

# CRITERIA FOR DETERMINING THE ADEQUACY AND EFFICIENCY OF THE METHODS OF PROTECTION WHEN APPEALING THE DECISIONS OF AUTHORITY SUBJECTS

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**Annotation.** The article is devoted to the problems of researching the criteria of propriety and effectiveness of the methods of judicial protection when challenging the decisions of the subjects of authority. The article analyzes the current administrative-procedural legislation, judicial practice and the opinions of scientists in the issues of criteria for determining the appropriateness and effectiveness of judicial protection methods when challenging the decisions of subjects of power. It is proved that the Code of Administrative Procedure of Ukraine has expanded the possibilities of choosing methods of protection when appealing the decisions of subjects of authority. However, and this is confirmed by judicial practice, the extended list of methods of protection when challenging the decisions of subjects of authority is insufficient to ensure a person the realization of his rights or interests violated by the subject of authority when making a decision. The reason for this lies in the fact that the chosen means of protection must also meet certain requirements of effectiveness and propriety. The article substantiates that the following requirements can be attributed to the criteria for the effectiveness of protection methods when challenging the decisions of subjects of authority: the chosen protection method allows to stop and (or) eliminate the violation of the right and prevent its violation in the future; the chosen method of protection allows to restore the violated right and (or) compensate for the damage caused in connection with the violation of the right or interest; the chosen method of protection must correspond to the purpose of protection and ensure the actual protection result desired by the person. It is concluded that the proper method of defense should not contradict the law; to ensure maximum complete and effective restoration of violated rights, freedoms or interests within the limits of current legislation; must not contradict the essence of the claims that were determined by the person who appealed to the court and be adequate to the circumstances of the case and the nature of the offense; comply with the duty of the subject of authority to act within the limits, in the order and in the ways specified in the legislation.

**Key words:** administrative proceedings, administrative court, methods of protection, effective methods of protection, proper methods of protection, decisions of subjects of authority, appeals.

## 1. Introduction.

In the case of appeals against the decisions of subjects of authority, the parties to the administrative process and the court determine the means of protection. Such activity requires a correct understanding of such concepts as "proper method of judicial protection", "effectiveness of justice", "effective method of judicial protection". Along with this, in the context of judicial protection of the rights, freedoms and interests of individuals and when applying methods of protection in the event of appeals against the decisions of subjects of authority, the issue of "determining an appropriate and effective method of protection" is of great importance. Indicators for determining the proper and effective method of protection when challenging the decisions of subjects of authority are certain criteria that indicate that the proper and effective method of protection was chosen and applied.

## **2. Analysis of scientific publications.**

Such scientists as V. Bevzenko, Ya. Bernaziuk, O. Gubska, L. Kokhanska, M. Onishchuk, A. Potapenko and others dealt with problems related to the definition of an effective and appropriate method of protection in science. Despite the certain development of this issue, mainly within the scope of the civil process, it should be noted that the definition of an effective and appropriate method of judicial protection when challenging the decisions of subjects of authority in the science of administrative law has not been sufficiently studied. This issue is also updated by the ambiguous judicial practice of consideration of public legal disputes in the aspect of determining by the court an effective and appropriate method of legal protection.

## **3. The aim of the work.**

The purpose of the article is to carry out a scientific study of the theory and law enforcement regarding the determination of an effective and appropriate method of legal protection, with the aim of characterizing the appropriate criteria for the appropriateness and effectiveness of the methods of legal protection when challenging the decisions of the subjects of authority.

## **4. Review and discussion.**

The methods of judicial protection when appealing against the decisions of the subjects of power represent material and legal requirements that the plaintiff has submitted to the court and which allow the plaintiff to protect his violated rights or interests on the part of the subject of power that made the contested decision.

An effective method of legal protection is a substantive legal requirement, the selection and application of which allows you to actually restore the violated right or terminate the impossibility of satisfying the interest, and in the event of this impossibility, to receive appropriate compensation.

If we refer to the Code of Administrative Procedure of Ukraine, we can conclude that the legislator in Part 1 of Art. 5 of the Code defined a certain "closed" list of methods of protection, the selection of which allows the plaintiff to choose one that will allow him to protect his right, freedom or interest violated by the subject of authority. At the same time, as it has developed in judicial practice, and this is also addressed in scientific works, the methods of protection when challenging the decisions of subjects of authority should be such that they do not contradict the law. That is, we are talking about the fact that the methods of protection that the plaintiff chooses when appealing the decisions of the subjects of authority must meet the requirements of Part 1 of Art. 5 of the Code of Administrative Procedure of Ukraine. In turn, the court, determining the method of defense and resolving a public legal dispute, also applies the prescriptions of Part 2 of Art. 245 of the Code of Administrative Procedure of Ukraine, choosing the method of defense defined therein [1].

Along with this, as follows from the content of Part 2 of Art. and p. 10 part 2 of Art. 245 5 of the Code of Administrative Procedure of Ukraine [1] a person and the court can apply another method of protection, which does not contradict the law, but which is effective. From this follows the need to find out, firstly, what is the method of protection that does not contradict the law, and secondly, what method of protection can be considered effective in such a case.

Therefore, although the norms of the Code of Administrative Procedure of Ukraine in clauses 1-2 part 1 of Article 5 contain a certain closed list of methods of protection in case of appeal against the decisions of subjects of power, however, part 2 of Art. 5 and clause 10 of part 2 of Art. 245 of the Code of Administrative Procedure of Ukraine allow choosing other methods of protection that do not contradict the law, that is, those that are not provided for in the Code of Administrative Procedure of Ukraine, but are more effective. So, in this case, we are talking about the use of a method of protection, which is not contained in the Code of Administrative Procedure of Ukraine. It is possible

to assume that the phrase “does not contradict the law” allows us to conclude that they, the methods of protection, can be contained in other legislation, a contract, etc. The only requirement for these methods is that they should be more effective than those specified in Part 1 of Art. 5 and Part 2 of Art. 245 of the Code of Administrative Procedure of Ukraine [1]. Such provisions of the Code fully correspond to the fifth part of Article 55 of the Constitution of Ukraine, which states that everyone has the right to protect their rights and freedoms from violations and illegal encroachments by any means not prohibited by law. Як зазначає

I.F. Koval, the mandatory conditions for the court’s application of a method of protection that does not contradict the law are: 1) the absence of an effective method of protection of the relevant right in the law or contract, 2) the non-contradiction of the chosen method of protection of the law [2]. One can fully agree with such an approach. That is, when appealing the decisions of subjects of authority, other methods of protection can be chosen, which are not included in the list of those defined in Part 1 of Art. 5 and Part 2 of Art. 245 of the Code of Administrative Procedure of Ukraine, but they may be contained in other normative legal acts or contracts, or derive from their provisions. However, in order for a person or a court to apply such a method of protection, it must be more effective than those specified in the Code of Administrative Procedure of Ukraine. In such a case, it should be assessed that the chosen method of protection, firstly, is not contained in the norms of the Code of Administrative Procedure of Ukraine, secondly, it is contained in another legislative or subordinate regulatory legal act, thirdly, it does not contradict the law, according to – fourthly, in these disputed legal relations, this method of protection is more effective than others. But it should still be used in the context of other criteria that relate to the appropriateness and effectiveness of the method of protection.

Therefore, the person and the court, applying “a method of protection that does not contradict the law” should refer to the criteria of appropriateness of the method of protection. Thus, one of the requirements for the appropriateness of the methods of protection is the correspondence of the method of protection to the content of the violated right and the nature of the offense, as well as to the consequences caused by the offense. It is also important that the chosen method of protection is adequate to the purpose of protection – to restore the violated right or interest commensurate with the offense committed. Its application should take place within the norms of substantive law, which regulates disputed legal relations, without violating the rights of other subjects of these legal relations. Protection of the violated right or interest of the plaintiff must not be carried out to the detriment of public interests or the interests of other persons. As the Supreme Court notes in numerous of its decisions, “the method of protection must ensure the restoration of the violated right, be adequate to the existing circumstances” [3 ;4].

In addition, a method of protection that corresponds to the obligation of the subject of power to act within the limits, in the order and in the ways specified in the legislation is appropriate. When resolving a public legal dispute, the court may choose another method of defense not provided for in the Code of Administrative Procedure of Ukraine, but which does not contradict the law and is more effective. At the same time, the choice of such a method of protection is a difficult task, because, firstly, it must correspond to the obligation of the subject of power to act within the limits, in the order and in the ways defined in the legislation, and secondly, it concerns the limits of judicial intervention in discretion subjects of authority.

For example, in the resolution of November 6, 2019 in case No. 509/1350/17, in which the refusal of a local self-government body to grant a person a permit to develop a land management project regarding the allocation of a plot of land for personal farming was contested, the Grand Chamber of the Supreme Court, evaluating the effectiveness of the method of protection chosen by the court (obligation of the defendant reconsider the application), noted that the evaluation of the legality of the refusal to grant a permit for the development of the land management project concerned only those reasons given by the defendant in the contested decision; the courts did not fully investigate whether these motives are exhaustive and whether the plaintiff has complied with all other conditions for obtaining such permission. Therefore, as the Grand Chamber of the Supreme Court noted, the proper (effective) way to protect and restore the rights of the plaintiff in this case will be the obligation of the defendant to re-examine the relevant application of the plaintiff to grant him permission to develop the land management project [5].

Now let's turn to judicial practice regarding the application of "another method of protection that does not contradict the law and is more effective." Judicial practice also follows the path of the fact that when choosing a method of protection, including "another one that does not contradict the law", they, the methods of protection, must also correspond to the content of the violated right, the goal of legal protection, which the person seeking to achieve applied for protection, as well as the nature of the offense. So, on the one hand, a person whose rights have been violated can choose a specific method of protection from the list of those provided for in Part 1 of Art. 5 of the Code of Administrative Procedure of Ukraine, but also implement the principle of dispositiveness, and choose another method of protection that does not contradict the law and is more effective when challenging the decisions of subjects of authority. At the same time, in all cases, the chosen method of protection must correspond to the content of the violated right, the goal of legal protection, which the person who applied for this protection seeks to achieve, as well as the nature of the offense.

Determining an effective way to protect a violated right, freedom, or interest when challenging the decisions of subjects of authority, the court must proceed from the fact that the plaintiff's right in disputed legal relations must be violated. That is, to establish not only the existence of a public legal dispute, but also the existence of a legal dispute as such. The absence of a dispute, in turn, excludes the possibility of going to court, since there is no right subject to judicial protection.

It is necessary to understand that each case of violation of a person's right, freedom or interest in the event of an appeal against the decision of a subject of authority has its own unique specificity, which is determined by the nature of the violated right, the specifics of the specific legal relationship in which this right or interest arose, and the specifics of the violation. This feature must be identified by the court and subjected to legal analysis before applying specific methods of protection. It is here that it is necessary to determine whether the restoration of the violated right or interest will be achieved by the chosen method of protection, whether there will be an effect in the future from the chosen method of protection (the reality of the result). The plaintiff in the claim can choose several methods of legal defense. In the event that the plaintiff raises several claims, the court must also evaluate each method of protection chosen by the plaintiff for appropriateness and effectiveness, separately and as a whole. Only a complete legal analysis of all the circumstances of the offense, its possible consequences, allows you to choose a method of protection that will provide adequate and effective protection.

Therefore, in order for the method of protecting the rights and interests of a person to be effective when challenging the decisions of the subjects of authority in the administrative court, the methods of protection used must meet certain requirements. First of all, the method of protection should ensure maximum complete and effective restoration of violated rights, freedoms or interests within the limits of the current legislation. Secondly, the method of defense must be adequate to the actual circumstances of the case. Thirdly, it should not contradict the essence of the claim, which was determined by the person who appealed to the court.

## 5. Conclusions.

The conducted analysis allows making certain generalizations. The Code of Administrative Procedure of Ukraine expands the possibilities of choosing methods of defense when challenging the decisions of subjects of authority. Such methods of protection are separately defined in Art. 5 of the Code of Administrative Procedure of Ukraine and also expanded due to the selection of others that do not contradict the law and are more effective (Part 2 of Article 5 and Clause 10 of Part 2 of Article 245 of the Code of Administrative Procedure of Ukraine). However, and this is confirmed by judicial practice, the extended list of methods of protection when challenging the decisions of subjects of authority is insufficient to ensure a person the realization of his rights or interests violated by the subject of authority when making a decision. The reason for this lies in the fact that the chosen means of protection must also meet certain requirements of effectiveness and propriety.

The following requirements can be attributed to the criteria of effectiveness and appropriateness of defense methods when challenging the decisions of subjects of authority: the chosen defense method allows stopping and (or) eliminating the violation of the right and preventing its violation in

the future; the chosen method of protection allows to restore the violated right and (or) compensate for the damage caused in connection with the violation of the right or interest; the chosen method of protection must correspond to the purpose of protection and ensure the actual protection result desired by the person.

The proper method of protection must not contradict the law; to ensure maximum complete and effective restoration of violated rights, freedoms or interests within the limits of current legislation; must not contradict the essence of the claims that were determined by the person who appealed to the court and be adequate to the circumstances of the case and the nature of the offense; comply with the duty of the subject of authority to act within the limits, in the order and in the ways specified in the legislation.

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