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ГАРАНТІЇ ЗАБЕЗПЕЧЕННЯ ПРАВ ТА СВОБОД ЛЮДИНИ У ПРОВАДЖЕННІ У СПРАВАХ ПРО АДМІНІСТРАТИВНІ ПРАВОПОРУШЕННЯ

Анотація. Акцентовано на питаннях забезпечення гарантій прав та свобод людини в провадженні у справах про адміністративні правопорушення. Розглянуто проблему наявності ефективного механізму захисту прав громадян та юридичних осіб у процесі застосування до них заходів адміністративного примусу, зокрема й адміністративних стягнень. Розкрито роль Уповноваженого Верховної Ради України з прав людини у забезпеченні гарантій прав і свобод людини та громадянина.

Сучасні демократичні тенденції розвитку української держави є основою реальності гарантій прав і свобод людини. Їх здійснення та повна реалізація можливі лише за умов дотримання та виконання обов'язків і з боку держави, і людей. Кожен має можливість використовувати свої права і свободи за власним розсудом, здійснювати вільний розвиток своєї особистості, якщо водночас не порушуються права і свободи інших людей.

Найкращою гарантією дотримання прав і свобод і громадян, і юридичних осіб під час адміністративного провадження є високий рівень професіоналізму посадових осіб державних органів усіх рівнів, об'єктивний та індивідуальний підхід до вирішення кожної справи, ретельне вивчення матеріалів та всебічний аналіз обставин справи. Водночас необхідно брати до уваги і так званий людський фактор та відсутність ідеальних умов здійснення професійної діяльності. Тож поряд із цим необхідні й інші гарантій. Вони виявляються в праві на оскарження рішень і дій органів державної влади, в адміністративному, судовому та парламентському державному контролі. Наявна система гарантій, навіть при їх недосконалості, є доволі важливою. Оскільки, з одного боку, застерігає уповноважених осіб та державні органи від вчинення дій, що суперечать нормам закону, стимулюють зростання правосвідомості та професіоналізму, а, з іншого – гарантують особам, щодо яких здійснюється адміністративне провадження, об'єктивність і неупередженість вирішення справи.

Ключові поняття: права та свободи людини, гарантія, адміністративна відповідальність, адміністративне провадження, адміністративне стягнення.

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GUARANTEES ON THE PROVISION OF HUMAN RIGHTS AND FREEDOMS IN PROCEEDINGS ON ADMINISTRATIVE OFFENCES

Abstract. The focus is paid to the provision of the guarantees of human rights and freedoms in proceedings on administrative offenses. The problem of the existence of an effective mechanism for the protection of the rights of citizens and legal entities in the process of applying to them administrative coercion, including administrative penalties, is being considered in the article. The role of the Commissioner on human rights in providing guarantees of human and civil rights and freedoms is Verkhovna Rada of Ukraine is revealed.

The best guarantee of the observance of the rights and freedoms of both citizens and legal entities during administrative proceedings is the high level of professionalism of officials of state bodies of all levels, an objective and individual approach to the solution of each case, thorough study of materials and a comprehensive analysis of the circumstances of the case. At the same time, an official who is a representative of a body authorized to consider cases of administrative offense is only a person; therefore, the so-called human factor and the absence of ideal conditions for professional activity should be taken into consideration. So, along with this, there is a need for other guarantees. They are manifested in the right to appeal decisions and actions of state authorities, in administrative, judicial and parliamentary state control. The existing system of guarantees, even with their imperfections, is quite important. Since, on the one hand, it warns authorized persons and state bodies against actions that contradict the rules of the law, stimulate the growth of legal awareness and professionalism, and, on the other hand, guarantee the persons, for whom administrative proceedings are carried out, objectivity and impartiality of the decision on the case.

Key concepts: human rights and freedoms, guarantee, administrative responsibility, administrative proceedings, administrative penalty.

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Introduction

According to Art. 3 of the Constitution of Ukraine, a man, his life, health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value [1]. This constitutional provision defines the fundamental levers of the state's activities in ensuring human rights and freedoms. But only with the help of legal guarantees human rights and freedoms acquire real meaning and possibilities for realization.

Modern democratic trends in the development of the Ukrainian state are the basis of the reality of guarantees of human rights and freedoms. Their realization and implementation are possible only under conditions of observance and fulfillment of obligations both by the state and people themselves. Every person has the opportunity to use his rights and freedoms at his own discretion, to freely develop his personality, without violating the rights and freedoms of others.

The theoretical basis for studying general issues of guaranteeing human rights and freedoms have become, to a greater or lesser extent, the publication of leading scientists: V. B. Averyanov, Yu. P. Bytiak, S. T. Honcharuk, I. P. Holosnichenko, E. V. Dodin, L. V. Koval, A. T. Komzyuk, I. V. Martyanov, V. F. Opryshko, O. I. Ostapenko, I. M. Pakhomov, O. M. Yakuba and other scholars.

1. Components of legal guarantees

The current state policy of Ukraine on ensuring rights and freedoms is conducted in accordance with the requirements of international and European democratic standards in the field of human rights and freedoms. Although there are still some deficiencies in the implementation, the protection

of guarantees of human rights and freedoms, the elimination of which requires time and considerable efforts of both the whole system of public authorities, and every person in our society. And the very adoption of the Constitution of Ukraine on June 28, 1996 became a necessary legal basis for the implementation of human rights and freedoms and their guarantee [1].

Guarantee (from the French – guarantee, garantin) stands for – to provide, to protect. In a narrower sense, legal guarantees are understood as legal means of realizing and protecting rights and freedoms by the citizens [2, p. 555]. The problem of guarantees, and most of all, this is the problem of the existence of an effective mechanism for protecting the rights of citizens and legal entities in the process of applying to them administrative coercion, including administrative penalties. It is activated in the process of the rapid development of legislation, which provides for an increasing number of administrative offenses for which a person can be brought to administrative liability.

In our opinion, legal guarantees consist of several constituent elements. First of all, these are clearly formulated provisions of laws that regulate the issue of the application of administrative penalties; elimination of contradictions between the legal norms, violation or non-compliance of which initiates the use of penal administrative sanctions (penalties).

The second important element is the observance of the principles of bringing to administrative responsibility and the principles of administrative proceedings.

The third element is state control. The term «state control» is considered as the function that is carried out by the state in order to verify compliance with and fulfillment of tasks, decisions taken and their legitimacy. The content of the state control includes the observation, analysis and verification of the activities of the relevant authorities and their officials in relation to the tasks assigned to them, the observance of rules, norms and standards established by the state [3, p. 101]. At the same time, the performance of the control function must be realized with the help of a certain mechanism.

This mechanism should include:

1) the presence of a competent authority, which has the power to control and verify the decisions taken and adherence to all procedural rules when it is adopted;

2) a clearly defined procedure for applying to such an authority;

3) legislative regulation of the activity of the authority, and the competence of its decisions.

If we differentiate between types of control over decisions and rulings issued in cases of administrative offenses, by the subject of the appeal, one can distinguish:

a) control carried out by the authorized body on the initiative of a legal entity or a legal person;

b) control carried out on the initiative of state bodies.

On the other hand, depending on which branch of government belongs thebody authorized to carry out the control, one can speak about:

1) administrative control, carried out by executive authorities based on both the complaints of individuals and legal entities, and initiated by the authorized body;

2) judicial control;

3) parliamentary control, in the person of a specially authorized in human rights ombudsman.

In accordance with the established legal tradition, allocated higher (meaning structurally subordinated) bodies are given the authority to verify the lawfulness of the decision taken by the executive authorities, to observe procedural and substantive rules of law when applying administrative penalties to the offender. Thus, Art. 288 CUpAP of Ukraine [4] provides that an order imposing an administrative penalty may be appealed to a higher authority (official) or to a district (city) court.

External control over the lawfulness of executive bodies is also carried out by the judiciary branch of government. According to Art. 124 of the Constitution of Ukraine, justice in Ukraine is carried out exclusively by the courts, and the jurisdiction of the courts extends to all legal relations that arise in the state. Article 55 of the Constitution of Ukraine guarantees every citizen the right to appeal to the court actions or inactivity of executive bodies or unlawful decisions of officials.

2. Public relations in the field of judicial control

At the present stage, social relations in the field of judicial control over the observance of the rights and freedoms of citizens in the sphere of executive power are regulated by the norms of the Constitution of Ukraine, norms of direct action, the norms of the Civil Procedural Code of Ukraine and the Commercial Procedural Code of Ukraine, regarding decisions made by the authorized bodies to legal entities and subjects of entrepreneurial activity.

The rules and regulations established by the procedural codes have certain differences that affect both the procedural process and the status of a person. The comparative analysis of procedural legal norms allows us to speak of the presence of the following distinctive differences:

– by the form of appeal;

– by the subject of the appeal.

In legal literature enough attention is paid to the issue of creating a system of administrative courts. In accordance with clause 4 of Art. 22 of

the Law of Ukraine «On the Judiciary and Status of Judges» the wording of 02.06.2016 [5] provides that local administrative courts should consider cases of administrative jurisdiction (administrative matters) related to legal relations in the field of public administration and local self-government (cases of administrative jurisdiction). In addition to this, clause 3 of Art. 21 indicates that local administrative courts are district administrative courts, as well as other courts defined by procedural law. It provides as well for the existence of appellate administrative courts established in the constituencies in accordance with the Decree of the President of Ukraine.

One of the types of state control in the field of legitimacy of decisions taken by the executive authorities is parliamentary control. The proclamation in the Constitution of Ukraine of rights and freedoms of citizens as the highest social value requires from the legislative body not only the adoption of the relevant laws, but also the monitoring of the implementation and observance of these laws by all executive authorities. In our opinion, the position of the Commissioner of the Verkhovna Rada of Ukraine on human rights deserves special attention, as this issue is not sufficiently highlighted in terms of legal guarantees when applying administrative penalties. The special nature of the purpose, tasks, means and methods of carrying out the Commissioner's functions makes it difficult to determine his branch affiliation. On the one hand, the connection of this institute with constitutional law is undoubted, since the activities of the Commissioner for ensuring the guarantees of human and civil rights and freedoms make this institution part of the state (constitutional law), namely, the constitutional basis of the legal status of a person. On the other hand, the activities of the authorized representative can be realized, first of all, in the sphere of supervision over executive bodies, where the rights of citizens are most often violated.

3. Commissioner of Verkhovna Rada of Ukraine on Human Rights

Article 2 of the Law of Ukraine «On the Authorized Representative of the Verkhovna Rada of Ukraine on Human Rights» dated December 23, 1997 defines the scope of application of the law – these are relations that arise when realizing rights and freedoms of a person and a citizen only between a citizen of Ukraine, regardless of his place of residence, foreigner or a stateless person staying on the territory of Ukraine and state authorities, local self-government bodies and their officials [6].

The constitution of Ukraine was the first to introduce this position, although it exists in many countries. For our country, this position and the purpose of its introduction are rather new. So, it's worth attention to look more closely at the peculiarities of this institute.

In accordance with the Law of Ukraine dated December 23, 1997 «On the Authorized Representative of the Verkhovna Rada for Human Rights», the purpose of parliamentary oversight conducted by the Ombudsman is:

1) protection of human and civil rights and freedoms;

2) observance and respect for human rights and freedoms by all bodies of state power, local self-government, their officials;

3) prevention of violation of rights and freedoms of man and citizen or promotion of their renewal;

4) assistance in bringing the legislation of Ukraine on the rights and freedoms of man and citizen in line with the Constitution of Ukraine, international standards in these areas;

5) improvement and further development of international cooperation in the field of the protection of human and civil rights and freedoms;

6) prevention of any form of discrimination against the realization of human rights and freedoms.

The Commissioner may start proceedings and inspections on the following grounds:

1) at the request of citizens of Ukraine, foreigners, stateless persons or their representatives;

2) at the request of people's deputies of Ukraine;

3) on its own initiative.

Appeals to the Commissioner are filed within a year from the date of detection of violations. In exceptional cases, this period may be extended, but not more than two years. The submitted appeals are dealt with in accordance with the Law of Ukraine «On Citizens' Appeal» dated October 2, 1996 [7].

In considering a petition the Commissioner may do the following: a) open proceedings in the case of violation of rights and freedoms; b) explain the measures to be taken by the person who has submitted the application; c) send an application for membership in an authority whose competence is to review this appeal; d) refuses to consider the appeal.

The Commissioner carries out his activity independently of other state bodies and officials. This is ensured by special status, since his authority can not be terminated or limited in the event of expiration of the term of office of the Verkhovna Rada of Ukraine or its pre-term dissolution, the introduction of a military state or state of emergency in Ukraine or in its separate areas [6]. In addition, he is endowed with a wide range of powers, so he can freely visit public authorities; get acquainted with the documents, including with the

secret ones; receive the necessary copies in state and local government bodies, prosecutor's offices and courts; invite officials and officers, citizens of Ukraine, foreigners and stateless persons to receive oral or written explanations from them on the circumstances that are audited on the case; submit responses to the relevant authorities. Moreover, all state authorities and local self-government bodies, enterprises, institutions and organizations, officials and officers are obliged to cooperate with the Commissioner and provide him with the necessary assistance for the full, thorough and objective investigation of the actual circumstances of the case.

Article 5 of the Law of Ukraine «On the Authorized Representative of the Verkhovna Rada of Ukraine» defines two types of such acts of response:

1) constitutional petition of the Commissioner, in which he refers to the Constitutional Court of Ukraine regarding the issue of the compliance of a law or other normative act with the Constitution of Ukraine; official interpretation of the laws and provisions of the Constitution;

2) submission of the Commissioner, which is sent to the bodies of state power, local self-government, associations of citizens, institutions, enterprises of organizations, their officials to take appropriate measures within a one-month period with respect to the elimination of violations found.

The procedural aspect of the application of administrative penalties to individuals is more regulated and systematized. Instead, a similar process with regard to legal entities is rampant. The draft Code of Administrative Offenses should include the principles for the application of administrative penalties to legal entities. Among other issues, attention should be paid to the following: the original procedural document, which records the fact of committing an offense by a legal entity; requirements for the form and content of such a document; general limitation period for applying to a legal entity administrative penalty; grounds for the dismissal of legal persons from liability; mitigating or aggravating circumstances of an administrative offense committed by a legal entity.

The reform of administrative legislation should be carried out by optimizing the complex mechanism of applying 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 [8, p. 8].

Conclusions

It is obvious that the best guarantee of the observance of the rights and freedoms of both citizens and legal entities during administrative proceedings is the high level of professionalism of officials of state bodies of all levels, an objective and individual approach to the solution of each case, thorough study of materials and a comprehensive analysis of the circumstances of the case. At the same time, an official who is a representative of a body authorized to consider cases of administrative offense is only a person; therefore, the so-called human factor and the absence of ideal conditions for professional activity should be taken into consideration. So, along with this, there is a need for other guarantees. They are manifested in the right to appeal decisions and actions of state authorities, in administrative, judicial and parliamentary state control. The existing system of guarantees, even with their imperfections, is quite important. Since, on the one hand, it warns authorized persons and state bodies against actions that contradict the rules of the law, stimulate the growth of legal awareness and professionalism, and, on the other hand, guarantee the persons, for whom administrative proceedings are carried out, objectivity and impartiality of the decision on the case.

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