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Modalities of protection of the rights of individuals according to the administrative-procedural order and in legal-administrative procedures

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Abstract

The object of the research was to consider the methods of protection of people's rights according to the administrative-procedural order and also in administrative judicial proceedings. A number of normative legal acts regulating the use of tools for the protection of subjective public rights were considered. Attention has been drawn to the following methods of protection of people's rights, according to the administrative-procedural order and in administrative judicial proceedings: administrative procedure; administrative mediation; administrative appeal; subjecting guilty public administration officials to special disciplinary liability; compensation for damage caused by unlawful actions (inaction) of public administration entities; means of self-defense and legal means of protest. The methodological basis of the research was presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. It was concluded that in the scientific literature it is very often the case that protection methods are not used, but tools, means and forms. The authors also examine the methods of protection of rights, freedoms and interests of individuals in the sphere of public administration.

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Modalidades de protección de los derechos de las personas según el ordenamiento administrativo-procesal y en los procedimientos jurídico-administrativos

Resumen

El objeto de la investigación fue considerar los métodos de protección de los derechos de las personas según el orden administrativo-procesal y también en los procesos judiciales administrativos. Se consideraron una serie de actos jurídicos normativos que regulan el uso de herramientas para la protección de los derechos públicos subjetivos. Se ha llamado la atención sobre los siguientes métodos de protección de los derechos de las personas, según el orden administrativo-procesal y en los procedimientos judiciales administrativos: procedimiento administrativo; mediación administrativa; apelación administrativa; someter a responsabilidad disciplinaria especial a los funcionarios de la administración pública culpables; indemnización por daños causados por actuaciones ilícitas (inacción) de las entidades de la administración pública; medios de legítima defensa y medios legales de protesta. La base metodológica de la investigación se presentó como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Se llegó a la conclusión de que en la literatura científica es muy frecuente que no se utilicen métodos de protección, sino herramientas, medios y formas. Los autores también examinan los métodos de protección de los derechos, libertades e intereses de las personas en el ámbito de la administración pública.

Palabras clave: procedimiento judicial administrativo; modalidades de tutela; modelo de procedimiento administrativo; derechos subjetivos; ordenamiento administrativo-procesal.

Introduction

It is impossible to imagine the present-day world without human rights, which are the basis of the legal order and must definitely be protected by the state. That is why, in the conditions of present-day reformation state-

building and law-making processes in Ukraine, one of the priority tasks consists in ensuring unimpaired functioning of legal mechanisms needed to be applied by subjects of authority for protection of rights and freedoms of citizens in the sphere of public-legal relations against violations performed by power entities. This is an important guarantee for implementing the constitutional principle of state bodies' responsibility for their activities to individual citizens.

The legal basis for protection of rights and freedoms is based on provisions of Article 3 of the Constitution of Ukraine. According to the mentioned article a person, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine, and affirmation and insurance of human rights is the main duty of the state.

Also, Article 40 of the Constitution of Ukraine defines the right of a person and a citizen to direct individual or collective written appeals or to personally address state authorities, local self-government bodies and officials of such bodies, who are obliged to consider the appeal and give a reasoned answer within the time limit established by the law. In addition to that, in accordance with Part 2 of Article 55 of the Constitution of Ukraine, everyone shall be guaranteed protection of his/her rights, freedoms and interests against violations and illegal encroachments by any means not prohibited by law. (Law of Ukraine, 1996).

First of all, it is necessary to pay attention to the fact that the right to protection guaranteed by Article 55 of the Constitution of Ukraine is possible only in the event of its violation, therefore justification of the violation is a logical requirement during protection of such a right. Violation must also be real, relate to an individually expressed right of a person, that is, it must be specified in the laws of Ukraine.

Instead, protection of a violated right must be effective. Thus, in its decisions the European Court of Human Rights has repeatedly emphasized the need for effective protection of applicants' rights. For example, in paragraph 75 of the decision dated 05 April, 2005 in the case "Afanasiev v. Ukraine" (application No. 38722/02), the European Court of Human Rights notes that the remedy required by the mentioned article must be "effective" both by law and in practice, in particular in the sense that its use should not be complicated by actions or oversight of the authorities of the relevant state (decision of the European Court Of Human Rights, 2005).

A similar idea is enshrined in the Convention on Human Rights and Fundamental Freedoms. Article 13 of the Convention entitled "The right to an effective remedy" declares that everyone whose rights and freedoms recognized in this Convention have been violated shall have the right to an effective remedy before a national body, even if such a violation was

committed by persons, who exercised their official powers (European convention on human rights, 2013). We would like to add that in its decision No. 3-рп/2003 dated 30 January, 2003 the Constitutional Court of Ukraine stated that justice in its essence is recognized as such only on the condition that it meets the requirements of fairness and ensures effective restoration of rights (par. 10 p. 9) (Law of Ukraine, 2003).

In addition, in its decision dated 09 July , 2002 No. 15-рп/2002 in the case of pre-trial settlement of disputes the Constitutional Court of Ukraine noted that every person should have the right to freely choose a means of protection of rights and freedoms not prohibited by law, including judicial protection; the possibility for subjects of legal relations to use pre-trial settlement of disputes can be an additional means of legal protection provided by the state to the participants of certain legal relations, which does not contradict the principle of justice to be administered exclusively by the court; choosing a certain means of legal protection, including pre-trial dispute settlement, is a right and not an obligation of a person who uses it voluntarily, taking into account his/her own interests.

Based on the need to increase the level of legal protection, the state can stimulate the resolution of legal disputes within the framework of pre-trial procedures, but their use is a right and not an obligation of a person who needs such protection; establishment by law or by contract of pre-trial settlement of disputes at the will of subjects of legal relations is not a limitation of the jurisdiction of courts and the right to judicial protection (Law of Ukraine, 2003).

Taking into account the above, it can be stated that responsibility for illegal behavior in a legal state should be borne equally by natural and legal persons, as well as by the state, its bodies, local self-government bodies and their officials and in the manner prescribed by the law. In cases of illegal decisions taken, illegal actions or inaction of state authorities, local self-government bodies and their officials, every person shall be granted the right to protection.

1. Literature review

It should be noted that scientific doctrine often uses not “tools” of protection, but “methods”, “means”, “forms”, etc. Thus, as noted by O.V. Konstantyi, the judicial procedural form of protection of rights and freedoms takes precedence and exclusivity over administrative appeals against decisions, actions, inaction of power authorities (Konstantyi, 2012). In this example, the scientist uses the term “form”. Y.V. Lazur also analyzes forms of protection. In particular, the author notes that judicial control, supervision and the right of citizens to appeal are the most effective forms of

administrative and legal protection (Lazur, 2010). In other cases, it is about methods or means of protection. Thus, application of a specific method for protection of a violated or denied right is the result of activity concerning rights protection.

Administrative and legal regulation of protecting rights and freedoms of humans and citizens is a system of administrative and legal means (elements), a set of ways and methods of legal influence on social relations, which are used to determine a complex of organizational and special measures aimed at protecting and guaranteeing their rights and freedoms, as well as at prevention of offenses in the analyzed sphere (Kostiushko, 2017). The explanatory dictionary defines the concept of "tools" as a means, a way to achieve something.

We support the position determined by the scholars in the administrative law textbook; they analyze precisely tools for protecting rights, freedoms and interests of individuals in the sphere of public administration and provide the following definition of them: these are administrative (quasi-judicial) means of legal protection of individuals in administrative-legal relations with subjects of public administration through an appeal to the appropriate competent extrajudicial arbitrator regarding illegality of decisions, actions or inaction of public administration subjects.

In addition, certain issues regarding methods to protect subjective public rights of participants in administrative relations and regarding correlation of these rights have been studied by present-day Ukrainian researchers including Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna (Halaburda *et al*., 2021). These works constitute a scientific basis for further research of the specified instruments and actually initiate a scientific discussion regarding prospects for their legislative improvement.

2. Materials and methods

The study is based on the works of foreign and Ukrainian researchers regarding methodological approaches to understanding methods to protect the subjective public rights of participants in administrative relations and correlation of these rights, etc.

With the help of the epistemological method, methods of protecting subjective public rights of the participants in administrative relations and correlation of these rights, etc., were clarified. Thanks to the logical-semantic method, the conceptual apparatus was deepened, methods of protecting subjective public rights of participants in administrative relations and correlation of these rights, etc., were determined. Thanks to the existing

methods of law, we managed to analyze methods of protecting subjective public rights of participants in administrative relations and correlation of these rights, etc.

3. Results and discussion

Thus, when participants of administrative relations implement their rights, public legal disputes may arise between a subject of power, on the one hand, and a citizen, on the other hand. Instruments for protection of the subjective public rights of participants in administrative relations during resolution of a public-law dispute include the following:

1. administrative mediation;
2. administrative appeal;
3. bringing guilty public administration officials to special disciplinary responsibility;
4. compensation for damage caused by illegal actions (inaction) of public administration entities;

means of self-defense - legal means of protest (Matviichuk *et al*., 2022).

The listed protection tools make it possible to quickly restore violated rights of participants in administrative relations, to bring to justice public administration officials who are guilty of their violation. Common features for all types of right protection are as follows: firstly, they have a common goal - to restore the violated right and thereby prevent such offenses in the future; secondly, they are carried out in an extrajudicial (administrative) way (Villasmil Espinoza *et al*., 2022).

Separately, it is necessary to single out another tool for protection of subjective public rights of participants in administrative relations - this tool is judicial control (Nalyvaiko *et al*., 2018).

Despite the common features, the mentioned protection tools have a number of differences, because they are endowed with different legal nature.

Thus, administrative mediation is an institution of legal reconciliation; administrative appeal is a type of administrative proceeding based on complaints, statements and proposals of individuals; bringing guilty public administration officials to special disciplinary responsibility characterizes the institution of legal responsibility; legal means of protest realize the right of citizens to self-defense (for example, the freedom of meetings guaranteed by the Constitution of Ukraine (Article 39) (meetings, rallies, picketing, etc.) (Leheza *et al*., 2022).

Administrative-legal protection includes coercive measures provided by law which are applied by executive authorities and which are a measure for carrying out restoration (recognition) of violated rights of subjects, intellectual property rights, as well as for exerting property influence on violators (Tylchyk *et al.*, 2022).

Kobrusieva considers administrative-legal protection as a set of legal means applied in the administrative procedure and aimed at implementation of appropriate procedural actions by authorized bodies (officials), as well as by individuals and citizens aimed at stopping illegal encroachment on rights, freedoms and interests of citizens as well as at elimination of any obstacles during their implementation, at recognition or confirmation, renewal and enforcement of rights, unfulfilled or improperly fulfilled duties with prosecution of the guilty person (Kobrusieva *et al.*, 2021).

There is no consensus on the interpretation and application of the term "administrative and legal protection" in the domestic legislation. It is often that this concept is identified and compared with "preservation". The latter is a broader concept and represents a set of measures aimed at ensuring the normal realization of rights, as well as at protecting rights in the event of their violation or challenge through specific means of state influence, which exist mainly in legal form and can be manifested either through establishment of legal norms, or through their primarily positive application. The concepts of "preservation" and "protection" are related as a whole and a part.

Referring to the dictionary of the Russian language Borysenko also notes that these concepts coincide in many cases, but also, he draws attention to the grounds for distinguishing them: "protection" is related to activities carried out in case of violation of subjective rights (for example, judicial protection). It provides for measures to restore a violated right (for example, cancellation or suspension of illegal actions and the like). The concept of "preservation" presupposes activities that ensure normal realization of subjective rights, and the primary importance belongs to prevention of possible violations (precautionary measures) (Borysenko *et al.*, 2022).

Zhukova also contrasts these concepts, choosing the moment of violation of rights as the criterion for their separation. Thus, according to the scientist, preservation measures are in place before violation of rights, and protection measures are in place after violation (Zhukova *et al.*, 2023). At the same time, he understands "preservation" a set of various interrelated measures, which are carried out by both the state and public organizations and are aimed at preventing violations, eliminating the reasons that prompt them, and thus contribute to the normal process of citizens' realization of their rights and freedoms.

In turn, protection is understood as a coercive (relative to the obliged person) method of exercising a subjective right, which is applied in accordance with the law-established procedure by the competent authorities or an authorized person himself in order to restore the violated right (Nalyvaiko *et al*., 2022).

Conclusions

Therefore, the performed analysis provides grounds for the conclusion that the concepts of "preservation" and "protection" are on the same plane and have a single measurement criterion - rights and freedoms of individuals and citizens. However, there is no need to equate them. The concept of "protection" is directly related to a specific offense. But measures of protection are also applied in the event of contestation of rights.

In addition, the purpose of applying measures of protection consists not only in renewal of rights, but also in recognition of rights, as well as in termination of the offense. Thus, protection is a set of measures aimed at restoring, recognizing rights and terminating violations of rights, including measures applied by a competent authority independently or at the request of an authorized person.

In turn, the concept of "preservation" does not cease to be effective at the moment of violation of rights, but continues to operate at all stages of realization of rights, including the stage of their protection.

Therefore, administrative and legal protection is a set of measures aimed at ensuring and protecting rights, which are applied by competent bodies of public administration upon the application or complaint of a person whose rights are violated or denied, or on their own initiative. It is a reliable guarantee of quick, effective and objective transformation of the general concept of "protection of human rights" from rhetorical one to real one.

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