

# ON THE UNDERSTANDING OF THE RIGHT TO COURT PROTECTION IN ADMINISTRATIVE PROCEEDINGS

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**Annotation.** Judicial protection of human rights and freedoms is one of the types of state protection of human rights and freedoms, of a citizen. And it is the state that assumes responsibility and duty. The right to judicial protection is the constitutional right of every person to apply to court for protection of their violated, unrecognized or disputed rights, freedoms and interests, implemented through the relevant procedural codes (CPC, CAS, CPC) and which guarantees the possibility of a fair consideration of the case without obstacles, including access to professional legal assistance, which is the cornerstone of a legal state. This is a comprehensive institution that ensures the implementation of human and citizen rights and freedoms through the judicial system.

The right to a fair trial is one of the fundamental human rights and deserves special attention from scholars and practitioners, since it is through the right to a fair trial that it is possible to ensure, implement and restore all other rights and freedoms.

The article examines the right to judicial protection as a complex legal institution of a substantive and procedural nature, which consists in defining the right to judicial protection as the unity of its substantive content and procedural form, since the right to judicial protection can be realized only in court proceedings.

The presence of different approaches to defining the right to judicial protection poses a large number of problems not only in the scientific community, but also in law enforcement activities. It is obvious that at the current stage of development of Ukrainian society it is necessary to work on developing unified theoretical approaches to defining and characterizing the most important theoretical categories. This situation has a general negative impact on the entire Ukrainian society, but at the same time, identifying and eliminating all the reasons that prevent the achievement of this goal is a complex not only practical, but also theoretical problem.

Analysis of judicial practice makes it possible to say that the right to judicial protection is perceived and applied rather ambiguously, and therefore, the right to judicial protection, proclaimed by Article 55 of the Constitution of Ukraine, requires separate scientific research to clarify its concept and content.

**Key words:** right to protection, administrative proceedings, subjective public law, legitimate interest, public-private relations, guarantees.

## 1. Introduction.

The development of human rights has become perhaps the most important achievement, while the protection of human rights and freedoms in the modern world should be carried out only by legal means. The right to judicial protection is ensured by constitutional, administrative, civil, and criminal proceedings, the main purpose of which is to protect and restore violated rights. The right to a fair trial is one of the fundamental human rights and deserves special attention from scientists and practitioners, since it is

through the right to a fair trial that it is possible to ensure, implement, and restore all other rights and freedoms.

The right to judicial protection is an integral part of a democratic state, which guarantees the establishment and protection of individual rights and freedoms. Even if the law does not provide for direct protection, the court is obliged to consider the appeal, ensuring the effectiveness of justice. Therefore, this is the right to a real mechanism for restoring justice when it is impossible to protect the violated right in other ways.

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

In legal doctrine, there is currently no unified view of the essence of the right to judicial protection. Different researchers put different approaches into the content of this concept, but the fact that judicial protection is the most perfect form of protection of the subjective rights of individuals is undeniable. Judicial protection of the rights, freedoms and interests of individuals in administrative proceedings attracted the attention of such scholars as V.M. Bezenko, Ya.O. Bernazyuk, L.R. Bila-Tiunova, V.V. Ilkov, A.O. Korenev, V.K. Kolpakov, O.V. Kuzmenko, T.O. Kolomojets, N.V. Kovalenko, D.V. Luchenko, R.S. Melnyk, T.P. Minka. Judicial protection is a tool through which a person can not only protect their violated rights, freedoms or interests, but also benefits society by contributing to the restoration of law and order and the establishment of a regime of legality in the activities of subjects of power.

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

The article aims to explore theoretical and practical approaches to understanding the construction of the right to protection in administrative proceedings in Ukraine. The article substantiates and explains how the administrative justice system implements the constitutional guarantee of protection of human rights from the state.

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

The effectiveness of justice directly depends on the real possibility of a person to exercise the right to judicial protection, using methods not prohibited by law. Hence the need to develop unified approaches to understanding the content of the concept of the right to judicial protection, guarantees and means of its implementation in administrative proceedings. On the other hand, constant changes in procedural law and judicial practice do not contribute to the unification of approaches to the category we are studying, which ultimately affects the quality of justice and the effectiveness of protecting violated rights of individuals in public legal relations [1].

Analysis of legal literature allows us to draw conclusions that scholars have studied and continue to study the content of the right to judicial protection from different angles.

The legal nature of this right is seen differently by scholars. Hence, different scientific approaches to its definition have been formed. Some define it through the prism of human rights and consider the right to judicial protection as a constitutional right (constitutional subjective right), the implementation of which is embodied in the right to appeal to court, that is, as a subjective public right of a person to access independent and impartial resolution of disputes according to the established legal procedure on the principles of the rule of law and justice [2, p. 23].

The right to judicial protection is reflected primarily in the basic principles of judicial proceedings, and therefore considers the right to judicial protection through such constituent elements as: accessibility of justice; the right to appeal and cassation appeal of a court decision; independence and impartiality of the court; equality of all participants in the trial before the law and the court; the right to defense; publicity of the trial; consideration of the case in the shortest possible time, as provided for by law [3, p. 20].

Summarizing all definitions of the right to judicial protection, it seems quite possible to classify them into such groups as: 1) definitions that emphasize the material or procedural aspect of the law under study, or their dialectical combination; 2) definitions that focus on defining the right to judicial protection as subjective or objective, or on highlighting both the subjective and objective sides; 3) definitions that define the right to judicial protection as a constitutional right, or exclusively as a human right; 4) definitions that consider the right to judicial protection directly as a “right”, or as a guarantee of the realization of all other human and civil rights [4, p. 16].

The importance of studying the essence of the right to judicial protection in administrative proceedings is due to the presence of gaps in national legislation that reduce the effectiveness of mechanisms for ensuring this right. There is also a significant need to harmonize national legislation with international standards in the field of human rights protection and the administration of justice. Modern challenges of today require a transition to a new format in understanding the concept of “the right to judicial protection in administrative proceedings.”

Regarding the content of the right to judicial protection, it should be noted that it is proclaimed and enshrined in the Constitution of Ukraine, and therefore this right should be attributed to the constitutional right of the individual. The right to judicial protection arises in an individual when his rights, which a person has according to the law, have been violated. As a result, the individual has the right to protect the violated subjective rights. Therefore, judicial protection arises when his subjective right has been violated and as a result of such a violation, the individual exercises his subjective right to protection by applying to the court. Judicial protection of rights is a right for an individual, not an obligation, and the individual independently, at his own discretion, decides whether to exercise this right or not.

Scientific theorists consider judicial protection as an important element of the mechanism for guaranteeing the rights and freedoms of a person and a citizen, argue that judicial protection is an integral part of the legal system of a democratic state and is implemented through the activities of courts, which guarantee the observance of rights and freedoms through a fair trial [5].

The right to judicial protection is considered as a category of substantive and procedural law, that is, as the right to judicial protection as a substantive legal category, it is identified with the ability of an authorized person to demand in court the protection of his violated rights [6]. There is another point of view, which is reduced to defining the right to judicial protection as a category of procedural law (A.I. Kryshtof, S.O. Koroyed, etc.). Some authors define the right to judicial protection as simultaneously an institution of substantive and procedural law [7].

There are scientific approaches to the study of the right to judicial protection that are reduced to considering it as an element of the right to sue, the right to apply to court. Such approaches are justified by the fact that this right is a guarantee of the ability to apply to court for the protection of one's rights, freedoms and interests. This also applies to domestic courts and judicial institutions and international organizations recognized by Ukraine.

Equating the right to judicial protection with the right to appeal or the right to sue, or considering the right to judicial protection as an element of the right to appeal, is erroneous. The right to judicial protection is a broader and more substantive category than the right to appeal to court and the right to sue, and includes these legal categories. The right to judicial protection is a complex substantive and procedural concept that consists of substantive content and has a procedural form of expression, a form of implementation in the norms of procedural law [8].

The issue of implementing the right to judicial protection in administrative proceedings has both theoretical and practical significance. In addition, the very concept of the right to judicial protection, the person's powers to implement it when applying to an administrative court and choosing methods of protection, requires filling with new content.

As follows from the provisions of the Code of Administrative Procedure of Ukraine (CAU of Ukraine), the task of administrative proceedings is the fair, impartial and timely protection of the rights, freedoms and

interests of individuals in public legal relations from violations by subjects of power (Part 1, Article 2 of the CAU of Ukraine) [9].

International and national legislation enshrine human rights guarantees, including the right to judicial protection. The right to judicial protection is of paramount importance, which is confirmed by its enshrining in the Constitution of Ukraine. This is due to the fact that the right to judicial protection guarantees the implementation of almost all other subjective rights, and, at the same time, acts as an independent subjective right, also requiring legal guarantees [10].

The procedural component of the right to judicial protection is contained in the norms of the Code of Administrative Offenses of Ukraine, which provide a person with the opportunity to exercise the right to appeal to an administrative court, the right to sue, the right to compensation for damages, etc. Thus, Article 5 of the Code of Administrative Offenses of Ukraine states that a person may apply to court and request protection of his violated rights, freedoms or interests in one of the ways specified in the code.

In connection with this, the procedural guarantees of the right to judicial protection are the rights of a person to apply to court, file a lawsuit, choose methods of protecting violated rights, freedoms and interests, demand consideration of his case by an independent court, receive a court decision that meets the requirements of legality and validity, demand its execution, etc. An important guarantee at the stage of a person's appeal to court is the person's right to protect his violated rights, freedoms and interests by choosing methods of protection. Thus, the state guarantees the person to choose the most effective, in his opinion, method of protecting violated rights, freedoms and interests from the subject of power. That is why the methods of protecting violated rights defined in the norms of the Civil Procedure Code of Ukraine can be considered a component of the guarantees of the right to judicial protection. At the same time, a person may choose another method of protection that does not contradict the law, in addition to the one provided for in the Civil Procedure Code of Ukraine [11].

## 5. Conclusions.

In public law relations, the right to judicial protection is implemented by applying to an administrative court and is a measure of a person's permitted behavior, which is carried out with the aim of obtaining effective protection, that is, restoring a violated right, freedom or interest, restoring the situation that existed before the violation of the right. Substantive legal guarantees of the right to judicial protection are a set of rights of a person to apply to an administrative court within the limits and in the manner provided for by law to protect their subjective rights, freedoms and interests violated by a subject of public authority regarding: cessation of these violations; restoration of the legal situation that existed before the violation of subjective rights, freedoms or interests, and if such restoration is impossible - compensation for damage.

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