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ADMINISTRATIVE PROCEDURES FOR FAIR AND EFFECTIVE JUSTICE IN UKRAINE

Abstract. Purpose. The purpose of the article is to analyse administrative procedures for ensuring fair and effective justice in Ukraine.

Results. The article analyses administrative procedures for ensuring fair and effective justice in Ukraine. The role of the judiciary is to provide justice in the State and to ensure that citizens have access to it. In Ukraine, the judicial system does not meet the requirements of the European level, as citizens apply to the European Court of Justice for the restoration of human and civil rights, freedoms and legitimate interests. The ongoing reform of the judicial system is not making a positive difference, indicating a low level of confidence in the court and the entire judicial system. Therefore, the justice sector requires special attention and research on problematic issues. It is found that administrative procedures are not clearly defined. We may argue that they are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration and control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice. It is underlined that any information, not only regarding the judge but also concerning the proceedings, should be entered in the relevant register, which should be accessible to the parties to the proceedings or other persons concerned. The obligatory condition, related to the issue under study, is the procedure for ensuring the protection of information, especially with regard to the personal data of the above persons. That is, the relevant technical equipment should be with appropriate software.

Conclusions. Administrative procedures for ensuring fair and effective justice in Ukraine are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration and control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice.

Key words: administrative and legal framework, efficiency, fairness, justice, procedures, administrative law, courts

1. Introduction

The role of the judiciary is to provide justice in the State and to ensure that citizens have access to it. In Ukraine, the judicial system does not meet the requirements of the European level, as citizens apply to the European Court of Justice for the restoration of human and civil rights, freedoms and legitimate interests. The ongoing reform of the judicial system is not making a positive difference, indicating a low level of confidence in the court and the entire judicial system. Therefore, the justice sector requires special attention and research on problematic issues.

The study is based on the work of academic theorists on administrative law, such as: B. Averianov, O. Bandurka, O. Bezpalova, Y. Bytiak, M. Havryltsiv, V. Halunko, I. Holosnichenko, S. Kivalov, M. Kovaliv, V. Kolpa-

kov, A. Komziuk, O. Kuzmenko, A. Kravtsov, R. Melnyk, I. Stakhura, A. Shcherbliuk, V. Felyk, K. Fuhlevych, and others.

The purpose of the article is to analyse administrative procedures for ensuring fair and effective justice in Ukraine.

2. Administrative procedures as an administrative and legal instrument regulating public relations

The main task of the State is to clearly define the provision of rights, freedoms and legitimate interests for its citizens. All this is done through administrative procedures. The word *procedure* comes from Latin *procedo*, which means “proceed” or “advance”, *process* (from Latin *processus* “proceeding”, “moving forward”) (Melnychuk, 1974). V. Averianov believes that administrative procedures can significantly contribute to improving the efficiency of management, clear

performance of functions and powers of bodies and officials. Most importantly, these procedures should ensure the necessary consistency of citizens' exercise of their rights and freedoms and become an effective obstacle to subjectivity and arbitrariness of officials of the executive authorities (Averianov, 2002). S. Ovcharuk considers that the institution of administrative procedure is the only multifunctional organisational and legal instrument in the administrative law, contributing to the realisation of the rights and freedoms of citizens under the formation of the legal State (Ovcharuk, 2015). Some legal scholars in administrative law note that administrative procedures are: a) external expression of the exercise by public administrators of their powers granted to them to ensure (facilitate) the exercise of rights, freedoms, interests of individuals, performance of subjective duties, tasks of the State; b) the manifestation of managerial and executive activities of State authorities, local self-government bodies, their officials and officers; c) the institution of administrative law, inherent in and objectively interconnected with it, characterized by the staging and presence of special proceedings (Kolomoiets, Kolpakov, 2014: 9). In addition, the administrative procedure is the procedure defined by the legislation for consideration and decision by public administrators of a specific administrative case, as well as the procedure for the adoption and execution of the administrative act to ensure the rights and legitimate interests of the individual and the performance of duties prescribed by law, protection of rights, freedoms and legitimate interests (Halunko, Dikhtiiivskiy, Kuzmenko, 2001). S. Savchenko's study of the registration procedures in the activities of the internal affairs agencies has allowed concluding that the registration procedure is regulated by the administrative and procedural rules of the activities of the public administration bodies, carried out with the aim of: official recognition of the legality of regulations; actions of legal persons; actions of natural persons; confirmation by the State of the legal status of actors; granting of rights or obligations to actors; recording of legal facts; establishing a certain legal relationship (Savchenko, 2012). In the study of administrative procedures for ensuring the right of citizens to access public information, S. Taradai concludes that administrative procedures, established by law, are the manner in which the information managers carry out the actions and ensure the right of everyone to access the information that is created, collected, used, disseminated and maintained by authorised actors and other managers of public information of public interest. Their specificity is that they are official, enshrined in

the relevant legal regulations and are the main instrument in the system of ensuring the exercise by actors of their rights, freedoms, legitimate interests and powers. Observance by information managers of certain procedures while ensuring the right of citizens to access public information is a guarantee of their legality (Taradai 2012). According to V. Halunko, administrative procedures for administrative and legal support for investigative activities are specific administrative activities of public administrators, carried out on the basis of the substantive provisions of constitutional law, implemented in the procedural provisions of administrative law and consisting of stages, phases and actions related to the activities of pre-trial investigation bodies (Halunko, 2017). We advocate the scholar's perspective, since the activities of the courts are also specific, and in the performance of their direct functional duties in administration of justice in cases, they are guided by a number of procedural codes, such as: Criminal Procedure, Administrative Proceedings, Civil and Economic Codes, which include procedures for the consideration of cases.

Therefore, there is no clear definition of administrative procedures. We may argue that they are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration, control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice.

3. Specificities of administrative procedures in the justice sector in Ukraine

Next, some administrative procedures for ensuring fair and effective justice in Ukraine are considered. For example, the law clearly stipulates that justice in Ukraine is administered exclusively by the courts and in accordance with the procedures established by law (Law of Ukraine on the Judiciary and the Status of Judges, 2016).

The first procedure is the election of a judge. It is quite extensive and specific. The person applying for the post shall go through certain stages. Thus, the applicant shall submit documents only after the High Qualification Commission of Judges of Ukraine has placed an announcement of the selection of candidates for the post of judge on its official website. After the relevant check, carried out by the High Qualification Commission of Judges of Ukraine, a person is allowed to take a qualifying examination, the results of which shall be published on the official website of the High Qualification Commission of Judges of Ukraine. Then the person shall receive special training and a certificate of special training. According

to the results the candidate passes a qualifying exam, after the successful passing of which the High Qualification Commission of Judges of Ukraine appoints candidates for the post of judge in the reserve for filling vacant positions of judges, determining their rating, promulgates the list of candidates for the post of judge included in the reserve and rating list on the official website of the High Qualification Commission of Judges of Ukraine. Further competition is held on the basis of the rating of candidates and the consideration by the High Council of Justice and the recommendation of the High Qualification Commission of Judges of Ukraine and the adoption of a decision on the candidate for the post of judge. The documents are submitted for adoption to the President of Ukraine, and only after the issuance of the decree of the President of Ukraine on appointment to the post of judge the candidate is appointed to the post.

Moreover, specificities in the selection of candidates for the post of judge are at least three-year experience as an assistant judge, determined by the decision of the High Qualification Commission of Judges of Ukraine.

The next procedure is the special training of a candidate for the post of judge for a period of one year, which takes place at the National School of Judges of Ukraine on a budgetary basis. The Higher Qualification Commission for Judges of Ukraine, on the recommendation of the National School of Judges of Ukraine, approves the programme, the curriculum and the procedure for special training for judges. While the candidate is in office, he or she retains his or her main job and is paid a stipend equivalent to the salary of an assistant judge of a local court. The period of special training at the National School of Judges is included in the length of professional activity in law and, upon completion, a certificate is issued. The materials for candidates who have passed special training by the National School of Judges of Ukraine are sent to the High Qualification Commission of Judges of Ukraine for passing the qualification exam. In the event of a violation of the procedure for special training, which has led to the unsuccessful implementation

of the special training programme, failure to attend the exam, expulsion from or termination of training on his or her own initiative, the candidate shall reimburse the funds, spent on his or her training. A candidate for the post of judge shall reimburse the funds spent on his or her special training.

These procedures and the obligatory promulgation of the results make information and registration procedures important for our research. Any information, not only regarding the judge but also concerning the proceedings, should be entered in the relevant register, which should be accessible to the parties to the proceedings or other persons concerned. The obligatory condition, related in our case, is the procedure for ensuring the protection of information, especially with regard to the personal data of the above persons. That is, the relevant technical equipment should be with appropriate software. Nowadays, the judicial information and communication system is served by the State Court Administration of Ukraine and the State Enterprise Information Judicial Systems.

The next procedure is the funding procedure. The Constitution of Ukraine provides for that the State shall ensure the financing and an enabling environment for the functioning of courts and the activities of judges. The State Budget of Ukraine separately determines the expenses for the maintenance of courts, taking into account the proposals of the High Council of Justice (Constitution of Ukraine, 1996). This reveals the special funding arrangements and a constitutional guarantee of their independence. Financial support for the activities of the courts of Ukraine is included in the State Budget of Ukraine.

4. Conclusions

Therefore, administrative procedures for ensuring fair and effective justice in Ukraine are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration, control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice.

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ДЕЯКІ АДМІНІСТРАТИВНІ ПРОЦЕДУРИ СТОСОВНО ЗАБЕЗПЕЧЕННЯ СПРАВЕДЛИВОГО ТА ЕФЕКТИВНОГО ПРАВОСУДДЯ В УКРАЇНІ

Анотація. Мета. Мета статті полягає в тому, щоб проаналізувати адміністративні процедури стосовно забезпечення справедливого та ефективного правосуддя в Україні.

Результати. У статті проаналізовані адміністративні процедури стосовно забезпечення справедливого та ефективного правосуддя в Україні. Роль судової системи полягає у здійсненні в державі правосуддя та забезпеченні належного до нього доступу громадян. В Україні судова система не відповідає вимогам європейського рівня, оскільки громадяни звертаються за відновленням своїх прав до Європейського суду, що свідчить про неналежний рівень захисту прав, свобод та законних інтересів людини і громадянина. Започатковане реформування судової системи не дає тих позитивних зрушень, що свідчить про низький рівень довіри до суду та всієї судової системи. Саме тому сфера правосуддя потребує особливої уваги та дослідження проблемних питань. З'ясовано, що чіткого визначення щодо поняття адміністративних процедур немає. Можемо зазначити, що вони є певним адміністративно-правовим інструментом, який регулює суспільні відносини різних сфер для забезпечення прав і обов'язків громадян у сфері управління, процедури контрольної діяльності, а в разі порушення вживаються заходи щодо їх відновлення та притягнення винних до відповідальності. Наголошено, що будь-яка інформація не тільки стосовно судді, а така, що стосується питань судочинства, повинна бути внесена до відповідного реєстру, доступ до якої повинні мати учасники процесу або інші особи, що зацікавлені у ній. Обов'язковою умовою, що переплітається у нашому випадку, є процедура забезпечення захисту інформації, особливо що стосується персональних даних вищевказаних осіб. Тобто відповідне технічне обладнання повинно бути забезпечене відповідним програмним забезпеченням.

Висновки. Адміністративні процедури стосовно забезпечення справедливого та ефективного правосуддя в Україні є певним адміністративно-правовим інструментом, який регулює суспільні відносини різних сфер для забезпечення прав і обов'язків громадян у сфері управління, процедури контрольної діяльності, а в разі порушення вживаються заходи щодо їх відновлення та притягнення винних до відповідальності.

Ключові слова: адміністративно-правове забезпечення, ефективність, справедливість, правосуддя, процедури, адміністративне право, суди.

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