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THE ESSENCE OF ADMINISTRATIVE AND DELICT PROCEEDINGS IN THE SYSTEM ADMINISTRATIVE AND PROCESSUAL LAW OF UKRAINE

The article deals with the scientific views on the essence of administrative and procedural rules in the system of administrative-procedural law of Ukraine from the point of view of modern administrative procedural law in the context of adapting national legislation to the requirements of the European Union. The analysis of cases of administrative offenses was analyzed, since they have a dual procedural legal nature, and they are executed by the court in the form of administrative procedure and administrative bodies - in the form of administrative proceedings jurisdiction.

Key words: administrative process; administrative delinquent proceedings; administrative-procedural law; administrative jurisdiction.

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СУЩНОСТЬ АДМИНИСТРАТИВНО-ДЕЛИКТНОГО ПРОИЗВОДСТВА В СИСТЕМЕ АДМИНИСТРАТИВНО-ПРОЦЕССУАЛЬНОГО ПРАВА УКРАИНЫ

В статье рассматриваются научные взгляды на сущность административно-деликтного производства в системе административно-процессуального права Украины с позиции современного административного процессуального права в контексте адаптации национального законодательства к требованиям Европейского Союза. Проанализированы процессуальные формы отдельных административных производств и производств по делам об административных правонарушениях, которые имеют двойную процессуально-правовую природу, и осуществляется судом в форме административного судопроизводства и административными органами – в процессуальной форме административной юрисдикции.

Ключевые слова: административный процесс; административно-деликтное производства; административно-процессуальное право; административная юрисдикция.

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СУТНІСТЬ АДМІНІСТРАТИВНО-ДЕЛІКТНОГО ПРОВАДЖЕННЯ В СИСТЕМІ АДМІНІСТРАТИВНО-ПРОЦЕСУАЛЬНОГО ПРАВА УКРАЇНИ

У статті розглянуто наукові погляди на сутність адміністративно-деліктного провадження в системі адміністративно-процесуального права України з позиції сучасного адміністративного процесуального права у контексті адаптації національного законодавства до вимог Європейського Союзу. Проаналізовано процесуальні форми окремих адміністративних проваджень та проваджень у справах про адміністративні правопорушення, які мають подвійну процесуально-правову природу та здійснюються судом у формі адміністративного судочинства й адміністративними органами – в процесуальній формі адміністративної юрисдикції.

Ключові слова: адміністративний процес; адміністративно-деліктне провадження; адміністративно-процесуальне право; адміністративна юрисдикція.

Formulation of the problem. Continued discussions in the legal science on the content and structure of the administrative process have not yet led to the development of the same theoretical explanation of this legal phenomenon. Integrated understanding of the administrative process, which contains different types of administrative proceedings, is recognized by a large proportion of the scientists which deal with administrative law. The main result of research and scientific disputes on this issue is appropriate to recognize the very fact of the active development of the administrative process and putting the question of the administrative process as a branch of law. The administrative process is a legal reality that is conceptually not denied by representatives of different areas of scientific legal knowledge.

State of exploration of the problem. The scientists which contributed significantly to the study of the problems of the administrative process are: V. Averyanov, Y. Bytiak, V. Garaschuk, I. Golosnichenko, E. Dodin, V. Zuy, L. Koval, I. Koliushko, V. Kolpakov, T. Kolomoets, O. Kuzmenko, I. Martyanov, O. Ostapenko, I. Pakhomov, G. Stetsenko, A. Khomenko, S. Chikurliy and others. At the same time, adaptation of the national legislation of Ukraine to the requirements of the EU requires a scientific analysis of the essence of administrative and delict proceedings in the system of administrative-procedural law of Ukraine.

The purpose of the article is to research the essence of administrative and delict proceedings in the system of administrative and procedural law of Ukraine.

Presentation of main material. The intensification of the scientific research of the administrative process began in the 60's of the twentieth century. At this time, two conceptions of the administrative process raised, which are traditionally opposed. Jurisdictional concept (narrow interpretation of the administrative process), the most scientific statement of which is reflected in I. Pakhomov textbook "Soviet administrative law", and the management concept (broad interpretation of the administrative process), which was substantiated in the works of V. Tsvetkov [1; 2].

The concept of narrow understanding of the administrative process (jurisdictional), proposed by E. Dodin, defined the process as a statutory activity for resolving disputes arising between parties not under official jurisdiction and the application of administrative coercive measures [3].

Representatives of the jurisdiction concept determined the administrative process, comparing its essence with the existing traditional processes: civil and criminal. The jurisdictional nature of these processes was taken as the basis, given that the administrative process was submitted by them as a procedure for resolving disputes that affect the competence of the authorities and as a procedure for the application of administrative coercion.

As T. Kolomoets stated revealing the genesis of the administrative process in Ukrainian scientific thought, a broad interpretation of the administrative process were formulated in the works of O. Yakub, Y. Bytiak, V. Zuy, L. Kovaly, V. Shkarupy, N. Salischeva and others who wrote that the administrative process in the broad sense is executive and administrative activity of state administration bodies but administrative process in the narrow sense is the activity of public administration bodies for the consideration of individual subordinate cases [4, p. 155].

A retrospective view of the accumulated by legal science material, a comparison of research of Ukrainian scientists with the results of modern studies in the field of proceedings on administrative violations allowed a number of conclusions, the most important of which are:

– the concept, signs, the concept of the development of the administrative process and the conduct of cases on administrative offenses in particular, other conclusions, which form the basis of the modern understanding of this category, were formulated up to 90 years of the twentieth century and are now developing in the context of adaptation of national legislation to the requirements of administrative law, which is used in the member states of the European Union;

– for the scientific doctrines that existed prior to the acquisition of Ukraine's independence in the field of administrative law, the dominance of the normative concept was characteristic, which gave rise to the persuasion of the researcher in the absolute sufficiency of legal means to resolve any issues that arise, including in the field of proceedings about administrative violations. The thesis is based on the basis that in the event of a conflict between the requirements of a legal provision and another social norm, the priority of the first one is guaranteed. Administration science with its orientation to the state of the normative component was perceived as not precise science. However, in fact, the common sense in normative regulation, to which any researcher of this sphere strives, is a category specifically historical, which depends not only on the subject of legal regulation, but also on the system of values characteristic of the environment in which management is carried out.

From the beginning of the XXI century, scientists gave a generalized description of the administrative process, recognizing the right to existence of two concepts: jurisdictional and managerial. However, different opinions were expressed not only on the content of the administrative process, but also on the identity of the concepts of "process" and "proceedings". Representatives of the jurisdictional concept believed that the category of "proceedings" is wider than the category "process", it covers almost all aspects of the activity of state administration.

Criticizing this position, Y. Bytiak noted that the process can be compared with the proceeding; the process is a form of activity, and the process is the content of this activity. In other words, the process is expressed in the implementation of the proceedings [5]. In substantiating the determinism of these categories, O. Kuzmenko defines the process as the amount of proceedings, the proceedings - as part of the process.

The legal literature proposes a variant of the division of the proceedings: the administrative process is presented as a complex of jurisdictional and procedural proceedings. Procedural proceedings include

licensing, permitting, registration, with regard to the adoption of legal acts of management. Types of jurisdictional proceedings can be: proceedings in cases of administrative offenses, disciplinary proceedings, proceedings for appeals (complaints, applications, proposals).

At the same time, M. Sambor notes that an important aspect of the problem of determining the place of administrative and delict law in the system of law are issues related to the fact that administrative and delict law combines the rules of material and procedural law, which already indicates the impossibility of its identification with one institute within one branch of law [6, p. 102].

In the works of the scientists that work in the field of administrative law (O. Bandurka, M. Tishchenko, S. Grin'ko, T. Gurzhy, O. Kuzmenko, G. Lisko, A. Lyalka, D. Movchan, T. Moskalenko, O. Ostapenko, J. Ponomariov, V. Tymoschuk, G. Tkach) various types of administrative proceedings were identified, which at times do not coincide either by definition or by content [7]. The need to systematize administrative proceedings in the structure of the administrative process is due to their different orientation in terms of content and tasks.

At the same time, as D. Lukianets notes, the procedure for bringing to administrative responsibility is executed in the form of administrative proceedings with all the features inherent to him. The idea of the role of administrative responsibility in a modern society is given by its three main concepts: managerial, public service and human rights. In accordance with the management concept, administrative liability is a specific means of implementing the compulsory method of public administration. In the context of a public service concept, administrative liability can act as a means of ensuring the fulfillment of obligations arising from contracts and other relationships that do not belong to public administration. From the point of view of the human rights concept, administrative responsibility is an element of the mechanism of protection of rights and freedoms of the people [9, p. 32].

Representatives of the management concept offer to classify administrative proceedings according to the nature of individual-specific cases. At the edge of the administrative process they include the legislative consolidation of proceedings: rulemaking; according to citizens' appeals; regarding administrative-legal disputes and complaints; in cases of encouragement and rewarding, in cases of administrative offenses; in disciplinary cases; proceedings on granting rights (registration, licensing) and enforcement proceedings. Criticizing this approach, scientists point out that the proposed design contains simplicity of perception, but the confusion consists in the fact that the administrative process is divided into three types of proceedings, which simultaneously include a whole series of proceedings.

O. Kohut, analyzing the correlation of the administrative process with administrative proceedings, the content and classification of the latter, concluded that taking into account the close connection between the administrative process and the public administration, it is necessary to separate administrative proceedings in the content of administrative and procedural activity into: procedural (connected with the activity of law enforcement, in which the implementation of the disposition of the relevant administrative-legal norm occurs) and jurisdictional (related to the law enforcement aimed at implementing the sanction of the relevant norm) of proceedings [9, p. 3].

Based on the existing versions of the classifications of administrative proceedings, O. Kuzmenko and T. Gurzhy offer a compromise version of the types of proceedings and include practically all previously proposed proceedings in the theory of administrative law proceedings. At the same time, the authors believe that the structure may include other administrative proceedings, new emerging in the process of developing the doctrine of administrative law and process.

At the same time, the scientific substantiation and determination of the place of administrative and delict proceedings in the structure of the administrative process is important. This, in our opinion, necessitates a more detailed discussion of the issues of structuring the administrative process. From the point of view of V. Timashov's research, the criterion for structuring the administrative process can be the content of functions performed by the administrative authorities, which sees the law-enforcement activity of the state in two directions: both administrative and as a judicial [10]. In the structure of the administrative process distinguish two processes: administrative and regulatory and administrative-security. At the same time, the administrative and regulatory process includes proceedings granting

(licensing, permitting, incentive), examination-competitive, expert-certifying. The administrative-security process contains administrative-compulsory and administrative-conflict proceedings.

There are other points of view, for example, to distinguish in the administrative process three types of processes (administrative law-making, administrative-, administrative-jurisdictional), which, in turn, include, respectively, law-making (in relation to the adoption of normative acts by executive authorities), right-wing (privatization, incentive, registration, attestation) and jurisdictional (for appeals, cases on administrative violations, disciplinary, executive) proceedings. In the legal literature, there is a proposal on the appropriateness of the division of the administrative process into three types of processes: administrative, administrative, administrative, administrative and judicial.

The considered judgments on the content of the administrative process are oriented on the inclusion in the administrative process of several types of processes: administrative and administrative (administrative law-making, administrative-law-enduing, operational and administrative), administrative-jurisdictional (administrative-security), administrative-judicial (administrative, administrative justice, administrative justice proceeding), which in turn include a number of administrative proceedings.

In our view, different administrative proceedings must be systematized in the structure of the administrative process.

In turn, we note that with all the diversity of classifications of proceedings in the structure of the administrative process, the recognition of the existence of proceedings in cases of administrative offenses as an integral part of the administrative and jurisdictional process is unchanged. In addition, the detailed and exhaustive, in our opinion, research of numerous publications in the legal literature of recent decades, was conducted in A. Tarasyuk's study “The Characteristics of Administrative Justice in the Works of Leading Scientists” [11].

Proceedings in cases of administrative offenses (administrative delict proceedings) are an integral part of the administrative and jurisdictional process, and, consequently, have all the features of jurisdictional proceedings. First of all, in the disclosure of the characteristics of this proceeding, let's dwell on its conceptual definition. In scientific researches from the beginning of this century there are such legal categories as: administrative and delict law, administrative and delict process, administrative and delict procedure, administrative and delict proceedings and administrative and delict litigation.

It should be noted that a large part of the scholars of the administration share the scientific views of O. Ostapenko and M. Zavalny with respect to certain equivalence of the concepts of “administrative and delict proceedings” and “proceedings in cases of administrative offenses” [12; 13, p.7].

The term “delict” comes from the Latin. delictum – offense, guilt. The phrase “administrative-delict” was introduced into the scientific circle even before independence. Prominent Ukrainian scholars V. Remnyov and E. Dodin used this terminology for relations arising in connection with the commission of administrative offenses [14; 15]. V. Olifer points out to the significant contribution of Ukrainian scholars to the development of administrative delictology, the application of the term “delict” is justified, since it facilitates the perception of the terminological characteristics of legal concepts and categories [16, p. 524–525].

The foregoing makes it possible to conclude that administrative proceedings are administrative delict proceedings. In turn, administrative delict proceedings in certain spheres (for example, customs), possessing all the signs of administrative delict, do not go beyond the scope of regulation of the security legal relationship in a separate sphere, but it has the characteristic features and specificities of legal regulation that characterizes it as independent form of administrative and delict proceedings. Important in determining the essence of administrative and delict proceedings is the question of determining the legal nature of this proceeding.

The tangible peculiarities of administrative and delict proceedings are now the application of unified rules of the KUpAP (Code of administrative delicts of Ukraine) by judicial authorities and administrative authorities. According to the current KUpAP, the right to draw up protocols is only authorized to those persons of the corresponding bodies, which number 98 [17, p. 25]. According to M. Sambor, there are two problems that need to be differentiated. This is a problem of codification of the rules of administrative responsibility and the problem of administrative justice [18]. This is a problem of codification of the rules of administrative responsibility and the problem of administrative justice [18].

Considering the problem of understanding the essence of administrative and delinquent proceedings we should pay attention to differences in the perception of scientists of its content. V. Averyanov, administrative and delict proceedings deduces from the limits of administrative legal proceedings, differentiating between the consideration of cases on administrative violations and the relations of legal protection of the rights and freedoms of individuals and legal entities. The supporter of such a position is S. Vasilkov, who denies the possibility of considering cases arising from administrative violations, in the procedure of administrative legal proceedings [19, p. 178]. The reasons are the absence in the legislation on administrative violations of the real system of guarantees of procedural rights and interests of the "weakness", and not the development of legal instruments that are specific to judicial proceedings.

At the same time, in the science of administrative law, a number of scholars identify certain varieties of administrative affairs. At the same time, cases of administrative offenses are referred to administrative cases, which are considered by courts within the framework of administrative proceedings, and consider that this is activity of judges, which is carried out under special rules of proceedings, based on the principles inherent in administrative proceedings.

According to Y. Sorochko, administrative proceedings include two types of judicial proceedings: judicial review of administrative cases, completely or partially resolved by administrative and public authorities, and direct enforcement within the limits of administrative cases initiated by courts [20]. With this statement, it is quite possible to agree, since administrative proceedings are carried out in various procedural forms. Administrative judicial proceedings combine the activities of bringing persons to administrative responsibility and activities in resolving administrative and legal disputes. The latter may include review in the order of judicial control of administrative cases, the list of which is enshrined in the Code of administrative delicts of Ukraine. Accordingly, the consideration by the courts of cases of administrative offenses is a specific type of administrative proceedings.

In general, the reform of administrative legislation should be carried out by optimizing the complex mechanism of application of administrative penalties, bringing the legal norms in line with the provisions of the Constitution and the laws in force. This, first of all, will ensure an adequate level of compliance by the state through its authorized bodies, the declared rights and freedoms of citizens and legal entities, and, on the other hand, will ensure the effective application of legal rules to offenders [21, p. 8].

Conclusions. Summarizing the foregoing we can note that administrative delict proceedings have a dual procedural and legal nature and is carried out by the court in the form of administrative legal proceedings and administrative bodies – in the procedural form of administrative jurisdiction. By delineating these two types of legal proceedings, we note that administrative delinquency, as a rule, is defined as the activity of authorized officials of state and non-state bodies (on the basis of delegated authority) for the consideration of cases of administrative offenses and the application of measures of administrative coercive enforcement.

At the same time, the procedural form is an attributive feature of administrative and delict proceedings. Considering the characteristics of administrative delict proceedings and outlining the functions of this proceeding, one should speak of a real hierarchy between the notion of law and administrative jurisdiction, which suggests that functions of administrative jurisdiction are derived from functions of law.

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