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SUBJECTS OF ADMINISTRATIVE JURISDICTION: SOME ISSUES OF LEGAL STATUS

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The scientific article is devoted to the study of the legal status of subjects of administrative proceedings. The article examines scientific and legal approaches to the definition of the concept of “subject of administrative proceedings”, analyzes the criteria for the classification of subjects in administrative proceedings. The legal status of subjects who are participants in administrative proceedings depends directly on its legislative definition, but the mechanisms of its implementation are related to the functional features of the subjects of judicial review of administrative cases. The establishment of the system of subjects of administrative procedural law is ensured by the corresponding systemic legal regulation in the legislation. In the science of national administrative law, there are different views on the system of subjects of administrative law and administrative proceedings. It is emphasized that the participants in the administrative process according to the instructions of the CAS of Ukraine, depending on their interest, are divided into persons who conduct the judicial process (directly the administrative court), participate in the case (parties, third parties, representatives of the parties and third parties) and other participants (witness, expert, specialist, etc.). Also, the system of subjects of administrative proceedings can be divided into individual and collective subjects.

The most logical, in our opinion, is the classification of all subjects of administrative procedural legal relations into three groups: courts that administer justice; persons participating in the case; persons who assist in the administration of justice. It was concluded that in each of the listed cases, the administrative-legal status of an individual subject as a participant in administrative proceedings has its own specificity, due to the functional affiliation performed by the subject during the implementation of administrative proceedings.

Key words: subjects; administrative proceedings; courts; principles; purpose; task; protection of rights.

Formulation of the problem. An important issue in the structure of administrative-procedural relations is the legal status and procedural position of subjects of administrative proceedings. The study of this issue will allow to determine the role of each subject, who, according to national legislation, have the status of participants in the legal process.

The status of the subjects of administrative proceedings depends directly on its legislative definition, but its implementation is connected with active or passive forms of performance of the functions of all parties to the judicial review of administrative cases [1, p. 2].

Therefore, the issue of the status of participants in administrative proceedings is important for achieving a legal result, which is provided for by the legal norm and does not lose its relevance, taking into account the need for constant improvement of mechanisms in the light of the development of administrative proceedings.

Analysis of the study of the problem. The issues of the status of subjects of administrative proceedings were to some extent covered in the works of L. V. Arestova, N. O. Armash, D. O. Bezzubov, B. V. Budzyka, V. V. Golovchenko, I. I. Ditkevich, O. M., Dubenko, V. S. Zayatsia, V. M. Kotenko, O. S. Ishchuka, A. Yu. Osadchyo, O. V. Skochylas-Pavliv, I. V. Topora, O. V. Shkuropatskyi et al.

However, in their writings, these issues were covered indirectly and require a more thorough analysis.

The article aims to study the peculiarities of legal issues of the status of subjects of administrative proceedings.

Presenting main material. The legal aspects of the definition of subjects of administrative proceedings, generally defined by the Code of Administrative Proceedings of Ukraine (hereinafter referred to as the Code of Administrative Proceedings of Ukraine) [2], provide for the implementation of relevant procedural actions by subjects of administrative proceedings. Such subjects are an administrative court, a person who applies for the protection of his rights, freedoms, legal interests, a defendant, bodies and persons who are authorized by law to protect the rights, freedoms and interests of other persons (prosecutor, Human Rights Commissioner, local authorities self-government, state authorities, individuals and legal entities) and others. Granting these subjects procedural rights and duties means that the legislator has established a specific place for each subject in administrative proceedings, thanks to which the proceedings themselves acquire an orderly, consistent character. At the same time, the legal status of each subject needs improvement. The above refers to clarifying the court's competence, making a distinction with the jurisdiction of commercial courts, in particular in disputes that arise in the field of economic activity with the participation of a subject of power; there is a need to significantly improve the prosecutor's procedural status; the definition of "subject of authority" is unclear. The essence and content of the actual category "subject of administrative proceedings" needs to be elaborated, since its theoretical definition and further consolidation in the current legislation is a legal guarantee of legality in relations regarding the exercise of the right to appeal to an administrative court for protection, as well as the procedures of court proceedings themselves.

To begin with, it is worth considering the concept of "subject" and its definition in the main law on administrative proceedings. The legislator uses this term only in relation to the state power body, local self-government body, their officials or officials, other persons when they exercise powerful management functions based on the legislation, in particular, for the performance of delegated powers, without clarifying the essence of this term. In general, persons involved in the sphere of administrative proceedings are referred to as participants in the administrative process (Chapter 5 of the Civil Procedure Code of Ukraine). And it is necessary to emphasize that the majority of scientists, operating with the concepts of "subject" and "participant" of administrative proceedings, equate them.

Usually, the concept of "subject" (of a process, proceedings, legal relations, judicial proceedings) is revealed through the lexeme "participant" (for example, the subject of knowledge in any process is a complex socially organized system that contains various individuals as its components (bodies, individuals) that are the bearers of information regarding this or that fact, event or carry out its acquisition and transformation into reliable knowledge (evidence) in order to resolve the tasks of administrative

proceedings in accordance with the procedure prescribed by law) and, on the contrary, a “participant” – through “subject” (for example, participants in the process are subjects with a special special procedural legal capacity, which is recognized by the state in a special order [3, p. 110]).

The category “subject of administrative proceedings” includes two components: the legal capacity to acquire status and administrative legal personality, which specifies the subject’s legal status.

The category “subject” is broader in content than the category “participant” in administrative proceedings.

With the application of a broad approach to the category “subject of administrative proceedings”, there is reason to note that any natural or legal entity can be recognized as such a subject. At the same time, in order for such a person to exercise the constitutional right to apply to an administrative court for the protection of his violated rights, freedoms, and legitimate interests, he must have legal opportunities, which are reproduced through administrative procedural legal capacity [4, p. 48].

Therefore, the subject of administrative proceedings is a potential participant in the judicial administrative process, that is, a person who has the opportunity to become the subject of legal relations that will arise during the implementation of administrative proceedings.

An important condition for acquiring the status of a subject of an administrative process is the possession of a person with such a feature as administrative procedural legal personality. It is known that the presence of administrative procedural legal personality is the most important prerequisite for the emergence of legal relations formed during the implementation of administrative proceedings. The analysis of the provisions of the Civil Code of Ukraine gives reason to believe that administrative procedural legal personality is a category that includes administrative procedural legal capacity and administrative procedural legal capacity. These signs are characterized as follows.

Administrative-judicial capacity is the ability of a person to have procedural rights and bear procedural duties, the ability to be the subject of legal relations in the field of administrative justice [5, p. 74].

Administrative-judicial capacity is a person’s ability to exercise the rights provided for by the Civil Code of Ukraine and perform duties as a participant in the judicial administrative process by his own actions. The legal capacity of natural persons is affected by age (as a general rule, it arises from the age of 18) and health (a person can be recognized as incapacitated or with limited legal capacity) [2].

The issue of classification of subjects of administrative proceedings is of great importance for subjects of administrative proceedings. Proceeding from the provisions of the chapter of the CAS of Ukraine, it can be concluded that the legislator divided the subjects of administrative proceedings on the basis of their legal affiliation to the resolution of an administrative case. Taking into account the above, scientists classify subjects of administrative proceedings according to three criteria:

Having analyzed the scientific works of administrative scientists [6, p. 54], several approaches can be distinguished regarding the classification of subjects of administrative proceedings depending on legal aspects.

So, for example, in the writings of V. K. Kolpakov, five groups of subjects of administrative proceedings are distinguished: citizens; executive and administrative bodies and structural parts of their apparatus; associations of citizens and their bodies and bodies of self-organization of the population; civil servants and officials endowed with certain rights and obligations by administrative and procedural norms; other state bodies and their officials [7, p. 284].

The proposed classification is quite broad, but does not sufficiently highlight the functional powers, legal status and role of individual participants in the administrative process.

AND. Ostapenko divides the subjects of administrative proceedings into two groups: 1) individual (citizens, foreign citizens, stateless persons); 2) collective – bodies of executive power, enterprises, institutions and organizations, public associations, state and municipal services [8]. We consider such a division too unclear.

The classification proposed by M. M. Tyshchenko separates the subjects of the administrative process into organizers and participants of administrative proceedings. In turn, he divides the participants into leading subjects, interested persons and persons contributing to the consideration of the case [9, p. 352].

I. B. Koliushko proposed another proposal for the division of subjects of administrative proceedings. According to the legislator, it is appropriate to classify subjects into three groups, according to their roles in the legal process: 1) persons participating in the case (parties, third parties, representatives of the parties and third parties); 2) persons who contribute to the consideration of the case (witnesses, experts, specialists); 3) persons serving the court process (interpreter, secretary of the court session, bailiff). The author believes that such a classification has not only theoretical significance. It simplifies the presentation of normative material and the determination of the legal status of each group of participants [10, p. 159].

In our opinion, the most logical classification is S. T. Honcharuk. Thus, the scientist believes that it is advisable to combine the following categories of subjects in the field of administrative proceedings into three main groups (by distinguishing among them the subject that administers administrative justice – the administrative court) according to the following criteria [11, p. 72]:

– depending on the purpose of participation in administrative proceedings (the presence of a procedural and/or material interest in the results of the judicial procedure):

a) entities that administer administrative justice: local (district) administrative courts, appellate administrative courts.

According to the procedural legislation, the participants in the administrative proceedings include: participants in the case (parties and third parties), representatives, other participants in the judicial process (assistant judge, secretary of the court session, bailiff, witness, expert, legal expert, translator, specialist). It is obvious that the persons who will belong to different groups of participants in administrative proceedings will actually be the bearers of different procedural rights, which require different content of guarantees.

b) entities directly interested in the results of the court procedure (Article 61 of the Civil Procedure Code of Ukraine: persons participating in the case) [2]. They include: entities that become participants in legal relations in the field of administrative proceedings, in order to protect their own rights, freedoms and interests. They have a direct legal interest in the subject of the dispute. Therefore, they are always characterized by the presence of both a material interest in the subject of a public legal dispute and a procedural interest in the results of the case – these are the parties and third parties. Such participants actively influence the course of the process by their actions, contributing to its emergence, movement or termination; entities that become participants in legal relations in the field of administrative proceedings for the purpose of protecting the rights, freedoms and interests of other persons. They are characterized by the presence of a procedural interest in the results of the case, they act on behalf of persons to protect the rights and interests of which a lawsuit has been filed, they are representatives of the parties and third parties, bodies and persons who are authorized by law to protect the rights, freedoms and interests of other persons in court; special subjects: expert, legal expert, translator, specialist – these subjects perform accessory activities during the consideration of an administrative case, they are not empowered to make decisions, but influence the course of the process through their professional activities.

c) entities that contribute to the administration of justice (Article 61 of the Civil Code of Ukraine: persons who are other participants in the administrative process) [2], – the secretary of the court session, the judge's assistant, the court administrator, a witness, an expert, a specialist, a translator. These participants in legal relations do not administer justice, have neither a material interest in the subject of a public legal dispute, nor a procedural interest in the results of the dispute resolution in their favor. They perform procedural actions of an auxiliary nature, which contribute to the administration of justice by the administrative court. Therefore, in the process of exercising their powers, they are interested in the proper course of the judicial process and establishing the objective truth in the case.

The conclusion that the rights, freedoms and interests of private persons (natural and legal entities) in the sphere of public-law relations should be protected in the administrative court against any decisions, actions or inaction of subjects of power is justified.

Subjects of administrative jurisdiction: some issues of legal status

So, having analyzed the types of classifications of subjects of administrative proceedings, it is worth noting that each criterion division, depending on the functional affiliation, gives one or another group of subjects of administrative proceedings its rights and obligations.

The rights of the subject of administrative proceedings as an element of his legal status is a legally guaranteed measure of possible or permissible behavior of a person during his participation in administrative proceedings, which is established to ensure the private interests of the person, on the one hand, and to achieve the goal of administrative proceedings, on the other.

Taking into account the definition of the concept of “subject” of administrative proceedings, it can be argued that the set of general procedural rights inherent to a participant in administrative proceedings regardless of his functional role in the judicial process and special procedural rights inherent to a specific participant will form a single element its special legal status within the administrative procedural law. It should be noted that procedural rights do not affect the possibility of using other rights granted to a person.

As for the procedural rights of subjects in administrative proceedings, they can be classified into general and special, which are mediated by the specific legal position of the participant in the case.

The general procedural rights of subjects include the following:

1) the right to get acquainted with the case materials and the right to take the necessary actions for this, for example, making extracts and copies of the case materials, receiving copies of court decisions;

2) the right to actively participate in the consideration of an administrative case through the powers of: submission of evidence and participation in the examination of evidence, participation in court sessions, unless otherwise specified by law, to ask questions of other participants in the case, as well as witnesses, experts, specialists;

3) the right to submit statements and motions, to provide explanations to the court, to state their arguments and reasoning regarding issues that arise during the trial, as well as to provide objections to statements, motions, arguments, and reasoning of other persons;

4) the right to get acquainted with the protocol of the court session, the recording of the recording of the court session by technical means, which is accompanied by the possibility to make copies of them, to submit written comments regarding their incorrectness or incompleteness;

5) the right to appeal court decisions in cases defined by law;

6) the right to use other procedural rights [12, p. 208].

Among the special procedural rights of subjects in administrative proceedings, which are indirectly determined by their legal status, the following can be singled out: a) the right of the plaintiff and third parties who assert independent claims regarding the subject of the dispute at any stage of the judicial process to withdraw from the lawsuit (Part 1 of Article 47 and Part 1 of Article 51 of the Civil Code of Ukraine); b) the right of the claimant and third parties who make independent claims regarding the subject of the dispute to change the subject or grounds of the claim, increase or decrease the size of the claims by submitting a written statement (Part 1 of Article 47, Part 1 of Article 51 of the Civil Code of Ukraine); c) the right of the defendant to recognize the claim in full or in part, to file a response to the claim (Part 4 of Article 47 of the Civil Procedure Code of Ukraine); d) the right of the defendant, who is not a subject of official powers, to present a counterclaim (Part 8 of Article 47 of the Civil Code of Ukraine) and, in established cases, to claim compensation for legal costs incurred by him as a result of the plaintiff's unjustified actions (Part 8 Article 48 of the Civil Code of Ukraine); e) the right of the parties to achieve reconciliation at any stage of the judicial process (Part 5 of Article 47 of the Civil Procedure Code of Ukraine) [2].

As for the procedural rights of other participants in the case of administrative proceedings, their essence and scope depend on the legal position of another participant in the case (witness, expert, legal expert, translator, specialist) and the goal of normative consolidation of this or that right for a specific subject.

Conclusions. Therefore, administrative proceedings are characterized by a wide range of subjects of administrative-procedural relations. It is expedient to classify the system of subjects of administrative proceedings into three groups: subjects that administer administrative justice; subjects directly interested in the results of the court procedure; entities that contribute to the implementation of justice. The legal status of each individual subject of administrative justice is determined depending on its functional affiliation to the judicial process, and each subject is also endowed with a certain range of rights and obligations.

The importance and wide range of social relations within which the procedural rights of the subjects of administrative proceedings are implemented and the development of the elements of the mechanism for ensuring these rights mediate the need for further research into this issue.

REFERENCES

1. Bachun O. V. (2010). *Praovyi status subiektiv administratyvnoho sudochynstva* [Legal status of subjects of administrative proceedings]: Doctor's thesis. Sumy: SumDU. 24 p. [in Ukrainian].
2. *Kodeks administratyvnoho sudochynstva Ukrainy* (2005, July, 06) No. 2747-IV [Code of Administrative Procedure of Ukraine]. URL: <https://zakon.rada.gov.ua/laws/show/2747-15>.
3. Skakun O. F. (2004). *Teoriia derzhavy i prava* [Theory of the state and law]. Kh.: Konsum. 656 p. [in Ukrainian].
4. Zheltobriukh I. L. (2019). *Krytychnyi analiz suchasnoi naukovoï literatury shchodo administratyvno-protseusualnoho statusu uchasnykiv administratyvnoho sudochynstva* [Critical analysis of modern scientific literature on the administrative-procedural status of participants in administrative proceedings]. *Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu*. Serii : Yurysprudentsiia. Vyp. 39. Pp. 47–50 [in Ukrainian].
5. Tokmilova L. M. (2019). *Shchodo vyznachennia protseusualnykh prav uchasnykiv administratyvnoho sudochynstva* [Regarding the definition of procedural rights of participants in administrative proceedings]. *Prykarpatskyi yurydychnyi visnyk*. Vyp. 2(27). Tom 2. P. 73–76 [in Ukrainian].
6. Skochyliias-Pavliv O. V., Sydor N. T. (2021). *Pidkhody do klasyfikatsii subiektiv administratyvnoho sudochynstva v Ukraini*. [Approaches to the classification of subjects of administrative proceedings in Ukraine] *Yevropeiski perspektyvy*. No. 1. Pp. 53–59 [in Ukrainian].
7. Kolpakov V. K., Kuzmenko O. V., Pastukh I. D., Sushchenko V. D. [ta in.] (2013). *Kurs administratyvnoho prava Ukrainy: pidruchnyk* [Course of administrative law of Ukraine: a textbook]. Kyiv: Yurinkom Inter, 872 p. [in Ukrainian].
8. Ostapenko T. A. (2011, July 16). *Subiekty administratyvnoho sudochynstva Ukrainy* [Subjects of administrative proceedings of Ukraine]. *Suchasnyi stan ta perspektyvy rozvytku ukrainskoi pravovoi systemy: Vseukrainska konferentsiia*. Lviv: Zakhidnoukrainska orhanizatsiia "Tsentri pravnychkh initsiatyv". T. II. URL: <http://www.court.gov.Ua/sud5024/9/39/> [in Ukrainian].
9. Tyshchenko N. M. (2005) *Administratyvno-protseusualnyi status hromadianyna Ukrainy: problemy teorii na shliakhu yoho vdoskonalennia* [Administrative-procedural status of a citizen of Ukraine: theoretical problems on the way to its improvement]. Kharkov: Pravo. 268 p. [in Ukrainian].
10. Koliushko I. B., Kuibida R. O. (2003). *Administratyvna yustytisia: yevropeyskyi dosvid i propozytsii dlia Ukrainy* [Administrative justice: European experience and proposals for Ukraine]. Kyiv: Fakt. 536 p. [in Ukrainian].
11. Honcharuk S. T. (2012). *Administratyvnyi protses: navch. posib*. [Administrative process: a textbook]. K.: NAU. 184 p. [in Ukrainian].
12. Salmanova O. Yu., Komziuk A. T., Husarov S. M. ta in. (2022). *Administratyvnyi protses: navch. posib*. [Administrative process: A Textbook]. Kharkiv: KhNUVS. 412 p. [in Ukrainian].

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СУБ'ЄКТИ АДМІНІСТРАТИВНОГО СУДОЧИНСТВА: ДЕЯКІ ПИТАННЯ ПРАВОВОГО СТАТУСУ

У статті досліджено питання правового статусу суб'єктів адміністративного судочинства. Розглянуто наукові й нормативно-правові підходи до визначення поняття “суб'єкт адміністративного судочинства”, проаналізовано критерії класифікації суб'єктів у адміністративному судочинстві. Правовий статус суб'єктів, які є учасниками адміністративного судочинства, залежить безпосередньо від його законодавчого визначення, але механізми його реалізації пов'язані із функціональними особливостями суб'єктів судового розгляду адміністративних справ. Встановлення системи суб'єктів адміністративного процесуального права забезпечується відповідною системною правовою регламентацією в законодавстві. У науці національного адміністративного права існують різні погляди на систему суб'єктів адміністративного права та адміністративного судочинства. Наголошено, що учасників адміністративного процесу за приписами КАС України залежно від їхньої зацікавленості поділяють на осіб, які здійснюють судовий процес (безпосередньо адміністративний суд), беруть участь у справі (сторони, треті особи, представники сторін і третіх осіб) та інших учасників (свідок, експерт, спеціаліст тощо). Також суб'єктів адміністративного судочинства можна розділити на індивідуальні і колективні суб'єкти.

Найлогічнішою, на нашу думку, є класифікація всіх суб'єктів адміністративних процесуальних правовідносин на три групи: суди, котрі відправляють правосуддя; особи, які беруть участь у справі; особи, які надають сприяння здійсненню правосуддя. Зроблено висновок, що у кожному з перерахованих випадків адміністративно-правовий статус індивідуального суб'єкта як учасника адміністративного судочинства має певну специфіку, зумовлену функціональною належністю суб'єкта під час здійснення адміністративного судочинства.

Ключові слова: адміністративне судочинство; суди; принципи; суб'єкти; мета; завдання; захист прав.