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ЗАХИСТ ПРАВ ЛЮДИНИ В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ З ТОЧКИ ЗОРУ МІЖНАРОДНОГО ПРАВА

Анотація. *Адміністративний судовий процес може вплинути практично на всі аспекти життя людини, такі як опіка, імміграція, соціальне забезпечення і житло. У той же час рішення державних органів не завжди є законними і відповідає міжнародно-правовим стандартам. В даний час можна констатувати глобалізацію адміністративного права, зокрема, адміністративного провадження. Актуальність досліджуваної проблеми зумовлена потребою в здійсненні аналізу тематики захисту прав людини в адміністративному судочинстві з точки зору міжнародного права, а також недостатньою теоретичною розробленістю даної тематики. З огляду на те, що міжнародне право впливає на верховенство права держав, в тому числі в адміністративному провадженні, було б доцільно проаналізувати міжнародно-правові акти у цій сфері. Мета статті полягає в аналізі джерел міжнародного права в сфері захисту прав людини в адміністративному судочинстві. При дослідженні проблематики були використані сукупність загальнонаукових та спеціальних методів пізнання, зокрема провідними методами були: метод системного аналізу; історико-правовий та порівняльно-правовий методи. У статті комплексно розглянуто питання захисту прав людини в адміністративному судочинстві з точки зору міжнародного права, зокрема на універсальному і регіональному, а саме в рамках Європейського правового простору. Встановлено, що органи державної влади відіграють ключову роль в демократичних суспільствах, а їх діяльність зачіпає права та інтереси фізичних і юридичних осіб. Практична значимість полягає в тому, що сформульовані в статті положення і висновки*

можуть бути використані в науково-дослідній сфері – для подальших досліджень загальнотеоретичних питань захисту прав людини в адміністративному судочинстві.

Ключові слова: глобальне адміністративне право, універсальні і регіональні міжнародні договори, практика Європейського суду.

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PROTECTION OF HUMAN RIGHTS IN ADMINISTRATIVE PROCEEDINGS FROM THE STANDPOINT OF INTERNATIONAL LAW

Abstract. *Administrative litigation can affect almost every aspect of a person's life, such as custody, immigration, welfare, and housing. At the same time, the decisions made by state authorities are not always legal and those that meet international legal standards. At present, it can be said that administrative law is becoming globalised, as well as, in particular, administrative proceedings. The relevance of the subject matter is conditioned by the necessity of analysing the topics of human rights protection in administrative proceedings from the standpoint of international law, as well as the insufficient theoretical development of this subject. Considering that international law has an impact on the rule of law of states, including in administrative proceedings, it would be appropriate to analyse international legal acts in this area. The purpose of the study is to analyse the sources of international law on human rights protection in administrative proceedings. Upon the study of the subject matter, a set of general scientific and special methods of cognition were used, in particular, the leading methods were as follows: the method of system analysis; historical legal method; comparative legal method. The study comprehensively considers the issue of protecting human rights in administrative proceedings from the standpoint of international law, in particular, on the universal and regional level, namely within the framework of the European legal space. It was established that the*

authorities have a key role in democratic societies and their activities affect the rights and interests of individuals and legal entities. The practical significance lies in that the provisions and conclusions formulated in the study can be used in the research area – for further research on general theoretical issues of protecting human rights in administrative proceedings.

Keywords: global administrative law, universal and regional international treaties, the practice of the European Court of Justice.

INTRODUCTION

“In a modern world complicated by globalisation, a person can exercise most of their rights only with the assistance or direct participation of public authorities in this” [1]. On the other hand, when individuals and legal entities interact with authorised government bodies, problems of human rights violations may arise. Administrative litigation can affect almost every aspect of a person's life, such as custody, immigration, welfare, and housing. At the same time, the decisions made by state authorities are not always legal and those that meet international legal standards.

“The historical conflict between the interests of the state and the citizen has led to an evolution of protecting human rights in law and in practice” [2]. Yu.S. Pedko defined the protection of the rights and freedoms of citizens from violations by state authorities, local government, and their officials as a strategic goal of administrative proceedings [3]. Therewith, "administrative court proceedings constitute an integral element of a more general system of human rights protection" [4]. Thus, "on the one hand, effective legal proceedings are the most important basis for the protection of human rights, and on the other hand, an important tool that improves the quality of administrative actions and ensures effective management" [5]. "The specificity of administrative proceedings is that any deviation from democratic or humanistic foundations can lead to a significant infringement of human rights, the interests of society and harm to the authority of the state" [6].

At present, it can be said that administrative law is becoming globalised, as well as, in particular, administrative proceedings. For example, B. Kormich means that “in a narrow meaning, global administrative law is associated with the development of certain universal requirements for the decision-making procedure within the global administrative space, forms autonomous legal regimes” [7]. Furthermore, the principles of administrative law have been adopted in key human rights instruments. The standards of administrative proceedings can be considered as an integral part of international standards of human rights and freedoms, since they are designed to ensure the effectiveness of judicial protection of human rights and freedoms in disputes with state authorities [8]. Thus, considering that international law has an impact on the rule of law of states, including in administrative proceedings, it would be appropriate to analyse international legal acts in this area.

Notably, having analysed the scientific articles of domestic and foreign scientists, the doctrine lacks comprehensive studies of the problems of protecting human rights in administrative proceedings from the standpoint of international law. Therewith, O. Radyshevskaya considered some of the international legal aspects of the impact of the globalisation on national administrative law. She noted that the concept of global administrative law arose to solve the problems of exercise and protection of human and civil rights in the public law sphere. Furthermore, scholars such as A. Pukhtetskaya,

B. Kormich [7] also studied the issues of global administrative law. E. Inshakova studied the issues of legal protection of the rights, freedoms and legitimate interests of citizens and organisations in administrative and other public legal relations [9]. M. Batalli studied the issue of increasing the efficiency of public administration through improving the system of administrative justice [5]. K. Kobylyansky investigated the human right to defence in an administrative court [6]. D. Poncet thoroughly analysed the functions of administrative procedures. Among the main functions, he distinguishes: (1) protection of personal dignity; (2) promotion of citizen participation; (3) increase in transparency and accountability; and (4) improvement of the rule of law. He also noted that administrative procedures contribute to the protection of the rights and interests of citizens, as well as, on the other hand, good governance and, therefore, the quality of final decisions.

The methodological framework of the study constitute a set of general scientific and special methods of cognition, the application of which is carried out within the framework of a systematic approach. Achievements of individual objectives of the study led to the use of the following methods: the historical legal method was applied when considering the evolution of administrative proceedings and the development of international legal provisions on human rights in administrative proceedings; comparative legal method – when comparing international legal provisions on the protection of human rights in administrative proceedings at the universal and regional level, within the framework of the European legal space; the method of systems analysis helped to comprehensively consider the issues of protecting human rights in administrative proceedings from the standpoint of international law.

1. ANALYSIS OF UNIVERSAL TREATIES ON PROTECTION OF HUMAN RIGHTS IN ADMINISTRATIVE PROCEEDINGS

The situation necessitates the establishment of mechanisms for monitoring the observance of human rights and the legality of actions/inaction of state authorities in public administration. Upon dealing with state authorities, it is very important for individuals and legal entities to be able to file a complaint and seek the renewal of violated rights from the state, local government, etc. These issues are dealt with by administrative proceedings, which "in general, makes provision for the activities of administrative courts for the purpose of considering and resolving public law cases" [10]. Importantly, the role of administrative justice is very important in the modern world, as it creates opportunities to guarantee the performance of everyday duties by officials in accordance with the laws [11]. Administrative litigation has played an important part in the struggle to restrict and establish judicial control over government action [12].

Administrative justice and human rights protection have similar goals. Firstly, they are both associated with the relations between the state and the individual. Secondly, administrative proceedings protect individuals and legal entities from illegal actions of representatives of state authorities, while human rights impose obligations on the state to respect and protect the rights and freedoms of people. Historically, "administrative justice" was formed in France when Napoleon Bonaparte created the Council of State in 1799. Councils of prefectures were soon established. By the law of 1872, the councils of the prefectures were given judicial powers, they were given the right to make judicial decisions. The decisions of the new courts, apart from influencing the legality of specific actions of the administration, gave rise to many provisions of administrative law" [13].

With the adoption by the UN General Assembly of the Universal Declaration of Human Rights[1] on December 10, 1948, civil, cultural, economic, political, and social rights were recognised. Therewith, Article 8 stipulates that everyone has the right to seek legal aid if their rights are not respected. This Article also provides for recourse to administrative remedies. It should be noted that although the Universal Declaration of Human Rights is not a legally binding instrument per se, since it was adopted by a General Assembly resolution, the principles it contains are currently considered legally binding on states as a custom of international law.

Articles 2 and 14 of the 1966 International Covenant on Civil and Political Rights[2] oblige states (a) to provide any person whose rights and freedoms are violated with an effective remedy, even if the violation was committed by persons acting in an official capacity; b) to ensure that the right to legal protection for any person claiming such protection is established by the competent judicial, administrative, or legislative authorities, or any other competent authority prescribed by the legal system of the state, and to develop judicial remedies; c) to ensure that remedies are applied by the competent authorities when they are provided; d) to ensure equality of all before the courts.

Therewith, in 2004, the Human Rights Committee, created to monitor the implementation of the International Covenant on Civil and Political Rights, noted that "the Committee attaches great importance to the fact that States parties establish appropriate judicial and administrative mechanisms to address complaints of violations of rights in domestic legislation"[3]. Furthermore, in 1998, the UN Committee on Economic, Social, and Cultural Affairs stressed that administrative remedies, not just remedies, are an important means of providing "effective remedies" to people whose rights are violated. "The right to an effective defence should not be interpreted as necessarily requiring a remedy. In many cases, administrative remedies will be sufficient, and those within the jurisdiction of the State party have a legitimate reason, based on the principle of good faith, to expect all administrative authorities to consider the requirements of the Covenant in making their decisions. Any such administrative remedies must be available, acceptable, timely, and effective"[4].

2. ANALYSIS OF REGIONAL TREATIES OF THE EUROPEAN LEGAL SPACE IN PROTECTION OF HUMAN RIGHTS IN ADMINISTRATIVE PROCEEDINGS

The issues of the protection of human rights in administrative proceedings within the Council of Europe were first raised on October 7-8, 2002 at the First Conference of the Heads of the Supreme Administrative Courts of Europe entitled "Opportunities and scope of judicial control over administrative decisions". As a result of the conference, conclusions were drawn up, which supported the creation of the Project Group from

[1]Universal Declaration of Human Rights. (1948, December). Retrieved from https://www.un.org/en/universal-declaration-human-rights/

[2]International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

[3]General Comment No. 31. "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant". (2004, March). Retrieved from https://undocs.org/en/CCPR/C/21/Rev.1/Add.13

[4]Substantive issues arising in the implementation of the International covenant on economic, social and cultural rights. (1998, December). Retrieved from https://www.refworld.org/docid/47a7079d6.html

administrative law. It was also indicated that at the level of the European Convention on Human Rights and Fundamental Freedoms, general standards of judicial administrative procedure are enshrined in Article 13 and paragraph 1 of Article 6. Article 13 of the Convention establishes the right to an effective remedy "Everyone whose rights and freedoms... are violated, has the right to an effective remedy before a public authority, even if the violation was committed by persons acting in an official capacity"[1].

Later, the Committee of Ministers of the Council of Europe on protection of human rights in administrative proceedings adopted the following recommendations:

1. Recommendation of the Committee of Ministers to member states on the implementation of administrative and judicial decisions in the field of administrative law dated 2003[2].

2. Recommendation of the Committee of Ministers to member states on judicial review of administrative acts dated 2004[3].

3. Recommendation (2007) 7 of the Committee of Ministers to member states on good governance dated 2007[4].

In particular, the above documents stipulate the necessity of maintaining the confidence of individuals and legal entities in the administrative and judicial system. Furthermore, it is pointed out that effective judicial oversight of administrative acts to protect the rights and interests of individuals constitutes an essential element of the human rights protection system. Therewith, public authorities play a key role in democratic societies, and their activities affect the rights and interests of individuals and legal entities. Notably, when public authorities provide services to individuals and legal entities, as well as make decisions, they should act within a reasonable time.

In the 2001 case Kress v. France, the European Court of Human Rights noted that the very creation and existence of administrative courts can certainly be noted as one of the leading achievements of the state based on the rule of law[5]. Considering that the European Court of Human Rights has applied the Convention for the Protection of Human Rights and Fundamental Freedoms to protect individuals in their relations with the administration, it is necessary to analyse the practice of the Court in these matters. Although Article 6 refers to civil and criminal matters, it may appear that this Article does not cover the scope of administrative matters. But the practice of the European Court of Human Rights indicates that consideration of a case in another jurisdiction, in particular an administrative one, is not an obstacle to the recognition of the

[1]European Convention on Human Rights. (1950, November). Retrieved from https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005

[2]Recommendation Rec(2003)16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law (2003, September). Retrieved from https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805df14f

[3]Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts. (2004, December). Retrieved from https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805db3f4

[4]Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration (2007, June). Retrieved from https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d5bb1

[5]Judgment of The European Court of Human Rights No. 39594/98 "Case Kress v. France". (2001, June). Retrieved from https://www.menschenrechte.ac.at/orig/01_3/Kress.pdf

inadmissibility of the case under Article 6[1]. In general, the European Court of Human Rights has extended the scope of Paragraph 1 Article 6 to disputes between citizens and public authorities, in particular to:

1. Disputes on expropriation, cancellation of a building permit, land acquisition and, in general, decisions that violate the right to ownership.
2. Disputes regarding permits, licenses, including those necessary for conducting a certain type of economic or professional activity.
3. Disputes regarding contributions under the social security programme.
4. Disputes between civil servants and the state.

In accordance with the provisions of Articles 6 and 13 of the Convention, the system of European standards of administrative proceedings can be described as comprising the following elements: 1) the right to consider the case by a court established based on the law; 2) independence and impartiality of the court, transparency, and publicity in the consideration of the case; 3) a fair trial; 4) reasonable terms for the consideration of the case; 5) the obligation to comply with the judgement [8]. One example of a dispute between citizens and state bodies can be the case of Karelin v. Russia dated 2016. The European Court of Human Rights held unanimously that there had been a violation of Article 6 (right to a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms[2]. In the case, it was recognised that the absence of an accusing party in a trial for an administrative offence means a violation of the right to a fair and impartial trial.

At the 1990 Copenhagen Meeting, for the first time, OSCE Member States committed themselves to providing effective remedies against administrative decisions[3]. Also at this meeting, they drew up a list of "elements of justice" that are essential to fully express the inherent dignity of the human person and the equal and inalienable rights of all people. Therewith, one of the components of "justice" was that "everyone will have effective remedies against administrative decisions in order to guarantee respect for fundamental rights and ensure that the legal system is not harmed", as well as "administrative decisions directed against any or individuals who are fully substantiated and should usually indicate the usual remedies available". A year later, in 1991, at the Moscow meeting, the OSCE Member States established that "every person shall have effective remedies against administrative decisions in order to guarantee respect for fundamental rights and ensure that the legal system is not harmed. For the same purpose, effective remedies will be provided for persons who have suffered damage as a result of the administrative provisions"[4].

As a result of the interaction between the European legal order and the legal order of the EU member states, it is possible to note the influence of European administrative law on national legal orders. And although the EU still lacks a comprehensive set of

[1]European Convention on Human Rights. (1950, November). Retrieved from https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005

[2]Judgment of The European Court of Human Rights No. 926/08 "Case of Karelin v. Russia". (2016, September). Retrieved from https://hudoc.echr.coe.int/fre#{"itemid":["001-166737"]}

[3]Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. (1990). Retrieved from https://www.osce.org/files/f/documents/d/0/14305.pdf

[4] Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE. (1991). Retrieved from https://eos.cartercenter.org/uploads/document_file/path/376/OSCOW_Moscow_RU.pdf

codified rules of administrative law, especially administrative procedural law, the process of approximation of the laws of the member states in this area should be noted. In accordance with Article 298 of the Treaty on the Functioning of the EU, as amended by the Lisbon Treaty of 2007, "in the performance of their functions, the institutions, bodies, offices, and agencies of the Union shall enjoy the support of an open, effective, and independent European administration"[1].

One of the important acts adopted in the EU with the purpose of codifying administrative procedures is, in particular, the Resolution of the European Parliament with the Commission's recommendations on the law of EU administrative procedures of January 15, 2013[2][14; 15]. Also, numerous principles follow from case law that apply to administrative proceedings, such as the principles of good governance; the duty to present facts impartially, accurately, and comprehensively; obligation to notify interested parties about the commencement of administrative proceedings; duties to be diligent; the obligation to complete the proceedings within a reasonable time; as well as the right of interested parties to information.

CONCLUSIONS

Thus, the study for the first time analyses the international legal provisions and practice of the European Court of Human Rights in protection of human rights in administrative proceedings. It has been established that administrative proceedings can affect almost all aspects of a person's life, for example, in the field of custody, immigration, social security, and housing. This means that the protection of human rights in this area is very important in the modern world. A number of universal international treaties, such as the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, and the International Covenant on Economic, Social and Cultural Rights of 1966, contain a number of international legal provisions related to the protection of human rights in administrative legal proceedings. The study also analysed the specificity of the regulation of the protection of human rights in administrative proceedings within the framework of the European legal space, namely within the framework of the Council of Europe, the European Union and the Organisation for Security and Cooperation in Europe. Furthermore, it analysed the practice of the European Court of Human Rights in this area and established that Article 6 of the Convention for the Protection of Rights and Fundamental Freedoms also extends its scope of application to administrative cases.

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