

THE PURPOSE OF ADMINISTRATIVE PROCEEDINGS: PROTECTION AGAINST VIOLATIONS BY PUBLIC AUTHORITIES OR ENSURING THE CORRECT APPLICATION OF LAW BY THEM

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Annotation. The pertinence of the matter of correct understanding of the purpose of administrative proceedings in Ukraine is caused by the fact that the trends in the development of the practice of interpretation and application of the Ukrainian legislation on administrative litigation, as well as the shifts in scientific studies of the principles and rules of administrative proceedings, indicate that there are fundamental discrepancies in the understanding of the purpose of administrative proceedings among the scientific community and administrative courts, which lead to the distortion of the outcomes of the functioning of the administrative justice system in the practical dimension. The purpose of the article is to determine the purpose of administrative proceedings in the light of its nature and social purpose. The dialectical method of scientific research was used, making it possible to consider the purpose of administrative proceedings in view of its continuous development in the theory and practice of administrative litigation in its unity and contradictions. The author as well resorted to normative-dogmatic method, serving as a tool for understanding the purpose of administrative proceedings in accordance with its legislative definition. As a result of the study it was determined that the point of view, according to which the activity of administrative courts should be directed not only towards the protection of the rights and legitimate interests of natural and legal persons in the public law domain from violations by public authorities, but also towards the judicial review of proper satisfaction of the public interest in the activities of public authorities with regard to the performance of the public powers entrusted to them, by establishing the comprehensive truth within the framework of the case and by ensuring lawfulness in disputed legal relations through the correct definition of the rights and obligations of their participants. Moreover, the author maintains that by collecting information and documents to determine those decision, action or inaction of the public authority, which should have been made (committed) outside the context of protecting the rights and legitimate interests of the relevant private individuals, the administrative court takes over the governmental executive functions of the public authorities, protecting the relevant public interest and becoming part of the executive branch of power. It was, furthermore, noted that even an administrative lawsuit filed by a public authority against natural or legal person is not deemed to be a way to protect the rights and interests of the respective public authority, as the administrative justice has a different task.

Key words: ensuring correct application of law by public authorities, functions of administrative courts, judicial control (judicial review), protection against violations by public authorities, purpose of administrative proceedings.

1. Introduction.

The purpose of administrative proceedings is both a normative and value basis for the fulfillment of its social purpose by this most effective remedy for natural and legal persons in the public administration domain. However, trends in the development of interpretation and application of the legislation of Ukraine, as well as of scientific research of the principles and rules of administrative litigation, show that

there are fundamental discrepancies in the understanding of the purpose of administrative proceedings among the scientific community and administrative courts, which lead to the distortion of the outcomes of the functioning of the administrative justice system. Classical and universal views on administrative proceedings as a special toolkit aimed at ensuring effective protection of the rights and legitimate interests of private persons from violations by public authorities through balancing the procedural standing of private persons with public authorities within the framework of administrative court disputes, are often deviated from in case-law and scientific opinions stating that, along with the innate purpose, administrative justice should, moreover, serve as a mechanism for achieving truth and objectivity in public relations, directing its activity not only towards the protection of rights and legitimate interests of private persons, but also towards making an administrative act that is as correct as possible from the point of view of public interest, regardless of whether it is for the benefit or to the detriment of the private person who challenged it.

2. Analysis of scientific publications.

Accomplishing the proper quality of scientific research on this subject requires relying on a significant array of works of Ukrainian and foreign scientists. In particular, the literature analysis should cover the works of V. Averianov, P. Vovk, M. Greve, O. Kapynos, O. Konstantii, I. Koprach, A. Rudenko, V. Skrypchenko, A. Selivanov and other scholars. However, at the current stage of the development of scientific thought concerning the understanding of the purpose of administrative proceedings and its projection on activities of administrative courts and judgments in individual cases, these sources should be analyzed and compared in order to arrive at such an understanding of the purpose of administrative proceedings, which corresponds to the nature of this legal protection mechanism.

3. The purpose of the work.

The purpose of this article is to define the purpose of administrative proceedings in the light of its nature and social purpose.

4. Review and discussion.

First of all, addressing the Ukrainian provisions of legislation on administrative proceedings stipulating its objectives, it is to be noted that according to Art. 2 (1) of the Code of Administrative Proceedings of Ukraine, they include fair, impartial and timely court resolution of disputes in the field of public administration with the purpose of effectively protecting the rights, freedoms and interests of natural persons, rights and interests of legal persons from violations by public authorities. Any court decision must correspond to the purpose of administrative proceedings (Article 242 (4) of the Civil Procedure Code of Ukraine) [1].

Reflecting on the prerequisites for the formation of the system of administrative justice and its purpose, the Constitutional Court of Ukraine emphasized that the exercise of public power in an orderly manner requires that the person is given the opportunity to effectively challenge acts of public authorities, their officials and employees, their actions or nonfeasance, which ensures the accountability of these authorities, their officials and employees for their decisions, actions or nonfeasance. Administrative justice is a core element of democratic governance, and its effectiveness is essential for any society based on the rule of law. The purpose of the national system of administrative proceedings is to ensure judicial control over the decisions, actions or nonfeasance of public authorities, their officials and employees in accordance with the procedure consistent with the requirements of a fair trial [2].

The Constitutional Court of Ukraine also emphasized that in legal relations between a private person – on the one hand, and the state (represented by public authorities) and other public authorities – on the other, a private person is always the weaker party. For this reason, in a state governed by the rule of law, administrative courts must be in place, the purpose of which is to protect the individual against the government. In addition, the Constitutional Court pointed out that in order to ensure the effectiveness of the rule of law, the right of a person to judicial protection in administrative proceedings, guarantees of

its implementation, as well as of the purpose of the system of administrative justice, the law-maker must introduce such a legal mechanism the administrative litigation, under which a private person during the trial shall not have a worse procedural standing compared to the government represented by public authorities, their officials and employees, and shall have a real procedural opportunity to protect and restore their violated rights, freedoms and legitimate interests (Decision of the Constitutional Court of Ukraine of 1 March 2023 no. 2-p(II)/2023) [2].

The vision of the purpose of administrative justice, which the Supreme Court of Ukraine follows with a high degree of consistency, is similar to the aforementioned. In the most generalized form, the point of view of this judicial institution is expressed by the words that administrative proceedings are aimed at protecting the rights of private persons in the public law domain (Judgment of the Supreme Court of Ukraine of 22 February 2023, case no. 320/12166/20) [3]. In other words, the essence of administrative proceedings is judicial control over the activities of public authorities in the sphere of observing the rights and freedoms of citizens and legal entities with the help of a procedural toolkit with certain peculiarities, in particular, including the burden of proof of lawfulness of administrative activities, which is imposed on public authorities (Judgment of the Supreme Court of Ukraine of 12 December 2018, case no. 814/2307/18) [4].

In particular, in the case no. 725/5630/15 the Supreme Court of Ukraine determined that according to the logic of the Ukrainian law-maker, administrative proceedings are designed to provide an opportunity for a natural or legal person to effectively protect their rights or interests, taking into account the fact that the opposing party is a public authority, a priori having significantly more resources at its disposal both for asserting its position in legal relations and for representing its own interests in court proceedings (Judgment of the Supreme Court (Grand Chamber) of Ukraine of 31 October 2018, case no. 725/5630/15) [5]. Likewise, in the case no. 826/1934/17, the Supreme Court of Ukraine pointed out that the main idea/purpose of the system of administrative courts is to protect the “small person” from the “big state”, represented by its numerous public authorities endowed with a wide range of powers and a number of mechanisms of official coercion. It is for this reason, according to opinion of the Supreme Court of Ukraine, that the legislation on administrative proceedings provides for a set of procedural exceptions for plaintiffs (private persons): it is possible for an uncertified lawyer to act as a representative in court in disputes regarding the protection of social rights, minor disputes, etc. (Art. 131-2 (5) of the Constitution of Ukraine); an insignificant amount of the court fee, calculated, as a rule, not from price of the claim, but in a fixed number (Art. 4 of the Law of Ukraine “On Court Fees”); imposing on one of the parties – the defendant (a public authority) the unconditional obligation to prove the lawfulness of its acts, in a certain way placing the plaintiff (a private person) in a privileged position. This fully corresponds to the constitutional principle, according to which a person, his or her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine (Judgment of the Supreme Court of Ukraine of 4 September 2018, case no. 826/1934/17) [6].

In the theory of administrative litigation, the above-mentioned point of view on the purpose of administrative proceedings in correlation with the peculiarities of administrative procedural relations is a prevailing one. In particular, speaking on this matter, specialists of the Main Legal Department of the Apparatus of the Verkhovna Rada of Ukraine were inclined to the opinion that a peculiarity of administrative proceedings is that in public law disputes the plaintiff faces a powerful administrative apparatus. In view of this, the presumption of guilt of the public authority, whose decisions, actions or nonfeasance are contested, was introduced in administrative proceedings. This approach, firstly, strengthens the standing of the plaintiff, who may not have enough legal knowledge to convincingly prove the correctness of his statements before the court, and, secondly, strengthens the responsibility of public authorities [7]. Similar considerations are expressed by M. Kovaliv in his works, devoted to the main tasks of the administrative judiciary of Ukraine, in which he points out that objectively, public authorities are strictly bound by legal limits for the implementation of laws, therefore it is not excluded, that they can take actions, make regulatory acts that contradict the rights and interests of a private person, justifying it with public interests. In this connection the parties initially have unequal opportunities both in determining the disputed rights and duties and in protecting their own rights and interests. To eliminate these inequalities, according to the scientist, administrative proceedings with its special criteria for evaluating decisions, actions or nonfeasance of the public authority, special interim reliefs, special powers of the administrative court, etc. were deployed [8, p. 30].

So, in the context of the peculiarities of relationships between the public authorities and private persons the scientific community and law practitioners unanimously recognize that public authorities as parties in public legal disputes in most cases have an advantage over private persons due to their mostly constant and sufficient budget funding, as well as due to the participation of an administrative apparatus specializing in essential and legal aspects of its activities and having significant experience in justifying the correctness of the application of the relevant administrative legal norms. In light of this, in order to achieve balance in terms of opportunities to protect the rights and legitimate interests of private persons from violations by public authorities, the legislation on administrative proceedings should place private persons in a privileged procedural standing, in particular by redistributing the burden of proof and judicial assistance to them in the implementation of their procedural rights and duties.

Nevertheless, there are disagreements in the scientific literature regarding the unity or duality of the purpose of administrative proceedings, which, in addition to the protection of the rights and legitimate interests of private persons in the public domain from violations by public authorities, should also include the abstract safeguarding the supremacy of law, as well as the correct application of relevant norms of public law.

Starting the review of various standpoints of scientific community on this issue, and referring to the results of the literature analysis of O. Konstantyi it could be noted that in Ukrainian legal literature from the beginning of the 20th century to the present, researchers note that the task of the system of administrative justice is the protection of individual administrative rights of a person. Likewise, O. Zaverukha at the stage of the development of the bill of Ukrainian code administrative proceedings also asserted that the purpose of administrative justice is to protect the rights and freedoms of citizens in cases where the actions or nonfeasance of the public administration and their officials limit or violate their individual rights [9, p. 15-16].

In this context, particularly noteworthy is the reasoning of A. Selivanov, who adheres to the point of view according to which the main purpose of administrative justice is to ensure compliance with the principle of the rule of law in relations between public authorities and a private person. According to the scientist, modern administrative justice becomes, in a certain sense, an important form of protection of public rights and freedoms of a person, as well as the legitimate interests of public figures. Thus, according to the conclusion of A. Selivanov, the law-maker with the adoption of the Code of Administrative Proceedings of Ukraine opened the way for the establishment of a new procedure in the field of judicial control over public administration, implementing the priority of constitutional safeguards of protection of human rights and freedoms [10]. These considerations are fully consistent with the vision of V. Averianov and M. Boiaryntsev, who believe that the main purpose of administrative proceedings is that, owing to administrative courts, the basic administrative protection of the rights, freedoms and interests of private persons is carried out, which includes a set of administrative court procedures aimed at: (1) ceasing illegal encroachment on the rights, freedoms and interests of private person; (2) elimination of any obstacles arising during their implementation; (3) recognition or confirmation, renewal and enforcement of rights, unfulfilled or improperly fulfilled duties [11, p. 403].

Likewise, A. Kuzmenko as well makes valid statements on this issue, pointing out that if the purpose of litigation is an imaginary model of the desired result – what the parties strive for – then the purpose of administrative proceedings should be understood as the protection of rights and legitimate interests of private persons, ensuring lawfulness through administration of justice [12, p. 6]. Similarly, V. Bashkatova and O. P. Svitlychnyi recognize that the main task of administrative justice is to protect the rights of citizens from violations by public authorities and their officials who exercise executive functions in line with current legislation [13, p. 19].

It is, moreover, to be noted that in world administrative legal literature, similar views are expressed on the purpose of administrative proceedings due to its universality as a form of judicial protection of rights in the public law domain. As stated in this regard by South Korean scientists and experts, as one of the types of administrative review of administrative acts, administrative proceedings are designed to correct violations of the rights or legitimate interests of private persons that resulted from unlawful decisions, actions and nonfeasance of administrative authorities, as well as to determine the rights and obligations under public law or other disputed issues regarding the application of laws within the framework of preliminary judicial control [14]. As M. Feyereisen stressed, the role of administrative courts is not in

general control over the public administration, but in the protection of the rights of private persons in connection with the exercise of public authority [15].

Concurring with this point of view, P. Vovk emphasized that administrative courts, which are an element of one of the branches of power, protect not public authorities, but private persons from the arbitrariness of the former. In other words, by protecting the rights, freedoms and legitimate interests of private persons from violations by public authorities, the system of administrative courts of any state ensures public needs, restores the rights of private persons and ensures the general public interest. The system of administrative courts raises the level of trust in state power to a new qualitative level, greatly increases the effectiveness of its activities for the benefit of society and is the most effective safeguard against violations of the rights, freedoms and legitimate interests of private persons in future [16, c. 260].

Moreover, referring to American scientific sources, it should be pointed out that according to the conclusions of M. Greve, the American concept of judicial control (review) combines two slightly different orientations. One is to prevent and counteract unjustified government interference in private behavior, the other is to ensure the legality and validity of administrative acts. But this power, according to the scientist, has a built-in limitation: it unequivocally prohibits general judicial supervision of the behavior of the executive power, because the courts that consider lawsuits of "public interest" should be part of the executive power for elementary reasons of practicality and separation of powers. The power to demand the faithful execution and careful observance of the laws, and the power to determine whether these duties have been fulfilled, is the power to govern the system. Instead, independent courts operating on the model of individual rights should decide nothing but disputes about individual rights, so as not to lose – in repeated wording – their distance from the executive [17].

Nevertheless, there is wide support in the scientific community for the opposite opinion, according to which the system of administrative justice should not only be a toolkit for protection of the rights and legitimate interests of private persons in the public law domain, but also a safeguarding mechanism of the correct exercise the functions of public authorities.

In particular, O. Kapynos is of the opinion that the purpose of administrative proceedings is to issue a legal, well-founded decision in an administrative case. The decision in an administrative case must be carefully substantiated from the point of view of factual circumstances and reflect the objective truth. At the same time, the scientist noted that the tasks of administrative proceedings coincide with the general tasks of justice – resolution of a legal dispute, restoration of individual rights and freedoms, holding the guilty actors liable and imposing an administrative penalty on them, strengthening the rule of law [18, c. 57].

The ambivalence of views on the purpose of administrative proceedings is to some extent inherent in the reasoning of A. Rudenko, who came to the conclusion that administrative proceedings are a form of administration of justice, encompassing a comprehensive and objective consideration and resolution by administrative courts public law disputes arising between natural and legal persons, on the one hand, and the public authorities, on the other, for the purpose of protecting the rights and freedoms of private persons in the public law domain [19, p. 28]. Agreeing with this belief, B. Budzik emphasized that the essence of the practice of human rights protection activities of administrative courts is to ensure the restoration of individual rights in the event of infringements in public legal relations. This indicates that administrative justice in Ukraine is a special independent legal institution designed to impartially settle disputes between the state and civil society (its specific members). At the same time, according to the scientist, this does not exclude the performance by administrative courts of the guarantor of legality during government regulation of the economy, the inadmissibility of unjustified interference by public authorities with free market economy [20, c. 90]. In other words, judicial control in the "objective" model of administrative justice is carried out within the framework of the democratic ideology of civil society in order to protect not only the rights of citizens, but also public interests and law and order [21, c. 2]. V. Skrypchenko as well, taking the view that the task of administrative proceedings is to ensure and guarantee justice in public legal disputes, recognizes the establishment of truth and justice as the optimal ultimate outcome of administrative proceedings, as well as protecting the rights of citizens and public authorities [22, c. 29].

Having regard to the above observations, there are ample reasons to believe that the point of view, according to which activities of administrative courts should be directed not only towards the protection

of the rights and legitimate interests of natural and legal persons in the public law domain from violations by public authorities, but also towards the judicial review of proper satisfaction of the public interest in the activities of public authorities with regard to the performance of the public powers entrusted to them, by establishing the comprehensive truth within the framework of the case and by ensuring lawfulness in disputed legal relations through the correct definition of the rights and obligations of their participants. Moreover, the author maintains that by collecting information and documents to determine those decision, action or inaction of the public authority, which should have been made (committed) outside the context of protecting the rights and legitimate interests of the relevant private individuals, the administrative court takes over the governmental executive functions of the public authorities, protecting the relevant public interest and becoming part of the executive branch of power. These outcomes lie beyond the indirect influence of administrative justice on the organization of enforcement of administrative laws and the quality of administrative decisions, which is achieved by assessing their lawfulness within the framework of protecting the rights and legitimate interests of private persons in the public law domain from violations by public authorities.

It is to be pointed out that the duality of the purpose of administrative proceedings cannot be justified by the possibility of making court decisions resulting from the lawsuits of public authorities.

It is about the fact that according to the provisions of Art. 46 (5) citizens of Ukraine, foreigners or stateless persons, public associations, legal entities that are not public authorities may be defendants only in an administrative lawsuit of the subject of authority:

- (1) on the temporary ban (suspension) of certain types or the entire activity of a non-government organization;
- (2) on forced dissolution (liquidation) of a non-government organization;
- (3) about the detention of a foreigner or a stateless person;
- (4) on establishing restrictions on the exercise of the right to freedom of peaceful assembly (meetings, meetings, marches, demonstrations, etc.);
- (5) in other cases when the right to appeal to the court is granted to a public authority by law [1].

Interpreting these legislative provisions in the context of issues of this study, first of all, it is advisable to refer to the considerations of the Supreme Court of Ukraine regarding the cases in which it is allowed to appeal to the public authority with an administrative claim, which were laid down in the case no. 809/1891/16. In particular, according to the conclusions of the Supreme Court of Ukraine in this case, an appeal to the court is a way of exercising the powers of a public authority, during which the court carries out preliminary judicial control, checking the existence of legal grounds for the intervention of the public authority (plaintiff), and therefore preventing possible violation of the rights, freedoms or legitimate interests of private persons. It is emphasized that the lawsuit of a public authority to the court is not a way to protect its rights or interests, since administrative proceedings have a different purpose (Judgment of the Supreme Court of Ukraine of 9 April 2019, case no. 809/1891/16) [23].

5. Conclusions.

The point of view, according to which activities of administrative courts should be directed not only towards the protection of the rights and legitimate interests of natural and legal persons in the public law domain from violations by public authorities, but also towards the judicial review of proper satisfaction of the public interest in the activities of public authorities with regard to the performance of the public powers entrusted to them, by establishing the comprehensive truth within the framework of the case and by ensuring lawfulness in disputed legal relations through the correct definition of the rights and obligations of their participants. Moreover, the author maintains that by collecting information and documents to determine those decision, action or inaction of the public authority, which should have been made (committed) outside the context of protecting the rights and legitimate interests of the relevant private individuals, the administrative court takes over the governmental executive functions of the public authorities, protecting the relevant public interest and becoming part of the executive branch

of power. These outcomes lie beyond the indirect influence of administrative justice on the organization of enforcement of administrative laws and the quality of administrative decisions, which is achieved by assessing their lawfulness within the framework of protecting the rights and legitimate interests of private persons in the public law domain from violations by public authorities.

Even in the context of the public authority filing an administrative lawsuit against private persons, it is stated that this action is not deemed a way to protect the rights and interests of the public authority's authority, since administrative proceedings have a different task. Instead, it constitutes a way of exercising the powers of the relevant public authority through an administrative court for preventive judicial review of administrative interferences by public authorities with the rights and legitimate interests.

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