SOME ASPECTS OF LEGAL REGULATION OF ADMINISTRATIVE PROCEDURES IN UKRAINE AND THE EUROPEAN UNION: THEORY AND REALITIES

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Abstract: Administrative procedures are of fundamental legal importance in the practice of legal construction and public administration. This institution is an integral part of modern administrative law. In countries that have a positive practice of applying legislation on administrative procedures in public administration systems, a proper legal order, openness and accessibility of the functioning of the public administration apparatus, real responsibility of officials and civil servants have been established. The study allowed not only to establish the main elements of the content and the internal logic of the development of administrative procedures, but also to expand the understanding of the structure and prospects of codification of the general part of administrative law by creating a legislative foundation for the positive management activities of public administration. The scientific novelty of the research lies in the fact that a comprehensive consistent concept of legal regulation of administrative procedures has been developed. Essentially new is the disclosure of administrative procedures as an institution inextricably linked with the principles of administrative law and with administrative acts.

Keywords: Administrative procedures, Court, Public administration, Reforms, Rights.

1 Introduction

The end of the 20th – the beginning of the 21st centuries became an era of complication of socio-economic, political, and legal reality. The development of almost all states follows the path of expanding their functions, increasing the number of spheres in which public administration is carried out, and increasing the role of administrative discretion. At the same time, traditional problems "superimposed" on new challenges and crisis phenomena. All of the above compels a more intensive search for legal forms and organizational models for making legal, justified, and expedient managerial decisions.

It is not surprising that the past decades in many countries have been marked by administrative reforms. Modernization of Ukrainian administrative law and EU administrative law is aimed at improving not only the system of internal apparatus relations, but also the interaction of state bodies with the population in various directions, including the provision of public services, the implementation of state control and supervision, ensuring the information transparency of public administration, the introduction of new electronic technologies in the management process. It should also be noted that a number of sustainable development objectives recognized by Ukraine in the framework of international cooperation are directly related to improving public administration and have a procedural dimension (in particular, promoting the rule of law, fighting corruption, creating effective, accountable and transparent institutions at all levels, responsible decision-making, ensuring public access to information and protecting fundamental freedoms).

2 Literature Review

The role of proper legal regulation of administrative procedures in this context cannot be overestimated. The modern state does not just unilaterally affect passive objects, but interacts with citizens and organizations, recognizing their legal personality and providing an opportunity to participate in the development of administrative decisions, especially when these worsen the legal status of the addressees. This important aspect of the development of public legislation and the practice of its application is primary, while all other areas of modernization of public administration (including the introduction of electronic technologies) should be considered derivatives of it. Namely the institution of administrative procedures can act as a means of the most profound transformations of public administration, contributing to the achievement of the following tasks: first, the creation of guarantees for the protection of the rights of citizens and organizations in mutual legal relations with state bodies, officials (including by ensuring the ability to defend their legal position in the procedure), secondly, ensuring legality and transparency, accountability of public administration, thirdly, rationalizing the activities of public administration, fourthly, legitimizing administrative decisions, fifthly, creating a legal framework for administrative discretion, sixth, combating corruption seventh, standardization of administrative and judicial practice, as well as stimulating economic growth and creating favorable conditions for investment [8, 21, 33].

At the same time, the procedures for the positive (indisputable) activity of the executive authorities, despite the adoption of a large number of mainly by-laws, have not received a sufficiently strong and modern legislative foundation in Ukrainian public law [32].

Thus, the formation of a unified and consistent, adequate, increasingly complex socio-economic, legal reality of the theory of administrative procedures, as well as the search for concepts of proper legal regulation of relevant relations is one of the most important problems of modern public law both in Ukraine and abroad. These circumstances determine the relevance of this research and its significance for the science of administrative law.

3 Materials and Methods

The object of the research is public relations regulated by law, arising in connection with the interaction of state authorities, local self-government bodies, and other organizations exercising public functions with citizens and organizations regarding the adoption of individual or regulatory administrative acts. The purpose of the study is to develop the concept of theory and practice of legal regulation of administrative procedures.

The methodological basis of the research is determined by its object and subject and includes philosophical, general and special-scientific methods: dialectical, historical, comparative legal, formal logical, methods of analysis and synthesis, the method of abduction. The entire system of cognitive methods used was aimed at solving the assigned tasks and achieving the goal of the work [1-7]. A special role in the study is played by the comparative legal method, which made it possible to identify and compare the advantages and disadvantages, including gaps in the legal regulation of administrative procedures both in Ukraine and in foreign countries, to establish trends for the further development and improvement of relevant legislation and practice of its application with taking into account the experience of foreign countries. The works of experts on general issues of administrative law, process and procedures are used.

4 Results

Administrative procedures act as a "connecting link" between various administrative and legal phenomena: public administration (the implementation of whose competence is regulated), administrative acts (adopted by the public administration as a result of the procedure), citizens and organizations (whose legal status is undergoing changes as a result of the adoption of legal acts of management). Finally, administrative procedures serve as a means to implement the requirements of the principles of administrative law. Being regulated by administrative legislation, administrative

procedures "permeate" all of its main institutions and ensure their unity, consistency [52]. Thus, the theory of administrative procedures is an important part of the theory of administrative law, and the legislation on administrative procedures contributes to the systematization (codification) of legislation on public administration.

Various authors today point out that the essence of administrative procedures, which has become more complicated in parallel with the evolution of the entire public administration, can no longer be revealed exclusively through the prism of rationalizing the activities of state bodies). Modern administrative procedures are not just a sequence of actions performed by officials [10-13, 20]. Legal regulation of administrative procedures should be no less based on human rights ideas, securing for citizens and organizations the necessary set of guarantees of subjective rights to defend their interests in interaction with the public administration.

At the same time, legal regulation of administrative procedures is impossible without an internally consistent system of principles of both the procedures themselves and administrative law in general [23, 24]. Within the framework of the concept of legal regulation of administrative procedures, a system of principles of administrative law has been developed. According to the functions of law, it is proposed to distinguish the following: universal principles of administrative law, regulatory static, protective static, regulatory dynamic and protective dynamic principles. Universal principles of administrative law cover the entire set of administrative and legal relations and institutions [9, 16, 51]. Static principles are the principles of material institutions of administrative law, dynamic procedural, regulatory ones determine the structure and logic of institutions that regulate the lawful behavior of subjects, protective ones are devoted to countering illegal behavior, as well as resolving legal disputes. Accordingly, regulatory static principles are the fundamental principles of the organization of public administration and executive power. Protective static principles are material principles of administrative responsibility (coercion). Dynamic principles cover all types of administrative process: protective dynamic principles are the principles of administrative proceedings and administrative jurisdictional process, regulatory dynamic are the principles of administrative procedures.

It should be noted that the development of administrative procedure in Ukraine is due primarily to the specifics of the development of administrative law in the Soviet period. The activities of public administration bodies were not regulated at the legislative level, as public administration bodies had to be guided primarily by the criteria of political expediency. After all, there was no objective need for legislative regulation of the administrative procedure, because in the conditions of continuous nationalization of all spheres of society, most issues were resolved independently, without taking into account the interests of society [32]. That is why the introduction of the legislative act "On Administrative Procedure" into Ukrainian legislation and, of course, the correct formation of the norms of this law should eradicate the Soviet principles of administrative law, which are still reflected in the objective reality.

First of all, it should be noted that under the administrative procedure we understand the normative algorithm (procedure for achieving the result) of consideration and resolution of public administrative cases by public administration, which is carried out to promote and protect the rights, freedoms and legitimate interests of individuals and legal entities of rule of law in Ukrainian society. Administrative procedures can significantly increase the efficiency of public authority, clear performance of functions and powers of bodies and officials, but, most importantly, they are designed to ensure the necessary consistency in the exercise of citizens' rights and interests and become an effective means of combating subjectivity by law enforcement officials of public authorities. In addition, it is fundamentally important that due to administrative procedures, the legal positions of the subjects of power and human are actually "aligned", as opposed to the so-called subordination relations, in which the subjects of administrative relations are usually located [15 18, 19].

The main characteristic feature of legislative development, including administrative, in democratic countries is the focus of development on guaranteeing the rights and interests of citizens within the relations between the state and its bodies, of the legal type. One of the most important guarantees of this is the precise regulation of the procedural side of legal relations between individuals and the state. In such a situation, the employee of the administration does not act arbitrarily, but exactly following the established procedure. The above guarantees the equality of persons before the provisions of the law, as a common procedure is used for all such cases. In addition to the above, it should be noted that the existence of a procedure established by law is the basis for the implementation of control of legality in the activities of government bodies, including the judiciary [25].

However, the level of regulation is a very important and difficult point, because of which, as noted by the German administrator Luchtergandt, in Europe, there is a constant debate about whether the efficiency and professional quality of administrative procedure is reduced due to its excessive regulation [32, 33]. Other scholars add that legal regulation is detrimental to the law itself. The rule of law, as a state of restraint and moderation, requires in the use of resources the right to observe moderation to have a feeling of common sense.

It should be noted that in most EU member states, there are three main models of systematization of administrative procedure law: a) systemic and detailed procedural rules with a "code" and multi-volume acts, for example, as in Germany; b) administrative law, which consists of general principles that are concentrated in acts of small size, as in Italy, but these models usually disappear because the legislation is full of detailed and fairly broad rules; c) administrative legislation relating to only certain parts of the procedure, such as access to documents, participation, hearings, without framework legislation, as in France. In addition to these models, a variety of situations can still be observed in the Member States, especially in the countries that joined the Union much later [23, 41, 49].

It should be noted that "Europe is a continent of diversity" [24]. The correctness of this point of view can be easily verified if we pay attention to the specifics of the administrative-legal systems of European states. This diversity has attracted the interest of comparative comparative lawyers. However, this diversity is, at the same time, a barrier to a common, cross-border understanding of the practice and theory of administrative law in the European legal space. The reason for the administrative and legal diversity should be sought, first of all, in the territorial and intellectual (spiritual) fragmentation of the continent, which for a long period made it difficult to exchange opinions. In the 19th century, the factor of nationalism was added here as an additional factor. In addition, the administrative-bureaucratic apparatus multiplied, which necessitated a clearer structure of administrative-territorial units, as well as a reorganization of relations between administrative government bodies and individuals. Against this background, it seems not surprising that the time of formation of modern administrative law should be considered the second half of the 19th century. During this period, political relations in individual states were still rather heterogeneous, which explains why the newly created national administrative legal order unfolded and developed in very different ways [22, 26-31]. Only in the second half of the 20th century did they gradually begin to converge with each other, although, despite this trend, as before, however, there are still significant differences.

It can hardly be argued that there are as many administrative and legal systems in Europe as there are European states. States that have developed their own unique system, but have not had much impact on other countries, are rather rare. This can be confirmed by the experience of Switzerland, where the principles of direct democracy have been implemented so consistently for a long

period that the Swiss administrative legal order was in many respects unique and partially remains so to this day [25, 44].

As another, similar example, one can point to the Scandinavian countries. This group of countries can be contrasted with a group of other states, mainly the major world powers, which widely "promoted" their own administrative and legal systems in Europe, whether due to their military and political superiority, their economic importance, or due to the influence of their scientists-lawyers. Great Britain, France, and Germany are among the most important examples in this sense. Both systems of administrative law and order both remaining unique and those that have become the most influential are considered as the main types (within) of state administrative law [48]. At the same time, the category of the most influential types of administrative law seems to be especially significant, since many other states have used these administrative-legal systems as a model.

If we take the regulation of individual legal protection as the main criterion, then three types of administrative law should be distinguished, each of which is named after the country in which they were first implemented in practice: French, German, and British type.

Overall, the French system has changed dramatically over the past decades. It nevertheless retained its advantages and advantages [42]. This can be attributed, on the one hand, to relatively easy access to the courts, when not only the addressee of the administrative act and third parties whose rights it directly affects can challenge this act in court, but also those third parties who declare their own let not entirely clear or definite material or moral interests [34, 35]. On the other hand, not only administrative acts in the sense that they are understood in Germany, but also all types of decisions and orders, including those adopted by the government, can be appealed in court, and in this case they are subject to careful legal control.

The German type of administrative law, although it arose rather late, nevertheless, quickly began to exert a great influence on many other European states. The German type of administrative law today is characterized by a number of features, among which the following should be highlighted. This is a high degree of institutional differentiation, on the one hand, at the level of federal states, which are understood as states with their own constitutional, constituent, and legislative power (even if its boundaries are sometimes drawn rather artificially), and on the other hand, at the level of well-developed institutions of self-government. In addition, this is the recognition of the supremacy of the Constitution, in particular, of the fundamental constitutional rights and freedoms, as well as control over their observance by the bodies of constitutional jurisdiction. Finally, an important feature is the fact that the administrative justice bodies are part of the judicial power system and carry out exclusively judicial activities. Their role is mainly to resolve disputes between citizens and government authorities within the framework of checking the legality of administrative acts. However, in disputes related to contracts and state property, they have only limited competence, and in tort claims they have none at all. It is also important that the administrative process is focused primarily on protecting the subjective rights of the plaintiff [52]. The high degree of decentralization has led to the fact that the lands and communities have received important administrative competencies, which facilitates the control of administrative acts due to their usually less important political significance.

Another important feature of the German type of administrative law is the differentiation between the so-called "bound" administrative acts (gebundenem Verwaltungshandeln), decisions of full discretion (Ermessen; discretionary decisions) and freedom of judgment in decision-making (Beurteilungsspielraum) [17].

The British system of administrative law has largely retained its identity, which is a positive factor during Brexit, since it eliminates the need to revise the order of organizing administrative procedures after the withdrawal from EU. When it comes to sources of law, it is important to keep in mind that there is no constitution in the UK in a formal sense. Parliamentary legislation is still considered a clear exception to common law, and common law continues to act as a source of general principles of law. In addition, great attention is still being paid to the principle of the unity of the rule of law and the principle of the unity of the justice system. The effect of these principles, in any case, is somewhat limited as a result of the fact that a special place is currently assigned to administrative law within the framework of general civil law, as well as a result of the fact that a specific procedural mechanism of legal protection against decisions of administrative bodies the so-called an application for judicial review. With the introduction of the Administrative Court, an institution specialized in administrative law was created within ordinary jurisdiction [21]. All this is a manifestation of the special position of administrative law in relation to common law, on the one hand, and civil law, on the other.

In Ukraine, the legal framework for the protection of freedoms, rights and public interests during the implementation of administrative procedures, as noted by D.V. Sushchenko, is based primarily on the provisions of the Constitution [33]. For example, Article 3 of the Basic Law stipulates that the greatest and highest social value in Ukraine is people, their life and health, honor, dignity, inviolability and security, and the affirmation and guarantee of human rights and freedoms is a basic state obligation. The provisions of Art. 40 of the Constitution stipulates that everyone has the right to send individual and collective written appeals or personal appeals to state, local governments and their officials, officials who must consider the appeal, and after giving a reasoned response within the period prescribed by law. The norm of Art. 55 of the Basic Law guarantees everyone the right to appeal against decisions, actions or omissions of state, local governments, their officials, officials in court [41].

The current Law of Ukraine "On Citizens' Appeals" is also included in the general legislative acts with the content of administrative-procedural norms applicable to all bodies of public administration [42] in particular, Articles 16 (consideration of citizens 'complaints), 17 (deadline for filing a complaint), 18 (citizens' rights when considering an application or complaint), 19 (duties of public authorities, local self-government and other entities for consideration of applications or complaints), 20 (deadline for consideration of citizens' appeals). Another general legislative act that actually contains administrative procedural norms is the Code of Administrative Procedure of Ukraine [36]. Article 3, paragraph 3, of this Code of Judicial Procedure, entitled the requirements to be reviewed by administrative courts when appealing against decisions, actions or omissions of public authorities; in fact, it sets out the basic principles of administrative procedure. The obvious problem with the application of this rule by public servants is that it is contained in a piece of legislation designed to regulate primarily the activities of courts, rather than public administration.

The second group of legislative acts with the content of administrative-procedural norms includes conditionally framework legislative acts that regulate a fairly broad area of public administration. For example, the administrative procedure during the performance of one of the defining functions of public administration the provision of administrative services is regulated, in particular, by Articles 9 (procedure) and 10 (terms of provision) of the Framework Law of Ukraine "On Administrative Services" [42]. The third group is special legislative acts in Ukraine, which in some cases are even called codes. This is due, in particular, to the presence in them of not only administrative and procedural, but also material norms, as well as the importance of a separate area of public administration. For example, the Tax and Customs Codes of Ukraine regulate, inter alia, the procedure of formally one executive body, the State Fiscal (currently tax) service of

Ukraine, in the system of which there are two subsystems of the respective entities [14].

Thus, there is an urgent need to adopt a legislative act that would regulate the relationship between public administration bodies and the individual, as they are not regulated, but only scattered to some extent in a large number of different regulations, which creates some inconsistency and complexity of such norms.

5 Discussion

At the present stage, administrative arbitrariness and corruption in state and local government bodies continue to be the most acute problems that hinder the positive socio-economic development of Ukraine [37-40, 43]. The absence or inconsistency of legislation, bureaucratic confusion of procedures for registration, licensing, certification, approval of investment projects create serious difficulties in the implementation of constitutional rights and freedoms of citizens. The tasks facing the state and society require a revision of the legal regulation of the relationship between executive bodies, citizens, and organizations.

In Ukraine, attempts to pass a law on administrative procedure have been going on for over twenty years. At this time, Ukrainians suffer from unreasonable decisions and arbitrariness of officials, from exhausting bureaucracy and time-consuming struggle with the state.

Illegal developments, incomprehensible inspections of business are only a small part of the iceberg of problems that citizens and businesses are trying to deal with on their own [45-47, 50]. Evidently, while the anger is mostly directed at government agencies, individual officials or even politicians, many of the problems are rooted in outdated procedures.

It is obvious that it is necessary to consolidate in the legislation on administrative procedures the following universal principles of administrative law: legality, fairness, equality, proportionality (proportionality), the principle of legal guarantee (legal stability). The specified list of principles is not full; however, the “loss” of at least one of the above elements clearly indicates the incompleteness of the system.

The law on the administrative procedure is, in fact, a "quiet revolution" that fundamentally changes the Soviet mentality in the interaction of the state with its main stakeholders' citizens.

The adoption of the law will ensure equality of all participants in administrative proceedings and uniform standards in the work of officials, accelerate the provision of more high-quality and convenient services for citizens.

One of the directions of transformation was the use of an electronic communication channel to inform citizens. Technologies of this kind, which provide for electronic interaction with citizens, have long been mandatory in the international practice of government bodies. One of these technologies is the presence of an official website, which should have not only the central level of the authorities, but also the regional level (clause 2, part 2, Article 6).

In addition, the Law obliges the city, village, or settlement council to provide information and advise on the provision of services to citizens through telecommunications (including e-mail) (clause 4, part 2, Article 6). Thus, the official website and e-mail have become mandatory technologies in the activities of public authorities.

The law obliged all city councils of cities of regional significance to establish Centers for the provision of administrative services, the so-called “integrated offices” (part 2 of Article 12). According to clause 1 of the Approximate Regulation on the Central Administrative Office of February 20, 2013 No. 113 [36], it should be created not only in cities of regional significance, but also in all cities and even villages that are administrative centers of districts. In accordance with clause 20 of the “Approximate regulations of the center for the provision of administrative services” dated August 1, 2013 No. 588 [42], the body that formed the center creates and ensures the operation of the center's website or a separate section on its website. Thus, having its own official website has become a mandatory technology not only for the overwhelming majority of city councils in Ukraine, but also for some village councils.

Another important innovation that provides for the use of electronic technologies when informing the subjects of circulation is the Register of Administrative Services. The register is a unified information database on services provided by public administration bodies, the purpose of which is to record services, ensure transparent access to information about services.

In states based on a free democratic rule of law, administrative law is determined mainly through the normative regulation of legal relations between state (public) power and the individual, as well as through the provision of guarantees of individual legal protection [53-57]. These aspects are decisive insofar as the rights and interests of citizens constitute the raison d'être of a free democratic state. The organization of government bodies or the administrative system can have a significant impact on the relationship between public authorities and citizens, but they cannot, nevertheless, affect the very essence of these relationships.

Administrative procedures are recognized as one of the most important institutions for building effective interaction between individuals and executive bodies in democratic states. Most domestic experts also consider administrative procedures as an institution that ensures the formation of a rule of law state and the implementation of the norms enshrined in the Constitution of Ukraine [14].

The development and adoption, taking into account the needs of the Ukrainian legal reality, of normative legal acts on administrative procedures will make it possible to achieve significant success in public administration: to overcome administrative barriers; modernize the system of executive power; create conditions for the development of economic freedoms; determine the strategic guidelines for the country's development; provide the population with high-quality public services and effectively manage state property; go to a clear technology for the development, adoption and execution of decisions.

6 Conclusion

The draft Model Code of Administrative Procedures of the European Union attempts to summarize the positive examples of codification of administrative procedural legislation and the practice of its application in the member states of the European Union. The EU experience may well become a guideline, a best practice for application in Ukraine.

First of all, the legal consolidation of the democratic principles of public administration in the administrative and legal relations between public administration bodies and individuals should be based on the position of the individual as an entity before which the state is responsible for its activities. At present, the legal norms governing the administrative procedure are contained in regulations of various legal force, which, however, does not eliminate a large number of gaps in the legal regulation of administrative-procedural relations, which can be eliminated only by adopting a codified law.

One of the reasons for the protracted codification of administrative and procedural legislation is called a wide range of relations, which will be part of the subject of legal regulation of the relevant law. However, the wide range of relations that will be included in the subject of legal regulation of the law should not be considered as an obstacle to the codification of administrative and procedural legislation. Instead, the possibility and necessity of adopting a single legislative act to regulate administrative procedures is confirmed by the rich foreign experience of both continental and general legal systems.

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