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**«ORIGINS» OF THE MODERN THEORY OF ADMINISTRATIVE LAW
IN THE PAPERS OF POLICE LAW SCHOLAR
OF THE SIXTH CENTURY M. KH. BUNGE**

Abstract. The aim of the research. Based on the analysis of the papers of Mykola Khrystyanovych Bunge and the comparison of their provisions with modern scientific professional sources, the paper substantiates the «basic» (fundamental) role of «theory of police law» («police theory») formulated by the prominent police law scholar in the XIXth century for the contemporary domestic theory of the administrative law. **The research methodology** is grounded on the principles of historical, comparative analysis. **The scientific novelty** is defined by the fact that it is proposed an innovative approach to the analysis of the provisions of M. Kh. Bunge's papers in the aspect of the comparison of their provisions with the content of the modern scientific sources directly devoted to the priorities of the formation of the contemporary doctrine of administrative law which results in the substantiation of a «basic» role of the scientific heritage of police law scholar of the XIXth century M. Kh. Bunge for the latter. **The Conclusions.** Thus, a detailed analysis of M. Kh. Bunge's scientific papers directly devoted to the «police law» illustrates that basic principles of the modern theory of the administrative law were

formed in the XIXth century, in particular, regarding the comprehension of the administrative law, its methods (with the separation of the specific nature of resource of each of them), the major institutes and its system as a whole, the sources and priorities for their formation. Consequently, it necessitates the intensification of comparative legal studies of the scientific heritage of the XIXth century, which not only keeps its role but also strengthens it through the years. However, the later should be consistent, detailed, system-based, and the use of historical professional source – correct and justified. Under such circumstance, it is possible to maximize the use of that unique resource of scientific sources on the subject of the «theory of police law» («police theory»), which practically serves as a basis for the modern domestic theory of the administrative law despite the period of its formation.

Key words: police law scholar, M. Kh. Bunge, police law, theory of administrative law, state development, state security.

«ВИТОКИ» СУЧАСНОЇ ТЕОРІЇ АДМІНІСТРАТИВНОГО ПРАВА У ПРАЦЯХ ВЧЕНОГО-ПОЛІЦЕЙСТА ХІХ СТОЛІТТЯ М. Х. БУНГЕ

Анотація. *Мета дослідження* – обґрунтування на підставі аналізу праць М. Х. Бунге та порівняння їх положень із новітніми науковими фаховими джерелами «базисного» (фундаментального) значення «теорії поліцейського права» («поліцейської теорії»), сформульованої відомим ученим-поліцейстом ще у ХІХ ст., для новітньої вітчизняної теорії адміністративного права. **Методологія дослідження** базується на засадах історичного, компаративного аналізу. **Наукова новизна** визначається тим, що пропонується новаційний підхід до аналізу положень праць М. Х. Бунге в аспекті порівняння їх положень зі змістом сучасних фахових наукових джерел, безпосередньо присвячених пріоритетним напрямам формування новітньої доктрини адміністративного права, результатом якого є обґрунтування «базисного» значення «наукової спадщини» вченого-поліцейста ХІХ ст. М. Х. Бунге. **Висновки.** Детальний аналіз наукових робіт М. Х. Бунге, безпосередньо присвячених «праву поліцейському», фактично свідчить про формування ще у ХІХ ст. засад сучасної теорії адміністративного права, зокрема щодо його розуміння адміністративного права, його методів (із виокремленням специфіки ресурсу кожного із них), основних інститутів та його системи загалом, джерел і пріоритетів їх формування. Це зумовлює потребу активізації порівняльно-правових досліджень наукової спадщини ХІХ ст., значення якої не тільки не втрачається, а й істотно з роками зростає. Щоправда, останні мають бути послідовними, поглибленими, системними, а використання історичних фахових джерел – коректним та обґрунтованим. Саме за таких умов цілком можливо максимально використати той унікальний ресурс наукових джерел з проблематики «теорії поліцейського права» («поліцейської теорії»), який, незважаючи на період свого формування, фактично слугує базисом її для новітньої вітчизняної теорії адміністративного права.

Ключові слова: вчений-поліцейст, М. Х. Бунге, поліцейське право, теорія адміністративного права, державний благоустрій, державна безпека.

The Problem Statement. Under the framework of a thorough revision of the foundations of a scientific basis for a regulatory activity oriented to settling relations directly related to the provision of the state development, the state security, the introduction of innovative institutions, the review of the content and purpose of the available ones, the attention of the interested professional academic community more often is focused on the analysis of those fundamental research papers, which not only keep its significance but, on the contrary, strengthen it through the years. That entails the historical notes of the police law, and most of them were elaborated in the XIXth century – a period of the «blossom» of the «police law», the «theory of police», the «police theory». However, a detailed analysis of the latest professional research papers concerning a relevant problem, unfortunately, illustrates the common cases of a «simplified» approach to the comprehension of the provisions' content, a «selective nature» of their consideration in forming the modern scientific basis for domestic

rule-making. In fact, the very «heritage of police law scholars» of the XIXth century forms the basis of a modern domestic professional doctrine and rule-making. The above fully refers to the «scientific golden heritage» of Mykola Khrystyianovych Bunge – «living chronicle of the civilization of the half of the century» (Antolohiia, 2003, p. 70–79).

The Analysis of Sources and Recent Researches. The analysis of the topic-related sources makes it possible to mark several research areas in the study of a relevant issue conditionally. The first area is directly related to the analysis of the personality of prominent police law scholar of the XIXth century M. Kh. Bunge, his life experience and career, the role in the development of education, science and to indirect, even somewhat simplified analysis of the content of his papers (Antolohiia, 2003, pp. 70–79; Yurydychna entsyklopediia, 1998, pp. 282–283; Administratyvno-pravova nauka u personaliiakh, 2015, pp. 49–50). The second area is characterized by a complex approach to the analysis of the issue combining bibliographic aspect and study of the fundamental provisions of his papers (Rektory Kyivskoho universytetu, 2006, pp. 85–89; Politseiske pravo, 2010, pp. 1–236; Korniihuk, 2005, pp. 58–89; Kolomoets, 2018, pp. 52–56). The third area differs in the context of the field-specific trend of the research and a focus exclusively on the individual provisions of his papers (Romnin, 2003, p. 22; Stepanov, 1998, pp. 80–329; Buriachok, 2012, pp. 114–117). The fourth area provides the coverage of some provisions of «theory of police law» of M. Kh. Bunge in the aspect of the study of the genesis of theory of the administrative law (Zahalne administratyvne pravo, 2015, p. 27) but without their analysis in the context of adjustment with the provisions of the modern theory of the administrative law. In the aggregate with the above research areas, it is impossible to clarify that fundamental role of «theory of police law» formed by M. Kh. Bunge in the XIXth century for the latter one.

The Publication's Purpose. Based on the analysis of the papers of M. Kh. Bunge and comparison of their provisions with the latest scientific professional sources, the paper substantiates the «basic» (fundamental) role of the «theory of police law» («police theory») formulated in the XIXth century for the modern theory of administrative law.

The Statement of the Basic Material. Despite the unique nature of M. Kh. Bunge's personality and his significant contribution to the development of economics, a local self-government, education as a whole and a legal education (Iurydychnyi fakultet, 2015, pp. 12–14; Rektory, 2006, pp. 85–89; Hrytsenko, 2009, pp. 80–87), first of all, in the mindsets of the Ukrainians his personality is associated with the «police law», the «theory of police», the «police theory» as the very his papers included the terminological issue-related framework, concentrated the provisions on «doctrine of welfare», «doctrine of well-acting», «police law with a negative nature», «police law with a positive nature», the thesis about the complex nature of the «law of police», etc. Although he didn't have a large number of issue-related papers (Politseiske pravo. Vstup ta derzhavnyi blahoustrii, 1869; Kurs lektsiy z politseiskoho prava, 1873 – 1877), their details impress by their profound nature and volume. It is expedient to start with the comprehension of the police law as «a complex unit covering doctrine of security, or the laws on well-acting (state law) and doctrine of welfare (laws of well-being settings)» (Antolohiia, 2003, pp. 73–74). At the same time, M. Kh. Bunge considered the doctrine of welfare as «an applied part of political economy» (Kolomoets, 2018, p. 57). According to his vision, well-being setting, first and foremost, «the police law with a positive character», while well-acting is the «police law with a negative character». Specifying these «two conditional components» of the police law, in the XIXth century the police law scholar paid attention to their interrelation highlighting their general features, as follows: a) «a common source –

social relations that were formed historically in various spheres of human relations; b) the laws regulating these relations are established both for welfare and well-acting; c) the focus on regulating relations between the state or public authorities and the individual» (Antolohiia, 2003, pp. 77–78). The analysis of the modern scientific professional sources illustrates the fact that the term the «police law» is comprehended as a set of rules of law designed to regulate the relations with the participation of officers of the National Police (for example, papers of M. Loshytskyi, O. Pronevych, V. Nastiuk et al.), which is consistent with the «police law with a negative nature», «with police law – the laws of well-acting». At the same time, M. Kh. Bunge, marking a complex nature of the police law, associated it with a set of rules of the law designed to regulate the whole diversity of social relations connected with the public administration that is fully in line with the modern comprehension of the administrative law (for example, papers of V. Kolpakov, T. Kolomoets, O. Kuzmenko, V. Harashchuk, Yu. Bytiak, O. Mykolenko et al.). Moreover, M. Kh. Bunge clarifies his position regarding this issue noting that the police law itself determines «... the set of forms and methods of relations regulation... in the sphere of science, economics, transport, etc.» (Antolohiia, 2003, p. 76) emphasizing the «police law with a positive content» as a component of the «police law» or the «theory of police». The above allows stating that a modern vision of the police law is practically based on the provisions formulated in the XIXth century regarding «police law with a negative nature» or «police law in a narrow sense», and a modern vision of the administrative law is the «police law» as a whole, which covers counterparts of the XIXth century of the «laws of welfare» and the «laws of well-acting». A detailed analysis of the provisions of M. Kh. Bunge's papers directly devoted «...to the regulation of relations in transport, taxing, banking affairs...» (Antolohiia, 2003, p. 76) makes it possible to compare them with the provisions of modern professional scientific sources directly oriented towards modeling the system of a contemporary administrative law (for example, the papers of R. Melnyk, V. Bevzenko, T. Kolomoets et al.) and to hold that these objects of regulatory influence are a base for the formation of a Special part of the administrative law or its counterpart of a Special administrative law (Zahalne administratyvne pravo, 2015, p. 72; Kolomoets, 2011, p. 18–19) that once again confirms the «fundamental nature» of M. Kh. Bunge's approach of the XIXth century to the comprehension of the police law, its poly-structural character and composition of its structure, topicality of his provisions for modern realities despite the time flow, the state-building and law-making processes. In his papers, M. Kh. Bunge even uses specific terminology – a «general police law» and a «special police law» (Antolohiia, 2003, p. 79) that justifies a «basic» nature of his papers towards the modern theory of the administrative law. The provisions on the peculiarities of a regulatory state influence on the relations in economic, political and socio-cultural sectors formulated by the police law scholar M. Kh. Bunge in the XIXth century today serve as the basis for the updated doctrinal approach to the separation of sub-branches and institutes of a modern administrative law as follows: the service law (papers of T. Anishchenko), the sport law (papers of M. Tkalych), the education law (papers of S. Kushnir), the information law (papers of O. Zaiarnyi), the medical law (papers of H. Sarybaeva) etc. Even «innovative» approaches of modern legal scholars to the identification of «unorthodox» components of administrative law, for example, administrative-land law (papers of Bevzenko), administrative-business law (papers of Ye. Petrov), are based on the provisions of M. Kh. Bunge's papers on a «complex», «unifying» character of the police law.

Drawing attention to the sources of police law, in the XIXth century M. Kh. Bunge noted that «there is not a unified systematized police code» (Anthology, 2003, p. 79) and stated that

«... the availability of such a code is hardly possible, and if possible – it's more convenient at the same time ... taking into account the dual nature of the content of the police law... the unification of norms separately from the laws of welfare and the laws of well-acting» (Antolohiia (2003), p. 79). In other words, substantiating the need in systematization of the norms of the police law, the police law scholar made the use of such a form as codification impossible that is quite justifiable for poly-structural, complex branches. At the same time, he explained the need to use other forms of systematization eliminating an excessive amount and diversity of sources of the relevant branch. These provisions are fully consistent with the latest doctrinal professional approaches to the adjustment of the rules of law which regulate the entire diversity of relations in the public administration, namely: a) by the impossibility of codification (complete) of the administrative-legal norms and consequently, the availability of Administrative Code; b) by a combination of a resource of several forms of systematization of the relevant norms – codification (for adjustment of some sub-branch rules of law), incorporation (for substantive rules designed to regulate relations in certain areas of public administration). The very idea of a sub-branch approach to the adjustment of the rule of law regulating social relations in public administration, which was proposed by M. Kh. Bunge to form «rules of welfare» and «rules of well-acting», is also basic for the modern theory of the administrative law concerning the modeling of the system of sources of the relevant branch of law.

The provisions regarding the «distinction between justice (court) and police (Antolohiia, 2003, p. 77) for the protection of the rights of participants of legal relations proposed in the XIXth century is the emphasis of modern two forms of such protection – the administrative procedure and extrajudicial (administrative) protection, whose role and significance is important in the context of «priority» of the rights, freedoms and legitimate interests of individuals in their relations with the subjects of the public administration as «a guarantee» of democratization of the Ukrainian society.

The justification of the expediency for expanding the scope of the dispositive regulation of social relations in public administration is directly related to the clarification of the role and importance of the coordination foundations for building relations between the individuals and the subjects of the public administrations. Calling it «positive method», in the XIXth century M. Kh. Bunge marked that this method «... leads to the respect of the subject of the public administration to individuals ... the concentration of the principles of their powers to meet the needs of individuals» (Antolohiia, 2003, p. 78). In other words, in the XIXth the basis of theory of the administrative-procedural relations was laid, namely of their variety of administrative services, which is one of the «central» elements of the modern domestic theory of the administrative law. Moreover, the determination of the special status of «private persons» as participants of legal relations in the public administration, as well as the use of the term «individuals», is dominant for the modern theory of the administrative law. Taking into account the papers of M. Kh. Bunge, one can argue that the basic provisions of the latter in the context of the subjective aspect of individuals were formed in the XIXth century. With minor content changes, they remain dominant for the modern theory of the administrative law. Offered provisions regarding the determination of the role in relevant legal relations of local self-government authorities and justification of the need to expand the scope of their participation, including by delegating powers, are a prototype of the modern theory of decentralisation of power, the use of the resource of the administrative discretion and arbitrary powers.

Consequently, analyzing the resource of tools set of the public administration M. Kh. Bunge pays attention to the important role of «positive» tools not related directly to the punitive impact on the participants of legal relation which have legal liability. In the XIXth century it was formulated a provision on «...the important role of positive tools for stimulating the behavior of participants in relations» (Antolohiia, 2003, pp. 78–79) that is fully in line with the latest doctrinal provisions regarding the conviction as a «basic» method of the public administration throughout its diversity in relation to different participants of the legal relations in the public administration and position of the modern persuasion theory, the theory of incentives, the theory of promotion as components of the administrative law theory. Drawing attention to the special resource of «positive» regulation methods in the public administration, the foundation of «the priority» of these methods for a effective, successful regulation of the relations in the mentioned area was laid in the XIXth century that under current conditions of a complete revision of available and formation of new provisions of the modern theory of the administrative law is manifested in the separation of institutions of incentives in the administrative law (Strelchenko, 2008, p. 6; Kolomoiets, 2018, pp. 173–180), promotion in the administrative law, discretion and arbitrary powers in the activities of the public administration subjects, etc. Paying attention to the «positive features» of these tools, which provide «arrangement», «regulated nature» of relations with minimal resources expenditure, it is laid the basis of modern provisions of the administrative law theory towards a «human-centric» model of legal relations as a basic one in the public administration. The above-mentioned information allows formulating the conclusion that in the XIXth century M. Kh. Bunge modelled all the «architectonics» of the modern theory of the administrative law in his writings acting as its founder.

The Conclusions. Thus, a detailed analysis of M. Kh. Bunge’s scientific papers directly devoted to the «police law» shows that basic principles of the modern theory of the administrative law were formed in the XIXth century, in particular, regarding the comprehension of the administrative law, its methods (with the separation of the specific nature of resource of each of them), major institutes and its system as a whole, sources and priorities for their formation. The above causes the need to activate a comparative legal research of the scientific heritage of the XIXth century, which not only keeps its significance but also strengthens it through the years. However, the latter should be consistent, detailed, system-based, and the use of historical professional source – correct and justified. Under such circumstance, it is quite possible to maximize the use of that unique resource of scientific sources on the subject of the «theory of police law» («police theory»), which practically serves as a basis for the modern domestic theory of the administrative law despite the period of its formation.

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