey the detailed information about them to the consumers in a convenient way [18].

The Law also states that only the Law defines the List of administrative services and the Cabinet of Ministers of Ukraine is given the task to prepare and to submit draft laws on the List of administrative services and fees (administrative fee) for provision of them to the Verkhovna Rada of Ukraine within six months. Unfortunately, during the seven years of the operation of the law, this List has not been approved at the governmental level, although such tasks have been repeatedly provided to the appropriate authorities of the government. Besides this, the absence of the procedure of determining the amount of the administrative fee for the provided administrative service leads to the establishment the amount of the fee at own direction of the subject of the service provision. So the same service is provided in the different regions of the country for different amounts of administrative fee.

Today the most of the administrative services are provided by the central executive authorities and their territorial subdivisions in Ukraine. The most demanded administrative services, which almost all citizens face during their lifetime, are considered basic [19, p.20]. Such services include:

- registration of birth, marriage, death and other acts of the civil status;

- registration and issue of passports;
- registration of the place of birth;
- allotment of various types of social assistance and subsidies;
- registration of ownership of real estate;
- registration of vehicles and issue of driver's licenses;
- registration of business activities and so on.

It was natural to delegate them to the executive authorities of the local government in order to bring such services as closely as possible to consumers. Receiving most of the necessary services on places, the community inhabitants would be able to influence the quality of their provision.

Civil registration services are the most popular among citizens. The birth of a child, marriage, divorce, death are typical events that occur in each person's life. That is why there is a need for their decentralization, because they should be as close to consumers as possible. This necessity is enshrined in the Action Plan for the Implementation of the Strategy for the Reform of the Public Administration of Ukraine for 2016-2020, approved by the Ordinance of the Cabinet of Ministers of Ukraine of 24.06.2016 No 474 [20]. According to it, the power to provide the administrative services for the registration of the acts of a civil status is transferred to the local self-government authorities through the CDAS.

Since October 1, 2018, the administrative services of state registration of civil acts have been provided through the CDAS pursuant to the order of the Ministry of Justice of Ukraine of August 28, 2018, No 2825/5 «On approving amendments to some regulations in the state registration of civil status acts» [21]. An analysis of the procedures for providing such services through the CDAS allows us to conclude that they do not meet the needs of citizens, because the applicant has to visit the CDAS a few times (to make an appointment, hand in an application and documents during the consultation, take out a document). Citizens of Ukraine are more interested in getting the service of state registration of civil status acts at the territorial authorities of justice, rather than through the CDAS, because the CDAS administrators do not have access to the state civil register of citizens.

To improve the current legislation in the field of registration of civil status acts it has been prepared a draft law «On amendments to the Law of Ukraine «On State Registration of Civil Status Acts» and some other legislative acts of Ukraine about the decentralization and the approximation of the administrative services in the field of state registration of civil status acts» No 6150 [22]. The listed above draft law envisages the transferring of the most part of the powers in the field of registration of the civil status acts from the Ministry of Justice of Ukraine to the executive authorities of local councils, in particular in cities of regional importance and regional centres.

In our opinion the adoption of the draft law in the proposed form is inappropriate due to the fact that it does not comply with the requirements of the Family Code of Ukraine, the Civil Code of Ukraine, the Civil Procedure Code of Ukraine, the Convention on the Rights of the Child, also it does not determine the order of registration of the civil acts for the residents of certain areas of Donetsk and Lugansk regions, as well as Crimea, which are not temporarily under the control of Ukraine. This extremely difficult situation needs the legislative regulation, because within five years the concept and draft law on the procedure for registration of civil status acts by residents from the occupied territories and on the use of the archival fund of the state registration departments of the territorial departments of justice, which are located in the territory under control of the Ukrainian authorities, have not been even proposed.

According to Golosnichenko I.P. the organization of legal regulation of the AS provision in modern conditions is regulated haphazardly and is not consistent with the branches of Ukrainian law. In connection therewith, at first it is necessary to provide for the regulation of administrative-legal relations and procedural relations of the relevant branch of law at the level of the law. The legislative arrangements of material respects has already been done. The Code of Administrative Procedures remains to be adopted. This should be done despite the fact that some procedural rules are also contained in the Law of Ukraine «On Administrative Services», because they do not fully support the process of providing the AS. In the new social relations, that are in Ukraine now, where

the rights and freedoms of citizens are the priority, it is necessary to create appropriate administrative and procedural conditions for the realize these rights and freedoms. That is why the Cabinet of Ministers of Ukraine has formed a working group to prepare a draft Code of Administrative Procedures, but so far this normative act has not been adopted yet, and the public relations of regulating the process of proceedings in citizens' applications have not been fully regulated [23, p.45].

According to the ordinance of the Cabinet of Ministers of Ukraine dated January 30, 2019 No. 37-p. [24] the Action Plan for the Implementation of the Concept of Development of the Electronic Services System in Ukraine for 2019-2020 (hereinafter - the Plan) has been adopted. According to paragraph 2 of the Plan, «Central executive authorities and local state administrations should ensure implementation of priority services in electronic form in 2019-2020, namely: introduction of electronic interaction for optimization of priority services provision using electronic interaction system of state electronic information resources and introduction relevant changes to the legal acts that regulate the provision of priority services, taking into account the requirements of the Law of Ukraine «On administrative services».

By the order of the Cabinet of Ministers of Ukraine dated January 30, 2019 No. 37-p. [24] the Action Plan for the Implementation of the Concept of Development of the Electronic Services System in Ukraine for 2019-2020 was approved (hereinafter - the Plan). According to the paragraph 2 of this Plan «Central executive bodies and local state administrations must ensure

the implementation of the priority services in an electronic form in 2019-2020, namely: the introduction of the electronic interaction for the optimization of the order of the priority services provision by using the system of the electronic interaction of the state electronic information resources and the introduction of corresponding amendments to the normative legal acts that regulate the provision of the priority services taking into account the requirements of the Law of Ukraine «On Administrative Services».

The Decree of the President of Ukraine of July 29, 2019 No. 558/2019 [25] «On Some Measures to Improve the Access of Individuals and Legal Entities to Electronic Services» provides: «... 5) to take steps to create a single state-owned electronic e-services portal, which, including by using a smartphone or tablet, will provide: the ability to create electronic offices for individuals and legal entities will provide; as well as providing electronic, including administrative services and others «

In order to approve the functioning of the service state - the state for citizens and business, ensuring the proper exercise of the rights of individuals and legal entities in the sphere of public services, including the administrative services, the President of Ukraine made significant steps in this direction. According to the Decree of the President of Ukraine [26], the task of ensuring the introduction of the possibility of providing the local self-government bodies and / or notaries with certain public services, including those related to the registration of acts of civil status, was established. From this, it is envisaged that the services in the field of the state registration of civil status acts can be provided not only by executive bodies, but also will create a full opportunity to provide such services to the local governments and notaries (both private and public). That is, the citizen of Ukraine is given the opportunity to choose exactly where to receive such a service and where it will be provided with the highest quality and attractiveness, which fully corresponds to the multilevel governance paradigm. The more the number of administrative services is provided, the better the service will be in the relation to the competition for the right to provide such a service at a high quality level, namely: fast, accessible, professionally and convenient for the applicant.

During the 20 years of the existence of the DRACS bodies in the system of the state executive bodies, the state has not been able to provide the state registration offices of civil status with the proper premises, to provide the comfortable conditions for citizens and employees in them, there are big problems with the equipment of modern office, etc This not only leads to staff turnover and a quite low professional level of professionals who provide administrative services, but also, that is important, to poor quality services and citizen dissatisfaction when receiving such services.

A common tool for improving the quality of administrative services in the DRACS should be to deepen decentralization processes, that is, to delegate appropriate powers to local governments. In such circumstances, citizens will be able to influence the quality of their services and use the resources of the local community effectively.

Today in the field of DRACS modern electronic services can be created, which significantly improve the level of the service to the citizens and create favorable conditions for the individuals to receive services in this field. Thus, for the convenience of citizens and the avoidance of queues in the departments of state registration of acts of civil status, the Ministry of Justice of Ukraine introduced a pilot project web portal «Appeals in the field of state registration of acts of civil status» [27]. The project allows citizens to submit applications to the state registration department of civil status on various issues via the Internet.

In order to facilitate the provision of childbirth-related services, the Cabinet of Ministers of Ukraine in March 2019 sent to the Verkhovna Rada of Ukraine a draft Law of Ukraine «On Amendments to Some Laws of Ukraine on Creating Favorable Conditions for Optimizing Childbirth-Related Services» [28]. The development of the draft Law is necessitated by the creation of an effective mechanism by the state to provide a complex of services aimed at the realization of the child's right to social protection, the right of residence and other rights related to her birth. The «E-toddler» service includes the acquiring, at the request of parents, up to 10 e-services, and is planned to be implemented from January 2020.

Thus, reforms in the state registration of civil status bodies seek to provide the population with quality, convenient and affordable services in the field of the state registration of civil status acts through the introduction and the practical implementation of modern services.

In such circumstances, the main task of public authorities is to convey properly the essence of the reforms to the citizens of Ukraine. In the process of interaction between institutions, organizations of government, public and business sectors that provide public services, administrative corruption (ineffective mechanism of carrying out relevant functions) must be overcome, which is the main reason for citizens' dissatisfaction with the quality of received administrative services, but also reduces the trust in the authorities.

Conclusions. Therefore, the country has a sufficient regulatory framework for the functioning of the administrative service delivery system. But the absence of the Administrative Procedure Code and the lack of regulation of certain aspects of the mechanism of administrative services rendering it necessary to carry out scientific work on improving legal acts to improve the quality of administrative services, to ensure the organization of quality administrative services based on the processes of administrative and territorial reform, the association of territorial communities in particular. The adoption of the Administrative Procedure Code, the legislative act that should regulate the general procedure for the submission of the AP, is essential. Which, in turn, minimizes the corruption risks involved in the granting of AP by the authorities and local self-government bodies, since the clear regulation of the procedure negates the possibility of the authorized entity in some cases to act at its own discretion. In the meantime, it is necessary to urgently develop and approve the Law of Ukraine «On Administrative Fee», which will determine the legal bases for collection of administrative fees, payers, rates of administrative fees, the payment procedure, the exemption from the payment and the refund of administrative fees. The absence of a legislative definition of the term «the standard of the administrative service» and the size of the administrative fee rate lead to corruption risks in the provision of administrative services, both by authorities and local governments. In order to simplify the procedure of providing administrative services in the field of state registration of civil status acts, it is necessary to urgently develop and adopt a new Law of Ukraine «On State Registration of Civil Status Acts».

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