

UDC 34(477)(092)  
DOI 10.24919/2519-058x.0.184408

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**Бібліографічний опис статті:** Kolomoets, T., & Kolpakov V. «Forgotten» scientific heritage of Yuriy Paneiko (the end of the XIXth – the beginning of the XXth century). *Skhidnoievropeiskiyi istorychnyi visnyk [East European Historical Bulletin], scientific conference proceedings*, 53–61. doi: 10.24919/2519-058x.0.184408

**«FORGOTTEN» SCIENTIFIC HERITAGE OF YURIY PANEIKO  
(the end of the XIXth – the beginning of the XXth century)**

**Abstract.** *The purpose of the study is to analyze the scientific heritage of Yuriy Lukych Paneiko as a representative of the «forgotten» scientific community in the aspect of substantiating the «national roots» of the administrative and legal traditions of a public administration and their perception and development under current conditions of the state and law reform. The methodology of the research is based on the basis of the comparative legal analysis. During the research such methods as historical, legal, component analysis were used. The scientific novelty is the systematic analysis of the poorly researched sources of the «forgotten» professional heritage of the XIXth – the beginning of the XXth centuries and the substantiation of the «national roots» of the administrative and legal traditions of the public administration, the perception and development of its modern home legal science in the aspect*

of the newest scientific base formation for reforming the state-making and law-making processes in Ukraine. **The Conclusions.** The analysis of the poorly researched scientific heritage of the XIXth – the beginning of the XXth centuries, the part of which is the work of Yu. Paneiko, indicates that most of the provisions, formulated in a certain historical period, have in fact «absorbed» the «basic component» of the administrative and legal traditions of the public administration, which are updated with a new force in the context of a modern state-making and the law-making reform processes in Ukraine. These provisions are actualized with a focus on the needs of the modern period, and are able to ensure the effectiveness and efficiency of the transformations. That is why it is important to search and to analyze the «forgotten» scientific professional heritage of the XIXth – the beginning of the XXth centuries, which should be systematic, consistent, profound and nationally recognized as a priority area of a modern professional research on the formation of the latest scientific basis for the state-building and law-making reforming processes in Ukraine. It is the use of this heritage as a «golden scientific professional fund» that formed the administrative and legal traditions of the public administration, that will contribute not only to their preservation with the emphasis on a national specificity, but also the development approaching the European and international legal analogues.

**Key words:** administrative and legal traditions, public administration, instrumentation, «forgotten» scientific heritage, scientific sources, scientific basis, state-building, law-making.

### «ЗАБУТА» НАУКОВА СПАДЩИНА ЮРІЯ ПАНЕЙКА (кінець XIX – початок XX ст.)

**Анотація.** *Мета дослідження* – аналіз наукової спадщини Юрія Лукича Панейка як представника «забутої» наукової спільноти в аспекті обґрунтування «національного коріння» адміністративно-правових традицій публічного адміністрування та їх сприйняття й розвитку в сучасних умовах реформування держави і права. **Методологія дослідження** базується на засадах, в основі яких – порівняльно-правовий аналіз. Під час проведення дослідження використані такі методи, як історичний, проблемно-правовий, компонент-аналіз. **Наукова новизна** полягає у систематизованому аналізі малодосліджених джерел «забутої» фахової спадщини кінця XIX – початку XX ст. й обґрунтування «національного коріння» адміністративно-правових традицій публічного адміністрування, сприйняття та розвитку його сучасною вітчизняною правовою наукою в аспекті формування новітнього наукового базису для реформаційних державотворчих і правотворчих процесів в Україні. **Висновки.** Аналіз малодослідженої наукової спадщини кінця XIX – початку XX ст., складовою частиною якої є й праці Ю. Л. Панейка, свідчить про те, що більшість положень, сформульованих у відповідний історичний період, фактично «увібрали» той «базовий компонент» адміністративно-правових традицій публічного адміністрування, які в умовах сучасних реформаційних державотворчих та правотворчих процесів в Україні актуалізуються з новою силою й їх урахування, з акцентом на потреби сучасного періоду, здатне забезпечити результативність і ефективність відповідних перетворень. Саме тому важливим є пошук та поглиблений аналіз «забутої» наукової фахової спадщини означено періоду, який має бути системним, послідовним, виваженим й на загальнодержавному рівні визнаним пріоритетним напрямом сучасних фахових наукових досліджень з формування новітнього наукового базису для реформаційних державотворчих і правотворчих процесів в Україні. Саме використання цієї спадщини як «золотого наукового фахового фонду», що сформував адміністративно-правові традиції публічного адміністрування, сприятиме не тільки їх збереженню з акцентом на національну специфіку, а й розвитку із наближенням до європейських та міжнародно-правових аналогів.

**Ключові слова:** адміністративно-правові традиції, публічне адміністрування, інструментарій, «забута» наукова спадщина, наукові джерела, науковий базис, державотворення, правотворення.

**The Problem Statement.** Under conditions of modern reforming of state-making and law-making processes in Ukraine, directly related to the introduction of the innovative state-legal institutions, there is the need analyzed to create a new scientific base, which would contain the provisions on the content, the purpose, the resources of such institutions, stipulating

adherence to the principle of a scientificity nature during such processes, the effectiveness and efficiency of the latter. The intensification of the legal scholars efforts to resolve this issue is accompanied by the attempt to study thoroughly the under-researched legal scientific heritage of the «forgotten» scientists of the XIXth – the beginning of the XXth centuries, which was unjustifiably forgotten by Ukrainian society for a long time, but at that time (at the time of its appearance) contained the provisions that are actualized and are of a practical importance under modern conditions. One of these «forgotten» scientists, whose scientific heritage «was well known in Europe but almost unknown to the compatriots» (Teteruk, 2007, p. 4), is Yuriy Lukych Paneiko, whose works are «oversaturated» by the provisions on the public service, a local self-government, a public interest, the administrative acts, the public authority delegacy, the public administration and other public and legal phenomena, a careful study of which will help to clarify their real purpose and the standardized efficient use of the resource in Ukraine. A consistent, advanced and systematic study of Yu. Paneiko's works will help to form a new modern scientific foundation for the effective reformative state-building and law-making processes.

**The Analysis of the Sources and Recent Researches.** Taking into account the fact that for a long time Yu. L. Paneiko's works were «forgotten» for the Ukrainian scientific legal community and only in the early 1990-ies of the XXth century there appeared the fragmentary references to his figure in the process of the legal education organizing, the justification for the need to develop the state through the introduction of the latest tools of the public administration, a sufficient source base to find out his real contribution to the law-making and law-making processes, unfortunately, cannot be recognized. A fragmentary character of the provisions of P. Stetsiuk's works (Stetsiuk, 2005, pp. 50–53), S. Teteruk (Teteruk, 2007, pp. 4–7), T. Andrusiak (Andrusiak, 1996, p. 873) aroused the interest of the scientific community in the heritage of Yu. Paneiko and intensified the search of his works. As a result, the access to his works (primarily, «The Science of Administration and Administrative Law. The General Part» (1949), «Theoretical Fundamentals of Self-Management» (1963), «The Organization of Public Administration in the Agricultural Sector» (1928), «The Outline of Polish Administrative Law» (1929), «The Communal Self-Government in Switzerland» (1931), «The Reform of Administration and Administrative law» (1932), «Ethical Moments in Public Life» (1948), «Polish Law of Communication» (1938) and the others) caused an in-depth study of their provisions, the emergence of a significant number of works of the home administrative scientists (for instance, the works of V. Kolpakov (Kolpakov, 2019, pp. 14–18), T. (Kolomoyets, 2017, pp. 53–60), V. Bevzenko, O. Radyshevska, I. Koliushko, I. Hrytsenko ((*Nauka administratsii i administratyvnoho prava*, 2016) and the others) on the issues of his contribution to the development of a legal science, the reform of a local self-government, a public administration, etc. A number of the «landmark» scientific and practical events were held (for instance, International Scientific Practical Conference: «History of National and European Administrative Law and Process», Taras Shevchenko National University of Kyiv, October 2016, International scientific and practical conference «Constitutional and Administrative Law Traditions of Public Administration», I. Franko National University of Lviv, November 2016, All-Ukrainian Legal Forum on Human Rights and Public Governance, Yuriy Fedkovych Chernivtsi National University, May 2019), the presentation of a reprinted edition of his work «The Science of Administration and Administrative Law» (*Nauka administratsii i administratyvnoho prava*). At the same time, even the existing works do not allow to elucidate fully the «Yuriy Paneiko's phenomenon» for the administrative and

legal traditions of the public administration, thus updating the «new wave» of a scientific professional interest in his heritage in the aspect of its consideration for the formation of the home scientific professional basis for reforming the state-building and law-making processes in Ukraine.

**The purpose** of the article is to analyze the scientific heritage of Yuriy Lukych Paneiko in the context of substantiation of the «national roots» of the administrative and legal traditions of the public administration and their perception and development under current conditions of the state and law reform.

**The Statement of the Basic Material.** The access to Yuriy Lukych Paneiko's scientific heritage gave the possibility «to open him and his scientific heritage to Ukrainian Society» (Nauka administratsii i administratyvnoho prava, p. 46), «to get acquainted with his unique personal dimension, demonstrating his life path, which he managed to pass successfully and to become an example of the scientist, who combined successfully the theory and practice of the public administration, an administrator, a person, who did a lot in the field of education and law» (Melnyk, 2016), «to renew his name, which is truly iconic in the global scientific space» (Melnyk, 2016; Kolomoets, 2017, p. 54). As V. Bevzenko remarked rightly in the afterword to the reprinted edition of Yu. Paneiko's work «The Science of Administration and Administrative Law», the scientist's works «are precious for the administrative legal science due to the number of the problematic issues and the depth of their research, which does not diminish their value over the years» (Nauka administratsii i administratyvnoho prava, p. 459), his works are precious owing to «the globality of the problems, which the author broke, as well as the uniqueness of the research methods» (Nauka administratsii i administratyvnoho prava, pp. 431–432). It is really so. The analysis of his works allows to state that at end of the XIXth – the beginning of the XXth centuries he focused on finding out the real resource of the public self-government, the role and place in it of a local self-government, finding the best model of the relations between the individual and the state, which would allow to protect and realize the public interest and at the same time to recognize the person to be of the highest social value. Among the main questions, the answers to which played an important role in the search of a dreamy optimal normalized model of the above-mentioned subjects relations, he said: «Does the community have a separate, non-state power? Is it independent of the state? How firmly is it included in the state mechanism? Does it perform the functions of the state?» (Paneiko, 2002, p. 131; Kolpakov, 2019, p. 14). Searching for the answers to these questions, he also formulates the author's approach to understanding the community as a «core system-forming component of the self-government; as the main subject of the science of self-government; as an important research object» (Paneiko, 2002, p. 131; Kolpakov, 2019, p. 14), as «a combination of public bodies, performing separate administrative functions» (Paneiko, 2002, p. 131), which completely correlates with the basic current provisions of a local self-government theory on understanding the notion «community» (for instance, the works of O. Batanov, M. Baimuratov, S. Seryohina, I. Bodrova and the others). Clarifying his vision of the normalized model of the relations «a person-community-state», he notes that «the self-government becomes a legal concept only when the properties of relations of the monarch and the subjects, when the function of their regulator changes from the absolute power of the monarch (or a state materialism) to the normative determined mutual rights and duties of the state and the citizen. In this regard, although natural grounds for the self-government existed in all epochs of the state life, the self-government, as a legal concept, emerged only when the relations of the monarch and the subjects in the absolute state began to turn into «the legal

relations», when the physical unit outside of the private rights began to acquire the public rights and when this position of the unit against the state power is transferred to existing collectives, first of all to the communities. From the moment, when the constitutional rule of law state organized the public associations for its purposes and included them into its own body, the self-government institution emerged in the new sense. Thus, the self-government science emerged (Paneiko, 2002, p. 13). Recognizing the «basic element» of the local self-government relations theory of the community and the state power, in the period of the end of the XIXth – beginning of the XXth centuries, it is quite reasonable to conclude that it is these relationships that play a decisive role in determining the self-government content and are conditioned by «... the dependence of communities on the state, on the specific features of the state system, the system of law, the system of legislation..., and therefore the local self-government acquires an individual legal expression» (Kolpakov, 2019, p. 15). One can't help agreeing to it. This allowed the law scientist to formulate the author's definition of the local self-government as «a decentralized state administration, which is carried out by the local bodies, which are hierarchically not subordinate to other structures and are independent within the law and the general legal order» (Paneiko, 2002, p. 184). It can be stated that at the end of the XIXth – the beginning of the XXth centuries the provision was formulated that «the self-government is functioning of the legislatively limited state administration in the field of the self-government relations ... The self-government is in fact characterized by autonomy, a hierarchical independence, which is the main factor of decentralization, and therefore the latter is the self-government» (Paneiko, 2002, p. 91).

Drawing attention to the importance of decentralization as a legal category, in his works Yu. Paneiko sought to unravel its phenomenon, noting that it was «a system of the organizational and technical administrative organization that does not presuppose the existence of the rigid foundations of the hierarchy, the existence of a central subject (body) and the total subordination of one body to another (higher)» (Nauka administratsii i administratyvnoho prava, 2016, p. 206). Yu. Paneiko emphasized a double meaning of the decentralization – «organizational» (with the division of the state territory, with provincial and territorial centers) and a «corporate» («important») decentralization, as well as distinguishing its properties, which makes it possible «... the concentration on the local conditions and adaptation to them», «speeding up the processes of solving any local governance issues», «eliminating an undue influence (pressure) on the part of the central government in resolving the issues in a pattern way» (Nauka administratsii i administratyvnoho prava, 2002, pp. 207–208, Kolomoets, 2017, p. 37). The very provisions, not borrowed from the foreign scientific sources, found their reproduction in the works of home legal scholars on the problems of a legal support for a public power decentralization (for instance, the works of K. Bryl, S. Stetsenko, S. Kivalov, etc.), as well as served as «basic» in the development of a regulatory support for the power decentralization in Ukraine. Thus, the formulation of the basic conceptual apparatus («local self-government», «decentralization», «delegated authority», «public administration», etc.), the delimitation of the related legal concepts with the separation of the criteria for such delineation, the formulation of the copyright provisions for the main features of the self-government, a practical implementation of the community-state relations in the works of Yu. Paneiko at the end of the XIXth – beginning of the XXth centuries allows to state with confidence that already in this historical period the foundations of the modern theory of the local self-government were actually laid, accepted by the representatives of a national legal science and «laid» in the basis of those innovative reform processes in Ukraine, which are

directly connected with the redistribution of a public power, the transfer of a public power government «to local places», the community access to the tasks of implementation and protection of a public interest.

The analysis of the available sources reveals the fact that Yu. L. Paneiko formulated a series of provisions that actually serve as an integral part of the modern home administrative law on the use of the public administration tools resource. Thus, in particular, substantiating the expediency of using in the public administration «the actions of administrative bodies competing in the regulation of an individual case» (*Nauka administratsii i administratyvnoho prava*, 2016, p. 237). In fact, a legal scholar back at the end of the XIXth – the beginning of the XXth centuries he spoke about the analogue of modern administrative acts as one of the tools of the public administration. The doubts disappear as to the fact that the very «tool» is analyzed because there are provisions for the isolation of their varieties, including: «acts of guardianship», «declarative», «constitutional» «acts of granting», «acts of approval», «permission acts», «nomination acts» and, etc. Proposing to single out such acts in the scientific works of the end of the XIXth – the beginning of the XXth centuries, the attempt was made to classify them, however, with the veiled selection of the criteria for such division. However, even in spite of this, the analysis of the classification division of the administrative acts in Yu. L. Paneiko's works testifies that the criteria and types of such acts, proposed by him are proposed, are distinguished by modern domestic administrative scientists (for instance, the works of V. Tymoschuk, S. Stetsenko, S. Mosyondz, V. Harashchuk, etc.), and even the names of acts are similar.

Drawing attention on the importance of the public community role as a subject of the public legal relations, especially in the context of decentralization of the public power, the author of the sources of the «forgotten» scientific heritage of the end of the the XIXth – the beginning of the XXth centuries formulates the provisions on «the public participation in business, professional, religious societies», «various forms of a non-territorial self-government» (Kolomoets, 2017, p. 57). He even tries to substantiate the expediency of normalizing the principles of such participation with an emphasis on the specificity of using the forms variety of such participation, which is fully correlated with the provisions of the public control modern theory on the public administration (for instance, the works of S. Denysyuk, P. Matviyenko, I. Skvirskyi and the others) and the scientific expert substantiation of the development and adoption of the draft Law of Ukraine «On Public Control».

The scientific works of Yu. L. Paneiko are of no less interest in the part of the study of «a free evaluation» phenomenon, which he proposes to consider as «the discretion of the administrative authorities in formulating conclusions on the content of the legal norm in relation to a specific state of affairs (*Nauka administratsii i administratyvnoho prava*, 2016, p. 456, 253), and which is nothing more than a prototype of the administrative discretion, including one of its most common varieties – an interpretative administrative discretion. In formulating the provisions on «the criteria and limits of a free evaluation», in fact Yu. L. Paneiko lays the foundations of the administrative discretion modern theory, the detailed provisions of which were reproduced in the works of modern domestic scientists, including: A. Selivanov, P. Dikhtievskyi, Yu. Bytyak, V. Bevzenko, D. Lukyanets and the others. Taking into account the procedures specifics in the subjects' activities of the public administration and the need to normalize their principles, it is quite logical to say that at the end of the XIXth – the beginning of the XXth centuries a legal scholar made an attempt to distinguish as a separate sectoral legal category – the administrative procedure, to find out the

variety of the subclasses, which is fully consistent with the provision of the latest domestic administrative and legal science on the concept, features, varieties of the administrative procedures (for example, the works by O. Kuzmenko, O. Mykolenko I. Boyko, O. Andriyko, etc.), and the Yu. L. Paneiko's normative project proposals for the settlement of this issue – with an expert substantiation of the need to develop and to adopt the Law of Ukraine «On Administrative Procedure», around which the representatives of various sectoral professional schools of Ukraine were grouped and several variants of the relevant project act were prepared by these representatives' efforts.

Under conditions of the expediency substantiation of singling out the law of service as a sub-branch of the modern administrative law and the formation of the public service theory (for instance, the works of S. Kivalov, L. Bily-Tiunova, T. Anishchenko, etc.) and the drafting of the Service Code of Ukraine, the interest is provoked by the provisions of Yu. L. Paneiko's scientific works on «the need to comply with the requirements for a personnel and ethical support of the public service process» (Kolomoets, 2017, p. 58). In particular, Yu. L. Paneiko reflects on the fact that «it is important for a public servant to be highly educated in his professional activity, as well as to be ethical, because the unethical specialist poses more danger to both the manager and the others than the ethical specialist, since in this case the negative qualities of his character prevail» (Nauka administratsii i administratyvnoho prava, 2016, p. 19). Yu. L. Paneiko's reflections, in fact, are the prototypes of the modern theory provisions of the public service, regarding professionalism as one of the basic principles of such service and the ethical principles of the relationship of the public servant with the representatives of the public authority and individuals as a prerequisite for the effectiveness of the public service and the elimination of the unlawful acts in the public service state or the local government. The analysis of Yu. L. Paneiko's works testifies to the fact that, despite the period of writing: the XIXth – the beginning of the XXth centuries, the provisions of the corresponding substantive content have not only not lost their relevance for a legal science, the norm-making, the law-enforcement, but also coincide textually with the modern scientific and regulatory sources.

Similar is the state of affairs of the provisions on the appointment of the police, the peculiarities of the legal regulation principles of its activity, including the certain types of the latter and the activities of the individual police units (in particular, on the «the use of coercion», «a direct coercion») with the determination of their formation principles, the subordination principles, the search of an optimal model of their relationship with individuals, which in fact fully correlates with the latest approaches of a scientific sectoral professional research of the modern police phenomenon, the justification of the expediency of the police law allocation as a sub-branch of the administrative law (as a modern analogue of «the administrative-punitive law») and its component – «the punitive police law») and the development of the Police Code of Ukraine.

Paying attention to the fact that «any self-governing body can easily go beyond what is allowed» (Nauka administratsii i administratyvnoho prava, 2016, p. 234), Yu. L. Paneiko states that there is an urgent need to use the «control over the self-government» resource in its types diversity, in particular: «the administrative supervision by the supervisory authorities», «the supervisory entities» with the focus on verifying the legality and appropriateness of the administration» and «judicial administrative supervision with consideration of the disputed cases» (Nauka administratsii i administratyvnoho prava, 2016, pp. 234, 430–432). Therefore, it is quite possible to state that the need for the use of the administrative supervision and

administrative justice with the involvement of both specialized subjects of the public administration and administrative courts (paying attention to the peculiarities of this branch of the judiciary) is justified in the scientific works of the end of the XIXth – the beginning of the XXth centuries. The same provisions are also «basic» for the modern administrative law in the aspect of the public administration supervision theory (for instance, the works by V. Harashchuk, S. Kushnir, O. Andriyko, etc.), the administrative and judicial process (for instance, the works by M. Smokovych, S. Kivalov, A. Komziuk, etc.), the basis of the rulemaking activity in the supervisory relations regulation, the administrative justice relations.

**The Conclusions.** The analysis of the poorly researched scientific heritage of the end of the XIXth – the beginning of the XXth centuries, a part of which is the work of Yu. Paneiko, indicates that most of the provisions, formulated in the relevant historical period, in fact «absorbed» the «basic component» of the public administration legal and administrative traditions, which are being updated with a new force in the context of the modern reformatory state-making and law-making processes in Ukraine, with an emphasis on the needs of the modern period, the updated public administration legal and administrative traditions are able to ensure the effectiveness and efficiency of the respective transformations. That is why important is the search and a deep analysis of the «forgotten scientific professional heritage of the end of the XIXth – the beginning of the XXth centuries», which should be systematic, consistent, profound and nationally recognized as a priority area of a modern professional research on the formation of the latest scientific basis for reforming the state-building and law-making processes in Ukraine. It is the use of this heritage as a «golden scientific professional foundation» that formed the administrative and legal traditions of the public administration, that will contribute not only to their preservation with the emphasis on a national specificity, but also to the development with the approximation to European and international legal analogues.

**Acknowledgments.** We express sincere gratitude to all members of the editorial board for consultations provided during the preparation of the article for printing.

**Funding.** The authors received no financial support for the research, authorship, and/or publication of this article.

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*The article was received on March 24, 2019.  
Article recommended for publishing 06/11/2019.*