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PROCEDURAL LEGAL PERSONALITY OF PARTIES TO COMPETENCE DISPUTE: THEORETICAL AND LEGAL ANALYSIS

Abstract. ***Purpose.*** The purpose of the article is to analyse the category of "administrative legal personality" to highlight the specific features of the legal status of the parties to a competence dispute. ***Results.*** The article analyses the category of "administrative legal personality" to highlight the specific features of the legal status of the parties to a competence dispute. It is determined that the CAP and the scientific doctrine define the possibility of a person to be a party to an administrative case through the category of "administrative legal personality" which correlates with the term "legal status" as a part to the whole. Legal status is a general concept that combines in its content a certain range of elements, enabling to determine the place and role of a certain actor in the circle of legal relations. In turn, "administrative legal personality" is one of these elements. It is found that Article 43 of the CAP defines the components of the category of "administrative legal personality", but the issue of administrative and procedural tort capacity is neglected. This is despite the fact that, according to general theoretical principles, obligations are meaningless without measures of liability for their improper performance. It has been clarified that a competence dispute relates exclusively to the distribution of competence between authorised actors or persons with delegated functions. Their legal personality should be understood as the existence of a legally enshrined ability to be a party to disputed relations, to perform procedural actions and to be responsible for them. ***Conclusions.*** It is determined that the acquisition of relevant rights and obligations is both primary and secondary. In particular, the primary acquisition is related to the ability to have them on the basis of competence established by law. In turn, secondary acquisition is directly related to the entry into administrative procedural relations. The key point is that the scope of their rights and obligations may be changed when entering into administrative proceedings. It is generalised that the parties to a competence dispute have not only general and special administrative and procedural legal personality, but also targeted legal personality which limits the scope of their rights and obligations by the absence of their own interest in the resolution of an administrative case.

Key words: administrative courts, administrative law dispute, liability, competence dispute, rights and obligations, legal status, legal personality, public law dispute, parties to a competence dispute, authorised actor.

1. Introduction

In general, a competence dispute is a type of administrative law dispute that has arisen in the field of public law functions of public administration and concerns the removal of obstacles to the exercise of competence of its specific representatives. One of its key features is the parties, as the plaintiff in competence disputes is an authorised actor, if he/she believes that another authorised actor, the defendant, has interfered with his/her competence by his/her decision or actions or if such decision or actions are his/her prerogative (Decision of the Dnipropetrovsk District Administrative Court, 2022).

Their ability to participate in administrative proceedings is determined by the concept of administrative legal personality (Cherniakhovych, 2019, p. 186). However, both in the theory of law and in individual legal sciences, there is no consensus on the content of this term (Ditkevych, 2010, p. 132). And according to I. Cherniakhovych, the issues of administrative procedural legal personality are generally insufficiently developed in legal science (Cherniakhovych, 2019, p. 186).

Therefore, the purpose of the article is to analyse the category of "administrative legal personality" with a view to highlighting the spe-

cific features of the legal status of the parties to a competence dispute.

The topic being analysed is related to the works by scholars such as: M. Bevzenko, A. Venediktov, I. Ditkevych, O. Zubrytska, T. Matselyk, A. Pasichnyk, I. Cherniakhovych and others. However, the purpose of this article focuses on a different object of study, and therefore their works are its source base, since no researcher has directly addressed the specifics of the legal status of the parties to a competence dispute through the analysis of their administrative legal personality.

2. Content of procedural legal personality

The Great Encyclopaedic Legal Dictionary defines "legal personality" as the ability of individuals and legal entities to be parties to legal relations in the established manner, i.e. holders of subjective rights and legal obligations. The legal personality of individuals consists of their capacity for rights and ability to act. In some cases, legal personality also includes tort capacity. For legal entities, according to the dictionary, this capacity is manifested in their competence, a set of rights and obligations granted to them to perform their respective functions (Ditkevych, 2010, p. 132).

According to the provisions of the CAP of Ukraine, administrative procedural legal personality consists of administrative procedural capacity for rights and administrative procedural ability to act (Administrative Judicial Code of Ukraine, 2005). Article 43 of the CAP does not mention administrative and procedural tort capacity. However, the analysis of its provisions shows that it does exist, as the court may take measures to prevent abuse of procedural rights, including leaving without consideration or returning a complaint, application, petition (Administrative Judicial Code of Ukraine, 2005).

Following I. Ditkevych (2010, p. 132), in Soviet-era scientific works, scholars predominantly identified the concepts of "capacity for rights", "ability to act ", and "legal personality". For example, A. Venediktov argues that there are no grounds for distinguishing between capacity for rights and ability to act and characterises capacity for rights (ability to act) as the ability to have rights and obligations, the ability to be an independent bearer, actor of these rights and obligations (Venediktov, 1948, p. 86). In addition, the scholar argues that the ability to be a holder of rights and obligations in various branches of legal relations can be defined as its general legal personality; the ability to be a holder of rights and obligations in a particular area of legal relations – as its sectoral legal personality: administrative, civil, labour, etc. (Venediktov, 1955, pp. 17–28).

With regards to the administrative legal personality as a sectoral category, T. Matselyk argues that ontologically, it is the ability of a person to be an actor of administrative law. In other words, the specificity of the category of legal personality as a certain legal form is that it fixes the limits of a person's capacity for rights. In view of this, the scientist understands legal personality in one of its aspects as the relationship between an individual and society regarding their future relations with all third parties – actors of administrative law (Matselyk, 2011; Zubrytska, 2015).

In I. Ditkevych's opinion, administrative procedural legal personality as an element of the regulatory mechanism for administrative procedural legal relations specifies the scope of these legal relations, the relevant branch of legislation and the legal status of actors of administrative procedural activities (Ditkevych, 2011, pp. 5-6). It is an integral and specific element of the regulatory mechanism for administrative procedural legal relations and it ensures the transition of provisions of administrative procedural law to the sphere of administration of justice and realisation of the right to judicial protection (Ditkevych, 2011, p. 5).

According to O. Zubrytska, the main features of this term are as follows: 1) The conditions under which an actor of administrative law may become a participant in administrative legal relations are: the presence of administrative law provisions on the rights and obligations of the actor; the presence of grounds for the emergence, change and termination of administrative legal relations, as well as elements of administrative legal personality; 2) Rights, obligations and liability operate simultaneously and complement each other. It is impossible for a person to have certain rights without having an obligation to fulfil related (interchangeable) rights. The presence of an obligation is conditioned by the inevitability of liability for violation of imperative directions; 3) Administrative legal personality is measured by time, nature and scope, depending on the participants, the scope (role) of participation in a particular public law institution; 4) Administrative legal relations are performed in different areas of public administration, which have their own specifications. Therefore, types and/or models of administrative legal personality can be considered. For example, A. Pasichnyk substantiated the idea of a typological classification of legal personality, noting that administrative legal personality of legal entities under private law is divided into general (characteristic of all legal entities under private law without exception) and additional, which, in turn, is divided into: legal person-

ality of public associations, stock exchanges, commodity exchanges, self-regulatory organisations of professional stock market participants, credit unions, charitable organisations, religious organisations, trade unions and their associations, chambers of commerce and industry, condominium associations, private pension funds and business companies (entrepreneurial). It can be called additional targeted administrative legal personality (Pasichnyk, 2013). It should be emphasised that additional elements of legal personality do not form an independent model composition. On the contrary, they expand the scope of the basic legal personality to the level necessary to satisfy the public interest. Therefore, the author concludes that legal personality is an abstract and defining feature of a particular participant in a particular legal relationship, and its mandatory constituent elements are capacity for rights and ability to act and tort capacity. The correlation between legal personality and legal status should be understood as specific in the general, namely, legal personality is a set of rights, obligations and liability of a particular participant in legal relations. Only with legal personality does an actor of law become a participant in a legal relationship. In addition, legal personality connects the participant with a specific branch of legal relations (Zubrytska, 2015, p. 100).

Therefore, we can summarise that the parties to a public law dispute are its special participants, whose legal status is defined by law, providing for the assignment of administrative and procedural rights, obligations and liability to them, the exercise of which is ensured by the possibility of their use in the context of these disputed procedural relations.

Furthermore, their acquisition of relevant rights and obligations is both primary and secondary. In particular, the primary acquisition is related to the ability to have them on the basis of competence established by law.

3. Particularities of administrative legal personality

Traditionally, the emergence of administrative legal personality of an authorised actor is associated with its state registration or with the adoption by an authorised body of a managerial act establishing such an entity. Moreover, given the legal nature of authorised actors, it can be concluded that there are other legal facts that are associated with the emergence of administrative legal personality in these authorised actors. In other words, the moment of legal capacity also depends on the organisational and legal form, type and direction of activity of the future authorised actor. Depending on the type of authorised actors, the grounds for acquiring administrative legal personality can be classified, for example, into those that arose as a result of the people's will and the oath taken by the relevant authorised actor (Verkhovna Rada of Ukraine, President of Ukraine) or as a result of a decision of the general meeting (judicial self-government bodies) (Bevzenko, 2009, p. 14).

In turn, secondary acquisition is directly related to the entry into administrative procedural relations. The key point is that the scope of their rights and obligations may be changed when entering into administrative proceedings. In other words, the legal personality that arose at the beginning of the process may change several times during the further consideration and resolution of the dispute by the administrative court. For example, the transformation of the content of administrative procedural legal personality is a natural phenomenon in case of replacement of an improper party. In particular, the court of first instance, having established that the administrative claim was filed by the person other than to whom the right of claim belongs, or the person other than one liable under the administrative claim, may, with the consent of the plaintiff, allow the replacement of the original plaintiff or defendant with the proper plaintiff or defendant, if this does not entail a change in the cognisance of the administrative case (art. 52 of the CAP of Ukraine) (Bevzenko, 2009, p. 15). Moreover, this is admissible in case of administrative succession. It should be clarified that this process involves the full or partial transfer (acquisition) of administrative competence of one an authorised actor (public administrator) to another either as a result of the termination of the original entity or as a result of the full or partial termination of its administrative competence (Decision of the Dnipropetrovsk District Administrative Court Regarding the replacement of the defendant in case No. 160/17019, 2021). For example, Resolution of the Cabinet of Ministers of Ukraine No. 893 "Some Issues of Territorial Bodies of the State Tax Service" of 30 September 2020 liquidated the territorial bodies of the State Tax Service as legal entities of public law, according to the list in the Annex. The rights and obligations of the liquidated territorial bodies of the State Tax Service were transferred to the State Tax Service and its territorial bodies within the limits set out in the Regulations on the State Tax Service and its territorial bodies (paragraph 3 of Resolution No. 893). The Order of the State Tax Service of Ukraine of 30 September 2020 No. 529 "On Establishment of Territorial Bodies of the State Tax Service" established territorial bodies as separate subdivisions of the State Tax Service according to the list in the Annex. The pos-

sibility of ensuring the exercise by the newly established territorial bodies of the powers and functions of the territorial bodies being liquidated from 1 January 2021 was provided for by the relevant Order No. 755 of 24 December 2020. In other words, each territorial body of the State Tax Service established as its separate subdivision is the legal successor to the property, rights and obligations of the relevant territorial body of the State Tax Service being liquidated (Order No. 643 "On Approval of Regulations on Territorial Bodies of the State Tax Service" of 12 November 2020). Accordingly, on 1 January 2021, the actual (competent) administrative succession took place, since it was the administrative law provisions that regulated the conditions and procedure for the transfer of competence from the liquidated territorial body of the State Tax Service as a legal entity under public law to the territorial body of the State Tax Service as its separate subdivision (Decision of the Dnipropetrovsk District Administrative Court Regarding the replacement of the defendant in case No. 160/17019, 2021). In this case, the territorial body of the State Tax Service as a legal entity under public law lost the administrative procedural capacity for rights of a body that, according to the law, performs functions, in particular in the field of implementation of the state tax policy (Decision of the Dnipropetrovsk District Administrative Court Regarding the replacement of the defendant in case No. 160/17019, 2021), while the territorial body of the State Tax Service, established as its separate subdivision, de facto received it initially.

However, it should be considered that the administrative procedural legal personality of an authorised actor and its structural units is different (Bevzenko, 2009, p. 16).

It is also worth marking that authorised actors may either personally exercise their administrative procedural rights and obligations or entrust the case to a representative (Administrative Judicial Code of Ukraine, 2005). For example, the CAP of Ukraine, Article 55, part 3, provides for that: "a legal entity, regardless of the procedure for its establishment, an authorised actor that is not a legal entity, shall participate in the case through its director, a member of the executive body, or another person, authorised to act on his/her behalf in accordance with the law, charter, regulations, employment agreement (contract) (self-representation of a legal entity, an authorised actor), or through a representative" (Administrative Judicial Code of Ukraine, 2005). Pursuant to Article 57(1) of the CAP, an attorney or a legal representative may act as a representative in court. Furthermore, the provisions of Article 131-2 of the Constitution of Ukraine stipulate that only an attorney-at-law may represent another person in court (Constitution of Ukraine, 1996). That is, from 1 January 2020, an authorised actor that is not a legal entity shall participate in the case through its manager, a member of the executive body or another person, authorised to act on his/her behalf in accordance with the law, charter, regulations, employment agreement (contract) (self-representation of the authorised actor), or through a representative, such as an attorney or prosecutor (Decision of the Kyiv District Administrative Court On the return of the claim, 2022).

Moreover, it should be noted that the current legislation does not clearly provide for the possibility, grounds and procedure for limiting the procedural legal personality of authorised actors, but the provisions of some legal regulations enable to state with certainty that such restriction is admissible both in pretrial and court proceedings, but only if there are grounds clearly provided for by the rules of administrative or administrative procedural law (Bevzenko, 2009, 16).

4. Conclusions

The study enables to sum up that:

– the CAP of Ukraine and the scientific doctrine define the possibility of a person to be a party to an administrative case through the category of "administrative legal personality" which correlates with the term "legal status" as a part to the whole. Legal status is a general concept that combines in its content a certain range of elements, enabling to determine the place and role of a certain actor in the circle of legal relations. In turn, "administrative legal personality" is one of these elements;

– article 43 of the CAP defines the components of the category of "administrative legal personality", but the issue of administrative and procedural tort capacity is neglected. This is despite the fact that, according to general theoretical principles, obligations are meaningless without measures of liability for their improper performance;

– the legal personality of the parties to a competence dispute should be understood as the existence of a legally enshrined ability to be a party to disputed relations, to perform procedural actions and to be responsible for them;

– the parties to a competence dispute have not only general and special administrative and procedural legal personality, but also targeted legal personality which limits the scope of their rights and obligations by the absence of their own interest in the resolution of an administrative case.

References:

Bevzenko, M. (2009) Sutnist administratyvnoi protsesualnoi pravosubiektnosti subiektiv vladnykh povnovazhen [The essence of administrative procedural legal personality of subjects of power]. *Advokat – Lawyer, 2(101),* 13–17 (in Ukrainian).

Cherniakhovych, I. (2019). Storony publichno-pravovoho sporu u sferi derzhavno-sluzhbovykh vidnosyn i yikh administratyvno-protsesualna pravosubiektnist [Parties to a public-law dispute in the field of public-service relations and their administrative-procedural legal personality]. *Prykarpatskyi yurydychnyi visnyk – Carpathian Legal Gazette, 1,* 19-22 (in Ukrainian).

Ditkevych, I. (2010). Poniattia «administratyvna protsesualna pravosubiektnist»: problemy definitsii [The concept of "administrative procedural legal personality": problems of definition]. *Pravo i bezpeka – Law and security, 4 (36),* 131–136 (in Ukrainian).

Ditkevych, I. (2011). Administratyvna protsesualna pravosubiektnist [Administrative procedural legal personality]. *Extended abstract of candidate's thesis.* Kharkiv: Khark. nats. un-t vnutr. sprav (in Ukrainian).

Kodeks administratyvnoho sudochynstva Ukrainy: vid 06.07.2005 № 2747-IV [Administrative Judicial Code of Ukraine: dated July 6, 2005 No. 2747-IV]. (2005). *rada.gov.ua.* Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text (in Ukrainian).

Konstytutsiia Ukrainy: vid 28.06.1996 № 254k/96-VR [Constitution of Ukraine: dated 28.06.1996 No. 254k/96-BP]. (1996). *rada.gov.ua.* Retrieved from (in Ukrainian).

Matselyk, T. (2011). Administratyvna pravosubiektnist yak ontolohichna zdatnist osoby buty subiektom administratyvnoho prava [Administrative legal personality as the ontological ability of a person to be a subject of administrative law]. *Naukovyi visnyk Chernivetskoho universytetu – Scientific Bulletin of Chernivtsi University, 597*, 90–94 (in Ukrainian).

Pasichnyk, A. (2013). Vydy administratyvnoi pravosubiektnosti yurydychnykh osib pryvatnoho prava [Types of administrative legal personality of legal entities under private law]. *Pravovyi visnyk Ukrainskoi akademii bankivskoi spravy – Legal Bulletin of the Ukrainian Academy of Banking, 1*, 18-22 (in Ukrainian).

Rishennia Dnipropetrovskoho okruzhnoho administratyvnoho sudu vid 03 lystopada 2022 roku po spravi № 215/2604/22 [Decision of the Dnipropetrovsk District Administrative Court dated November 3, 2022 in case No. 215/2604/22]. (2022). *court.gov.ua.* Retrieved from https://reyestr.court.gov.ua/Review/107101283 (in Ukrainian).

Ukhvala Dnipropetrovskoho okruzhnoho administratyvnoho sudu Shchodo zaminy vidpovidacha u spravi №160/17019/: vid 26 bereznia 2021 roku po spravi №160/17019/20 [Decision of the Dnipropetrovsk District Administrative Court Regarding the replacement of the defendant in case No. 160/17019/: dated March 26, 2021 in case No. 160/17019/20]. (2021). *court.gov.ua.* Retrieved from https://reyestr.court.gov.ua/Review/95940654 (in Ukrainian).

Ukhvala Kyivskoho okruzhnoho administratyvnoho sudu Pro povernennia pozovnoi zaiavy: vid 08 liutoho 2022 roku po spravi № 320/1785/22 [Decision of the Kyiv District Administrative Court On the return of the claim: dated February 8, 2022 in case No. 320/1785/22]. *youcontrol.com.ua*. Retrieved from https://youcontrol.com.ua (in Ukrainian).

Venediktov, A. (1948). Gosudarstvennaia sotcialisticheskaia sobstvennost [State socialist property.]. M.; L.: Izd-vo AN SSSR (in Russian).

Venediktov, A. (1955). O subektakh sotcialisticheskikh pravootnoshenii [About the subjects of socialist law]. *Sovetskoe gosudarstvo i pravo – Soviet state and law, 6*, 17–29 (in Russian).

Zubrytska, O. (2015). Administratyvna pravozdatnist yak element pravosubiektnosti indyvidualnykh subiektiv administratyvnoho prava [Administrative legal capacity as an element of legal personality of individual subjects of administrative law]. *Visnyk Natsionalnoi akademii prokuratury Ukrainy – Bulletin of the National Academy of the Prosecutor's, 3(41),* 99–104 (in Ukrainian).

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ПРОЦЕСУАЛЬНА ПРАВОСУБ'ЄКТНІСТЬ СТОРІН КОМПЕТЕНЦІЙНОГО СПОРУ: ТЕОРЕТИКО-ПРАВОВИЙ АНАЛІЗ

Анотація. ***Мета.*** Метою статті є аналіз категорії «адміністративна правосуб'єктність» задля виокремлення особливостей правового статусу сторін компетенційного спору. ***Результати.*** Стаття присвячена аналізу категорії «адміністративна правосуб'єктність» задля виокремлення особливостей правового статусу сторін компетенційного спору. Визначено, що КАС України та наукова доктрина визначають можливість особи бути стороною у адміністративній справі через категорію «адміністративна правосуб'єктність», яка співвідноситься з терміном «правовий статус» як частина

від цілого. Правовий статус є загальним поняттям, що поєднує своїм змістом певне коло елементів, завдяки яким можна визначити місце і роль певного суб'єкта у колі правових зв'язків. Своєю чергою «адміністративна правосуб'єктність» є одним із таких елементів. Виявлено, що у статті 43 КАС України визначено складники категорії «адміністративна правосуб'єктність», однак облишено увагою питання адміністративно-процесуальної деліктоздатності. Це попри те, що за загальними теоретичними основами існування обов'язків є безглуздим без наявності мір відповідальності за їхнє неналежне виконання. Уточнено, що компетенційний спір стосується виключно розподілу компетенції між суб'єктами владних повноважень або особами з делегованими функціями. Під їхньою правосуб'єктністю слід вбачати наявність у них законодавчо закріпленої можливості бути суб'єктом спірних відносин, вчиняти процесуальні дії та нести за них відповідальність. ***Висновки.*** Визначено, що набуття цими суб'єктами відповідних прав та обов'язків є як первинним, так і вторинним. Зокрема, первинне набуття пов'язане зі здатністю їх мати на основі законодавчо закріпленої компетенції. Своєю чергою вторинне набуття пов'язане безпосередньо зі вступом у адміністративно-процесуальні відносини. Принциповим є те, що під час вступу в адміністративний процес обсяг їхніх прав та обов'язків може бути зміненим. Узагальнено, що сторони компетенційного спору мають не тільки загальну та спеціальну адміністративно-процесуальну правосуб'єктність, а й цільову, яка обмежує обсяг їхніх прав та обов'язків відсутністю власного інтересу у вирішенні адміністративної справи.

Ключові слова: адміністративні суди, адміністративно-правовий спір, відповідальність, компетенційний спір, права та обов'язки, правовий статус, правосуб'єктність, публічно-правовий спір, сторони компетенційного спору, суб'єкт владних повноважень.

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