Artículo de investigación

The modern concept of Ukrainian administrative justice

СУЧАСНИЙ КОНЦЕПТ УКРАЇНСЬКОЇ АДМІНІСТРАТИВНОЇ ЮСТИЦІЇ

El concepto moderno de justicia administrativa en Ucrania

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Abstract

The article is about the study of the content of the institute of Ukrainian administrative justice as a kind of justice, the subject of which is mostly the public-law disputes, which are implemented in the form of administrative legal proceedings (administrative process) on the basis of judicial specialization. The features of administrative justice, the task of administrative legal proceedings, methods of judicial protection of rights, freedoms and interests in administrative legal proceedings are revealed by authors.

The object of the study was public relations in the field of administrative justice. The subject of the research in the article were national normative-legal acts. In the process of research, the authors used the method of comparison, methods of analysis and synthesis, methods of induction and deduction, formal-legal method, etc.

The authors of the article made the following conclusions as a result of the study. The administrative justice is a manifestation of public authority – justice. The form of implementation of this type of activity, which reflects its essential characteristics, is administrative proceedings (administrative process). The task of administrative justice can be realized by applying to the administrative court the following subject:

Анотація

Стаття присвячена дослідженню змісту інституту української адміністративної юстиції, як різновиду правосуддя, предметом якого здебільшого виступають публічно-правові спори, що реалізується у формі адміністративного судочинства (адміністративного процесу) на основі судової спеціалізації. Авторами розкрито характерні риси адміністративної юстиції, завдання адміністративного судочинства, способи судового захисту прав, свобод та інтересів в адміністративному судочинстві.

Об'єктом дослідження виступили суспільні відносини в сфері адміністративної юстиції. Предметом дослідження в статті були вітчизняні нормативно-правові акти. Для проведення дослідження авторами були використані метод порівняння, методи аналізу та синтезу, методи індукції та дедукцію, формально-юридичний метод тощо.

За результатами проведеного дослідження автори статті зробили наступні висновки. Адміністративна юстиція є проявом публічно владної діяльності, а саме –правосуддя. Формою реалізації цього різновиду діяльності, що відбиває її сутнісні характеристики, виступає адміністративне судочинство

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an individual or legal person; a subject of authority.

Keywords: Justice, administrative justice, administrative proceedings, administrative process, tasks of administrative justice, methods of judicial protection.

(адміністративний процес). Завдання адміністративної юстиції є можливим реалізувати шляхом звернення з позовом до адміністративного суду такими суб'єктами: фізичною чи юридичною особою; наділеного владними повноваженнями суб'єктом.

Ключові слова: правосуддя, адміністративна юстиція, адміністративне судочинство, адміністративний процес, завдання адміністративного судочинства, способи судового захисту.

Resumen

El artículo trata sobre el estudio del contenido del instituto de justicia administrativa ucraniana como una especie de justicia, cuyo tema son principalmente las disputas de derecho público, que se implementan en forma de procedimientos judiciales administrativos (proceso administrativo) sobre base de especialización judicial. Los autores revelan las características de la justicia administrativa, la tarea de los procedimientos legales administrativos, los métodos de protección judicial de los derechos, las libertades y los intereses en los procedimientos legales administrativos.
El objeto del estudio fueron las relaciones públicas en el campo de la justicia administrativa. El tema de la investigación en el artículo fueron los actos normativos legales nacionales. En el proceso de investigación, los autores utilizaron el método de comparación, métodos de análisis y síntesis, métodos de inducción y deducción, método formal-legal, etc.
Los autores del artículo sacaron las siguientes conclusiones como resultado del estudio. La justicia administrativa es una manifestación de la autoridad pública: la justicia. La forma de implementación de este tipo de actividad, que refleja sus características esenciales, es el procedimiento administrativo (proceso administrativo). La tarea de la justicia administrativa puede realizarse aplicando al tribunal administrativo el siguiente tema: una persona física o jurídica; Un sujeto de autoridad.

Palabras clave: Justicia, justicia administrativa, procedimientos administrativos, proceso administrativo, tareas de justicia administrativa, métodos de protección judicial.

Introduction

The formation of an effective mechanism for the protection of rights in the rule of law implies the functioning of an effective judicial order for the protection of rights in public law relations. Today, such an order is linked to the functioning of administrative justice in Ukraine.

At the same time, the effective functioning of this relatively new kind of justice requires, first of all, to solve a number of scientific and theoretical problems, which is a condition for further proper legal regulation of administrative justice, and therefore an increase in the level of protection of the rights of individuals and legal entities in public legal relations, especially in the field of public administration.

The purpose of this article is to investigate the content of the Institute of Ukrainian Administrative Justice as a kind of justice, in the form of administrative judiciary (administrative process).

In the modern rule of law, the human rights function of the judiciary extends not only to cases where the legal order is violated by individuals and legal entities but also to cases where it is violated by public authorities, their officials or officials (Kivalov, Kartuzov & Osadchyj, 2014, p. 7). The main form of activity through which the judiciary is implemented is justice. Justice refers to the activity performed exclusively by the courts (Part 1 of Article 124 of the Constitution of Ukraine (2004)) in a special procedural form (judicial) through the consideration and resolution of legal (legal) disputes and in other cases provided for by law (Part 3 of Article 124 of the Constitution of Ukraine (2004)).

Methodology

The legal nature of administrative process relations was considered on the basis of the laws and special and scientific literature analysis. Social relations arose in the sphere of administrative justice were material for study.

In the process of research, general scientific and special methods were used. The authors used the method of comparison, methods of analysis and synthesis, methods of induction and deduction, formal-legal method, etc.

First of all, the method of analysis was used by the authors in the study of the legislative framework that has developed in the country. In addition, the synthesis method has helped the authors of the study to characterize the legal picture to ensure legal justice. Moreover, the comparison method has helped to identify gaps in the legal regulation of administrative justice relations.

Analysis of recent research

The problems of the study of theoretical principles of administrative justice in the modern administrative and legal science are devoted to the works of scholars as Bahrakh, D.N., Bonner, A.T., Chechot, D.M., Kartuzov, I.O., Kalinichenko, L. (2019), Kivalov, S.V., Kolesnikova M. (2019), Kolomiets, T. (2008), Komarov, V.V., Kujbida, R.O., Pysarenko, N.B., Salyshcheva, N.G., Shchukin, O.M. (2014), Zagryatskov, M.D. and others. However, the doctrine of administrative law does not currently have a steady approach to understanding the essence of administrative justice, its connection to the administrative proceeding.

Presentation of key research findings

In civil society, citizens are not the subjects of political-power relations and public law, but private individuals with their interests, subjects of private law, participants in civil-legal relations (Kharytonov, Kharytonova, Tolmachevska, Fasii, & Tkalych, 2019). Being independent, separated, both these processes constitute an indispensable condition for the reproduction of civil society (Koen & Arato, 2003).

Since public administration is an activity in which the practical implementation of the majority of the rights conferred on the person by the Constitution and the laws of Ukraine is fulfilled, it is natural that the greatest number of legal disputes concerning the exercise by individuals and legal entities of their rights, interests, and fulfillment responsibilities in the field of public-legal relations arise precisely in this sphere.

To resolve such disputes (referred to as public law disputes) in Ukraine, as well as in many leading democratic countries, the Institute of Administrative Justice operates. Administrative justice is a type of justice, the subject of which is mostly public-law disputes, which is implemented in the form of administrative justice based on judicial specialization. Based on the above definition, it is possible to identify the characteristic features of administrative justice, which together allow you to properly understand its nature, to distinguish administrative justice from the activity of solving public-law disputes, carried out out of court, or in the order of civil proceedings, etc., sometimes different by justice (Zagryatskov, 1925, p. 19; Salyshcheva, 1994, p. 78; Bahrakh, & Bonner, 1975, p. 13-21; Chechot, 1973, p. 57-65). Therefore, the following characteristics of this kind of justice can be identified:

1) Administrative justice considers and resolves mostly public-legal disputes in connection with violation of rights, freedoms, interests of individuals and legal entities in the field of public administration (in Code of Administrative Proceedings of Ukraine (2019) the functions of public administration are designated as public-power administrative functions);
2) Administrative justice is carried out in a special legislatively established procedure (procedural form) - in the form of administrative justice (administrative process), which is adapted precisely for the most effective consideration of public-law disputes and other cases in the public-legal sphere - procedural aspect;
3) Administrative justice is implemented based on judicial specialization - specialized courts (administrative courts) - organizational aspect.

Administrative judiciary acts as a procedural component of administrative justice - a form of realization of this kind of judiciary. The above view on the correlation between the judiciary (process) and justice is supported by both scholars-administrativeists and lawyers who deal with the problems of other procedural

branches of law (Pysarenko, 2019, p. 47; Komarov, 2011, p. 32). Therefore, administrative proceedings (administrative process) mean the procedure established by law for the administrative courts to hear and resolve public-law disputes and certain other cases in cases provided for by law. Administrative judiciary as a procedure for the administration of justice by administrative courts is defined by a specialized legislative act – the Code of Administrative Proceedings of Ukraine (2019) (hereinafter CAP of Ukraine).

The tasks of administrative justice are closely intertwined with the above features of administrative justice, which is defined in Part 1 of Art. 2 CAP of Ukraine (2019), and at the same time serves as the task of administrative justice, since the ratio of this kind of justice and administrative justice is the ratio of content and form. The objective of administrative justice is the fair, impartial and timely resolution of disputes by the court in the field of public-legal relations to effectively protect the rights, freedoms, and interests of individuals, rights, and interests of legal entities from violations by the authorities.

From the analysis of the task of administrative justice, it becomes clear the importance of this institution for the development of a democratic, rule of law in general. Art. 3 of the Constitution of Ukraine states that "a person, his life and health, honor and dignity, integrity and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and orientation of the state. The state is responsible for the person for its activities. Promoting and safeguarding human rights and freedoms is a major responsibility of the state". According to I.O. Kartuzov, the establishment of such a provision in the Basic Law of the country is certainly a great achievement of democracy, but without the existence of a mechanism for the realization of the protection of the rights, freedoms, and interests of individuals and legal entities against the arbitrariness of the authorities to remain only a theory. Administrative justice in Ukraine plays the role of one of such important mechanisms - the guarantors of citizens' rights officials (Kivalov, Kartuzov, & Osadchyj, 2014, p. 17).

It is advisable to note that the decisive task of administrative justice is to resolve legal disputes of a public nature. Such disputes arise, as a rule, between entities, one of which, at least, has power (authority). CAP of Ukraine (Part 2, Art. 2) (2019) establishes a list of criteria, which compliance with these entities should be reviewed by the court in the administration of justice. The administrative court has to find out the compliance with the statutory grounds and the decision-making method, as well as the defined competence limits. The appropriateness of the authority for the purpose for which it was endowed with a public authority is also important.

The activity of the authority also requires timeliness, impartiality, integrity, and prudence. The evaluation of these criteria, the lack of a formal interpretation, determine certain complications of judicial review of their compliance. Therefore, it is advisable to refer to recognized doctrinal interpretations and settled case-law to specify these criteria. Impartiality as a criterion for the legitimacy of a decision is determined by the absence of any internal or external bias and subjective point of view in the resolution of the dispute. Integrity implies a genuine intention in exercising its authority and achieving its goals and fair results (Kujbida, 2009, p. 42). Prudence is a criterion that is determined by generally accepted moral standards and common sense requirements (Kujbida, 2009, p. 42). As for timeliness, this criterion is a measure of adherence to a reasonable time - the shortest period of time necessary and sufficient to take action or decision without undue delay.

Besides, the contested decision of the subject, which has public authority as well as his actions or omissions, is analyzed for the subject of reasonableness, which is why the court finds out whether all relevant circumstances of the particular case have been taken into account. It is also important to emphasize the fact that during the operation of valuation categories, the court is required to ensure that other branches of public authority, both vertically and horizontally, are not interfered with in its activities. The court should not assume their authority, thus violating the balance of powers. As the activities of a person with powers of authority can influence on a private person, the court is required to establish the following (in addition to the above criteria):

- The respect for the principle of equality before the law and the absence of any form of discrimination;
- The balance of the purpose of the decision to the possible adverse consequences for the individual;

- The observance of the right of an individual to participate in the decision-making process.

The current system of functioning of administrative courts in Ukraine is an instrument through which the main tasks of administrative justice are realized. Therefore, its main purpose is to protect the rights, freedoms or legitimate interests of individuals in public relations. It is advisable to note that in the case of pre-trial settlement of a dispute, where such a pre-trial settlement obligation is provided by law, any private person may apply to an administrative court if it considers that the subject of power authority has violated its rights. At the same time, in addition to the persons mentioned above, the administrative court itself may be appealed directly to the entities themselves with powers authority. In the second case, such situations. Such cases are mostly due to the process of taking certain decisions and committing certain actions related to the realization by the entities empowered with powers authority, such powers, which entail a substantial restriction of the rights and legitimate interests of individuals of private law, by conferring on them burdensome duties, including:

- Establishing restrictions on the exercise of the right to peaceful assembly;
- The compulsory dissolution of citizens' associations;
- The forced expulsion of foreigners and stateless persons outside Ukraine, etc. (Kivalov, Kartuzov, & Osadchyj, 2014).

In the situations described above, the court makes preliminary control over actions that significantly affect the rights of the individual, and thus provides preventive protection of the defendant in the proceedings under the administrative claim of the subject endowed with power (Kujbida, 2009, p. 138).

Therefore, protection by the administrative court is made in two cases:

- As a result of the appeal of an individual to a person empowered with authority (in which case the court checks the lawfulness of such person's decisions, actions or omission);
- As a result of the appeal of the subject of power authority (in such circumstances the court establishes the existence of grounds for the exercise of such power by the subject when making certain decisions and committing actions against a private person).

In administrative proceedings, when an individual applies to the court for protection, such protection made in a manner (application of a substantive measure of compulsory nature) under Art. 5 and 245 CAP of Ukraine (2019), in particular:

- The recognition of a normative-legal act as unlawful and invalid in whole or in its separate provisions;
- The recognition as illegal and cancellation of an enforceable action;
- The recognition of the action or omission of the authority subject to be illegal;
- The obligation to refrain from taking certain actions or, conversely, to take certain actions;
- Establishing the presence/absence of the relevant competence of the authority.

It is important to note the fact that these methods can be divided based on their fixation into two types:

- Those established directly by law;
- Such as are determined by the court and are not contrary to law.

Simultaneously with the application of the aforementioned methods in court protection, the administrative court resolves the task of compensating for the damage caused by the unlawful decision, the action or omission of the authorities, or other violation of the rights and interests of individuals. Such issues may also include claims for the seizure of property that have been seized, for example, based on a decision by the authorities. It should be noted that the above issues could be brought before an administrative court solely with a request to apply the above methods in judicial protection. If the claimant states these requirements separately, such issues are resolved by the administrative court in the order of civil or commercial litigation.

According to Part 2 of Art. 5 and paragraph 11 of part 2 of Art. 245 CAP of Ukraine (2019) for the realization of the purpose of administrative proceedings, an administrative court may apply for judicial protection not explicitly provided

for by law, but such procedure must be true to the law and capable of providing the best protection of the rights and interests of the individual against the violation by the subject of power. This method is used when the application of the legal remedies provided by law is not capable of providing the best protection for individuals.

It is also important to emphasize the fact that the person in the statement of claim should indicate all the necessary means of protection. An administrative lawsuit may also specify other remedies not specified in the law. According to Part 2 of Art. 9 CAP of Ukraine (2019), an administrative court for ensuring the best protection of the rights and interests of individuals and other persons in the field of public relations from violations by the authorities, may go beyond the claim and use other remedies not specified in an administrative lawsuit. If the remedy requested by the person fails to provide effective protection of the rights, freedoms, and interests of the persons, then the choice of the appropriate remedy depends on the content of the particular right, freedom, interest, and nature of its violation.

As noted above, during the application to the administrative court with an administrative lawsuit by a subject of authority, a preliminary check is carried out to decide the legislation or action of the subject of authority. In such circumstances, the judicial protection of the rights, freedoms, and interests of the person is not specified, and the decision of the administrative court indicates the taking of certain decisions or the taking of certain actions by the subject of authority.

Conclusions

Summarizing all of the above in the article, it is appropriate to state that administrative justice is a manifestation of public authority – justice. The form of implementation of this type of activity, which reflects its essential characteristics, is administrative proceeding (administrative process).

The task of administrative justice and justice in this area (which is to effectively protect individuals of private law in public relations, related, first of all, to public administration) can be realized by applying to the administrative court the following entities:

- An individual or legal person;
- A subject endowed with power authority.

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