

REVIEW OF THE TEXTBOOK “SPECIAL ADMINISTRATIVE LAW” UNDER THE EDITORSHIP OF BERND WIESER, YAROSLAV LAZUR, TETYANA KARABIN, AND OLEKSANDR BILASH

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Abstract. The review concerns the textbook “Special administrative law”, published by the author’s team of the Uzhhorod National University (Ukraine) and the University of Graz (Austria). This is the first textbook on Ukrainian Special administrative law. The review indicates that Special administrative law serves as a fairly new term for Ukrainian juridical science. But this is not just about a transformation in terminology; it is about the establishment of a completely new idea of administrative law. The Special Administrative Law is an approach to the final and irreversible rejection of the Soviet heritage in the content of the national administrative-legal doctrine and its irrevocable orientation to the best European practices.

Keywords: special administrative law of Ukrainian; systematization of administrative law; Ukrainian doctrine of administrative law

In recent years, progressive changes have been observed in the Ukrainian doctrine of administrative law related to the appearance of new authors, the preparation of interesting monographs, and the development of modern textbooks. However, despite these positive trends, the general outlook does not seem very encouraging, since the vast majority of scientific and educational literature on administrative law remains, on the one hand, morally outdated, and, on the other hand, irrelevant to pertinent law enforcement, in other words, it is created only for the sake of “itself”, and not to in order to become a theoretical guide in the world of legal practice. Such a state of affairs, in my opinion, can be explained by a number of destructive factors, including the lack of scientific autonomy, the dependence of authors on “masters” and managers, academic inbreeding, devotion to “traditions”, as well as a not pretty good sense of how modern administrative law of EU member states, to which Ukraine wants to join, looks like. Therefore, the domestic doctrine of administrative law lacks breakthrough ideas that would, in turn, lay a new vector for its development.

Considering the above, the textbook on the Special Administrative Law of Ukraine prepared by the writing team seems extremely well-timed, the idea and content of which we would like to discuss both with its drafters and with other colleagues within the scope of this review. Of course, the review does not allow for a conversation in the form of a discussion, but it can lay some good grounds for it, so I am willing to participate in its continuation.

Special administrative law serves as a fairly new term for Ukrainian juridical science. The basis for its active use was the monograph “The Administrative Law System of Ukraine” [Mel’nyk 2010], prepared by the author of these lines, as well as the theses of E.V. Petrov [Petrov 2012], O.A. Morgunova [Morhunov 2013], and N.I. Tsekalova [Tsekalova 2016] which were created with the purpose to develop its provisions. It was bad timing because our opponents (some of whom, by the way, refused even to participate in defense procedures) were adamant that such a category (Special Administrative Law) does not exist; it is redundant; it cannot be introduced into the Ukrainian administrative-legal doctrine. And in this part, I share and fully support the opinion expressed on the pages of the textbook that Special Administrative Law is a reality within which separate material branches of administrative law are united (p. 19).

“Special administrative law” is not just about a transformation in terminology; it is about the establishment of a completely new idea of administrative law, focused on the implementation of the constitutional formula, enshrined in Part 2 of Article 6 and Part 2 of Article 19 of the Fundamental Law, which refers to the need to develop and preserve legal bases for the functioning of public authorities. In other words, each branch of Special Administrative Law, in fact, lays the legal basis for the functioning of the corresponding system of public administration subjects. And this task can be accomplished not at the expense of unclear and vague elements of the Special part of administrative law (management institutions), but owing to the relevant branch formations united within the Special Administrative Law.

Thus, the Special Administrative Law is an approach to the final and irreversible rejection of the Soviet heritage in the content of the national administrative-legal doctrine and its irrevocable orientation to the best European practices.

Referring again to the content of the textbook, it is worth paying attention to its structure. It is formed at the expense of 17 chapters, each of which (with the exception of the first) is devoted to the analysis of a separate branch of Special Administrative Law, the list of which, as the authors themselves emphasize (p. 19), is not exhaustive. Despite the fact that readers may have expected more specifics in the issue of the Special Administrative

Law content, the proposed list is nevertheless important. In this way, the writing team clearly shows those legal entities that include special norms of administrative law, which, in turn, are under the influence of General Administrative Law. This is extremely significant prior to the Law of Ukraine “On Administrative Procedure” coming into force, the scope of which will still have to be ascertained and clarified. However, within this part, the fact that the effect of this law must (will) apply to all those spheres of social relations that are in the “scope of responsibility” of the Special Administrative Law branches, the list of which, as noted above, is presented in the textbook is unequivocally clear.

Nevertheless, in view of the still-existing rejection of the concept of dividing administrative law into General and Special, as well as the efforts of a large group of authors who participated in the preparation of a textbook on the named field of law [Halun’ko, Dikhtiyevs’kyy, and Kuz’menko, et al. 2018], to introduce the category “Special Administrative Law” into circulation, it would be appropriate to dedicate additional attention to the justification of the concept and content of the Special Administrative Law in the first chapter. I am convinced that readers, and above all those who are just starting to study administrative law, did not have enough answers to these questions. Such clarification would not be superfluous for other colleagues, who still expect familiarization with the reviewed textbook, as well as the choice of the existing concept of the administrative law construction which they should support and which should serve as a benchmark in the process of their own professional activity.

Paying tribute to the members of the writing team in their desire to create a modern textbook on Special Administrative Law, I must admit that it is impossible to completely solve this task within such a format. If we are talking about dozens of specialized branch entities, which, in turn, are formed at the expense of thousands of regulatory acts, then it is obvious that the processing of this material requires completely different extent. More successful, in my opinion, would be the form of a multi-volume edition, each volume of which should be devoted to the analysis of a separate branch of Special Administrative Law. It is obvious that the textbook should contain a systematized and complete presentation of information, the processing of which allows the student to gain a comprehensive understanding of the relevant field of legal regulation. As for the revised version, as it is noted (p. 21), it contains only a superficial analysis of certain aspects of the relevant Special Administrative Law branches.

On this point, I am inclined to believe that the authors perfectly understand the cruciality and expediency of differentiated processing of the branches of Special Administrative Law, which, I am convinced, will be implemented by them in the future. As for today’s book, its value lies not

in its content, but in the fundamentalization of the new system of administrative law of Ukraine, without which the further scientific development of this branch of law is impossible. In this part, I would also like to admit that I fully support the structure of the sections of the textbook proposed by my colleagues, which begins to be built by defining the subject and tasks of each branch, as well as its constitutional foundations. In this way, the authors, in fact, transfer to the national legal ground the idea of Prof. Werner that administrative law is a concretized constitutional law. This opinion is extremely important for determining the main guidelines both during the formation of administrative and legal norms and their implementation.

On the whole, making a general conclusion, I would like to note that the work submitted for review deserves attention from the Ukrainian legal community, contributing to the reformation of the administrative-legal doctrine in the direction of the best Western European legal traditions. Undoubtedly, the recent release of the peer-reviewed textbook translated into German, “Besonderes Verwaltungsrecht der Ukraine” by the Austrian publishing house Verlag Österreich together with the German publishing house Berliner Wissenschafts-Verlag, will influence the achievement of the tasks set by the textbook’s author team. This, on the one hand, will contribute to the development of Ukrainian legal doctrine in general, its integration into the European context, and on the other hand, it will improve the awareness of European scientists with the problems that arise and are solved in Ukrainian administrative and legal science.

REFERENCES

- Halun’ko, V., P. Dikhtiyevs’kyy, O. Kuz’menko, et al. (eds.). 2018. *Administratyvne pravo Ukrayiny. Povnyy kurs*. Kherson: OLDI-PLYUS.
- Mel’nyk, Roman S. 2010. *Systema administratyvnoho prava Ukrayiny*. Harkiv: Vyd-vo Kharkivs’koho natsional’noho universytetu vnutrishnikh sprav.
- Morhunov, O. A. 2013. *Administratyvno-sportyvne pravo yak pidhaluz’ administratyvnoho prava*. Doktor thesis, Zaporizhzhya.
- Petrov, Y. V. 2012. *Administratyvno-hospodars’ke pravo yak pidhaluz’ administratyvnoho prava Ukrayiny*. Doktor thesis, Kharkiv.
- Tsekalova, N. I. 2016. *Mihratsiyne pravo u systemi administratyvnoho prava Ukrayiny*. Doktor thesis, Kyiv.