

CONCEPT OF “MANAGEMENT SERVICES” IN UKRAINIAN LEGISLATION AND EU LAWS

CONCEITO DE "SERVIÇOS DE GESTÃO" NA LEGISLAÇÃO UCRANIANA E NAS LEIS DA UE

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Abstract: The purpose of the article is to analyze the concept of “management services” in the legislation of Ukraine and EU laws. Research methods are: monographic analysis, systematic analysis, comparative and legal analysis, generalization, forecasting, etc. The need to amend the legislation of Ukraine by supplementing the concept of “management services” to the Law of Ukraine “On Administrative Services”, as well as by clarifying DK 021:2015. In particular the code “79420000-4: Management services” should be defined as “79420000-4: Assistance (service) related to management”. We have emphasized that there is a possibility of developing the potential of providing services in Ukraine and strengthening the sphere of business services due to the improvement of the current legislation, in particular through the implementation of the norms of European law into the national legal system. It has been proved that effective public procurement is possible only if institutions, organizations and enterprises clearly understand the “rules of the game” in this area. It has been concluded that the incorrect semantic load of concepts (translation) in DK 021:2015, developed in accordance with the EU requirements, has potential risks in the field of public procurement, does not contribute to the active attraction of investments through participation in national and international projects, as well as to effective management decisions.

Keywords: Management Services. Public Procurement. Economic Activity. Comparative Law. Legal System. Investments. EU.

Resumo: O objetivo do artigo é analisar o conceito de "serviços de gestão" na legislação da Ucrânia e nas leis da UE. Os métodos de pesquisa incluem: análise monográfica, análise sistemática, análise comparativa e jurídica, generalização, previsão, entre outros. É necessária a modificação da legislação da Ucrânia através da inclusão do conceito de "serviços de gestão" na Lei da Ucrânia "Sobre Serviços Administrativos", bem como através do esclarecimento do DK 021:2015. Especificamente, o código "79420000-4: Serviços de gestão" deve ser definido como "79420000-4: Assistência (serviço) relacionada à gestão". Foi destacado que existe a possibilidade de desenvolver o potencial de prestação de serviços na Ucrânia e fortalecer a esfera de serviços empresariais por meio do aprimoramento da legislação atual, especialmente através da implementação das normas do direito europeu no sistema legal nacional. Foi comprovado que a aquisição pública eficaz é possível apenas se as instituições, organizações e empresas compreenderem claramente as "regras do jogo" nesta área. Foi concluído que a carga semântica incorreta dos conceitos (tradução) no DK 021:2015, desenvolvida de acordo com os requisitos da UE, apresenta riscos potenciais no campo das aquisições públicas, não contribui para a atração ativa de investimentos por meio da participação em projetos nacionais e internacionais, bem como para decisões eficazes de gestão.

Palavras-chave: Serviços de Gestão. Aquisições Públicas. Atividade Econômica. Direito Comparado. Sistema Jurídico. Investimentos. UE.

1. Introduction

The development of legal relations in the field of public procurement, taking into account the active European integration processes and taking place in Ukraine despite of the war, testify to the consistency of our country's policy and attract more and more attention of scientists. Public procurements play an extremely important role in the modern economy. Therefore, defining and taking into account their features is an indispensable condition for ensuring the effectiveness of the state's economic strategy and the development of the country's economic potential in the whole. The creation of appropriate incentives for the spread and improvement of European experience while purchasing goods, works and services by a customer in accordance with the procedure defined by legislation becomes one of the most important tasks of the state.

Those changes taking place in the economic and social development of the country have led to a new model of economic development, which is characterized by fundamentally new features and priorities. Industries that guarantee the satisfaction of state and municipal needs through the most efficient use of budget funds play a particularly important role in the current society. This field has been recently developing very rapidly, in particular due to the constant improvement of legislation and the functioning of the "Prozorro" system. The main factor for changes is also the rapid pace of the modernization of our life, the proportional increase in requirements for the quality of

goods and services, as well as their wide assortment. The state and society are becoming more open to procurement in terms of transparency, competitiveness and professionalism.

Implementation of changes in the field of public procurement will help in raising the economy to a new level and promoting the development of the service sector, industrial production and business in the whole. The state is one of the main participants in the economic process as a consumer of goods, works and services. Public procurement makes up a significant part of world trade flows, which can roughly reach 1 trillion euros per year. Countries around the world use public procurement as one of the effective tools of the state aid system to ensure socio-economic development and stable economic growth. The success of the economy in the whole depends on the effectiveness of public procurement. Accordingly, the issue of further development of the public procurement system and increase in the efficiency of using public funds in order to provide Ukrainian society with quality goods and services is being updated.

European integration processes encourage Ukraine to bring national economies closer to the economic systems of EU countries and to introduce the European model in the field of public procurement. Therefore, studying the features of the EU procurement policy, as well as participating in projects aimed at stimulating its development, is extremely important for our country. The outlined issues will become especially relevant during the period of reconstruction of the post-war economy and modernization of all spheres of life of society and the state.

However, the current legislation of Ukraine in the field of public procurement does not fully meet the requirements of the time, which weakens the competitiveness of the national commodity producer. For this reason, the most effective use of the country's potential, internal and external resources and the transition to the European model of the development of the national economy as an imperative of the state procurement policy is extremely important. To accomplish this, we have to improve the legal regulation of relations in the field of public procurement relying on EU laws and scientific knowledge to overcome the existing gap between the legislation and the practice of its application.

2. Literature review

Enterprises, institutions and organizations, regardless of the forms of ownership, other entities are not mentioned in paragraph 3 of the Art. 1 of the Law of Ukraine "On

Administrative Services”, therefore they cannot provide administrative services. Scholars Andriyko, O. and others (2013: 19-33) making comments to the Section 7 “Scientific evolution of the term” of the Law of Ukraine “On Administrative Services” name a synonymous number of categories of services.

The category of “administrative service” in Ukrainian administrative law had other name variants for some period of time. In particular, “management services” and “management (administrative) services”, etc. Finally scholars Andriyko, O. and others (2013: 35) settled on the category of “administrative services”, since this term removes the “management” focus, which has a certain managerial / dominant character and does not correspond to the idea of a service state. It also clearly indicates that the subject of the provision of administrative services is public administration agencies (administrative agencies). That is, the terms “management services” and “management (administrative) services” are narrower group of administrative services or outdated name for administrative services. And therefore, management services, just like management (administrative) services are a certain part of administrative services. Therefore, all the features inherent in the “administrative services” category, in particular those mentioned above, are fully inherent in the “management services” and “management (administrative) services” categories.

Koliushko, I. (2002: 107) points out in another scientific work that management service has the final form of an individual act and is the result of administrative proceedings, and therefore it would be appropriate to use the term “administrative services”. Pisarenko, G. (2005: 162) indicates that “...the definition of “management” and “administrative” services in the literature is almost synonymous. We believe that the definition “administrative” is more successful and correct, because it indicates the entity that provides such services – the administration, administration agencies. Besides, the adjective “administrative” characterizes the authoritative and public (administrative) nature of activities related to the provision of such services”. In general, the term “management (administrative) services” is used in the works of this author (Pisarenko, G., 2006: 17), written under the guidance of S. V. Kivalov.

Solonar, A. & Semennikov, S. (2017: 20) indicate that an administrative service is a service established by law, which is provided by state authorities, local self-government agencies and authorized entities at the request of an individual or a legal entity and contributes to the creation of conditions for implementing the rights, freedoms and

legitimate interests of the applicants by adopting the appropriate administrative act. Administrative service is distinguished by characteristic features, namely: a certain type of service established by law; it is provided by an authorized entity (state authorities, local self-government agencies and authorized entities); the grounds, procedure and conditions of the provision are clearly defined by law; the basis for providing an administrative service is an application by an individual or a legal entity; it contributes to the creation of conditions for implementing the rights, freedoms and legitimate interests of the applicants; its result is the adoption of the corresponding administrative act.

Kolomoets, T. (2002: 180) provides the following definition: management services are services provided by executive authorities and local self-government agencies within their respective powers.

Karpenko, O. (2013: 80) has a slightly different opinion from many other researchers, believing that administrative services are part of management services, and not vice versa. However, he still believes that management services are exclusively provided by state authorities and local self-government agencies: "...the category "management services" is much broader than "administrative services", which causes their dichotomy, when they are used in the same logical series. Therefore, it is necessary to use the category of "management services" in further studies as the one that summarizes all services of state authorities and local self-government agencies in the theory and practice of modern public administration science...". At the same time, he expresses the same opinion as other scholars that management services are "all services of state authorities and local self-government agencies" (it was emphasized in the scholar's verbatim statement).

Taking into account the results of research conducted by these and other scholars, we consider it expedient to direct scientific research on clarifying the essence of the concept of "management services" in the legislation of Ukraine and EU laws, the impact of legal means of the state's procurement policy on the stimulation of public procurement development. Therefore, the purpose of the article is to analyze the perspectives for the development of procurement legislation and its improvement in accordance with the European integration aspirations of Ukraine based on the optimal use of the potential of the country, region and business entities.

3. Methods

The dialectical and special scientific methods of scientific research were used in the article. Thus, the method of monographic analysis made it possible to clarify the range of problematic issues of improving the concept of “management services”, which was researched and published by scholars in scientific publications. The method of analysis and synthesis made it possible to generalize information on understanding the concept of “management services” and to form the authors’ vision of its essence, while researching at the same time those legal instruments that can contribute to the improvement of procurement activities. The elements of the mechanism for the formation of thesaurus of concepts of business services within EU laws, which is actively used for conducting public procurement, are critically examined due to the method of theoretical generalization. The comparative and legal method made it possible to carry out a comparative and legal analysis of the concept of “management services” in the legislation of Ukraine and EU laws. The systematic method made it possible to conduct research of the state policy in the field of public procurement, consisting of separate subsystems and elements (thesaurus). The forecasting method made it possible to study the improvement of the current legislation, in particular by implementing the norms of European law into the national legal system. The generalization method made it possible to draw conclusions based on the conducted research.

4. Results and Discussion

4.1. Managerial, administrative or public service: content of the legislative definition

The most relevant regulatory legal act of Ukraine on the researched problem is currently the Law of Ukraine “On Administrative Services” dated from September 6, 2012 No. 5203-VI.

The Article 1 “Definition of the Terms” determines that:

- 1) an administrative service is the result of implementing authoritative powers by the entity providing administrative services at the request of an individual or a legal entity aimed at acquiring, changing or terminating the rights and / or performing the duties of such a person in accordance with the law;
- 2) the appeal entity is an individual, a legal entity applying for administrative services;
- 3) the entity providing administrative services is an executive power agency, other state agency, an authority of the Autonomous Republic of Crimea, local self-government

agency, their officials, state registrar, entity of state registration, authorized entities to provide administrative services in accordance with the law.

Thus, only an executive agency, another state agency or their officials can provide an administrative service. A business entity, in particular an entrepreneur, cannot be a provider of administrative services.

A similar opinion is expressed by the authors of the Scientific and Practical Commentary to the Law of Ukraine “On Administrative Services”. Thus, they claim that the key characteristics of an administrative service can be identified from the legislative definition:

1) an administrative service is provided only at the request of an individual or a legal entity;

2) the request leads to a certain result aimed at the acquisition, change or termination of the rights and / or obligations of a person. Currently, such a result can be understood as:
- a decision of an individual action (administrative act), which is adopted in relation to a specific person and creates, changes or terminates the rights and / or obligations of a person;
- an administrative (public and legal) contract, which is the basis for acquiring, changing or terminating the rights and / or obligations of a person;

3) an administrative service is the result of the exercise of authoritative powers by the entity providing administrative services. In fact, two features of an administrative service are recorded in this position.

First of all, an administrative service is provided only by a limited range of entities. Thus, paragraph 3 of the Art. 1 of the Law defines as the entity providing administrative services only “an agency of executive power, another state agency, an authority of the Autonomous Republic of Crimea, a local self-government agency, their officials” (for details, see the commentary to paragraph 3 of the Art. 1 of the Law) . This list defines the entities providing administrative services in Ukraine, and the main entities of public administration are actually listed there. Hence, the name of this type of public services – is “administrative”. In the same context, we can talk about such a feature of administrative services as their monopoly, because unlike private sector services or even other public services (for example, education or health care services), it is usually possible to get a specific administrative service only from one entity – in one agency. Secondly, it is necessary to take into account that an administrative service is the result of exercising authoritative powers. That is, an administrative service from the point of view of law is the

power of the authority. And although there is no established understanding of the category of “authoritative powers” either in legislation or in theory, we can obviously talk in the context of the commented Law about the implementation of the competence of the relevant entity providing administrative services, in particular, about exclusive power (the right and obligation / legal obligation) to solve a certain category of cases by making appropriate decisions. Authoritative powers are obtained by the entity providing administrative services on the basis of the law.

The entity providing administrative services in paragraph 3 of the commented Article is called “an executive agency, another state agency, an authority of the Autonomous Republic of Crimea, a local self-government agency, their officials authorized by law to provide administrative services”. This norm of the Law comprehensively defines the range of entities that can provide administrative services. They include:

- 1) agencies of executive power;
- 2) other state agencies;
- 3) authorities of the Autonomous Republic of Crimea;
- 4) local self-government agencies;
- 5) officials of an executive agency, another state agency, an authority of the

Autonomous Republic of Crimea, a local self-government agency.

This list is closed (exhaustive). The legislator used the institutional criterion to form the list of entities providing administrative services, rather than the functional criterion. It means that no other entities can provide administrative services under the current Law.

There is no definition of the term of “management services” in the legislation of Ukraine. Instead, the Law of Ukraine “On Administrative Services” dated from September 6, 2012 No. 5203-VI is on operation.

The absolute majority of well-known Ukrainian scholars in the field of law consider administrative and management services to be synonymous concepts. Disputes between scholars continue about the matter, which category is broader and which is narrower. Most researchers believe that management services are part of administrative services. Some scholars think otherwise. However, all scholars distinguish the same characteristics of management and administrative services. One of the main characteristics is an exclusive list of entities providing administrative (management) services with an exclusive scope of competence defined by legislation. It is correlated with the definition of the term of “management services” provided by Kolomoets, T. (2002): management services are

services provided by executive authorities and local self-government agencies within their respective powers.

The definition of an administrative service is given in paragraph 1 of the Art. 1 “Definition of Terms” of the Law of Ukraine “On Administrative Services” on the basis of the mentioned and certain other characteristics. It can be fully extended to the definition of the concept of a management service:

– the result of exercising authoritative power by the entity providing administrative services at the request of an individual or a legal entity aimed at acquiring, changing or terminating the rights and / or performing the obligations of such a person in accordance with the law.

Interpretation of the concept of “entity providing administrative services” is enshrined in paragraph 3 of the Art. 1 “Definition of Terms” of the Law of Ukraine “On Administrative Services”: agency of executive power, other state agency, authority of the Autonomous Republic of Crimea, local self-government agency, their officials, the state registrar, the entity of state registration, authorized to provide administrative services in accordance with the law.

4.2. Management service from the perspective of management theory and law

To provide clarity in this matter, let's return once again to the theory of management. Researchers in public management Moiseiev, Ye. & others (2006: 147) begin in most cases to clarify its essence by defining the term of “management”. Management is a complex and universal social phenomenon, a necessary function of social life (Kovalenko, V., 2009: 8-11). Science interprets management as a function of organized systems that ensures the preservation of their structure, maintenance of the activity regime, and achievement of the set purpose (Kunz, G. & O'Donnell, S., 1981: 49-52). The purpose of management is the organization of joint activities of people, their certain groups and organizations, ensuring coordination and interaction between them; and its essence is the exercise of managerial influence on the relevant objects (Aver'yanov, B. & others, 1998: 16-18). Schematically, it looks in the form of vertical subordination: the subject – the governing influence – the object.

Ordering the relationship between the elements of any system is necessary term for its existence and functioning, and is achieved by two main methods: self-regulation and management. Self-regulation is carried out without the use of external forces, due to the

program laid down by nature, based on the action of its objective laws. The need to carry out management appears where it is necessary to combine and coordinate the efforts of two or more people. The special function of management was originated when the first elements of social organization and social work appeared in primitive society (for example, the need for hunting or joint protection from the enemy), and which arized as a result of certain social needs and the very nature of social work. Therefore, any joint activity of people – production or leisure, politics or education, keeping law and order in the state or protecting the rights and freedoms of citizens – necessitates the agreement, coordination, ordering and targeting of individual and group efforts and will, that is, appropriate management. The relevance of a clear, scientific management of society was increased in the history of the development of society and production, when the economic, political and social conditions of the life of people were complicated. Society is impossible without a management system, just as it is impossible without material production. Therefore, the state as an all-encompassing organization is called to reflect and ensure general interests and needs, objectively it has a need to carry out activities related to the management of various issues that arise in the process of life and are of common interest to the entire community or public interest: promoting the development of the economy, ensuring the collection of taxes and defense capabilities of the country, development of science, education, culture, provision of social assistance, etc. All this determines the objective necessity and social value of state management, that is, managerial activities carried out by various state agencies.

The governing influence is exerted by higher agencies in the system of various levels of state authorities and local self-government agencies. City councils in accordance with Part 1 of the Art. 10 of the Law of Ukraine “On Local Self-Government in Ukraine” (Bulletin of the Verkhovna Rada of Ukraine, 1997, No. 24, Art. 170 amended and supplemented) are local self-government agencies that represent the relevant territorial communities and carry out functions and powers of local self-government on their behalf and in their interests, which are defined by the Constitution of Ukraine, this and other laws.

For example, the executive agencies of city councils in accordance with Part 2 of the Art. 11 of the Law of Ukraine “On Local Self-Government in Ukraine” (Bulletin of the Verkhovna Rada of Ukraine, 1997, No. 24, Art. 170 with amendments and alterations) are subject to the control and accountability of the relevant councils, and in matters of

exercising the powers delegated to them by the agencies of executive power – also under the control of the relevant executive authorities.

Management in general is a social phenomenon without which the existence and development of humanity is impossible. Management processes take place wherever joint activities of people aimed at achieving certain goals are carried out (Moiseiev, Ye. & others, 2006: 1003). The term of “management” is found in the English-language literature while characterizing social problems of management, which in translation means administration, guidance, leadership, and the word “manager” – administrator or leader. Social administration or management existed at all stages of the development of society as a necessary condition for the coordination of collective actions of people. The English words “management” and “manager”, which have become international, are widely used in translations of reference sources. There are many classic definitions of management, which is reflected in the Oxford dictionary, which provides 4 main meanings of management: 1) management agency, administrative unit; 2) power and the art of management; 3) special kind of skills, administrative skills; 4) way or manner of communicating with people (Oxford Learner's Dictionaries, 2023). I. Ansoff introduced the term of “synergy”, which was and is understood as the effect of increasing productivity due to the use of interrelationship and mutual reinforcement of various activities, when the total result exceeds the sum of the return indicators of all resources acting independently (Dictionary online, 2023). It is difficult to achieve a synergistic effect, but when creating a team of like-minded employees, it is important for a manager to avoid typical mistakes reducing synergy and efficiency of cooperation: a) turning a leader into an executor; b) refusal of delegation; c) definition of goals in isolation from employees; d) refusal to communicate with staff; e) refusal of education and self-development; f) resistance to changes; g) ignoring the achievements of employees.

Summarizing the vast world management practice, we can formulate the following prerequisites of management: 1) the need for management arises in connection with the need to coordinate the activities of a larger or smaller number of people, each of whom performs a specific job; 2) management as an administrative activity inherent in organizations that function in a certain market environment; any organization needs management to achieve its goals, and the latter cannot exist without organization; 3) to achieve the organization’s goals, it is always necessary to use a certain amount of limited resources (material, human, financial, informational): management is the link that ensures

the effective use of these resources; 4) rational management is based on balancing between the success of the organization (achieving its goals) and the level of using resource (productivity).

4.3. Semantic load of the Ukrainian and European thesaurus on management and business services

Let us refer to the Common Procurement Vocabulary (CPV, 2023), approved by the EU Regulations No. 2195/2002 of the European Parliament and the Council and amended by the EU Commission Regulation No. 213/2008, and which became the basis for the Common Procurement Vocabulary (DK 021:2015), approved by the Order of the Ministry of Economic Development of Ukraine dated from December 23, 2015 No. 1749.

The code “79420000-4”, according to the CPV, corresponds to the verbal description “Management-related services”, which in translation means “Assistance (services) related to management”. In particular, “Management” according to the Cambridge Dictionary (CALD, 2023) – is management, leadership, guidance; “related” – connected, allied; “service” (singular) - maintenance, service, assistance, servicing, inspection and current repair, service.

The code “79420000-4” in the CPV thesaurus is located in the “Business services” group. “Business Services” (CALD, 2023) in the translation, where “Business” is translated as matter, commercial activity, trade enterprise, company, affair. That is, this block “Business services” reveals activities related to business (economic activity). According to the described above, we can talk about management, but in its content load as social, that is, management.

According to DK 021:2015, the code “79420000-4” corresponds to the verbal description “Management services”, which in general is an incorrect translation of a similar code according to the CPV, and in the corresponding thesaurus DK 021:2015, where the code “79420000-4” is included into the group “Business services”. Semantically, it looks like this: the concept of “Business” (Busel, V., 2001: 305) means 1) refers to business; 2) well-prepared, experienced, hardworking; 3) suitable for economic needs, industrial, etc. usage; trade. The concept of “Service” (Busel, V., 2001: 1080) means 1) an action, an act that gives benefit, help to another; 2) work performed to satisfy the needs of someone; servicing.

Based on theoretical understanding of “management” as the exercise of managerial influence on the relevant objects, “management service” has a semantic load and interpretation as the work performed to exercise managerial influence on the relevant objects.

Earlier we have chosen an example with local self-government. In case of the organization of local government, it means that the subject (city council) carries out the work of managerial influence on the object (executive committee).

Any provision of the Section 2 “Powers of executive agencies of village, settlement, city councils” of the Law of Ukraine “On Local Self-Government in Ukraine” dated from May 21, 1997 No. 280/97-VR does not provide that the executive committee of the city council is empowered to delegate its management as object of management to any entity (another legal entity or individual). The executive committee of the city council according to the legislation of Ukraine does not have the right to announce a tender for the transfer of a certain part of its powers. It is quite clear that neither the theory of law nor the practice of its application provides for similar management schemes within the system of local self-government. Management within local self-government agencies, according to the Law of Ukraine “On Local Self-Government in Ukraine” dated from May 21, 1997 No. 280/97-VR, can only be in the form of vertical subordination: entity – managerial influence – object.

5. Conclusions

Based on theoretical understanding of “management” as exercising the managerial influence on the relevant objects, “management service” has a semantic load and interpretation as the work performed to exercise managerial influence on the relevant objects. In case when the object of management, which is the target for the provision of management services is a local self-government agency or executive power authority, then the subject of management (provider of management service) can only be a higher agency of local self-government or executive power (respectively).

That is why management services are services provided by executive authorities and local self-government agencies within their respective powers. Besides, on the basis of the above, the definition of a management service can be extended to the definition of administrative service (clause 1 of the Art. 1 “Definition of Terms” of the Law of Ukraine

“On Administrative Services”): the result of exercising authoritative powers by the entity providing administrative services at the request of an individual or a legal entity, aimed at acquiring, changing or terminating the rights and / or performing the obligations of such a person in accordance with the law.

The legislative term of “administrative service provider” contained in clause 3 of the Art. 1 “Definition of Terms” of the Law of Ukraine “On Administrative Services’ can be extended to the administrative service provider as an executive authority, another state agency, a government agency of the Autonomous Republic of Crimea, a local self-government agency, their officials, the state registrar, the subject of state registration, authorized entity to provide administrative services in accordance with the law.

It is also advisable to eliminate the incorrect semantic load of concepts (translation) in DK 021:2015, developed in accordance with the EU requirements, which carries potential risks in the field of public procurement, does not contribute to the active attraction of investments through participation in national and international projects, as well as contributes to the emergence of ineffective management decisions.

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