

АДМІНІСТРАТИВНЕ ТА ФІНАНСОВЕ ПРАВО

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OBJECT OF ADMINISTRATIVE AND LEGAL PROTECTION AS A BASIC ELEMENT OF THEIR LEGAL STATUS SECURED BY APPROPRIATE GUARANTEES FROM THE GOVERNMENT

ОБ'ЄКТ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ В ЯКОСТІ ОСНОВНОГО ЕЛЕМЕНТА ЇХ ПРАВОВОГО СТАТУСУ, ЗАБЕЗПЕЧЕНІ ВІДПОВІДНИМИ ГАРАНТІЯМИ ВІД УРЯДУ

The scientific paper analyzes the basic element of administrative and legal protection of human rights. The rights of citizens are being considered as an object of administrative remedies.

***Key words:** rights, freedoms and legitimate interests of citizens, object of administrative and legal protection, status of juristic person.*

У статті проаналізовано основний елемент адміністративного та правового захисту прав людини. Права громадян розглядаються як об'єкт адміністративних засобів захисту.

***Ключові слова:** права, свободи й законні інтереси громадян, об'єкт адміністративно-правового захисту, статусу юридичної особи.*

В статье проанализирован основной элемент административной и правовой защиты прав человека. Права граждан рассматриваются как объект административных средств защиты.

***Ключевые слова:** права, свободы и законные интересы граждан, объект административно-правовой защиты, статуса юридического лица.*

Crucial in this case becomes reality of human rights at the level of legal recognition of rights and effective implementation mechanisms, also provides the effectiveness of judicial and administrative protection, under what science understands that judicial and administrative decisions and take effect realized that necessarily led to the restoration or compensation of violated rights and freedoms.

The purpose of this paper is to identify ways of improving the administrative and legal mechanism for the protection of human rights in law enforcement Ukraine.

Achieving this goal involves the following tasks:

- to clarify the understanding of human rights as the object of administrative and legal protection;
- describe the protection of human rights and as an indication of the basic function of rule of law;
- define the features of the regulatory and legal framework, concepts, values and system of administrative remedies rights.

At the same time, examining different aspects of administrative and legal mechanism for the protection of human rights as one of the elements to ensure their reality, which in turn acts as an indicator of building a modern legal socially oriented state must separately pay attention to the still existing theoretical controversies methodological understanding the nature of the rights and freedoms of man and citizen. In particular, it is about establishing the specific category of civil rights, its relation to the rights, freedoms and interests of Man, which is directly related to the doctrinal and legal definition of the content of human rights as the object of administrative remedies.

We note that the issue of the legal status of man and citizen attention was paid within just a few areas of law (legal theory, constitutional, international, administrative law, etc.). However, these studies mostly focus only on the conceptual foundations of basic human rights, unnecessarily leaving aside the peculiarities of human rights in terms of mechanisms for their protection. Given this urgent issue and are seen concept and essence of human rights as the object of administrative remedies.

First, we note that the rights of man and citizen is just one of the manifestations of their legal status and separately from the latter can't describe the specifics of individual relationships with the state and civil society. In particular, it is clearly noted in the fundamental principle of "no rights without responsibilities" [3]. But, of course, that the legal status can't be limited solely by the individual rights and responsibilities, including other elements that ensure the reality of such rights and obligations, adequate coordination of social interests of various individuals and social groups. Therefore, K.G. Volinka clearly notes that "the value of the category of legal person status is that it allows us to consider his rights, freedoms and duties in a coherent and systematic unity and given their interdependence" [4, p. 30].

Thus, the elucidation of the essence of human and civil rights must take into consideration their place in the overall structure of the legal status and the nature of relationships between rights, responsibilities and other elements of the legal status of man and citizen. At the same time, we note that such legal status as a complete category also undergo appropriate under the influence of a single generalized social status of the individual, which is the most comprehensive categories and is not limited to purely legal sense. Thus, in sociology social status of an individual is defined as its position in the social system associated with membership of a partic-

ular social group or community, a set of social roles and the quality and level of their performance.

So, in conclusion, summarize that, firstly, the status always reflects a certain position (position) of the person or team in society, and secondly, includes at least the following elements of both rights and responsibilities. Legal status is a much narrower category than social status, accordingly affects the extent of the rights that form the content of such status.

D.N. Bachrach, considering the rights of the citizen in the structure of administrative and legal status defines them as follows “formally defined, legally guaranteed opportunity to enjoy social benefits, the official measure of possible behavior allowed in society” [6]. So, in this case, the following features are as important as the formal definition, legal security of an official nature extent possible behavior that directly reflect in its totality is the legal nature of individual rights. But on the other hand, even a narrow aspect of administrative and legal status of citizens can't agree with this feature of human rights as possible behavior of individuals.

Note that according to p. 1, art. 19 of the Constitution of Ukraine [1] established the principle that no one can be forced to do something that is not required by law. However, it is somewhat limited perception as allowed everything that is not explicitly prohibited by law. Administrative and legal relations are characterized by legal inequality and parties have power-prescriptive in nature, but that does not mean that absolutely all rights of such relationship must also acquire the aforementioned properties. The concept of naturally occurring human rights in indirect art. 21 and art. 22 of the Constitution of Ukraine, the Universal Declaration of Human Rights of 12.10.1948 [7] and other international instruments indicates that human rights is a measure not only permissible state behavior, as it is due to the very nature of possible behavior. Some of these natural rights are a further manifestation of relevant administrative and legal relations, such as a natural right to participate in public affairs (art. 38 of the Constitution of Ukraine [1]). Hence, on the rights of the individual, even in terms of administrative and legal framework, always refers to the extent possible behavior that is not always requires a permit from the state, the purpose of which is to provide legal corridor to certain rights. Moreover, as noted by V.V. Kravchenko [5], the state should not be limited to legal registration of human rights, instead they should provide not only legal, but also economic, political and cultural means.

Note that the understanding of human personality as a multifaceted social phenomenon is important in terms of clarifying it, on the one hand, the complex nature, on the other hand, place in the structure of social interaction and communication. In addition, a comprehensive vision of human rights facilitates delineation of individual rights of other persons behavior of social opportunities. For example, some politically reasonable and justified rationale, devoid of legal content alone does not create individual rights, however, so vested and opportunities of conduct contrary to the social, philosophical and moral principles also do not have to create individual rights, because, as right is not autonomous and self-sufficient. However,

now in Ukraine, whose legal system is still based on the idea of legal positivism, is a common understanding of the technical and legal rights, and therefore human rights in the first place gave the same test their legislative consolidation. So all this is taken into account in the formulation and practical implementation of the system of administrative and legal protection of individual rights.

So, can confidently be said that in the context of administrative and legal protection of the individual to distinguish between legal status in the objective sense as a coherent category, subjective legal rights, and subjective natural rights, and the completeness and the reality of the past, which is aimed at providing administrative and legal protection, precisely defined meaning first.

At the same time, V.Y. Vasetskiy adheres slightly expanded understanding of the rights and freedoms in the subjective sense, defined as “an opportunity that belongs to a specific person that legally established, and acts protected by the state” [8, p. 11–12]. Note that in this case actually identified different inherently subjective right and its use as a form of Implementing Rules. We emphasize that Implementing Rules is designed to ensure implementation of the law of life (legal status in the objective sense), including through the use of Implementing Rules) subjective rights. That is, in purely theoretical terms the state acts to secure proper implementation of specific features of the behavior of the person beyond the scope of subjective rights. However, for the purposes of systemic administrative and legal protection of individual rights should take into account and that protection be not only recognized for a person to act in a certain way, but its real ability to realize these opportunities available to it that appropriately included in the object administrative and legal protection.

Thus, making conclusions about the understanding of the category of individual rights as the object of administrative remedies, are given below of Features and Functions:

- multifaceted social phenomenon that covers the legal, moral, political, and philosophical content;
- a measure of possible behavior in specific historical conditions of social development;
- a key element of personal rights, inalienability of rights obligations;
- conditionality and the right expression, regardless of its particular form (not only in the legislation) and the security of legal and official character;
- the goal is to meet the social needs of the individual in accordance with established society and the state of law and order;
- providing state of reality in the relevant specific legally and socially feasible and reasonable limits;
- subjective law and natural rights of their process of Implementing rules (use);
- protection of the rights of the individual.

Note that the above list of features of individual rights is certainly not exhaustive and expresses primarily the nature of individual rights is a subject of administrative and legal protection. Accordingly, protection, including the adminis-

trative and legal order, is one element of reality to ensure individual rights as a key component of its social position, in order to realize the social needs of the individual in her relationships with others, the state and society in general.

Also emphasize that science, at the level of individual rights, has agreed to provide its freedoms and interests. However, the problem of delimitation of rights, freedoms and interests of the individual has not only theoretical but also practical. In particular, for example, p. 5. 55 of the Constitution of Ukraine [1] provides for the right of everyone “to protect their rights and freedoms from violations and illegal encroachments” by any means not prohibited by law. Similarly, p. 2, art. 15 Civil Code of Ukraine from 16.01.2003 № 435-IV [9] establishes the right of everyone to protect their interest, which is not contrary to the “general principles of civil law”. Consequently, the rights and freedoms and legitimate interests, in fact, act as separate objects specific administrative remedies.

We believe that in this case really can't leave out a single entity of human rights as far as possible of a person's behavior, however, can't agree with the position that the rights and freedoms do not have any significant distinctive differences. We believe that as the distinction between the rights and freedoms of man and citizen should act way of implementing entity and state enforcement of such behavior possible.

From this perspective, individual rights should be seen as the desire to use certain social benefits, effective practical implementation requires active purposeful activity of the state to safeguard and ensure the reality of a person's behavior are possible. As an example of such rights can be called a constitutional right to work, strike, holiday, appropriate social protection (art. art. 43–46 of the Constitution of Ukraine [1]).

Installing the essence of the notion of individual freedom also requires reference to specific examples. Therefore, it is defined as the freedom of thought and freedom of speech, freedom of conscience, freedom of creativity provided art. 34, 35, 54 of the Constitution of Ukraine. These opportunities by way of its implementation does not directly provide permanent interim of the state, in other words, they may be made subject to non-interference in their implementation of the state, which should provide the same interference from other individuals or social institutions. As noted in this regard V.V. Kravchenko [5], the concept of “freedom” has more to do with the scope of autonomy rights, protection against interference in its internal world.

Thus, we focus on the specifics of the legal instruments that define the formulation above named freedoms, particularly with respect to freedom of opinion and expression and freedom of belief and religion Constitution of Ukraine stipulates that a person has a right to such freedom. Thus, in this case there is a unique combination of rights and freedoms that we believe, primarily due to certain historical and political factors in view of the need for additional software, see freedoms. Legally same field, such as the right to freedom of opinion and expression should be understood as the possibility of state-guaranteed entities independently of any-

one to think and express their views, as the special value of civil society needs extra protection and security with the state.

So, while the reality freedoms of man and citizen, as opposed to individual rights, not so tightly linked with the creation of the state of conditions for their implementation, however, she, in turn, requires the maintenance of the state and ensure its maintenance and other persons from social institutions interference in the personal sphere of human freedom. That is why freedom of the individual, as well as its rights also need appropriate protection, including the administrative and legal order, however, somewhat different plane to ensure non-interference with the exercise of these freedoms.

Thus, in terms of administrative and legal protection of the legitimate interest of the individual as a subjective right, under the legal protection of the state, in fact, according to said decision of the Constitutional Court of Ukraine of 01.12.2004 № 18-2004, it is an independent object of judicial review and other means of legal protection. However, in our view, a legitimate interest, although not part of the content of individual rights, but exists in parallel with it, they may be the same or flow into each other.

Thus, not only the general constitutional principles, but also administrative and legal protection legislation guarantees the right of every person who sees the need.

Summing want to identify that part of the administrative and legal protection should talk primarily on the protection of citizens is, that as citizens of Ukraine and foreigners and stateless persons. It is this broad category generalized understanding of human rights allows, on the one hand, mark law (and freedom) of all individuals, regardless of their nationality, on the other hand, cover not only the special rights caused by the relevant public law status of a person, but her natural rights, is the right person.

Thus, the rights, freedoms and legitimate interests owed to citizens of Ukraine, foreigners and stateless persons as a basic element of their legal status, provided that appropriate guarantees from the government, are the object of administrative remedies. Administrative and legal protection mechanism has an important place in ensuring the reality of civil rights as one of the key factors in the formation of law and civil society in Ukraine.

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СПЕЦІАЛЬНІ ПРИНЦИПИ ЗДІЙСНЕННЯ УПРАВЛІННЯ МІСЦЕВИМИ ФІНАНСАМИ В УКРАЇНІ

SPECIAL PRINCIPLES OF THE LOCAL FINANCE MANAGEMENT IMPLEMENTATION IN UKRAINE

Розглянуто особливості спеціальних принципів здійснення управління місцевими фінансами в Україні. Уперше проаналізовано зміни в бюджетному законодавстві, які стосуються управління бюджетними коштами. Сформульовано пропозиції щодо вдосконалення спеціальних принципів здійснення управління в цьому напрямі.

***Ключові слова:** місцеві фінанси, управління, принципи, прозорість, підзвітність, бюджетний кодекс.*

Рассмотрены особенности специальных принципов осуществления управления местными финансами в Украине. Впервые проанализированы изменения в бюджетном законодательстве, касающиеся управления бюджетными средствами. Сформулированы предложения по совершенствованию специальных принципов осуществления управления в этом направлении.

***Ключевые слова:** местные финансы, управление, принципы, прозрачность, подотчетность, бюджетный кодекс.*