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PRINCIPLES OF ADMINISTRATIVE PROCEDURE FOR CASES INVOLVING APPEALS AGAINST AUTHORISED ACTORS' DECISIONS ON ADMINISTRATIVE LIABILITY IN UKRAINE

Abstract. Purpose. The purpose of the article is to identify and outline, on the basis of the legal literature review, the basic principles of the administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine. **Results.** It is underlined that administrative court proceedings on appeals against authorised actors' decisions on administrative liability in Ukraine is a leverage (instrument) of influence on public administrators enabling the citizens of our State to restore or establish their legitimate rights, freedoms and interests. In the study, the principles of the administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are grouped into general and special ones. The general principles of law include: the rule of law, legality, equality of all parties before court, justice, freedom, humanism. Accordingly, the special principles in this field include: the adversarial nature of parties, the equality of all before court and law; the obligation to adjudicate; the right to appeal; the reasonableness of the time for considering the case; compensation of legal costs by the guilty party; mandatory administrative prosecution of the perpetrators; appeal only against unlawful decisions of authorised actors. **Conclusions.** The article identifies that the principles of administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are the basic legislated provisions, according to which, judicial authorities administer justice in the field of appeals against unlawful decisions of public authorities violating rights and freedoms and the legitimate interests of the citizens of our State, and in the event that guilt is proven, in the manner established by law, the court shall bring the guilty officials to administrative liability.

Key words: administrative liability, administrative procedure, power, principle, decision, actor, judicial appeal.

1. Introduction.

Modern public and legal processes in our State require detailed legal regulatory mechanism. Moreover, the establishment of clear positions on specific areas is the basis for the further development of a democratic civil society. Therefore, the exercise by citizens of the right to appeals against authorised actors' decisions on administrative liability is of great importance for their personal interests, in particular, the fundamental principles in this field are enshrined in the Constitution of Ukraine and current national legislation.

Principles in the administrative procedure are fundamental factors which are the basis of any system. Thus, forming and choosing prin-

ciples is a very important aspect of all sectors of life. Every citizen has faced the violation of his/her rights to freedoms and legitimate interests not only by others but also by State bodies, as well as by their officials, so the State protects itself from attacks in these fields.

Therefore, the principles of the administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are used to ensure these aspects. Among the foundations of the theory of administrative law, the priority is always the principles, because only after their study one should pass to other administrative and legal phenomena.

The issue of the principles of the administrative procedure for cases involving appeals

against authorised actors' decisions on administrative liability in Ukraine was under focus of academics in administrative law of Ukraine and Spain: V. Averianov, V. Bass, Y. Bytiak, V. Halunko, M. Damirchyiev, P. Dikhtievskiy, V. Zarosylo, V. Kolpakov, O. Kuzmenko, R. Melnik, S. Stetsenko, V. Tkachenko, O. Tykhomyrov, T. Tsurkan, V. Shkarupa, García de Enterría, Moron Miguel Sanches, Posada Martínez Lopez-Muñiz, Zanobini, and others. However, they did not focus on comparability in the relevant field.

The purpose of the article is to identify and outline, on the basis of the legal literature review, the basic principles of the administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine.

2. Appeals against authorised actors' decisions

According to the explanatory dictionary of the Ukrainian language, the principle is the basic starting point of any scientific system, theory, ideological trend, etc.; the basic law of any exact science. A feature that underlies the creation or implementation of something, the way something is created or implemented. The rule that underlies the activities of an organization, society, etc. (Luchenko, 2011).

Every person has the right to apply to an administrative court if he/she considers that his/her rights, freedoms or interests have been violated by a decision, act or omission of an authorised actor (article 5, part 1, of the Code of Administrative Procedure of Ukraine) (Konstantinov, 2010).

In other words, regardless of whether a natural or legal person in Ukraine, it is possible to apply for the protection or restoration of their legitimate rights, freedoms and interests in accordance with the current legislation and to appeal the decision of actions or omissions of authorised actors.

In addition, it should be understood that the principles of the administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are the leading bases, determined to strengthen the generally established rules of conduct in this field.

A citizen may file a complaint in person or through an authorized other person. Complaints in the interests of minors and persons without legal capacity are filed by their legal representatives. A complaint in the interests of a citizen, on his behalf, may be filed by another person, a labour collective or an organization engaged in human rights activities, in the manner prescribed by law. The complaint shall be accompanied by the decisions or copies

of the decisions taken by his previous application, as well as other documents necessary for the consideration of the complaint, which, after consideration, shall be returned to the citizen. The specificities of consideration of citizens' complaints against decisions, actions or omissions of public registrars of rights on immovable property are determined by the Law of Ukraine "On State Registration of Real Rights to Immovable Property and Their Encumbrances". The specificities of consideration of citizens' complaints against registration actions, refusal of public registration, omissions of the public registrar are determined by the Law of Ukraine "On State Registration of Legal Entities, Individuals-Entrepreneurs and Public Formations" (Law of Ukraine "On State Registration of Real Rights to Immovable Property and Their Encumbrances", 2004).

According to art. 55 of the Constitution of Ukraine, everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers. The procedure for going to court is governed by procedural legislation, in particular the Code of Administrative Procedure. Pursuant to article 2 of the CAP, the task of administrative proceedings is to ensure that the courts settle disputes in the field of public legal relations in a fair, impartial and timely manner, with a view to protecting the rights, freedoms and interests of natural persons; rights and interests of legal persons from violations by authorised actors. Any decisions, actions or omissions of authorised actors can be appealed to administrative courts, unless the Constitution or the laws of Ukraine establish another procedure for court proceedings in respect of such decisions, acts or omissions (Administrative proceedings) (Constitution of Ukraine, 1996; Konstantinov, 2010).

Therefore, administrative court proceedings on appeals against authorised actors' decisions on administrative liability in Ukraine is a leverage (instrument) of influence on public administrators enabling the citizens of our State to restore or establish their legitimate rights, freedoms and interests.

According to D. Luchenko, an administrative and legal appeal as a procedure is based on a number of principles. These include both the principles inherent in the entire administrative procedure and the special principles of the complaint procedure. The first group includes the principles of the rule of law, justice, legality, objectivity, legal equality, protection of the interests of the individual and the State, transparency, dispositive capacity, economy, etc. The second group con-

sists of the principles of unrestricted right to appeal, certainty of the right to appeal, advantages of the applicant's interests, inadmissibility of abuse of the right to appeal, mandatory mechanisms of extrajudicial appeal, a combination of written and oral complaints, etc. (Luchenko, 2011).

To sum up, it should be noted that the purpose of the principles for appeals against decisions in cases on administrative offence is to declare, proclaim, and determine how citizens' complaints should and can be processed, they establish the only correct and permitted manner of conduct of the actors of such proceedings. Deviation from the rule of conduct established by law, going beyond the permitted range of actions means violation of the provisions of law, disregard of the law, non-recognition of its prescriptions (Konstantinov, 2010).

3. Principles of administrative procedure

In general, it should be noted that the general principles of the administrative procedure are formed, established and sanctioned by the State in the Constitution of Ukraine and the Code of Administrative Procedure of Ukraine.

According to article 2 of the CAP, the task of administrative proceedings is to ensure that the courts settle disputes in the field of public legal relations in a fair, impartial and timely manner, with a view to protecting the rights, freedoms and interests of natural persons; rights and interests of legal persons from violations by authorised actors. In cases of appeal against decisions, acts or omissions of authorised actors, administrative courts check whether they have been taken (committed): 1) on the grounds, within the powers and in the manner determined by the Constitution and laws of Ukraine; 2) using the power for the purpose, for which this power is granted; 3) justified, that is, taking into account all circumstances relevant to taking the decision (committing the action); 4) impartially (unbiased); 5) in good faith; 6) prudently; 7) respecting the principle of equality before law, preventing all forms of discrimination; 8) in proportion, inter alia, with the required balance between any adverse effects on the rights, freedoms and interests of the individual and objectives, to be achieved by the decision (action); 9) taking into account the right of the person to participate in decision-making; 10) in a timely

manner, that is, within a reasonable period of time (Code of Administrative Procedure of Ukraine, 2005).

In addition, following the Code, the basic principles of administrative proceedings are: 1) the rule of law; 2) equality of all parties to the proceedings before law and court; 3) transparency and openness of the court procedure and its full recording by technical means; 4) the adversarial nature, dispositive character and formal establishment of all the circumstances of the case; 5) the binding nature of the judgement; 6) the right to appeal; 7) the right to appeal against the judgement in cases defined by law; 8) reasonableness of the court's hearing; 9) inadmissibility of abuse of procedural rights; 10) reimbursement of legal costs of natural and legal persons in favour of whom the court has decided (Code of Administrative Procedure of Ukraine, 2005).

To sum up, the principles of the administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are grouped into general and special ones

The general principles of law include: the rule of law, legality, equality of all parties before court, justice, freedom, humanism, etc.

Accordingly, the special principles in this field include: the adversarial nature of parties, the equality of all before court and law; the obligation to adjudicate; the right to appeal; the reasonableness of the time for considering the case; compensation of legal costs by the guilty party; mandatory administrative prosecution of the perpetrators; appeal only against unlawful decisions of authorised actors.

4. Conclusions

Consequently, the principles of administrative procedure for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are the basic legislated provisions, according to which, judicial authorities administer justice in the field of appeals against unlawful decisions of public authorities violating rights and freedoms and the legitimate interests of the citizens of our State, and in the event that guilt is proven, in the manner established by law, the court shall bring the guilty officials to administrative liability.

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ПРИНЦИПИ АДМІНІСТРАТИВНОГО ПРОЦЕСУ У СПРАВАХ СТОСОВНО ОСКАРЖЕННЯ РІШЕНЬ СУБ'ЄКТІВ ВЛАДНИХ ПОВНОВАЖЕНЬ ЩОДО ПРИТЯГНЕННЯ ОСІБ ДО АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ В УКРАЇНІ

Анотація. Мета. Мета статті полягає в тому, щоб на основі праць вчених-юристів визначити та окреслити основні принципи адміністративного процесу у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні. **Висновки.** Наголошено, що адміністративне судочинство у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні є своєрідним важелем (інструментом) впливу на суб'єктів публічної адміністрації, за допомогою яких громадяни нашої держави можуть відновити або встановити їхні законні права, свободи та інтереси. Визначено, що принципи адміністративного процесу у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні поділяються на загальні та спеціальні. До загальних належать загально-встановлені принципи права, такі як: верховенство права, законності, рівності усіх учасників перед судом, справедливості, свободи, гуманізму. Відповідно, до спеціальних принципів у цій сфері, на нашу думку, слід віднести: змагальність сторін, рівність усіх перед судом та законом; обов'язковість прийняття судового рішення; право на апеляційний перегляд справи; розумність строків розгляду справи; відшкодування судових витрат винною стороною; обов'язковість притягнення винних до адміністративної відповідальності; оскарження виключно незаконних рішень суб'єктів владних повноважень. **Результати.** У статті визначено, що принципи адміністративного процесу у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні – це закладені на законодавчому рівні основні положення, спираючись на які, судові органи влади здійснюють правосуддя у сфері оскарження незаконних рішень органів публічної влади, які порушують права, свободи та законні інтереси громадян нашої держави; та у випадку, якщо вина буде доведена у встановленому законом порядку, суд буде змушений притягнути винних посадових осіб до адміністративної відповідальності.

Ключові слова: адміністративна відповідальність, адміністративний процес, влада, принцип, рішення, суб'єкт, судове оскарження.

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