

**Sokolenko O. L.,**  
*Doctor of Law, Professor, Dean of the Faculty of Law*  
*Oles Honchar Dnipro National University*

## **ADMINISTRATIVE AND LEGAL BASIS OF PROTECTING CITIZENS RIGHTS IN UKRAINE**

### **АДМІНІСТРАТИВНО-ПРАВОВА ОСНОВА ЗАХИСТУ ПРАВ ГРОМАДЯН В УКРАЇНІ**

The scientific article is devoted to the study of the administrative and legal principles of protecting the rights of citizens in Ukraine.  
**Key words:** *rights of citizens, administrative and legal protection, object of protection.*

Наукову статтю присвячено вивченню адміністративно-правових засад захисту прав громадян в Україні.  
**Ключові слова:** *права громадян, адміністративно-правовий захист, суб'єкт захисту.*

Научная статья посвящена изучению административно-правовых основ защиты прав граждан в Украине.  
**Ключевые слова:** *права граждан, административно-правовая защита, субъект защиты.*

Ensuring the realization of humans civil rights and freedoms is directly linked with the proper organization and effective functioning of the special system of protection of the rights of citizens. At the same time, in the conditions of a modern democratic social legal state, particular importance has pluralism of forms, the adequacy of methods and sufficiency of means of such a system of protection of the rights of citizens. It should be pointed out that coherence, interconnectivity and complementarity of various forms, methods and means of protecting the rights of citizens are not only an indicator of the sustainability of social development, but also a necessary condition for the effectiveness of the entire mechanism of protecting the rights of citizens. At the same time, as noted [1], in Ukraine, the forms, methods and means of protecting human and citizen's rights and freedoms can't be characterized by their orderliness, consistency and complexity, what impedes the timely prevention and elimination of violations of citizens' rights.

Among the main problems of the organization and implementation in Ukraine of the system of protection of the citizens' rights is insufficient theoretical and normative legal development of the categories of forms, methods and means of such protection, which, to a certain extent, distorts their perception and causes the fragmentation of application and imperfection of legal regulation. At the same time, particular attention should be paid to the administrative and legal means of protecting the rights of citizens, which, at level with civil law, criminal law and other means, constitute a significant segment of the general system of protection of the rights of citizens. It is in the process of executive and regulatory activity of various bodies and their officials that a significant part of the subjective rights of citizens is realized. At the same time, the forms, methods and means of administrative protection, which note the lack of a unified state policy and centralized legal regulation in this area, are currently in need of priority ordering.

Thus, the issues of improving both understanding and legal regulation of administrative and legal means

as the main element of the mechanism of administrative protection of the rights of citizens are actualized.

First of all, let us note that when considering issues of administrative and legal means of protecting the rights of citizens, one should first of all proceed from the essence of the general category of means of protecting the rights of citizens. We must also point out its insufficient scientific development, however, as well as the concepts of the forms and methods of protecting the rights of citizens, as a result of which some scholars can protect the rights in general even as a system of only legal remedies for the restoration and compensation of violated rights. However, both the forms and methods, as well as the means of protecting the rights of citizens, are the components of a unified mechanism for the protection of the rights of citizens, which is intended to ensure the restoration of the right, elimination of obstacles to its implementation, prevention of violations and compensation for the moral and material damage. In particular, the protection of subjective rights, freedoms and interests protected by law is carried out in the manner prescribed by law, that is, through the use of the appropriate form, means and methods of protection.

Thus, the formulation of definitions of means (and, therefore, of administrative and legal means) for protecting the rights of citizens should be based on their relationship with certain forms and methods. Similarly, the definition of the value of the means of protecting the rights of citizens requires the establishment of the place and role that they play in the whole mechanism of protection of the rights of citizens. Accordingly, the system of means of protecting the rights of citizens should be conceived not in isolation from its forms and methods, but should be grounded and co-ordinated with them, since such means, although they form a separate system (subsystem), however, which, in turn, is included in the general system protection of the rights of citizens.

It should be noted that normative-legal regulation doesn't define either the essence of concepts of the form, method and means of protecting the rights of citizens, not, accordingly, their relationship. At the same time, based on half of the Constitution of Ukraine, namely Part 5

of Art. 55 [5], citizens directly guarantee the use with local protection of their rights and freedoms (we also added – legitimate interests) of any prohibited by law means. At the same time, a modern integrated and structured vision of a mechanism for the protection of human rights and citizens requires the provision, in the level with means, of certain forms and methods of such protection. This, in turn, leads to the formation of different points of view in the scientific community regarding the essence, content and relationship of the named categories.

For example, to the structural components of the Institute of Protection, at the level with the object, separately belong “methods, procedural forms (means) of protection”, according to which the means of protection are thought to be identical to its forms and different from the methods of protection. On the other hand, one can't ignore the position regarding the close proximity of the concepts of “mode” and “means” [4]. Although semantic analysis of these concepts in the field of the protection of the rights of citizens and need to limit their legal substance, but indicated to some extent in the general linguistic sense is equal to the mode of form, and the means of the mode. So, we must state the existing trends in science about arbitrary, and sometimes even diametrically opposed, identification of the categories of forms, methods and means of protecting the rights of citizens. At the same time, in our opinion, within the framework of the mechanism in protecting the rights of citizens it is more appropriate to note not so much their identity as interconnection.

Let us note that as the most general category in the aspect of protecting the rights of citizens, scholars often consider the concept of its forms. At the same time, without denying the definition of forms protection as “an instrument for realizing the right to protection”, we note its excessive generalization and lack of informativeness for establishing the essence and differentiation of forms, methods and means of protecting the rights of citizens.

Moreover, we can't fully agree with the position that indicates on the forms of protection as certain variants of citizens' appeal for the protection of their violated, disputed or unrecognized law, due to the peculiarities of the legal status of state authorities and other institutions and the exercise of their functions and powers in the field ensuring the protection of subjective rights. First of all, we note that this definition only includes the initial stage of citizens; appeal to the competent authorities and doesn't reflect the following “options” for protecting the rights of citizens. It can't be emphasized on that, as in this case, and with regard to methods and means of protection, the question should go not only about rights, but also about the freedoms and legitimate interests of citizens. Concerning the understanding of the notion of forms protecting of the citizens' rights in science, one can distinguish a separate activity approach, according to which the form of protection is conceived mainly as a certain activity of authorized human rights bodies. For example, a number of scholars define the form of protection as a statutory activity of the competent bodies for the protection of the citizens' rights, including the definition of the method of protecting the rights. In our opinion, the above definition contains only one sign of the forms of protection, namely, their definition of the law.

Concerning the other, agreeing with V. Averyanov, we must emphasize that protection of the citizens' rights can be carried out not only by specially authorized bodies, but also by means of self-defense, and therefore the given definition can't be regarded as universal, at least in terms of protecting the rights of citizens [6].

More detailed we can see the definition of the form of protection of labor rights and interests of employees, which is also disclosed as the activities of authorized bodies, an employee or his representative for the protection of labor rights and legitimate interests, which are manifested in the application of the methods and measures envisaged by the legislation, aimed at stopping and preventing violations of labor legislation, restoration of violated labor rights and compensation for damage. At the same time, this notion of forms of protection in its essence actually coincides with the notion of the most protection of the rights of citizens, which should also be seen as certain determined by law deliberate activities, aimed at preventing and stopping human rights violations and their restoration. In other words, the form of protection is identified with protection. Thus, speaking about the form of protection as an appropriate activity, in fact, it can be talk about protection itself as a practical embodiment of its concrete form, methods and means.

In general, the definition of the protection form of the citizens' rights only as a certain activity characterizes only one – the activity aspect of protecting the rights of citizens largely leaving behind the notion of protecting forms its normative and institutional foundations. On the other hand, it can be noted from the above that methods and means form the content of the corresponding forms of protection, and therefore, the question of administrative and legal means of protecting the rights of citizens must be solved precisely in the context of its form. Therefore, in general, the concept of forms of protection can and must be extrapolated and taken into account when defining the forms of protection, in general, of any rights of citizens.

It should be noted, that the approach to defining forms of protection as a complex of certain measures for the protection of the corresponding rights, freedoms and legitimate interests of a person and a citizen has become no less commonplace in science. Thus, the form of protection is understood as a complex of internally agreed organizational measures for the protection law-protected subjective rights and interests that take place in the framework of a single legal regime. Such definition of protection forms the citizens' rights, first of all, proves positively precisely in the complexity and consistency of such organizational measures, because every concrete form of protection is a separate independent human rights mechanism whose effectiveness directly depends on the orderliness, integrity and systematic nature of its components. At the same time, in the aspect of the relationship between forms, methods and means of protection, it is necessary to specify that the named organizational measures in the framework of a certain form of protection must be connected with the application of appropriate methods and means of protecting the citizens' rights. In other words, in the framework of this approach, the form of protection should be defined as a complex

of agreed measures for the use and application methods and means of protecting the citizens' rights. At the same time, following this definition, it is not possible to precisely distinguish the notion of forms of protection from protection, the content of which actually forms the appropriate human rights protection measures.

Beyond this, it's worth noting another approach, namely the definition of protection forms as a specific procedure for the protection of the rights of citizens. In particular, noting that the forms of protection are a certain procedure for the implementation of the right of defense of the persons concerned and the powers of the competent authorities. Thus, unlike the previous approaches to understanding the forms of the protection of the citizens' rights, it is not identified with the protection, but is thought of as its outer shell, the sequence and algorithm of the application of certain human rights instruments. In particular, interpreting the definition of I. Vaganova, under the form of protecting the rights of citizens means a certain procedure for the implementation of activities for the protection the subjective rights, which includes a complex of internally agreed organizational actions, which take place within a single legal regime [3]. Thus, this definition combines, to a certain extent, the approaches discussed above, reflecting human rights activities as the essence of the protection form the rights of citizens, and organizational measures – as its elements. At the same time, in our opinion, it is precisely in accordance with the order of the implementation of human rights measures (means) should be allocated in the modern system for the protection of human and civil rights and freedoms of the administrative, legal, civil, criminal and other forms of protection. And, accordingly, within the administrative form, we are considering the appropriate administrative and legal means of protecting the rights of citizens.

In addition, somewhat ambiguous is the attempt to distinguish between forms of protection in procedural and material aspects. Thus, from these positions, scientists in the procedural aspect of the protection form are proposed to be defined as the means for the implementation of procedural actions that are carried out according to certain rules in a certain manner by one or another empowered subject. In our opinion, such an approach not only doesn't solve all the basic problems of understanding the protection forms humans rights, but, on the contrary, complicates their understanding, differentiating between

the material and procedural aspects of a single concept. Instead, the wording of the notion of protection forms of the citizens' rights in a broad and narrow sense appears more expedient.

So, in the broad sense, the form of protection of the rights of citizens is a legally determined procedure for the implementation of a complex of internally coordinated measures aimed at the use by authorized persons of appropriate means and remedies for the prevention and suppression violations, as well as the restoration of rights, freedoms and legitimate interests person and citizen. Accordingly, in the narrow sense, the forms of protection the rights of citizens can be defined as a certain complex of methods and means of protection, the specificity of which ultimately forms the basis of one form or another of the protection the citizens' rights.

At the level with the concept of protection forms, it is equally important for a proper understanding of the essence and importance of the means the protecting rights of citizens, have ways of such protection. It should be noted that there are also quite ambiguous and opposing points of view on science in this regard. For example, in the opinion to N. Hetmantseva, the method of protection is defined as a set of actions that restore, recognize, establish the rights and legitimate interests of the individual, and their totality is a form of protection. First of all, we can't agree with the latter, since, as we have already found out above, the content form includes not only methods but also remedies. Also, the authors' proposed definition of the protection method is somewhat unclear, since it doesn't reveal any fundamental differences from the remedies defined by them as "a set of actions aimed at the restoration, recognition and establishment of the rights and legitimate interests of the individual".

Based on these definitions, it can be argued that the means are broader than defense methods, but, in spite of this. N. Hetmantseva and I. Kozub [4] nevertheless argue that the means are subordinate to the methods of protecting the rights of citizens. In contrast, some scholars regard the way of protection in general as one of the means of protecting the citizens' rights, which is a way of legal influence, expressed in legal norms and aimed at eliminating the barrier to implementation. At the same time, the means ensure the use of methods in the appropriate forms. So, the means are a fairly broad category, which, in a democratic social state, is subject to legal regulation, however, it can't be ultimately restricted by positive regulation.

#### REFERENCES:

1. Бородин І.Л. Адміністративно-правові способи захисту прав та свобод людини і громадянина: монографія. Херсон: Вид-во «Олді – плюс», 2003. 218 с.
2. Буряк В.Я. Зміст і суть правового захисту трудових прав працівників. Проблеми державотворення і захисту прав людини в Україні: Матеріали XV Регіональної науково-практичної конференції. Львів, 2009. С. 237–238.
3. Ваганова І.М. Поняття форми захисту та різновиди заходів захисту трудових прав працівників. *Форум права*. 2009. № 3. С. 94–99. URL: <http://www.nbu.gov.ua/e-journals/FP/2009-3/09vimtpp.pdf>.
4. Гетьманцева Н.Д., Козуб І.Г. Засіб, спосіб і форма захисту трудових прав. *Адвокат*. 2009. № 11 (110). С. 37–42.
5. Конституція України: від 28.06.1996 р., № 254к/96-ВР. *ВВР України*. 1996. № 30. Ст. 141.
6. Принцип верховенства права: проблеми теорії та практики: у двох книгах/ За заг. ред. Ю.С. Шемшученко; [ред. кол.: Ю.С. Шемшученко (голова)]/ Книга друга: Принцип верховенства права у діяльності держави та в адміністративному праві / Відп. ред. В.Б. Авер'янов. Київ: Конус-Ю, 2008. 314 с.