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THE CONCEPT AND ESSENCE OF THE CATEGORY "PRINCIPLE OF ADMINISTRATIVE LEGAL PROCEEDINGS"

The article analyses the approach to the concept and essence of the category of «principle of administrative legal proceedings». It is indicated that the problem of forming effective ways to protect the rights, freedoms, legitimate interests of a person and a citizen, as well as a legal entity, has become urgent for Ukraine since it gained independence. Considering the experience of Ukraine along with the experience of established democracies, we can say that our country in comparison has passed quite a short way of introducing and asserting democratic traditions and values. During the years of independence, significant steps have been taken in this direction. However, the problem of the formation of effective means and measures to protect the rights, freedoms, legitimate interests are still relevant for us.

It is concluded that the principles give judicial proceedings the qualities of fair justice in administrative cases. And, accordingly, on the contrary – non-observance of the principles of administrative legal proceedings in the administration of justice entails illegality and subsequent cancellation of a court decision. In addition to ensuring the internal unity of all elements of the administrative process – norms, institutions, proceedings, it is worth noting that they also establish the consolidation of law-making and justice in administrative cases.

The principles of administrative proceedings play a regulatory role in law, due to which they acquire the meaning of general rules of conduct, that is, they have a generally binding legally authoritative character. The principles of administrative legal proceedings are fixed at the constitutional level. They are guidelines for the development of society, the state and justice in administrative cases in Ukraine, which is why the correctness and indisputability of their application in practice is a necessity.

Key words: *administrative justice, principles, system of principles, Code of Administrative Justice of Ukraine.*

Яцуба В. В. Поняття та сутність категорії «принцип адміністративного судочинства»

У статті проаналізовано підході до поняття та сутності категорії «принцип адміністративного судочинства». Вказано, що проблема формування дієвих способів захисту прав, свобод, законних інтересів людини і громадянина, а також юридичної особи стала нагальною для України з часів набуття нею незалежності. Розглядаючи досвід України поряд з досвідом держав сталої демократії, можна сказати, що наша країна в порівнянні з іншими пройшла цілком нетривалий шлях запровадження і утвердження демократичних традицій і цінностей. За роки незалежності було здійснено значні кроки у цьому напрямку. Проте, проблема формування дієвих засобів і заходів захисту прав, свобод, законних інтересів усе ще залишається актуальною для нас.

Зроблено висновок, що принципи надають судочинству якостей справедливого правосуддя в адміністративних справах. І, відповідно, навпаки – недотримання принципів адміністративного судочинства під час здійснення правосуддя тягне незаконність і подальше скасування судового рішення. Крім того, що вони забезпечують внутрішню єдність усіх елементів адміністративного процесу – норм, інститутів, проваджень, варто зауважити, що ними встановлюється також і консолідація правотворчості і правосуддя в адміністративних справах.

Принципи адміністративного судочинства відіграють регулятивну роль у праві, завдяки чому вони набувають значення загальних правил поведінки, тобто мають загальнообов'язковий юридично владний характер. Засади адміністративного судочинства закріплюються на конституційному рівні. Вони є орієнтирами розвитку суспільства, держави та правосуддя в адміністративних справах в Україні, саме тому правильність і безперечність їх застосування на практиці є необхідністю.

Ключові слова: *адміністративне судочинство, принципи, система принципів, Кодекс адміністративного судочинства України.*

Introduction. The problem of forming effective ways to protect the rights, freedoms, legitimate interests of man and citizen, as well as legal entity, has become urgent for Ukraine since its independence. Considering the experience of Ukraine along with the experience of sustainable democracies, we can say that our country in comparison has passed quite a short way of introducing and asserting democratic traditions and values. Over the years of independence, significant steps have been made in this direction. However, the problem of forming effective means and measures to protect rights, freedoms, legitimate interests is still relevant for us. Of all the means and measures to protect the rights, freedoms, legitimate interests of a person, the most effective and reliable today is the judicial method of protection [1, p. 4].

According to Article 3 of the Constitution of Ukraine, it is determined that the priority task of the functioning of the state is to ensure and protect human rights and freedoms as the main social value. Such a normative legal provision of the Constitution of Ukraine establishes a meaningful functional purpose of the state, determines the direction of implementation of functions and methods of public administration. The definition of a person as the highest social value is the basis for the implementation at the proper level of application of the mechanism of responsibility of the state and its institutions to the individual. The application of the mechanism of state responsibility, in addition to its constitutional consolidation, requires the development of effective structures capable of translating such a norm into reality.

Therefore, the protection of human rights, the application of measures of responsibility of the state for violation of such rights should not only be declarative constitutional norms but should be properly guaranteed by appropriate means of public administration. In this aspect, the institution of administrative justice is one of the main guarantees for the implementation of the mechanism of state responsibility to a person. The functioning of administrative justice is a guarantee of preventing manifestations of bureaucratic arbitrariness and bureaucratic abuse of powers defined by law. And the extent to which the administrative justice system is effective depends on determining the level of ensuring the rights and freedoms of participants in public legal relations.

According to Article 55 of the Constitution of Ukraine, the priority of the judicial form of protection of human rights and freedoms among other jurisdictional and non-jurisdictional forms is established. The subject of appeal to the court may be decisions, actions or inaction of public authorities, local self-government bodies, individual officials, or employees.

Setting objectives. Ensuring the consideration and resolution of public law conflicts, which are the subject of appeal to the administrative court, should be based on the application of the developed system of principles for the implementation of administrative legal proceedings, without which it is impossible to achieve unity of judicial practice. Clarification of the essence of the principles of administrative legal proceedings is the ***purpose of this article***.

Research results. From the beginning and essence of the principles of administrative justice in the current conditions of the European integration process, it is necessary to consider by their correlation with the category principles of law and principles of public administration.

It should be noted that the principles of public administration are legislatively defined starting principles and requirements for the organisation of the system of state authorities and local self-government bodies. Such principles include the principle of separation of powers, the obligation to implement decisions of public authorities, equality of access to public service, the priority of human rights and freedoms, the principle of integrity, sustainability of management, etc. The previous subsections have identified the effectiveness of the European administrative space, which is manifested in ensuring the implementation of such principles of public administration as the principles of openness, public participation in the adoption and implementation of managerial decisions, accountability, coherence. It should be emphasised that the judicial system is an integral part of the public administration system. The judicial system is a system of public authorities, and its functioning must comply with the general principles of public administration.

Continuous improvement of "human rights" standards of activity of public authorities, as well as continuous improvement of standards for ensuring a "fair balance of interests" during their interference with the legal capabilities of individuals are integral components of building a modern democratic, social, and legal state [2, p. 9]. Today in Ukraine there is a separate branch of specialised courts – administrative courts. The main task of such courts is to protect the rights, freedoms, legitimate interests of a person from violations by public authorities. The Code of Administrative Proceedings of Ukraine regulates the procedural form of such legal proceedings. This Code has been developed considering the latest international standards of justice. Arbitrariness on the part of public authorities can seriously infringe on fundamental human rights and principles of the rule of law. It is administrative legal proceedings that are one of the key elements in the mechanism of their protection [2, p. 9]. The existing judicial practice serves as proof that it is necessary to improve the norms of the Code. This is evidenced by many explanations of the highest judicial bodies regarding the content of the provisions of the CAS of Ukraine.

According to Article 3 of the Constitution of Ukraine, it is determined that the priority task of the functioning of the state is to ensure and protect human rights and freedoms as the main social value.

The above-mentioned normative legal provision of the Constitution of Ukraine establishes the direction of the implementation of functions and methods of public administration, as well as the substantive functional purpose of the state. A person is determined by the highest social value. This serves as the basis for the proper level of application of the mechanism of responsibility of the state and its institutions to the individual. The use of such a mechanism is possible with a combination of its constitutional consolidation, respectively, the development of effective ways to translate the fixed norm into reality.

Therefore, the protection of human rights, the application of measures of responsibility of the state for violation of such rights should be not only declarative constitutional norms. They should be guaranteed by appropriate means of public administration. In this sense, the institution of administrative justice is perhaps the most important guarantee of the implementation of the mechanism of responsibility of the state to a person. The functioning of administrative justice serves as a guarantor of protection. Such fraud makes it possible to ensure the prevention of manifestations of bureaucratic arbitrariness. It also provides manifestations of bureaucratic abuse of powers defined by law. The level of ensuring the rights and freedoms of participants in public legal relations is directly proportional to the level of efficiency of the administrative justice system [4].

In accordance with Part 1 of Article 2 of the Code, the tasks of administrative legal proceedings include protection of the rights, freedoms and interests of individuals, rights, and interests of legal entities in the sphere of public law relations. Such protection is carried out in respect of violations by state authorities, local self-government bodies, their officials and employees, and other subjects. Namely, in the exercise by the above-mentioned authorities of managerial functions based on legislation, including the execution of delegated powers.

Administrative legal proceedings are a way to achieve the goal of administrative procedural regulation. Therefore, the question of the correct order of organisation of the administrative process is important. The key to the effectiveness of such a process is, first, principles, since they are the main, initial ideas. Since the updated procedural legislation contains a significant number of new provisions, it is extremely relevant to study the essence and definitions of its main categories, including such as principles [5, p. 60].

First, it is necessary to understand the very concept of "principle". This concept, like the principle itself, is quite multifaceted, which leads to research by representatives of various fields of knowledge. The term "principle" comes from Latin, which means "basis", "beginning", "main starting position" [5, p. 4]. The philosophical approach to understanding the category of "principles" is reduced to the definition as the fundamental basis of what is the basis for the development of certain facts, science; The moral component of the essence of principles is also noted by philosophers [5, p. 5]. The selection of the moral component emphasizes the dependence of the implementation of principles on the will of the subject of the relationship. Thus, principles are not only the existing objective principles for regulating social processes, but principles are also a manifestation of the subjective will of their participants.

In addition, in philosophical works, the category of "principle" is defined as a starting position, a system-forming element or a central concept. It is called the generalisation and extension of a certain position to all phenomena of the industry from which the principle is abstracted [6, p. 133].

In the legal literature, the principles of law are defined as a reliable support for a court decision, because they are an effective tool, the use of which is necessary to resolve far from theoretical disputes. The principles of law regulate social relations, acting as the legal basis for resolving a case, both along with the norms of positive law, and independently. The principles of law ensure the unity of legal regulation of social relations and determine the direction of legal regulation of public relations [7, p. 133-134].

Without defining the principles of functioning of any public institution, it is impossible to achieve the effectiveness of its activities. The principles are understood as the basic principles, initial ideas, which are characterised by a certain universality, universality, ability to apply in any situation. The implementation of the principles is carried out imperatively, the possibility of their stagnation is characterised by universality. Principles can be defined as an abstract reflection of the laws of social reality [1, p. 110–111].

The significance of the principles of law lies in their ability to briefly identify the most essential features of law as the main regulator of public relations as a whole [1, p. 128]. Such a mandatory feature of principles as their legislative consolidation is emphasised in the studies of most scientists – representatives of various sectoral legal sciences.

In terms of determining the principles of legal proceedings, it is expedient to compare them with the principles of any procedural activity. It should be emphasised that all procedural norms and institutions form the structure of the legal process to ensure the implementation of its main task – decision-making in compliance with the requirements of completeness, objectivity, legality, and validity of the circumstances of the case.

Typological principles of law determine the peculiarities of the civilisational development of the state and society in specific historical conditions. Such principles of law are the principle of human-centeredness, providing a service model of state development, socialisation of the state, etc. The introduction of such typological principles of law determines the development of the state and its social institutions.

Administrative legal proceedings are characterised by the presence of special tasks, the main among which is the protection of human and civil rights and freedoms from the arbitrariness of officials and employees of state authorities and local self-government bodies [8, p. 49]. Sectoral principles regulate specific types of social relations and are often determined at the legislative level.

The characteristic features of the principles of administrative legal proceedings include: 1) ideological certainty; 2) normative certainty; 3) democracy; 4) effectiveness; 5) autonomy; 6) consistency [9, p. 5].

The most common classification of the principles of administrative proceedings is classification according to the scope of their distribution with their division into: 1) general principles of law; 2) intersectoral principles; 3) industry principles [6, p. 136].

General principles, in turn, apply to all branches of national law without exception. At the same time, intersectoral operate within several branches of law, and sectoral – operate within the same branch of law. There is also an approach to the classification of the principles of administrative proceedings depending on their functional direction. Within the framework of this approach, general, organisational, and procedural principles of administrative legal proceedings are distinguished.

The general principles of administrative legal proceedings include the general principles of the creation and functioning of administrative justice in the social and legal environment (the principle of systematic, legal, democratic, public, transparent, expedient, public law conditionality) [10, p. 64].

Cross-sectoral principles apply in several areas of law. An example of intersectoral principles of law is the principles of civil proceedings, criminal proceedings, economic and administrative proceedings. Such intersectoral principles are the principle of reasonableness of terms.

In accordance with Part 3 of Article 2 of the Code of Administrative Justice of Ukraine establishes sectoral principles of administrative legal proceedings: 1) the rule of law; 2) equality of all litigants before the law and the court; 3) publicity and openness of the trial and its full recording by technical means; 4) competitiveness of the parties, optionality and official clarification of all circumstances in the case; 5) binding nature of the court decision; 6) ensuring the right to appeal review of the case; 7) ensuring the right to cassation appeal of a court decision in cases determined by law; 8) reasonableness of time limits for consideration of the case by the court; 9) inadmissibility of abuse of procedural rights; 10) reimbursement of court costs of individuals and legal entities in favour of whom a court decision was made.

Thus, conventionally, the principles of administrative legal proceedings in the system of principles of law belong to sectoral and intersectoral principles. Therefore, it is necessary to talk about the relationship of sectoral and intersectoral principles.

The organisational principles of administrative proceedings are the principles that ensure the functioning of the court and its apparatus (territoriality, the establishment of special jurisdiction, unity, and instance). The procedural principles of administrative proceedings are aimed directly at determining the basic principles for the implementation of the consideration and resolution of a public dispute. The procedural principles of scientists rightly include the equality of participants in a public law dispute, optionality and competitiveness, the binding nature of a court decision, the provision of an appeal and cassation appeal against a court decision as a guarantee of protecting human rights and freedoms, etc. [10, p. 64].

Analysis of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (taking into account the practice of the European Court of Human Rights on its interpretation and application), the Code and doctrinal sources showed that the principles of administrative proceedings are recognised: the rule of law; legality; independence and impartiality of judges, equality of all participants in the judicial process before the law and the court; the adversarial nature of the parties and freedom in presenting their evidence to the court and in proving their conviction before the court; publicity and openness of the trial; ensuring appeal and cassation appeal of a court decision, except in cases established by law; proportionality; binding nature of court decisions; official clarification of all circumstances in the case; legal certainty; predictability of application of legislation and inadmissibility of excessive formalism; unity of judicial practice; access to justice; validity of court decisions; consideration of the case within a reasonable time; procedural economy [7, p. 135-136].

Conclusions. In view of the foregoing, it should be noted that the principles give judicial proceedings the qualities of fair justice in administrative cases. And, accordingly, on the contrary – non-observance of the principles of administrative legal proceedings in the administration of justice entails illegality and subsequent cancellation of a court decision. In addition to ensuring the

internal unity of all elements of the administrative process – norms, institutions, proceedings, it is worth noting that they also establish consolidation law-making and justice in administrative cases.

The principles of administrative legal proceedings play a regulatory role in law, due to which they acquire the meaning of general rules of conduct, that is, they have a generally binding legally authoritative character. The principles of administrative legal proceedings are fixed at the constitutional level. They are guidelines for the development of society, the state and justice in administrative matters in Ukraine [11, p. 63], therefore, the correctness and indisputability of their application in practice is a necessity.

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