

A COMPARATIVE ANALYSIS DEFINITIONS OF ADMINISTRATIVE LAW

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Abstract

It must be stressed that currently there is no universally accepted definition of administrative law that would prevail in the theory of administrative law and have an equal meaning in different countries and different legal systems. This aspect encouraged the authors of the present article to carry out an in-depth review of the conceptions of administrative law found in literature on administrative law in various foreign countries. A comparative analysis of the definitions of administrative law was carried out in order to reveal the elements of their content that are used by different authors (scholars) to define administrative law as well as the similarities and differences of these definitions.

Keywords: Administrative law, administrative agencies, administrative regulation, branch of law, definition of administrative law, executive power, legal system, rules, public administration

The majority of countries recognize administrative law as one of the central branches of law, and various definitions of this branch are formed in the modern literature on administrative law. However, the majority of these definitions emphasize the subject-matter and method of legal regulation of administrative law; therefore, the authors of such definitions, having individual attitudes towards the subject-matter and method of administrative law, design the conception differently. Such a formulation of a definition is typical of the representatives of the states of the continental legal system, whereas in the countries of the Anglo-Saxon legal system, especially Great Britain, the conception of administrative law is usually related to the implementation of public administration authority and functions as well as the control of the legitimacy of this implementation.

According to Lust S., administrative law in the broadest sense of the word consists of rules with regard to the organization and the functioning of the executive. His definition is however too broad. Defined like this,

administrative law would incorporate some constitutional rules as well, e. g. rules applying to the organization of the executive power, some procedural law – administrative procedural law to be precise -, and even tax law and social security law, which concerns in fact to a large extent relationship between the administrative authority and the citizen. That is why most often administrative law is defined in a more formal (and more strict) way: the rules concerning the organization and the functioning of the legislative and the judiciary power, and minus the rules that belong to the other branches of public law, such as tax law and social security law. This usually called administrative law *sensu stricto*⁵⁷.

Garnier B. A. defines administrative law as the law which governing the organization and operation of administrative agencies (including executive and independent agencies) and the relations of administrative agencies with the legislature, the executive, the judiciary, and the public⁵⁸. Harter P. points that administrative law is the group of requirements on how administrative agencies make decisions that affect members of the public⁵⁹. Aman A. C. stresses that administrative law regulates the procedures on the basis of which a number of the subjects of the government – local, state, federal – exercise their powers⁶⁰.

Martin E. A. and Law J. claim that administrative law is the branch of public law governing the exercise of powers and duties by public authorities. It is particularly concerned with the control of public power by judicial review and by non-judicial mechanisms such as individual and collective ministerial responsibility, and the work of the Parliamentary Ombudsman, the Commissions for Local Administration and other Commissioners or Ombudsmen. There is no universally accepted demarcation of the area of administrative law, but it conventionally includes the exercise of power by central and local government, planning, housing, social security, education, immigration, and tribunals and inquiries⁶¹.

According to Hall D., federal and state administrative agencies have become important vehicles for the implementation of governmental policies

⁵⁷ Lust S. Administrative Law in Belgium // Administrative Law of the European Union, its Member States and the United States. A Comparative Analysis. Second Edition. – Antwerpen-Oxford, Intersentia “METRO”. 2007. P. 6.

⁵⁸ Garnier B. A. Black’s Law Dictionary. Seventh Edition. – St. Paul, Minn. Printed in the United State of America by WEST GROUP. 1999. P. 46.

⁵⁹ Harter P. Administrative Law in the United State // Administrative Law of the European Union, its Member States and the United States. A Comparative Analysis. Second Edition. – Antwerpen-Oxford, Intersentia “METRO”. 2007. P. 351.

⁶⁰ Aman A. C. Administrative Law and Process // Cases and Materials Series. – Printed in United States of America by Matthew Bender & Co., INC. 1993. P. 1.

⁶¹ Martin E. A., Law J. A Dictionary of Law. Sixth edition. – Printed in Great Britain, Oxford University Press. 2006. P. 15.

and objectives and the enforcement of law. Because the number of the agencies in the United State has grown significantly in recent years, as has the authority these agencies possess, a body of law has developed to control and administer their behavior and function. This body of law is known as administrative law. More specifically, administrative law defines the powers, limitations and procedures of administrative agencies⁶².

The Russian scientists of administrative law Rosinskij B. V. and Starilov J. N. define administrative law as follows: it is a branch of law (a system of legal norms) that, by performing and implementing state tasks and functions, regulates public relations of administrative nature that emerge in the sphere of the organization and functioning of the executive power, state government and local self-government, the process of internal administration and jurisdictional activity of other state institutions by also ensuring juridical protection of the rights, freedoms and legitimate interests of legal and natural persons⁶³. Četverikov V. S. claims that as a branch of law, administrative law is a complex of norms, behaviour rules established or sanctioned by the state or its authorized institutions or officials, having the purpose to regulate the relations of administration emerging in the spheres of the activity of executive authorities, state government or local self-government institutions, the activities of other state government institutions and its bodies as well as the activities of non-governmental organizations authorized, in accordance with the procedures established by the laws, to perform the functions of state government⁶⁴. Popov L. L., Migačiov J. I. and Tichomirov S. V. define administrative law as a branch of law regulating social relations in the sphere of the exercise of the executive power (state government) as well as relations of internal administration in the bodies of state institutions and relations associated with civil service and the implementation of administrative jurisdiction⁶⁵.

Wade H. W. R. and Forsyth C. F. claim that a first approximation to a definition of administrative law is to say that it is the law relating to the control of governmental power⁶⁶. Similarly but in a rather wider context administrative law is defined by Leyland P. and Woods T. They write that

⁶² Hall D. Administrative Law. Bureaucracy in a Democracy. Second Edition. – Printed in the United States of America. Prentice Hall, Upper Saddle River, New Jersey. 2001. P. 1.

⁶³ Россинский Б. В., Стариков Ю. Н. Административное право. 4-е издание, пересмотренное и дополненное. – Москва, издательство «НОРМА». 2009. С. 67.

⁶⁴ Четвериков В. С. Административное право. – Москва, издательство «ФОРУМ: ИНФРА-М». 2005. С. 34.

⁶⁵ Попов Л. Л., Мигачев Ю. И., Тихомиров С. В. Административное право России. Учебник. Издание второе, переработанное и дополненное. – Москва, издательство «Проспект». 2010. С. 38.

⁶⁶ Wade H. W. R., Forsyth C. F. Administrative Law. Seventh Edition. – Oxford, Published by Clarendon Press. 1995. P. 4.

normally, it is regarded as the area of the law concerned with the control of governmental powers, powers which originate in primary legislation or in the prerogative. Or the subordinate powers exercised by individuals and bodies acting under the power given by primary legislation (or legislation of a binding nature emanating from the European Community)⁶⁷.

According to Craig P. P., for some it is the law relating to the control of government power, the main object of which is to protect individual rights. Others place greater emphasis upon rules which are designed to ensure that the administration effectively performs the tasks assigned to it. Yet others see the principal objective of administrative law as ensuring governmental accountability, and fostering participation by interested parties in the decision-making process⁶⁸.

Kenneth F. Warren point that broadly speaking, administrative law deals with (1) the ways in which power is transferred from legislative bodies to administrative agencies; (2) how administrative agencies use power; and (3) how the actions taken by administrative agencies are reviewed by the courts⁶⁹. The authors Orucu E. and Nelken D. claim that administrative law is about the institutions and powers of the executive branch of government and the controls exercised by law over them⁷⁰.

Reimann M. and Zimmermann R. note that in the continental European traditions, administrative law (*droit administratif, Verwaltungsrecht*) is concerned with the powers and organization of the executive organs of the state. The common law use of the term 'administrative law' is more synonymous with 'administrative litigation' (*contentieux administrative, Verwaltungsgerichtsbarkeit*), and even in the common law world the topic is often called 'judicial review (of administrative action)'. For the purposes of this study, administrative law establishes both primary rules governing how the administration is authorized to work (its organization, powers, and procedures), as well as the secondary rules governing the remedies (judicial or other) available in cases

⁶⁷ Leyland P. & Woods T. Textbook on Administrative Law. Fourth Edition. – Oxford University Press, Printed by Great Britain by Ashford Colour Press Limited, Gosport, Hampshire. 2002. P. 1.

⁶⁸ Craig P. P. Administrative Law. Fourth Edition. – London, Published by Sweet & Maxwell Limited of. 1999. P. 3.

⁶⁹ Kenneth F. Warren. Administrative Law In The Political System. – Prentice Hall, Inc., Upper Saddle River, New Jersey. 1996. P. 10.

⁷⁰ Orucu E. and Nelken D. Comparative Law. A Handbook. – Published in North America (US and Canada) by Hart Publishing c/o International Specialized Book services. 2007. P. 287.

of a failure to observe the primary rules. To this extent, the broader continental definition is to be preferred⁷¹.

It is possible to identify a group of British legal theoreticians who consider administrative law to be a part of constitutional law. The works of these authors are usually published under such titles as *Constitutional and Administrative Law* even though the publications could be entitled *Administrative Law* leaving out “constitutional”. The already mentioned Wade H. W. R. and Forsyth C. F. point that the whole of administrative law, indeed, may be treated as a branch of constitutional law, since it flows directly from the constitutional principles of rule of law, the sovereignty of Parliament and the independence of the judiciary; and it does much to determine the balance of power between the state and the citizen⁷².

Another English theoretician Adler J. writes that many or the standard texts, and many courses, are called constitutional and administrative law. There are also separate courses on administrative law, although there is an increasing number of generic public law courses. The difference between the two subjects is really one of practical convenience and thus a rough and ready one. Administrative law concerns the activities of the executive and can be subdivided into particular branches, for example public health, immigration control, housing, education, each of which can be studied in its own right. We shall be concerned only with general questions about administrative law – how the administration is controlled and made accountable⁷³.

A distinction is commonly drawn in continental countries between constitutional law and administrative law, but because English law is not codified or officially systematised English jurists have found difficulty in determining the distinction. Sir Ivor Jennings contended that administrative law, like other branches of law, ought to be defined according to its subject-matter, namely, public administration. Administrative law then determines the organization, powers and duties of administrative authorities⁷⁴.

Where there is a written constitution, as in France and United States, it is easier to demarcate administrative law from constitutional law, although neither the French *droit administratif* nor American administrative law is

⁷¹ Reimann M. & Zimmermann R. *The Oxford Handbook of Comparative Law*. – Published in the United States by Oxford University Press Inc., New York. 2006. P. 1261.

⁷² Wade H. W. R., Forsyth C. F. *Administrative Law*. Seventh Edition. – Oxford, Published by Clarendon Press. 1995. P. 6.

⁷³ Adler J. *Constitutional & Administrative Law*. Second Edition. – London, Published by The Macmillan Press, LTD. 1994. P. 14.

⁷⁴ Jackson P. and Leopold P. *Constitutional and Administrative Law*. Eighth Edition. – London, Published by Sweet and Maxwell Limited. 2001. P. 9.

codified. Where the constitution is unwritten, as in this country, it is largely a matter of convenience where the line is drawn⁷⁵.

Carroll A. investigating the distinctive features of constitutional and administrative law states that constitutional law deals with the legal foundations of the institutional hierarchy through which the state is governed. It concentrates in particular on the rules, both legal and conventional, which explain and regulate the composition, powers, immunities, procedures of, and relationships between, those institutions – hence, for example, the subject’s concern with the composition, workings and powers of Parliament, the legal authority and immunities of the executive, and the balance of legal and political power between the two⁷⁶.

Constitutional law also seeks to delineate those individual rights which, according to cultural traditions, are the inalienable attributes of a genuinely free society and upon which the state should not transgress except where an overwhelming public interest so requires (e.g. the defence of the realm). Such rights would include the freedom of the person (i.e. from arbitrary arrest and detention), freedom of association and assembly, and freedom of speech⁷⁷.

While describing administrative law abovementioned Carroll A. writes that administrative law, on the other hand, directs greater attention to the control and regulation of government power by both public and private law and through the workings of the various extra-judicial appeals and complaints procedures created in recent times to supplement the judicial and political mechanisms for dealing with individual grievances against the states. Central to the subject, therefore, is the process of judicial review, whereby alleged abuses of government power may be brought before the courts and condemned as *ultra vires* and of no legal effect. The subject also deals *inter alia*, with the jurisdiction and workings of statutory tribunals and inquiries which hear appeals against official decisions, and with the activities of the increasing number of ‘ombudspersons’ or complaints commissioners dealing with allegations of ‘maladministration’ in the public services and the execution of public policy⁷⁸.

Bradley A. W. and Ewing K. D. point that a formal definition of administrative law is that it is a branch of public law concerned with the composition, procedures, powers, duties, rights and liabilities of the various

⁷⁵ Ten pat. P. 9.

⁷⁶ Carroll A. Constitutional and Administrative Law. Fourth Edition. – Harlow, England; London; New York; Boston; San Francisco; Toronto; Sydney; Singapore; Hong Kong; Tokyo; Seoul; Taipei; New Delhi; Cape Town; Madrid; Mexico City; Amsterdam; Munich; Paris; Milan. Printed by Ashford Colour Press Ltd, Gosport. 2007. P. 5.

⁷⁷ Ibid. P. 5.

⁷⁸ Ibid. P. 6.

organs of government that are engaged in administering public policies. These policies have been either laid down by Parliament in legislation or developed by the government and other authorities in the exercise of their executive powers. On this broad definition, administrative law includes at one extreme the general principles and institutions of constitutional law outlined in earlier chapters; and at the other the detailed rules contained in statutes and ministerial regulations that govern the provision of complex social services [such as social security], the regulation of economic activities [such as financial services], the control of immigration, and environmental law⁷⁹.

The Lithuanian theoretician Andruškevičius A. distinguishes three possible levels of administrative law: 1) administrative law – the law of state government (such a view is the most suitable for the analysis of administrative law in effect during the period of Lithuania’s incorporation in the Soviet Union); 2) administrative law – the law of public administration and the adjustment of public interests (a wider attitude suitable for the analysis of the present-day administrative law of the Republic of Lithuania); 3) administrative law – a system of norms based (must be based) on certain principles (the widest scientific approach suitable for conceptual understanding and analysis of administrative law)⁸⁰. Another representative of the Lithuanian administrative law Petkevičius P. in describing administrative law writes that the word “administrative” originates from the Latin word *administratio* meaning “governance, management”. Thus administrative law is the law of government or a branch of law dealing with government, and its subject-matter is the complex of social relations that emerge in the process of government⁸¹. The group of Lithuanian authors (A. Bakaveckas, A. Dziegoraitis et al.) define administrative law as follows: administrative law is a branch of law consisting of social values legally significant for an individual, the society and the state regulated in the implementation of state government, legitimate ways and means of their implementation, the activity of natural and legal persons, involving state

⁷⁹ Bradley A. W., Ewing K. D. Constitutional and Administrative Law. Thirteenth Edition. – Harlow, England; London; New York; Boston; San Francisco; Toronto; Sydney; Singapore; Hong Kong; Tokyo; Seoul; Taipei; New Delhi; Cape Town; Madrid; Mexico City; Amsterdam; Munich; Paris; Milan. Printed and bound by Ashford Colour Press Ltd, Gosport. 2003. P. 631.

⁸⁰ Andruškevičius A. Administracinės teisės principai ir normų ribos. – Vilnius, leidykla “Teisinės informacijos centras”. 2004. P. 15–18.

⁸¹ Dambrauskienė G., Marcijonas A., Monkevičius E., Petkevičius P., Piesliakas V., Šatas J., Šileikis E., Valančius V., Vileita A. Lietuvos teisės pagrindai. – Vilnius, leidykla „Justitia“. 2004. P. 133.

government institutions, regulated by legal norms on the basis of social justice⁸².

To summarize the abovementioned approaches of various authors representing different legal systems, one may conclude that at present the majority of countries in the world acknowledge administrative law as one of the fundamental branches of law. Therefore, it is reasonable to claim that administrative law is of considerable practical significance for the functioning of the society and the state as it regulates a very important and significant sphere of public life. However, the definitions, objectives and tasks of administrative law as a branch of law are formulated differently even in the countries of the same legal systems.

As Orucu E. and Nelken D. stress, the understanding and definition of the notion “administrative law” varies in different legal systems⁸³. Therefore, as mentioned before, in comparison to the countries of the continental legal system, in the countries of the Anglo-Saxon legal system, the content of the definition of administrative law is construed differently. In the countries of this legal system, administrative law is associated with the authorities of the subjects of public government (administration) or executive authorities and the control of their exercise/usage as well as the protection of personal rights and freedoms and the legitimacy of administrative procedures. This means that in the countries of the Anglo-Saxon legal system administrative law is understood in a narrower sense than in the countries of the continental legal system; therefore, in the countries of this system, cumbersome definitions of administrative law are not typical.

The analysis of the definitions of administrative law shows a tendency to indicate the following key aspects describing (features characterizing) administrative law in the formulation of its conceptions: a branch of law or a complex of legal norms; the sphere of administrative legal regulation (the subject-matter of administrative law) and the subjects of administrative law. The definitions provided by the representatives of the countries of the Anglo-Saxon legal system focus on the control of the exercise of the authorities of the executive power or the subjects of public administration and its forms as well as the supervision of their legitimacy. Also it still has to be mentioned that usually administrative law theoreticians tend to develop (acknowledge) more detailed definitions of administrative law. On the other hand, it is hardly possible to formulate a comprehensive

⁸² Bakaveckas A., Dziegoraitis A., Dziegoraitienė A., Gylys A., Kalesnykas R., Pranevičienė B., Rusinas E., Šedbaras S., Urmonas A., Žilinskas D. Lietuvos administracinė teisė. Bendroji dalis. – Vilnius, Lietuvos teisės universitetas. 2005. P. 64.

⁸³ Orucu E. and Nelken D. Comparative Law. A Handbook. – Published in North America (US and Canada) by Hart Publishing c/o International Specialized Book services. 2007. P. 287.

definition of administrative law by referring to a single feature from the abovementioned list. Admittedly, only a reflection of the complex of all abovementioned features may fully and comprehensively define this branch of law.

The definition of administrative law as a branch of law, i.e. associating it to administrative legal regulation and a certain sphere, is perhaps the key component of this notion. According to the results of the analysis of different definitions formulated by administrative law theoreticians, in the countries of both the continental and the Anglo-Saxon legal systems administrative law is defined as a branch of law, i.e. this aspect of administrative law is emphasized the most often. This aspect is highlighted even in the most general (universal) definitions of administrative law. There are no disputes between theoreticians (except for several specialists of the English constitutional and administrative law who treat administrative law as an integral part of constitutional law) on the fact that administrative law should not be treated as an independent branch of law and, accordingly, a part of the legal system. Furthermore or even on the contrary, usually this branch of law is acknowledged as one of the most important branches of the legal system of any state the norms of which regulate an exceptionally significant and diverse sphere of the life of the state and the society (public government (administration)) and closely related to other branches of law.

Another attribute of the definition of administrative law that is always referred to while formulating the conception of administrative law is the sphere of administrative regulation or social relations regulated by the norms of administrative law, i.e. the regulation subject-matter of administrative law. Here, certain differences can be noticed. However, despite insignificant distinctions, essentially differentiated in this aspect are the definitions of administrative law in the countries of the continental and the Anglo-Saxon legal systems. The main reason is that in the counties of the continental legal system a wider understanding of administrative law is prevalent, i.e. it is understood as regulating a wider spectrum of public relations in comparison to the countries of the Anglo-Saxon legal system; therefore, the definitions formulated by authors representing this system are characterized by a narrow scope/briefness (usually it is stated that administrative law establishes the authorities of public administration and the control of their exercise).

The third element that is reflected in the definitions of various authors representing various legal systems is the subject of administrative law. The level of explicitness in the identification of the subjects of administrative law in the development of the conception of administrative law depends on the author of the definition: certain authors use the abstract construction (subjects of public government (administration), executive

authorities, etc.), while others choose more detailed versions, i.e. name particular groups of subjects.

While describing the systems of administrative law, Gabričidze B. N. and Černiavskij A. G. expressed a very well-directed idea. After analysing a number of the works of authors representing certain legal systems they stressed that the inductive⁸⁴ approach or method (from private to common) is typical of American administrative law, while in the countries of the continental legal system (France, Italy, Germany) an opposite deductive⁸⁵ approach (from common to private) prevails. Jurists representing the continental legal system in countries of civilized law refer to the Roman legal system and start from the formulation of conceptions and principles, identify the structure and institutes of different branches of law and only then proceed to particular norms of law. In such a situation, i.e. moving from the top to the bottom, attention is concentrated on the largest subjects of the sphere under investigation, i.e. administrative institutions. Thus a representative of the continental legal system tries to develop a scheme of the structure of administration, classify administrative institutions, arrange them in a certain hierarchical order, define their authorities, etc. Only then citizens and their rights and freedoms are taken into consideration⁸⁶.

Furthermore, it is noteworthy that before starting to analyse the structure of public administration the representatives of the continental legal system usually devote exceptional attention to the functions, subject-matter and method of administrative law, discuss its structure and administrative jurisprudence, norms and administrative legal relations, what is not at all characteristic of scientific works on administrative law in the countries of the Anglo-Saxon legal system. Meanwhile natural persons, including citizens, as subjects of administrative law are described the last.

⁸⁴ Inductive, based on induction; capable of creating induction. Induction (Latin *induction*, inducement, introduction): 1. Logical reasoning proceeding from separate to general facts or knowledge; 2. *math.* A method of proof and definition based on a transition from a conclusion that is true in the case of the integer n to a conclusion that is true in the case of the number $n + 1$; 3. Stimulation of a physical phenomenon by external magnetic, electromagnetic force; 4. *physiol.* interaction between arousal and suppression in a nerve centre: arousal creates suppression (negative induction), while suppression creates arousal (positive induction) (Tarptautinių žodžių žodynas. – Vilnius, leidykla „Alma litera“. 2008. P. 318.).

⁸⁵ Deductive, based on deduction. Deduction (Latin *deductio*, the act of deducing): 1. The deriving of conclusions from premises according to the laws and rules of logic; 2. Conclusions reached by deductive reasoning (Tarptautinių žodžių žodynas. – Vilnius, leidykla „Alma litera“. 2008. P. 146).

⁸⁶ Габричидзе Б. Н., Чернявский А. Г. Административное право Российской Федерации. Учебник для вузов. – Москва, издательство «ДЕЛО И СЕРВИС». 2001. С. 26–27.

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