

ON THE QUESTION OF RECOGNITION OF THE DECISION OF THE SUBJECT OF AUTHORITIES AS UNLAWFUL

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Annotation. The article examines the problems of recognition of illegal decisions of subjects of power. The author draws attention to the fact that the decision of the subjects of power is a consequence of the implementation of the public-authority management function by the subjects of power. The legality of the decisions of the subjects of power is a necessary condition for the legality of activities to ensure citizens' realization of their rights, freedoms and interests. The article states that the legality of the decisions of the subjects of power ensures the legality of administrative and regulatory activities, the proper level of law and order in the state, and the protection of the rights of participants in public-law relations. The author draws attention to the fact that administrative courts play a significant role in matters of legality verification, protecting rights, freedoms and interests by recognizing the decisions of subjects of authority as illegal. It is justified that the cancellation or invalidation of the decision of the subject of power can be considered one of the ways to ensure its legality and the extent of responsibility of the body or official who made the relevant decision. It is concluded that the annulment or invalidation of the decisions of the subjects of power, recognized by the court as illegal, is of undoubted importance for ensuring law and order by eliminating illegal regulatory and individual acts from the law enforcement mechanism, and restoring the violated rights, freedoms and legitimate interests of individuals in the field of public and legal relations. The article substantiates that recognition of an act as illegal is a separate way of protecting the violated rights, freedoms or interests of a person. If the act is recognized as illegal, the court, depending on the type of act, applies other methods of protection, annulment of the individual act, or invalidation of the normative legal act.

Key words: administrative proceedings, administrative court, subject of authority, decision of the subject of authority, illegality, legality.

1. Introduction.

The decision of the subjects of power is a consequence of the implementation of the public-authority management function by the subjects of power. The legality of the decisions of the subjects of power is a necessary condition for the legality of activities to ensure citizens' realization of their rights, freedoms and interests. The legality of the decisions of the subjects of power ensures the legality of administrative and regulatory activities, the appropriate level of law and order in the state, and the protection of the rights of participants in public-law relations. Administrative courts play a significant role in matters of legality review, protecting rights, freedoms, and interests by declaring the decisions of the subjects of authority illegal.

2. Analysis of scientific publications.

Problems of the legality of legal acts of public authorities attracted the attention of many scientists, among whom it is worth highlighting the works of such scientists as V. Averyanov, Yu. Bityak, I. Borodin, I. Golosnichenko, E. Hetman, V. Kolpakov, A. Komzyuk, Ya. Ryabchenko and others. In spite of significant developments in this area, it should be noted the lack of thorough research on the problems of recognition of illegal decisions of subjects of authority.

3. The aim of the work.

The purpose of the article is to study the issues of recognition of illegal decisions of subjects of power.

4. Review and discussion.

In accordance with Part 2 of Art. 6 of the Constitution of Ukraine, bodies of legislative, executive and judicial power exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine. According to Part 2 of Article 19 of the Constitution of Ukraine, state authorities and local self-government bodies, as well as their officials, must act only on the basis, within the limits and in the manner determined by the Constitution and laws of Ukraine. These constitutional norms are fundamental for the exercise of their powers not only by public administration bodies, but also by the judicial branch of government [1].

The limits of the court's powers are defined in the law and detailed in the procedural codes. The jurisdiction of the administrative court means the set of rights and obligations that the law gives the court for consideration and resolution of public legal disputes. The main purpose of these powers is to ensure effective protection of the rights, freedoms and interests of a person against illegal decisions, actions or inaction on the part of subjects of power.

Article 245 of the Administrative Judicial Code of Ukraine clearly defines the powers of the administrative court on the consequences of consideration and resolution of a public-law dispute, the subject of which was an appeal against the decision of a subject of authority. In accordance with clauses 1-2, part 2 of this article, the administrative court, in the event that the claim is satisfied, the court may make a decision regarding: 1) recognition of the legal act or its separate provisions as illegal and invalid; 2) recognition as illegal and cancellation of an individual act or its individual provisions [2].

When considering public-law disputes when appealing decisions of subjects of authority, administrative courts, deciding the issue of annulment of an individual act or invalidation of a normative-legal act, must find out whether this decision meets the requirements set forth in Part 2 of Art. 2 of the Administrative Judicial Code of Ukraine, in other words, whether this act is legal.

Concepts of legality of decisions of subjects of authority are formed both in legal theory and in judicial practice. The legality of such an act determines its legitimacy and possibility of application.

Legality is a multifaceted concept that is considered in legal science from different angles. Legality is strict and unquestionable observance and implementation of laws, which is mandatory for all state bodies, institutions, public organizations, officials and citizens. Legitimacy should be considered as a regime of strict implementation of laws and relevant normative acts, which ensures universal binding of legal norms in society and the state. Legality characterizes the democratic regime of society and involves strict and unwavering compliance by all subjects of laws and by-laws. This regime ensures the proper implementation of the provisions of the legislation in all spheres of social relations and requires compliance with the prescriptions of compliance of by-laws with the Constitution of Ukraine and its laws. This is a complex socio-legal phenomenon, which includes the principle, method and mode of existence of the state, and is based on the understanding and strict implementation by all participants of the legal relationship of legislative acts, and the latter, in turn, must comply with the principles of the rule of law, the construction of a system of legislation (hierarchy of this system).

Legality is the main principle that determines the functioning of society and the state. This principle reflects the important connection between law and power, law and the state. Accordingly, it concerns both society and the state. In addition, legality implies that all participants in legal relations must strictly observe and implement the laws of the state.

The requirement of legality is enshrined in Part 2 of Art. 19 of the Constitution, according to which officials, bodies of state power and local self-government, as well as citizens are obliged to comply with the Constitution of Ukraine and legislation [1].

According to the Constitution of Ukraine, bodies of state power and local self-government, as well as their officials, are obliged to act within the limits of their powers. These limits relating to the law-making activity of the subject of power are defined in the Constitution of Ukraine, laws and regulations regulating the status of relevant bodies of state and local government and other subjects that have the right to adopt normative legal acts. When carrying out law-making activities, bodies of state power, local self-government, their officials and other subjects must be guided by legislation and use only those forms and means of rule-making activity provided for by law. This means that each subject of authority has the right to adopt only those types of regulatory acts that are provided for by law and to follow the legally established procedure for the preparation, adoption and publication of a normative or regulatory act.

As for an individual act, the subject of power must be guided by the law, and act in the manner and within the limits provided for in the legislation.

Violation of the requirements of legality is the basis for recognizing the decision of the subject of authority as illegal, and its cancellation, if it is an individual act, or recognition as invalid.

Granting the courts the authority to cancel acts of public authorities, their officials and officials, can be considered as a means of ensuring legality and law and order in the state. Although, sometimes in the scientific literature, as well as among practicing lawyers, there are reservations about the limits of the intervention of courts in the competence of subjects of power from the position of the court taking over the functions of a public authority. When resolving public legal disputes regarding the appeal of decisions of subjects of power, the administrative court must act correctly, limiting itself to establishing the fact of illegality of the decision of the subject of power, without taking over the law-making functions. However, the administrative court can go beyond the legal requirements and oblige the defendant - a subject of authority to make a decision in favor of the plaintiff, if the following conditions are met: for the adoption of the act, all the requirements established by law have been met; making such a decision does not imply the right of the subject of authority to act at his own discretion [2].

Administrative courts in Ukraine may apply administrative discretion and impose additional duties on the subject of authority in the event of annulment or invalidation of his decision. However, such intervention must be carried out in accordance with the norms of the Administrative Judicial Code of Ukraine and in compliance with the principle of separation of powers. The possibility of intervention by an administrative court follows from the content of Articles 245, 264-289 of Administrative Judicial Code of Ukraine. The court's going beyond the scope of the lawsuit in case of finding it illegal and canceling (or invalidating) the decision of the subject of power may lead to a significant impact on the activities of public authorities and interference in their powers. However, if the administrative courts, guided by the rule of law and applying the provisions of Articles 3-6 of Art. 245 of the Administrative Judicial Code of Ukraine, may go beyond the legal requirements in order to effectively and fully protect the rights, freedoms and interests of individuals from the unlawful decision of the subject of authority, such intervention is justified. The presence of this competence in the administrative court serves as a guarantee of comprehensive and effective judicial protection and the achievement of the tasks of administrative proceedings [2].

If an individual act is recognized as illegal, it is considered to be not an action from the moment of its adoption, but a regulatory legal act, unless otherwise provided by law or decided by a court, loses legal force after the court decision declaring it illegal and invalid has acquired of legal force. From the above, it can be concluded that administrative acts can be annulled in the case of their illegality, and regulatory legal acts, in case they are recognized as illegal, can be declared invalid.

Therefore, recognition of an act as illegal is a separate way of protecting the violated rights, freedoms or interests of a person. If the act is recognized as illegal, the court, depending on the type of act, applies other methods of protection, annulment of the individual act, or invalidation of the normative legal act.

Judicial protection cannot be considered effective if it will be implemented by declaring the act illegal. In our opinion, this method of protection is a statement of the fact that the act contradicts the requirements of legality and therefore there are grounds to recognize it as illegal. A proper and

effective way of protection in the event of an appeal against a normative legal act is a combination of such as the court recognizing the act as illegal and invalid. An effective and proper way of protection in the case of a challenge to an individual act is to recognize such an act first as illegal, and then as one that is subject to cancellation.

Administrative courts review regulatory legal acts regarding their legality and compliance with acts of higher legal authority according to the following criteria: the legal content of the contested act and compliance with the procedure defined by law or another regulatory act, such as the procedure for review, adoption/acceptance, and entry into force of the regulatory act legal act [3, c. 15-16]. It is enough for the court to establish the fact that the decision of the subject of authority does not comply with the requirements of legality in order to recognize it as illegal. These provisions also apply to the verification of the legality of an individual act.

In addition, when verifying the legality of an individual act, the administrative court establishes whether the subject of authority has conducted administrative proceedings solely on the basis, within the limits of authority and in the manner provided for by the Constitution of Ukraine and the laws of Ukraine; whether the discretionary powers were lawfully and reasonably exercised when adopting an individual act. For this, the court also establishes: whether the law provides for the subject's use of discretionary powers when making a decision; whether discretionary powers are exercised within the limits and in the manner provided for by the Constitution of Ukraine and the law; whether the subject of power exercised discretionary powers with the purpose for which they were granted to him [4].

5. Conclusions.

Revoking or invalidating a decision of a subject of authority can be considered one of the ways to ensure its legality and a measure of responsibility of the body or official who made the relevant decision. The annulment or invalidation of the decisions of the subjects of power, recognized by the court as illegal, is of undoubted importance for ensuring law and order by eliminating illegal regulatory and individual acts from the law enforcement mechanism, and restoring the violated rights, freedoms and legitimate interests of persons in the sphere of public legal relations.

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