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DESCRIPTION OF THE DISTINCTIVE FEATURES OF SUBJECTS OF ADMINISTRATIVE LEGAL PROCEEDINGS

ХАРАКТЕРИСТИКА ВІДМІННИХ ОЗНАК СУБ`ЄКТІВ АДМІНІСТРАТИВНО-ПРОЦЕСУАЛЬНИХ ПРАВОВІДНОСИН

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Researched principle equality before the law and court. Investigated, does distinguishing features, which distinguish the members of the administrative process, have an influence on the effectiveness of this principle.

Key words: principle of administrative legal procedure, equality protection of the law, discrimination, actors administrative and procedural relationships.

Досліджено принцип рівності перед законом і судом. Досліджено, чи впливають відмінні ознаки, за якими розрізняються учасники адміністративного процесу, на ефективність дії вказаного принципу.

Ключові слова: принцип адміністративного судочинства, рівність перед законом і судом, суб'єкти адміністративно-процесуальних відносин.

Исследован принцип равенства перед законом и судом. Исследовано влияние отличительных признаков, по которым различаются учасники административного процеса, на эффективность действия указанного принципа.

Ключевые слова: принцип административного судопроизводства, равенство перед законом и судом, субъекты административно-процессуальных отношений.

The relevance of a low level of confidence in the administrative courts by members of the administrative process that characterized different contrast characteristics, including political views, social and economic status, gender, age, nationality, etc., leads to explore the features of the principle of equality before the law and the courts in administrative proceedings.

The principle of equality before the law and the court as a common law doctrine, and as a principle of administrative justice, as well as problems related to the diversity status of subjects participating in the administrative process, were investigated in the works of V.B. Aver`yanov, R.O. Kuibida, O.N. Panchenko, A. Pasenyuk, V.I. Shishkin, M. Zwick and other scientists. However, there is no conceptual theoretical works that detailed analysis of distinctive features members of administrative procedural relations such as political views, social and property status, and the impact on decision-making by administrative courts above distinctive features.

The purpose of this writing is to identify, describe and analyze some problems of application of administrative courts of the principle of equality before the law and the courts in disputes, as well as characteristics of individual distinctive features that are inherent members of administrative disputes.

The process of examining each administrative case Administrative Court should be regarded as a kind of relationship. Relationships – a public relation which is a legal expression of actual social relationships where one party based on the rule of law requires that the other party perform an action or refraining from them, and the other party must fulfill these requirements, which are protected by the state [1, p. 335]. Relationships can be classified into specific types according to various criteria, including: the subject of legal regulation, the functional purpose. There is also substantive and procedural legal relationship. With regard to procedural and legal relationships characteristic of them is that they implement the rules of procedural law and establish a procedure for the rights and obligations of entities, the procedure for resolving legal cases [1, p. 335]. The structure includes legal entities, objects, relationships and their legal meaning (the rights and obligations of the parties) [1, p. 336].

The analysis of the provisions of the CSSA, the subjects of administrative and legal proceedings are: 1) a judge or panel of judges, 2) persons involved in the case, which include the parties (plaintiff and defendant), third parties, counsel and third parties, and 3) other persons who are members of the administrative process, ie Secretary of the trial, the registrar, witness, expert, specialist, interpreter.

One of the principles on which the regulation of administrative and legal proceedings, is the principle of equality before the law and the courts, as well as provisions that shall be no privileges or restrictions of rights of the administrative process based on race, color, political, religious and other beliefs, sex, ethnic or social origin, economic status, place of residence, linguistic or other characteristics.

The article is divided into the following distinctive features actors: political views – in disputes about the right to vote, decision or dismissal from the public service, social and economic status – in disputes between members of different social classes and public authorities, gender, belonging to minority – in disputes about taking citizens for public service, its passage, dismissal, a sign of belonging to categories such as immigrants (refugees) – in cases of welfare payments, disputes about the expulsion of foreigners from the territory of Ukraine.

However, the amount allowed by article allows analyzing only those distinctive features actors like political views, as well as social and economic status.

Let us consider what is characterized by differences in political views of participants' litigation in administrative and legal proceedings. Article. 17 CACP relates to the jurisdiction of the administrative courts regarding legal disputes related to the electoral process.

In modern science, the right argues that the judiciary should be completely depoliticized, unlike the legislative and executive branches of government, not only are under the influence of political parties, but they themselves are active political force [2, p. 72-74].

Based on the assertion that the central characteristic of the concept of the state is to look at it as the organization of political power [1, p.78], then we are faced with the question of how depoliticized judiciary and whether it is able to consider the case impartially on the formation and representation other government agencies.

The researchers of the administrative courts believe that litigation is increasingly politicized, especially with regard to compliance with the electoral law, in support of which cited the decision of the Supreme Administrative Court dated 20.02.2010 was, the Supreme Court of Ukraine of 03.12.2004 and 20.01.2005, the representatives some political forces are trying to evaluate these decisions solely political. [3]

While there are no conceptual scientific papers describing the impact of the decisions of administrative courts in cases of political views of their members. However, in active scientific development in the field of political science, constitutional and criminal law at present are problems such as political corruption, in this study, is considered as the main possible cause of violation of the principle of equality before the law and the courts in disputes about the right to vote.

Tsyganov B. notes that political corruption – is an illegitimate use of political actors and public authorities carry their capabilities and powers to obtain personal or group benefits (corruption rent). It is a consequence of defects political regimes, their defects and dysfunctions. This is manifested in the election fraud, illegal removal candidates or parties from taking part in them, the administrative pressure on its course and so on. Contents of political corruption defined two objectives: 1) personal or collective enrichment, 2) getting or expansion of political power. This widely used by political support and loyalty (vote buying, favoritism, manipulation controls, supervisory, law enforcement functions to ensure their impunity, etc.). Particularly devastating are the effects of political corruption in the judiciary and security sector. Courts, law enforcement agencies are serving corrupt system component. Leveled sense of justice. [4]

Melnyk said that getting power (political influence) in a corrupt way is mainly in the formation of government and other political structures of the state through redistribution of power in the adoption of legal acts, misappropriation of state power through the appointment of «their» People building a system of government on the basis of personal loyalty and political affiliation. In the executive branch it occurs primarily through fees for post appointment only (mostly) for political and personal reasons. During the formation of the judicial branch is with the selection of candidates for office. Politicization of this process is a prerequisite for increasing the impact of political corruption on the formation of the judiciary. There is a power producing the most power. In this way the election result sets are not people, and the government – the last stage of his capture it formed the electoral commission and the electoral process, he provided all state and public institutions, including the security forces, which the government has an impact [5, p. 67-68].

According to the Prosecutor General of Ukraine, during the election campaign in Ukraine MPs 28 October 2012 the courts were filed 5373 lawsuits, including the results of examination by courts granted 2136. Most of them are related to updating voter lists, 134 – appeal against the actions of election commissions counting [6].

To analyze the specific decisions of the administrative courts, which would be exactly traced their political motivation, is extremely problematic. Therefore, this study examines the assessment of the electoral process on the quality of justice in the administrative courts in electoral disputes.

For example, in the newspaper «Voice of Ukraine» was published that the results of elections for national deputies, held on 28.10.2012, the Central Election Commission of Ukraine (hereinafter – CEC) recognized only 220 deputies elected by majority districts instead of 225 because five single-member districts the will is not recognized. CEC Chairman said that it was unacceptable solution AAUs to defeat at least one citizen the right to vote, so he asked the High Council of Justice to hear the case on violation of the oath of judges, based on the decisions of the Electoral Commission (hereinafter – DEC) № 94 invalidated the vote in 27 stations [7]. This is a situation where the period 02.11.2012 – 03.11.2012, the decision of the judge of the Kyiv Administrative Court of Appeal was satisfied claims candidate from the ruling party to 27 polling stations DEC number 94 on the recognition of their illegal actions. These decisions of judges as grounds for making number 94 DEC decision to invalidate the vote, the validity of which has been recognized by the administrative courts. [8] As a result, promoted by the opposition party, which gained as a result of counting the vast number of them, the victory gave the pro-government candidate, because it counted 30,000 votes, CEC appealed to the Supreme Council of Ukraine of application for re-election [9], and the members of the electoral process without recognizing the legitimate and impartial decisions of administrative judges appealed to the Supreme Judicial Council to demand judicial review of acts against the oath of a judge. [10]

Another example accusations of administrative courts in bias against opposition forces can result announced on an open appeal deputy deputy of Ukraine to the President of Ukraine in September 2012, which stated that the CEC officials were made illegal refusal the candidates for deputies of their registration, mainly opposition. According to the applicant, the decisions of the administrative courts such illegal activities is recognized legitimate, although there are decisions of the courts themselves been recognized that the actions of the Commission in similar circumstances, when the plaintiffs were pro-government candidates. [11]

It should be noted that already exists practice of the European Court of Human Rights on voting rights (right to «Kovacs v. Ukraine») [12], which found violations of the right

candidate for deputies to be elected Ukraine due to arbitrary interference with government officials in the electoral process and recognized that the Ukrainian national courts unreasonably was reserved the plaintiff's right to be elected. Arbitrary intervention consisted of illegal annulment of voting on 4 polling stations in which applicant in 2002 received more votes than his opponent, but the cancellation of the vote at the polls led directly to the recognition of the opponent, not the applicant, the winner of the election.

Thus, these examples give reason to consider political views as a hallmark for which there exists the possibility of discrimination or unequal treatment to the members of the administrative court disputes.

Regarding characteristics differences of social and economic status of participants' litigation in administrative and legal proceedings must first define the concepts of «social condition of people and property.» Characteristics of the mentioned concepts are the subject of research, and above all – social. Social structure in the narrow sense are social classes, social groups and strata, ie a group of people that have their own social position in society, occupy a special place in the system of social production, play a role in the social organization of labor, for example: workers, farmers, doctors, teachers and others. At the same social science uses the notion of «social stratification», which places the social strata (strata) vertically based on income level: poor occupy the lowest place, more or less well-off groups – high and rich – the top. From the beginning of perestroika and still the domestic social structure have three classes, six killings and two permanent establishments: criminal and marginal [13].

In the post-Soviet period, and so far sociologists define sharp social differentiation and polarization of the population [14, 10-11]. For the first time at an official level in the Address by the President of Ukraine from 06.03.01 «On the domestic and foreign situation of Ukraine in 2000» it was recognized that Ukraine is one of a high degree of inequality of the population by income and consumption. The category of the poor in the Ukraine was classified 27.8% of the population (13.7 million), and destitute – 14.2% [15]. In 2002 the President of Ukraine was recognized the need to implement policies of the middle class, membership of which is determined by the following criteria: property (especially in housing, land, means of production), medium income, vocational and educational training and social status, identifying himself as a representative class [16]. The problem of poverty in Ukraine gained official recognition after approval by the President of Ukraine on August 15, 2001 N 637 Poverty Reduction Strategy.

Commissioner of the Parliament of Ukraine on Human Rights in 2008, it was recognized that the basis of poverty in Ukraine (where there developed industry and agriculture, a high level of education) is primarily human rights of most members of the public to have access to resources to national wealth. [17]

Can differences in social and economic status of participants' dispute matter for the judge in deciding a dispute?

Consider the impact of social and economic aspects of the process in the context of the personality of the judge. Scientists note that although judicial procedure has a very large supine formalization, but applies rules a person, a person who empowerment consciousness and will, allowing you to talk about direct depends between personal qualities judge and efficiency of the judiciary. The structure of individual judges selected four major substructures: 1) substructure direction (vision, values, social guidance, motivation, etc.), that is, due to the judge's sense of justice, and 2) substructure of experience, including knowledge, skills, habits, etc., and 3) substructure properties associated with mental processes that occur in cognitive processes, mental, emotional state, and 4) substructure temperament and other biologically-related properties [18, p. 202-203]. For this study a more important consideration is sound substructure individual characteristics of mental processes judges, consisting of intellectual, cognitive, volitional and emotional elements.

Thus, the impact on the judge social and economic status of participants of the dispute depends to some extent on the moral and volitional qualities of a judge, however, in the opinion of the author, they are not critical decision-making in certain administrative matters. Although, as illustrated by studies generally wealthy people with psychologically accepted as relatively healthy, happy and well-adapted and the poor – both unsuitable and unhappy. Therefore, financial status, economic status affect the image of the personality in the eyes of others. Money – it's not just buying a thing, but the acquisition of personal status, prestige, career and more. Researchers role of monetary relations in changing the consciousness and behavior of people say that in today's society money do not only economic but also social and cultural functions. They are used for other values, but the modern era of cultural turns them into an end in itself, they become absolute value. According to many studies, wages and economic situation of the individual at all affect the perception of the human person. [19]

As usvidomlyuvalnoho judge the impact of social and economic status of the parties to the process of making their judgment, it can be seen in the context of loss of impartiality of a judge in exchange for property benefits that generally fall under the term «corruption» in this study is considered a major potential causes violation of equality before the law and the courts. V.M. Trepak considered corruption in the courts as a matter of research, giving them distinguishes forensic characterization and their causes in the courts. Among the factors that determines the «judicial» corruption, it accounted by such inherent features of our judicial system realities as chronic underfunding of the judiciary and a large number of vacancies in the courts, leading to delays in the process, by acceleration or braking which the parties may be willing to «pay» . Because of the small salary of a judge may be tempted on illegal remuneration offered by the parties or their advocates (lawyers). Judges may come under the influence of powerful individuals in matters relating to career judges, particularly in cases involving cases of pecuniary or political interest. Judges may offer bribe on the condition that in case of failure of the judge or members of his family may be subjected to physical violence or removed from office. Prerequisites for bribery in the judiciary create a biased distribution of cases, random assignment date of the case. Corruption contributes to transparent judicial system, in which both sides of the process, and the public cannot understand the essence of what is happening. In particular, due to the complexity and ambiguity of the application of certain procedural rules, legal education, low population and lack of affordable legal assistance [20, p.18-20]. The researcher concludes that the basis of the concept of «corruption» is bribery. However, in addition, agrees with A.N. Volobueva that the difference between these concepts is that in the course of official bribery is a member of a particular state or social system in which it has occupied a certain position. Is committing corrupt actions officer, regularly receiving benefits from illegal activities is included in the organized system that makes it impossible to unilaterally refuse to take on the role of [21, p. 130-132].

According to a survey of people who had experience going to court in 2009, the courts perceive fully or partially corrupted: 77% of surveyed companies, 85% of lawyers, 86% of citizens and a third suspected the opposite direction in an attempt to influence through informal judgment [22].

Thus, the above gives reason to consider social and economic status of the parties as hallmark in which there is a possibility discriminatory or unequal treatment to the members of the administrative court disputes.

At the conclusion can be summarized that the consolidation of the principle of equality before the law and the courts in cash due to the fact that the legislature did not consider the case that the effectiveness of the mentioned principle can affect different signs, which are different members of the ad-

ministrative process. This article attempts to analyze the interaction of different signs subjects such as political opinions, property and social status, the nature of the administrative and legal proceedings between them.

Issues that relates to further study the principle of equality before the law and the courts, is connected with a detailed analysis of different signs subjects of the administrative process, which was mentioned in this article as gender, membership of a national minority – in disputes over decision of citizens to public service, his passing, release, sign a membership website dispute to categories such as immigrants (refugees) – in cases of welfare payments, disputes on expulsion of aliens from the territory of Ukraine; characteristic problems of independence and impartiality of judges.

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КЛАСИФІКАЦІЯ ПРИНЦИПІВ АДМІНІСТРАТИВНОГО ПРАВА: СУЧАСНИЙ ПОГЛЯД В АДМІНІСТРАТИВНО-ПРАВОВІЙ ДОКТРИНІ

CLASSIFICATION OF PRINCIPLES OF ADMINISTRATIVE LAW: A MODERN VIEW OF THE ADMINISTRATIVE-LEGAL DOCTRINE

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Стаття присвячена аналізу наукових позицій провідних вчених-адміністративістів щодо класифікації принципів адміністративного права, в тому числі й у сучасній доктрині. Аналіз змісту таких позицій відстежити поетапну зміну підходів до класифікації, і визначити, яким чином це відбувається в сучасній адміністративно-правовій доктрині. Звернуто увагу на актуальність і важливість дослідження класифікації принципів адміністративного права з урахуванням кардинального перегляду предмету, сутності і змісту останнього.

Ключові слова: адміністративне право, доктрина, засади, ідеї, категорія, класифікація, класифікація принципів, принципи, принципи адміністративного права.