

KEY LEGAL ASPECTS OF THE HOUSEHOLD WASTE MANAGEMENT IN UKRAINE

Doctor of Juridical Sciences **Mykhailo H. KRAVCHENKO**
“Taras Shevchenko” National University of Kyiv

ASPECTE JURIDICE FUNDAMENTALE ALE GESTIONĂRII DEȘEURILOR MENAJERE DIN UCRAINA

Rezumat. Acest articol este dedicat analizei a patru aspecte-cheie ale gestionării deșeurilor menajere din Ucraina. Autorul investighează modul în care managementul deșeurilor menajere, ca funcție a administrației publice din Ucraina, vizează afirmarea și asigurarea drepturilor și libertăților omului; în ce măsură această gestionare se referă la punerea în aplicare a intereselor publice ale persoanelor fizice din domeniul dat; de asemenea, studiul în cauză ține cont de ponderea angajării persoanelor private în gestionarea deșeurilor menajere; în final, este definit nivelul calității reglementării legale a gestionării deșeurilor menajere ca proprietate publică. Pe baza analizei efectuate, autorul sugerează prezentarea unei propuneri de modificare a legislației ucrainene privind deșeurile.

Cuvinte-cheie: funcția administrației publice, deșeuri menajere, drepturile și libertățile omului, interes public, proprietate publică, subiecții administrației publice cu autoritățile delegate.

Summary. This article is devoted to the analysis of four key issues of the household waste management in Ukraine. The author investigates how the household waste management as the function of the public administration in Ukraine is aimed at the affirmation and securing the human rights and freedoms; to what extent this management is aimed at the implementation of the public interests of the physical persons in this area; also this research considers the volume of engagement of the private persons into the household waste management; and finally, the quality level of law regulation of household waste management as a public property is defined. Based on the performed analysis, the author suggests to submit the proposal on amending the Ukrainian legislation on waste.

Keywords: the public administration function, household waste, human rights and freedoms, public interest, public property, subjects of public administration with delegated authorities.

Introduction. The reformation of the household waste management sector in Ukraine is the logical step towards the adaptation of the Ukrainian legislation to the EU legislation in the field of waste and resources management. The necessity to bring the legislation of Ukraine in this sector in accord with the EU legislation is subject to the provisions of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [1], in particular the Annex XXX [2] herein. This annex determines the list of EU legal instruments, the provisions of which should act as the landmarks which ensure the becoming of the household waste management in Ukraine as the European one. This refers to the provisions of the following EC directives: Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives [3]; and the Council Directive No 1999/31/EC on the landfill waste, amended with the Regulation No 1882/2003 EC [4].

The specific steps on the reformation of the function of public administration of Ukraine on waste

management as well as bringing this function into the conformity with the European standards are identified in the National Strategy on waste management in Ukraine until the year 2030 [5]. The provisions of this Strategy designed to achieve the specific goals; particularly, the following ideas should be practically implemented in Ukraine: the closed-loop economy, i.e. the economy oriented at the minimization of negative impact of the waste on the environment, non-waste production and reaching the goals of sustainable development; the hierarchy of the waste management; integrated information system of waste management; extended producer responsibility; integration into the EU waste market and the European waste management system [6]. To our point of view, the above-mentioned ways of reform are only a part of what should be done in order to approximate the waste management in Ukraine to the European standards. We are confident that in order to make the effective reformation of that function of the public administration of Ukraine possible, in fact, a variety of benchmarks should be accounted as well. This article analyses four of them.

The following types of academic sources were used in research:

The scientific researches on the administration and legal support of human rights and freedoms; kinds of literature, that account public interests in implementing the functions of public administration; scientific papers on the legal status of public property; the scholars' works on interaction of public administration and institutions of the civil society. The following scholars have dealt with such kind of researching: V.V. Dzharty, N.Yu. Zadiraka, O.O. Kravchuk, Yev. V. Petrov [7, 8, 9, 10] and others. Professional attitude to the subject matter has been mainly defined under the influence of R.S. Melnyk's scientific works [11, 12, 13].

The following thesis works on certain aspects of waste management in Ukraine had some educative value: T.L. Antonova, O.M. Havriliuk, V.O. Yureskul [14, 15, 16].

Task statement The aim of this article is to evaluate the reformation of the public administration function of the household waste management from four points of view: firstly, to what extent it is oriented at meeting and safeguarding the human rights and freedoms; secondly, whether this function creates necessary conditions to comprehensive accounting of public interest of private persons in this field in full; thirdly, whether this reform encourages private persons as the public administration subjects with delegated power to implementing the function of the national public administration on the household waste management; and finally, does it address the issue of improving the mechanism of household waste management as the public property.

Study Results. In the following paragraphs, each of the above stated issue shall be analyzed separately.

Firstly, the household waste management in Ukraine should be oriented at affirmation and ensuring of human and citizens rights in this direction. Being the function of the public administration of Ukraine, the household waste management should ease the fulfilling of the main challenges that Ukraine currently faces. The Constitution of Ukraine adheres a specific position in this regard. Accordingly, the para 2 of the article 3 of the Constitution of Ukraine says that human rights and freedoms shall determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State [17]. We think that this provision refers to all subjects of public administration to the same extent. Besides, it serves as a clear benchmark to identify the content and main point of any function of public administration.

In other words, there might not be any function of public administration which does not focus at the affirming and ensuring the human rights and freedoms. At this time, the human rights and freedoms should be the corner point in the structure of such function. The goals and tasks should be build around the human rights and freedoms, and their affirmation and ensuring should be in the main stream of public administration of Ukraine. Talking about the household waste management in Ukraine, we should note that wide spectrum of human rights are executed in this area, particularly, the right for environmentally safe and friendly conditions for living and health; the right for being informed about environment condition; the ownership right for household waste as a material resources; the right for entrepreneurship operations related to the household waste; the right for participation in the public hearing, addressing the issues on the location of the household waste handling objects; the right to perform the public monitoring in the field of household waste management etc. In executing its obligations, laid down by the Constitution of Ukraine, it is evident that public administration should direct its efforts at affirmation and ensuring of these rights. Along with that, the National waste management strategy in Ukraine until the year 2030 insufficiently represents the issues related to the human rights and freedoms. The Strategy considers the human rights in direct way only once, when talking about the measures designed at the necessity to identify the proprietary rights on the household waste [6]. Besides, the aim of this Strategy as well as also the whole process of the waste management in Ukraine, does not cover the issues of the affirmation and ensuring of human rights in this field. Enhancement of the population's standards of living by means of implementing the systematic approach to waste handling at the state and regional level, reducing the volume of waste generation and increasing the volume of waste recycling and reuse, particularly, are in the focus of this Strategy [6]. Obviously, such approach to the definition of the goal of the waste management in Ukraine, does not correlate with the provisions of Constitution of Ukraine as well as does not correspond to those ideas and valuables, underlying the functioning of the European Union. This refers to the respect of democratic principles, human rights and principal freedoms. These ideals are mentioned in the Association Agreement between Ukraine, from one side and the European Union, European society on the atomic energy and their member-states, on the other hand [1]. The detailed information about the human rights and fundamental freedoms is contained

in the Charter of Paris for a New Europe (1990) [18]. This Charter identifies the requirement on safeguarding the human rights and fundamental freedoms as the first responsibility of the State [18]. Consequently, it is impossible to have the European-kind function of the public administration of household waste management in Ukraine without the priority affirmation and ensuring of the human rights and freedoms.

Within this context, we suggest revising the National Strategy on the waste management in Ukraine until the year 2030 from the position to what extent its provisions aimed at the affirmation and ensuring of human rights and freedoms, realized in the process of household waste management in Ukraine.

Secondly, the household waste management should be performed with utmost consideration of public interests of private persons. To our point of view, any public administration function in Ukraine should be realized with due account for public interests of private persons. That may be concluded, based on the analysis of legal acts of the European Union [19, p. 55-57] and research on the nature of public administration, conducted by European scholars. In this case, the scientific view of M. Benio is very indicative as he attracts the attention that public administration is a set of organizational actions, activity, and measures, performed by different subjects, entities and institutions based on the law and within the forms, identified by the law for achieving the public interest [20, p. 9]. Therefore, public interest should be considered as a benchmark to direct the activity of public administration and to specify what this administration should approach and what goals and tasks were assigned by the society.

Talking about the household waste management in Ukraine, it should be noted that the public interests of private persons have not been paid sufficient consideration in this field even while drafting the National strategy of waste management in Ukraine until the year 2030. It can be demonstrated in such example: this Strategy suggests to implement “the contaminator shall pay”, “the producer’s extend responsibility” and “pay for what you are going to get rid of” principles [6]. Implementation of these principles is a balanced and justified step in the conditions of the stable economic situation in the country. As Ukraine has been facing a deep economic crisis, implementation of the above-said principles would cause the growth of the product unit cost and thus the burden of responsibilities shall be carried by the general public. Perhaps, the employed citizens would cope with that burden but what to do with the socially vulnerable groups of the population?

Therefore, we suggest to update the list of tasks, fixed in the National strategy of waste management in Ukraine until the year 2030 with additional responsibility of the public administration to systematically identify the public interests of the private persons in this field as well as their obligatory accounting in executing the function of public administration on the household waste management in Ukraine.

Thirdly, the private persons should be engaged to an implementation of the public administration function on the household waste management in Ukraine as the subjects of public administration with the delegated powers. From our point of view, the function of public administration in Ukraine on the household waste management shall contain of the following components: the public management of the household waste administered by the executive authorities; management of the Autonomous Republic of Crimea, administered by its executive authorities; municipal management, executed by the municipal authorities; and management, rendered by private persons, acting as the subjects of public administration with delegated powers. Each of the above said type of management should have its own regulation at the level of the National Strategy of the household waste management in Ukraine until the year 2030 [6]. Other words, this Strategy had to define what was required for each type of waste management and what should be done in order for them to become more effective.

That national strategy had to pay specific attention to the development of the institution of the private persons being the subjects of the public administration with delegated powers. Bringing private persons to perform the function of national public administration is quite acceptable and grounded practice for the European Union states. Bringing private persons to household waste management in Ukraine is useful from the point of view that they can execute the majority of tasks, entrusted to the official subjects of public administration (executive power cells, bodies of authorities of the Autonomous Republic of Crimea and municipal authorities). On top of this, such tasks shall be executed by the private persons, acting as the subjects with delegated powers, not at the account of the state, Autonomous Republic of Crimea or municipal budget but shall be funded from their own resources.

It is important to note that the framework law of Ukraine On waste [21] does not say anything about the private persons as the subjects of public administration with delegated powers. This law of Ukraine does not contain the category of “private person as a subject of public administration with delegated

power” or any other analog of this category. Only article 23-2 of this law mentions the delegated powers in the light of the monitoring control, performed by the public authorities over the municipal authorities in the context of delegated to them powers [21]. Thereby, the framework Law of Ukraine On waste, being the baseline of the legislation on waste in Ukraine does not bind the private persons with the function of public administration on the household waste management which is from our point of view is a mistake.

Taking into account that the household waste management in Ukraine goes through the reformation stage in this regard it would be interesting to know how much attention is paid to the private persons as subjects of public administration with delegated powers in the national Strategy on waste management in Ukraine until the year 2030 [6], which serves as the instrument to approximate the household waste management in Ukraine to the appropriate European standards. Unfortunately, this Strategy does not say anything about the delegating of powers on managing the household waste in Ukraine to private persons. Along with that, it should be taken into consideration that exactly this Strategy serves as a baseline for further legislative works on drafting the Law on waste and secondary resources as well as series of some sectoral Laws, among which there is a Law on household waste [6]. Therefore, it is quite grounded that any further laws, regulating the function of public administration on the household waste management in future, will not designate the private persons as subjects of public administration with delegated powers.

We are confident that the private persons being the subjects of public administration with delegated authorities must be invited to execute the function of public administration of Ukraine on the household waste management. According to the experience of the European Union states, the involvement of these subjects in the household waste management facilitates the use of new technology for collection, transportation, sorting, processing, re-utilization and removal of household waste; improves the level of services, provided to the public on the transportation of the household waste; relieves the official subjects of public administration on managing the household waste as the material resources; cuts down the expenses of the budget funds and re-directs them on solving other social issues. In the light of the above, we recommend designing the mechanism of engaging the private persons being the subjects of public administration with the delegated powers to execute the public administration function on household waste management in Ukraine.

In this regard, it is reasonable to mention that the Directive 2008/98/EC of the European Parliament and of the Council on waste [3] provides that special economic subjects which might be the subjects of public administration with delegated powers, might be engaged to the waste management activity. In this context special economic subjects mean dealers and brokers. In fact, they are private persons being the subjects of economic operations, carrying out the activity, which relates to the household waste, considered as the property. It is strange why national strategy of the household waste management in Ukraine until the year 2030 [6] does not mention anything about those economic subjects. From our point of view, the operations of dealers and brokers should be legally regulated at the level of the legislation of Ukraine on waste. We suggest to amend article 1 of the Law of Ukraine On waste (the definition of main terms) with a “dealer” category, defining it as follows: dealer means any natural person or legal entity which buy and then sell the household waste on a regular basis, including those entities which do not possess such waste. Any entity which acquired or sold only once the household waste in the amount that does not exceed fifty tax-free minimum incomes shall not be deemed a dealer.

We also suggest to categorize the concept of “broker” and define it as any private or legal person which, on behalf of others, carries out the activity of use and removal of waste, including such brokers who do not take physical possession of the waste. The specifics of brokers activity in regard to dangerous, radioactive and chemical waste shall be defined by the legislation of Ukraine.

We are confident that introduction of the concepts of “brokers” and “dealers” shall be the necessary condition for reform of household waste management in Ukraine. We suggest to implement these concepts into the legislation of Ukraine with its further obligatory development.

Next goes the development of the mechanism of the household waste management as being the public property. Further development of the institution of the public property in the field of the household waste is covered insufficiently in the National waste management strategy in Ukraine until the year 2030. Generally speaking, it should be noted that the “property” category is not mentioned at all in this Strategy. From our perspective, that approach is false as the household waste is a property and depending on who owns this waste it may acquire the status of the public or private property. The waste that is owned by the state, the population of the Autonomous Republic of Crimea and the territorial communities shall be regarded

as public household waste. In this regard, it is worth to say that the household waste as being the public property is managed by the subjects of public administration of Ukraine. The public authorities, the authorities of the Autonomous Republic of Crimea and municipal authorities shall be qualified as the above-mentioned subjects. This management is the function of that subjects of public administration and stems from the entrusted for them responsibilities to further decide on handling the public and municipal waste as well as the waste of the Autonomous Republic of Crimea.

At the same time, the mechanism of how to manage such waste is only fragmentarily defined in the Law of Ukraine On waste. [21]. In such, only the parts 3 and 9 of this Law mention that the public waste is managed by the Cabinet of Ministers of Ukraine on behalf of the State. And how to manage the household waste which belongs to the Autonomous Republic of Crimea and that is of municipal communities property? Moreover, the waste which is the property of the Autonomous Republic of Crimea population was not allocated into the separate category. To our deep belief, these questions should be addressed by the National strategy of the household waste management in Ukraine until the year 2030 [6]. In fact, the Strategy does not respond to this question in due scope.

Therefore, we recommend to amend the National strategy of the waste management in Ukraine until the year of 2030, binding the public administration of Ukraine to develop the mechanism of household waste management, considered as the public property, particularly, the mechanism of management of the public household waste, the waste that belongs to the population of the Autonomous Republic of Crimea and the waste of municipal belonging.

Conclusions. Bringing the function of public administration on the management of the household waste in Ukraine consistent with the European standards presumes to put in place some measures. Certain of them are indicated in the National strategy of the household waste management in Ukraine until the year of 2030. Provided under this Strategy measures are insufficient to approximate the model of the household waste management in Ukraine to the European analogies.

We estimate that the management of the household waste as the function of public administration in Ukraine shall be subject to obligatory accounting of the human rights and freedoms as well as public interests of the private persons in this field. As such, we suggest to revise the National strategy of the waste management in Ukraine until the year of 2030 from the position that to what extend its provisions aimed at

the affirmation and ensuring of human rights and freedoms, realized in the household waste management field in Ukraine. On top of all that this Strategy should provide explicit mechanism of identification and accounting of public interests of the private persons while executing the function of public administration on the household waste management in Ukraine.

The practice of engagement of private persons as the subjects of public administration with the delegated powers is quite useful in all regards, as per our view. Bringing the private persons to execution of the function of the public administration on the household waste management is a common practice for EU states. Recruiting the private persons is beneficial in many respect: it stimulates the usage of the innovative technologies in the process of household waste management; it improves the quality of rendered to the general public services on household collection; it exempts the public administration from the obligation to directly manage the waste as a public property. In the light of the above said we suggest to implement and develop this institution in the field of the household waste management in Ukraine.

Adequate development of the institution of the household waste management as being the public property shall be provided as well. In our view the household waste shall be considered either with the status of public or private property, depending on the applied legal treatment. Sadly to say, but legislation of Ukraine does not provide the appropriate mechanism of the household waste management, being the public property. Due to this reason, we suggest to fill this gap in the legislation of Ukraine and develop the management mechanism of the public and municipal household waste as well as of the waste that belongs to the Autonomous Republic of Crimea.

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