

ON THE QUESTION OF LEGAL REGULATION OF ADMINISTRATIVE PROCEDURES ON THE EXAMPLE OF FOREIGN COUNTRIES

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Annotation. The article deals with the issue of legal regulation of administrative procedures on the example of foreign countries. The standards of the administrative procedure regarding the adoption of administrative decisions, i.e. decisions of public administration bodies, which concern the rights and obligations of individuals and legal entities, are considered. The content and features of legal regulation of administrative procedures in foreign countries, the scope and subject of legal regulation through the prism of the legislation of foreign countries on administrative procedures are outlined. Various approaches to determining the scope, content and methods of its legal regulation are analyzed.

Attention is focused on the specifics of managerial activity, which must take effective measures in a timely manner in a wide variety of situations, forming the boundaries and restrictions necessary in the rule of law. The types of entities to which administrative procedures apply have been considered.

The rights and obligations of administrative bodies regarding the preparation and adoption of an administrative decision are defined. Features of appeals by individuals and legal entities, definition of sub-agency category of cases are outlined. The types of decisions made by the administrative body are classified. Emphasis is placed on informing persons whose interests may be affected by an administrative act.

The grounds for removing officials considered biased are outlined. The rights of citizens participating in the administrative procedure are considered separately.

Key words: administrative procedures, legal regulation, foreign countries, natural persons, legal entities.

1. Introduction.

In the modern state, a mandatory element of the legal system is the legislative regulation of relations between public administration bodies and natural and legal entities. During the second half of the 20th century, a number of mandatory rules were developed in this area in developed countries. In particular, when making administrative decisions, that is, decisions of public administration bodies that concern the rights and obligations of specific private individuals, it is required to ensure the rights of the individual, to be heard before making a negative (unfavorable) decision, to review the case materials, and the duties of the administrative body justify adverse acts and specify the procedure for appealing them, etc. These and other individual rights and obligations of administrative bodies are recorded in laws on general administrative procedure.

2. Main material.

At the level of the Council of Europe, these provisions are reflected in several resolutions and recommendations of the Committee of Ministers. This allows us to assert the presence of certain European

standards of administrative procedure. Therefore, laws on administrative procedure are primarily aimed at protecting individuals from arbitrariness on the part of the administration. These are like analogy of procedural codes for court cases. They determine the actions of public officials from the point of view of procedure. And this applies both to the consideration of applications and the provision of administrative services, as well as to activities at the initiative of an administrative body, or to the consideration of complaints in a pre-trial procedure.

In most European countries, the administrative-procedural legislation is systematized, which makes it possible to talk about the existence of certain European standards of administrative procedure.

The Institute of Administrative Procedures was formed in foreign countries of Western Europe [1, p. 385] and North America. In Ukraine, it began to develop taking into account foreign experience, which determines the relevance of further research. In this regard, we will consider in more detail the content and peculiarities of legal regulation of administrative procedures in foreign countries. The scope and subject of legal regulation of laws on administrative procedures in different countries can differ significantly. In the era of globalization, not only the institution of administrative procedures itself was formed, but also different approaches to determining the scope, content and methods of its legal regulation.

For example, the Estonian law [2, p. 27] does not object, but regulates the discretion (judgment) of administrative bodies, taking into account the specifics of management activity, which must take effective measures in a timely manner in a wide variety of situations, and forming the boundaries and limitations necessary for it in a rule of law. The laws on administrative procedures establish that uniform rules must be obeyed by all bodies that have authority over citizens and their organizations: state and municipal bodies, state corporations and other decentralized institutions, and sometimes even private organizations exercising delegated management powers. . Some countries have extended administrative procedures to bodies and institutions of all branches of government. Thus, the Swiss Federal Law on Administrative Procedures of 1968 established the procedures for issuing, amending and revoking orders of: the Bundestag, its departments; federal office; federal agencies; autonomous federal institutions and enterprises, federal commissions; federal courts of first instance [3, p. 346].

Both an administrative body and a private person can initiate an administrative case. The vast majority of administrative acts are adopted on the initiative of the administration. In such cases, the administrative body is obliged to notify about the prepared decision all persons to whom this decision will apply, as well as all persons whose rights and interests may be violated by such a decision. The message informs the goals of the decision being prepared, its basis and the standards that will be applied during its preparation and implementation. Private individuals have the right to contact the administration with statements, demands and petitions. The administrative body is obliged to consider any appeal, but depending on its nature, different duties are imposed on the authority.

If the citizen's appeal is of an informative nature, the administrative body is authorized to determine whether it is necessary to start the official preparation of an individual administrative act or to sufficiently explain to the citizen how he should act, taking into account public interests. If a citizen's appeal is in the nature of a request for the adoption of an administrative act, the authority is obliged to initiate an official procedure and adopt an administrative act that satisfies or rejects the request. After receiving the appeal, the administrative body must decide on the subdepartmental issue of the case.

In foreign countries of Western Europe and North America, the determination of sub-agency is not the responsibility of a private person who submits an application. It is believed that a citizen should not be an expert in issues of public administration organization. He can raise questions before the administration about the exercise of his right, while the administration is obliged to determine which specific bodies are authorized to resolve this issue.

If the administrative body that received the appeal is not competent to consider this case, it must without delay send the materials to the competent body and inform the applicant about it. After the administrative body accepts the case for consideration, it determines its participants. The general circle of participants in the consideration of an administrative case is determined by laws on administrative procedures.

In Germany, the following are recognized as participants in the consideration of an administrative case: the applicant and the defendant in the application; persons to whom the administrative body intends

to direct or has directed the administrative act; persons with whom the administrative body intends to conclude or has already concluded a public legal contract; persons whose legal interests may be violated by an administrative act [4, p. 247]. In Estonia, the Law on Administrative Procedure considers the following to be participants in the consideration of an administrative case: the applicant; addressee; third person; the authority that authorizes the case [2, p. 14].

In Europe, the issue of determining the circle of participants in administrative proceedings is also regulated by supranational bodies. Recommendation Ns R (87) 16 of the Committee of Ministers of the Council of Europe "On administrative procedures affecting the majority of interested persons" of 1987 established that the right to participate in the preparation of administrative acts should be granted to three categories of citizens: persons to whom the administrative decision applies, participate in its preparation and consideration directly; persons whose rights, freedoms or individual interests may be violated - through one or more of their representatives; persons interested in making an administrative decision may be represented by relevant associations or organizations. The authority that authorizes the opening of a case determines which officials and employees will participate in its consideration and decision-making. Officials who may be interested in a certain outcome of the case are subject to impeachment.

In Switzerland, in accordance with Art. 10 of the Law on Administrative Procedures, officials are recognized as biased: they have a personal interest in solving the case; are in a family relationship with one of the parties; acting as representatives of the parties or represented a party in a similar case. At the same time, the stated grounds for revocation are not exhaustive: if employees may be prejudiced due to other reasons, they should also be removed from the case.

In Germany, the concept of relatives is interpreted very broadly when it comes to the grounds for dismissing employees. Relatives in such cases are recognized as: bridegroom or bride; husband or wife; direct relatives; persons who are in the property; brothers and sisters; nephews; spouses of brothers and sisters; brothers and sisters of the husband or wife; brothers and sisters of parents; foster parents and children [4, p. 139].

Any of the participants in the process of preparing an administrative decision can request the removal of an employee if he assumes an interest and is not sure of the impartiality of the case. The employee himself is obliged to declare his interest, otherwise he may be brought to disciplinary responsibility for non-fulfillment of official duties. Laws on administrative procedures, granting appropriate rights, determine the degree of citizen participation in the process of making administrative decisions.

The following rights of citizens participating in the administrative procedure are typical: to receive clarifications and recommendations; representation; listening; familiarization with case materials; preservation of personal and official secrecy. Legislation on administrative procedures usually determines what information must be disclosed in the process of preparing an administrative decision.

In Switzerland, the following case materials are recognized: statements of the parties; notification of administrative bodies; documents used as evidence; texts of orders of administrative bodies. In the US, any person has the right to request certain documents. The administrative agency, upon any request made in accordance with the published rules, must immediately provide: the final opinions of officials; interpretation and criteria for applying the rules; rules and instructions for administrative staff concerning citizens [4, p. 167].

Refusal to provide case materials is allowed only in cases specified by law. Usually, such exceptions are related to materials related to issues of defense, state and personal security. The rights of the participants and the order of consideration of the case also depend on what types of administrative procedures will be applied in its resolution. The legislation allows various forms of administrative procedures: formal - full, which include all the established procedures, which guarantee the protection of the rights of the parties, which bring the administrative procedure closer to a judicial process with the summoning and questioning of witnesses; informal - simplified, used in simpler cases.

In Tajikistan, the Code of Administrative Procedures of 2007 distinguishes simple, formal and public administrative procedures [5, p. 112]. Simple procedures do not require investigation of the circumstances with the participation of interested parties and oral hearings. Formal procedures involve the participation of interested parties and oral hearings. Public procedures are used for the preparation of acts that affect



the interests of an unlimited number of persons, and involve public discussion of the prepared draft decisions. It is noteworthy that the process of preparing individual decisions is often considered more complicated and involves a longer procedure compared to the process of preparing a normative legal act. In the process of preparing a draft of an administrative act, many countries, primarily in continental Europe, provide for consultations and conciliation procedures.

In France, draft orders in many cases must be discussed with consultative bodies - councils and committees created under administrative structures [5, p. 243]. The prepared draft of the administrative act is sent to the process participants. If the administrative act has many addressees or their number cannot be precisely determined, then the administrative body has the right to publish the text of the prepared act in the departmental printed body or present it for review in an accessible public place. In such a case, a reasonable term is set for submission of objections and additions by interested persons. The adopted administrative act must be announced and brought to the attention of all persons whose interests it affects.

3. Conclusion.

Thus, the institute of administrative procedures has become in foreign countries the most important tool of the rule of law, which allows to ensure the participation of citizens in the process of making administrative decisions, to identify, express and guarantee consideration of the interests of citizens in the implementation of state policy. Studying the experience of legal regulation of foreign countries, its understanding, identifying the essential and functional characteristics of the institute of administrative procedures, as well as the technique of its consolidation will help the establishment and successful functioning of this institute in Ukraine.

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