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Ways to protect the rights of individuals in administrative proceedings: legal regulation and international experience international experience

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Abstract

The objective of the research was to consider the forms of protection of the rights of individuals in administrative proceedings. The methodological basis used is presented as: comparative-legal and systematic analysis, formal-legal method, hermeneutic method, as well as methods of analysis and synthesis. Everything allows to conclude that, in order to clarify the issue of compliance of methods for judicial protection of the rights of individuals, provided by the Code of Administrative Procedure of Ukraine, with the criteria of a rule of law and the needs of establishing at each moment the rule of law in concrete reality, the assessment of provisions of the legislation on administrative procedures of: Azerbaijan, Georgia, Estonia, Latvia, Poland, France and the Federal Republic of Germany. Finally, it has been established that administrative courts in Ukraine have significant human rights powers to make decisions on recovery of funds from an authority to compensate for the damage caused by its unlawful administrative act, if such a claim is filed simultaneously with the application for recognition of such act as unlawful.

Keywords: subjective rights; form of protection; person and claim; administrative procedure; administrative act.

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Vías de protección de los derechos de las personas en los procesos administrativos: regulación jurídica y experiencia internacional

Resumen

El objetivo de la investigación fue considerar las formas de protección de los derechos de las personas en los procedimientos administrativos. La base metodológica empleada se presenta como: análisis comparativo-legal y sistemático, método formal-legal, método hermenéutico, así como métodos de análisis y síntesis. Todo permite concluir que, con el fin de aclarar la cuestión relativa al cumplimiento de los métodos para la protección judicial de los derechos de los particulares, previstos en el Código de Procedimiento Administrativo de Ucrania, con los criterios de un Estado de derecho y las necesidades de establecer en cada momento el Estado de derecho en la realidad concreta, son relevantes la valoración de disposiciones de la legislación sobre procedimientos administrativos de: Azerbaiyán, Georgia, Estonia, Letonia, Polonia, Francia y la República Federal de Alemania. Finalmente, se ha establecido que los tribunales administrativos en Ucrania tienen importantes poderes de derechos humanos para tomar decisiones sobre el cobro de fondos de una autoridad para compensar el daño causado por su acto administrativo ilegal, si tal demanda se presenta simultáneamente con la solicitud de reconocimiento de dicho acto como ilegal.

Palabras clave: derechos subjetivos; forma de protección; persona y demanda; procedimiento administrativo; acto administrativo.

Introduction

In the modern era of the controversial process of establishing the rule of law in the public-authority sphere in Ukraine, the matter concerning ways of private individuals' legal protection of their rights, freedoms, or legitimate interests that have been violated by authorities, their officials, when making official decisions, committing actions or inactions, rights, freedoms, or legal interests remains insufficiently developed.

Definite view of such legal protection in form of claims must be specified in the statement of claim and applied or not applied (depending on the availability of grounds) by the administrative court when deciding the case. Doctrinally, the matter of whether the methods of judicial protection of individual rights provided for by the current provisions of the Code of Administrative Procedure of Ukraine (hereinafter referred to as the CAP

of Ukraine) fully correspond to the criteria of the rule of law and the approaches to the settlement of these essential issues of administrative procedure available in European countries (Bezpalova *et al*., 2021).

It is worth noting that the matter of ways permissible in activities of administrative justice bodies for private individuals to protect their subjective rights, violated, in their opinion, by public administration bodies became relevant simultaneously with the emergence of this institution at the beginning of the 19th century in France and in Germany.

Initially, administrative justice was developed as a procedural mechanism of complaint-based proceedings, and that provided for injured persons a possibility to file only claims to declare illegal acts or actions of administrative and management subjects. S.O. Korf noted that an administrative lawsuit as a way of protecting a violated subjective right or an interest protected by law in an administrative court had historically developed from a complaint against superiors and an instance (Buha *et al*., 2022).

1. Literature review

In the Soviet state, administrative justice was considered as a hostile bourgeois institution, and therefore it was not used. Halaburda Nadiia wrote that:

> The rights and interests of citizens are protected and guaranteed by the entire system of socialist social relations, taking into account absence of antagonism between an individual and the collective, solidarity of interests of the state and citizens, and therefore administrative justice in the Soviet law is unnecessary (Halaburda *et al*., 2021: 95).

However, at the beginning of the 1960s, the authorities of the USSR took the path of partial recognition of possibility for citizens to appeal to civil procedure courts against certain actions of government entities (claims against inaccuracies in voter lists, imposition of fines, as well as some other actions when no other appeal procedure was determined) (Lata *et al*., 2022).

This approach was used in the Civil Procedure Code of the Ukrainian Soviet Socialist Republic 1963 (hereinafter referred to as the CPC) adopted for the development of the Soviet Union legislation. This code, with changes, was in effect in Ukraine until 01 September, 2005 – Code of Administrative Procedure (CAP).

According to Chapter 31-A "Complaints against decisions, actions or inaction of state authorities, local self-government bodies, officials and executives" of the CPC of 1963 (in the edition as of 11 May, 2005) the

procedural means of protecting person's rights consisted in complaints; based on viewing complaints the court had the authority to apply only the following methods of legal protection: 1) recognition of the contested decisions, actions or inactions as illegal and the obligation of the respective state authority, local self-government body, executive officer or official to satisfy the applicant's demand and eliminate the violation; 2) cancel the obligation imposed on the applicant or measures of responsibility applied to him/her; 3) restore the violated rights, freedoms or legitimate interests of the applicant in another way (part 2 Art. 248-7). Therefore, the CPC of 1963 did not provide for the possibility of collecting funds from a subject of power in favor of a person (as a result of the resolution of the case) as a compensation for damage caused by subject of power's illegal decisions, action or inaction (Kobrusieva *et al.*, 2021).

2. Materials and methods

The research is based on work of foreign and Ukrainian researchers on methodological approaches to understanding public relations from the point of view of the theory of law, administrative law, civil law, etc.

With the help of the epistemological method, the methods of protecting rights of individuals in administrative proceedings, etc., were clarified; thanks to the logical-semantic method, the conceptual apparatus was deepened, and the methods of protecting the rights of individuals in administrative proceedings were determined from the point of view of the theory of law, administrative law, etc. Thanks to the existing methods of law, we managed to analyze the essence of ways (methods) used for protecting rights of individuals in administrative proceedings, etc.

3. Results and discussion

In the implementation of part 2 Art. 55 of the Constitution of Ukraine when the CAP of Ukraine was adopted a significantly different approach was implemented in its text The list of permissible methods for legal protection of rights and legitimate interests of private individuals violated by state authorities, local self-government bodies, their officials and executives was expanded (Nalyvaiko *et al.*, 2018).

In terms of options for protection of subjective public rights, the legal form of proceedings for resolution of public legal disputes was established in the CAP. Individuals were given the opportunity to file petitions for compensation of material losses (damages) caused to them by improper management (Kolinko *et al.*, 2019).

According to the Law dated 13 May, 2020 № 590-IX the CAP of Ukraine was amended with a new article 266[i]. This article defines the specifics of proceedings in cases regarding appeal against individual acts of the National Bank of Ukraine, the Deposit Guarantee Fund, the Ministry of Finance of Ukraine, the National Securities and Stock Market Commission as well as against decisions of the Cabinet of Ministers of Ukraine regarding withdrawal of banks from the market.

According to part 7 of this article, based on the results of consideration of administrative cases specified in part 1 of this article, the court may decide on: 1) recognition as unlawful (illegal) and annulment of an individual act / decision specified in part 1 of this article or its individual provisions; 2) recovery of funds from the defendant (defendants) as a compensation for damage caused by his/her unlawful (illegal) individual act / decision, if such a claim is made by the plaintiff at the same time as the demand for recognition as unlawful (illegal) and annulment of the individual act / decision; 3) refusal to satisfy claims (in whole or in part) (Leheza *et al.*,, 2022).

In order to clarify the issue of whether the procedural methods of legal protection of the rights of private individuals (methods provided for in part 1, 2 Art. 5, Part 4 Art. 266, part 2661 of the CAP of Ukraine) are a purely national invention or still correspond to the practice established on the European continent, let us turn to the analysis of the relevant norms of the legislation on administrative proceedings in foreign countries (Tylchyk *et al.*, 2022).

Thus, in § 42 of the Regulation on Administrative Courts of the Federal Republic of Germany (VwGO) it is established that cancellation of an administrative act (appeal action), as well as an award to accept a declined or rejected administrative act (lawsuit for award) can be achieved by filing a lawsuit . In addition, § 43 of the VwGO also allows lawsuits to establish existence or absence of a legal relationship as well as invalidity of an administrative act (Matviichuk *et al.*, 2022).

In France methods of legal protection of individual rights include the following administrative lawsuits: lawsuits for illegality and cancellation of an administrative act (extraordinary suits); lawsuits of full court jurisdiction, allowing both protection and restoration of violated subjective public rights (simple suits); lawsuits regarding interpretation of an administrative act; lawsuits for the use of repression (Leheza *et al.*, 2022).

Lawsuits for illegality of an administrative act are the most famous. This type of lawsuits was formed in the practice of the State Council as early as 1832, when it was recognized as permissible to appeal to this body with objections concerning illegality of an act (actually the right to appeal) (Villasmil Espinoza *et al.*, 2022).

Lawsuits of full judicial jurisdiction or those for recognition of the right of claim allow the authority of the administrative court (as a result of consideration) to make a decision to compensate a person for damages caused as a result of illegal activity of the administration (Nalyvaiko *et al.*, 2022).

They are used to resolve the following disputes: disputes on responsibility of the administration for improper management that caused harm to a person (for example, in connection with the violation of requirements for maintenance of roads, communication routes, unjustified refusal to grant a permit); disputes on execution of public contracts, disputes on electoral, tax legal relations, disputes concerning certain real estate, environmental protection, historical monuments etc. (Vyhe, 2008).

In Azerbaijan, according to part 2 Art. 2 of the Administrative Procedure Code, the following types of lawsuits are allowed in administrative proceedings, depending on the method of protection of violated rights: for appeal (cancellation or change) of an administrative act adopted by an administrative body regarding rights and obligations of a person (lawsuit for appeal); lawsuits for imposing on an administrative body an obligation concerning issuance of an administrative act, and lawsuits for protection against inaction of an administrative body (lawsuits for coercion); lawsuits for commission of certain actions by an administrative body not related to adoption of an administrative act (lawsuits for the fulfillment of an obligation);

claims for protection against illegal interference unrelated to issuance of an administrative act and directly violating rights and freedoms of a person (lawsuits for refraining from committing certain actions); lawsuits for presence or absence of administrative-legal relations, as well as for recognition of an administrative act as invalid (lawsuits for establishment or recognition); lawsuits for verification of compliance with the law of regulatory acts, with the exception of issues referred to the powers of the Constitutional Court of the Republic of Azerbaijan (lawsuits for verification of legality); lawsuits concerning property claims related to resolution of administrative disputes, as well as concerning claims for payment of compensation for damage caused by illegal decisions (administrative acts) or actions (inaction) of administrative bodies; lawsuits filed by municipalities against actions of administrative control bodies or those filed by administrative control bodies against municipalities (Law of Azerbaijan Republic, 2015).

In Georgia, the subject-matter of an administrative dispute in courts may be:

1. Compliance of an administrative-legal act with the legislation of Georgia.

2. Conclusion, execution or termination of an administrative contract.
3. The obligation of an administrative body to compensate for damage, issue an administrative-legal act or perform any other action.
4. Recognition of the act as invalid, establishing presence and absence of a right or legal relationship (part 1 Art. 2 of the Administrative Procedure Code of this country) (Law of Georgia, 1999).

According to the norms of parts 1 and 2 of Art.37 of the Administrative Procedure Code of Estonia, administrative proceedings in this country begin with filing of a complaint to the court (Pryimachenko *et al*., 2018). Such a complaint may contain claims about:

1. Partial or complete cancellation of an administrative act (complaint about cancellation of an act).
2. Issuing an administrative act or taking an action (complaint about imposing an obligation).
3. Prohibition of issuing an administrative act or taking an action (complaint about prohibition of issuing an act or taking an action).
4. Compensation for damage caused in public legal relations (complaint about compensation for damage).
5. Elimination of illegal consequences of an administrative act or action (compensation complaint).
6. Establishing the nullity of an administrative act, illegality of an administrative act or action or another factual circumstance that is important for public-legal relations (institutional complaint) (Law of Estonia, 1999).

The powers of administrative courts based on the results of resolving complaints against administrative acts in Poland are established in Article 145 (§ 1) of the Law "On Proceedings in Administrative Courts", which provides that when satisfying a complaint against a decision or order the court shall:

1. Cancel the decision or order in whole or in part, if it finds: a) a violation of material law that affected the outcome of the case, b) a violation of the law that caused resumption of an administrative proceedings, c) another violation of procedural provisions if it had a significant impact on the outcome of the case.
2. Declare a decision or an order invalid, in whole or in part, if there are reasons specified in Art. 156 of the Administrative Procedure Code or in other normative acts.

3. Note that the decision or order was issued in violation of the law if there are reasons specified in the Administrative Procedure Code or other regulatory acts, in the case specified in Art. 145 (§ 1, paragraph. 1 letter "a" or paragraph 2), if it is justified by the circumstances of the case, the court also has the authority to oblige a body to make a decision or order within a specified period indicating the method of settlement of the case or to settle it, if the decision-making is not left to the discretion of the authorities (Art. 145a (§ 1) of this Law of the Republic of Poland) (Law of Poland, 2002).

Conclusions

Therefore, the methods of legal protection inherent in the full administrative-judicial jurisdiction (regarding compensation for damage caused by unlawful decisions, actions of the public administration) in Latvia, unlike Ukraine, are not directly applied in administrative proceedings.

In this way, the conducted analysis allows us to assert that the list of methods of judicial protection of the rights, freedoms or legitimate interests of private individuals given in part 1 Art. 5, Part 4 Art. 266, Part 7 Art. 266[i] of the Code of Administrative Procedure of Ukraine (the CAP of Ukraine) includes legal protection means, which are typical for both annulment proceedings (contentieux d'annulation), and full administrative court proceedings (contentieux de plein juridication).

Since the permissible methods of legal protection under the provisions of these articles of the CAP of Ukraine also include the authority of the court to make a decision concerning recovery of funds from the defendant (defendants) as a compensation for damage caused by his/her unlawful (illegal) individual act/decision, if such a claim is made simultaneously with a claim for recognition as unlawful (illegal) and cancellation of the individual act / decision.

The approach to determining permissible methods of legal protection of subjective public rights, implemented in the national Code of Administrative Procedure, generally corresponds to the practice established on the European continent for settlement of issues on administrative legal protection.

Therefore, the procedural methods of judicial protection of subjective rights provided for in part 1 Art. 5, Part 4 Art. 266, Part 7 Art. 266i of the Civil Code of Ukraine meet the requirements of the functioning of a law-governed state and the requirements for establishment of the rule of law in Ukraine.

Bibliographic References

BEZPALOVA, Olha; YUNINA, Maryna; KOROHOD, Svitlana; REZVOROVICH, Kristina; OHANISIAN, Tsahik. 2021. "Legal regulation of entrepreneurial activity in the national security system" In: Entrepreneurship and Sustainability Issues. Vol. 8, No. 3, pp. 340-355.

BUHA, Volodymyr; IAKUBIN, Oleksii; MAZUR, Tamara; REZVOROVICH, Kristina; DARAGANOVA. Nina. 2022. "Legal regulation of the institute of control in the field of housing construction in the conditions of armed aggression of the Russian Federation" In: Cuestiones Políticas. Vol. 40, No. 73, pp. 151-171.

HALABURDA, Nadiia; LEHEZA, Yevhen; CHALAVAN, Viktor; YEFIMOV, Volodymyr; YEFIMOVA, Inna. 2021. "Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public services in Ukraine" In: Journal of law and political sciences. Vol. 29, No. 4, pp. 100-121.

KOBRUSIEVA, Yevheniia; LEHEZA, Yevhen; RUDOI, Kateryna; SHAMARA, Oleksandr; CHALAVAN, Viktor. 2021. "International standards of social protection of internally displaced persons: administrative and criminal aspects" In: Jurnal cita hukum indonesian law journal. Vol 9, No 3, pp. 461-484.

KOLINKO, Tsahik; REZVOROVYCH, Krystyna; YUNINA, Maryna. 2019. "Legal characteristic of the franchise agreement in Germany" In: Baltic Journal of Economic Studies. Vol. 5, No. 1, pp. 96-100.

LATA, Natalya; MARTYNIUK, Serhii; MINKA, Tetiana; ILCHYSHYN, Nadiya; YURAKH, Vitalii. 2022. "Administrative and legal security of public information services in the activities of bodies of legislative and judicial power: Seguridad administrativa y jurídica de los servicios de información pública en las actividades de los órganos del poder legislativo y judicial" In: Cuestiones Políticas. Vol. 40, No. 72, pp. 656-669.

LAW OF AZERBAIJAN REPUBLIC. 2015. Administrative Procedure Code of the Republic of Azerbaijan. Available online. In: https://www.legislationline.org/ru/documents/id/17125. Consultation date: 24/02/2023

LAW OF ESTONIA. 1999. Administrative Procedure Code of Estonia. Available online. In: https://www.juristaitab.ee/ru/zakonodatelstvo/administrativno-processualnyykodeks. Consultation date: 24/02/2023.

LAW OF GEORGIA. 1999. Code of Administrative Procedure of Georgia. Available online. In: https://matsne.gov.ge/ru/document/view/16492?publication=82. Consultation date: 24/02/2023.

LAW OF POLAND. 2002. The Law on Proceedings Before Administrative Courts. Available online. In: https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawoo-postepowaniu-przed-sadami-administracyjnymi-16982717. Consultation date: 24/02/2023.

LEHEZA, Yevhen; NALYVAIKO, Larysa; SACHKO, Oleksandr; SHCHERBYNA, Victor; CHEPIK-TREHUBENKO, Olha. 2022. "Principles of law: Methodological approaches to understanding in the context of modern globalization transformations" In: Ius Humani. Law Journal. Vol. 11, No. 2, pp. 55-79.

LEHEZA, Yevhen; PISOTSKA, Karina; DUBENKO, Oleksandr; DAKHNO, Oleksandr; SOTSKYI, Artur. 2022. "The Essence of the Principles of Ukrainian Law in Modern Jurisprudence" In: Revista Jurídica Portucalense. Available online. In: https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15. Consultation date: 12/10/2022.

MATVIICHUK, Anatolii; SHCHERBAK, Viktor; SIRKO, Viktoria; MALIEIEVA, Hanna; LEHEZA, Yevhen. 2022. "Human principles of law as a universal normative framework"/ "Principios humanos del derecho como marco normativo universal" In: Cuestiones Políticas. Vol. 40, No. 75, pp. 221-231.

NALYVAIKO, Larysa; CHANYSHEVA, Galiya; KOZIN, Serhii. 2018. "Remuneration of Public Servants in the Federal Republic of Germany" In: Baltic Journal of Economic Studies. Vol. 4, No. 5, pp. 228-232.

NALYVAIKO, Larysa; ILKOV, Vasyl; VERBA, Iryna; KULINICH, Olha; KOROVAIKO, Oleksandr. 2022. "Specific features of the legal regulation of prosecution for contempt of court: judicial rules established in different countries"/ "Características específicas de la regulación legal del enjuiciamiento por manifestación de desacato a los tribunales: normas judiciales establecidas en diferentes países" In: Cuestiones Políticas. Vol. 40, No. 74, pp. 393-409.

PRYIMACHENKO, Dmytro; MINKA, Tetiana; MARCHENKO, Volodymyr. 2018. "Legal regulation of liability for offenses in the financial sphere in the EU countries and Ukraine: comparative analysis" In: Baltic Journal of Economic Studies. Vol. 4, No. 5, pp. 276-282.

TYLCHYK, Vyacheslav; MATSELYK, Tetiana; HRYSHCHUK, Viktor; LOMAKINA, Olena; SYDOR, Markiian; LEHEZA, Yevhen. 2022.

"Administrative and legal regulation of public financial activity: Regulación administrativa y legal de la actividad financiera pública" In: Cuestiones Políticas. Vol. 40, No. 72, pp. 573-581.

VILLASMIL ESPINOZA, Jorge; LEHEZA, Yevhen; HOLOVII, Liudmyla. 2022. "Reflections for the interdisciplinary study of the Russian Federation's invasion of Ukraine in 2022"/ "Reflexiones para el estudio interdisciplinario de la invasión de Ucrania por parte de la Federación Rusa en 2022" In: Cuestiones Políticas. Vol. 40, No. 73, pp. 16-24.

VYHE, Zhan-Pol. 2008. Administrative justice. Konus-Y. Kyiv, Ukraine.

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