

THE ROLE OF THE LAW OF UKRAINE "ON ADMINISTRATIVE PROCEDURE" IN THE FORMATION OF THE NON-JUDICIAL REDRESS MECHANISM

Markova Olena Olehivna

Doctor of Law, Associate Professor,

Professor of the Department of Legal Disciplines

Sumy Branch of Kharkiv National University of Internal Affairs

Sumy, Ukraine

The establishment of general principles and rules of administrative procedure at the legislative level not only contributes to legal certainty in relations between public authorities and individuals but also provides additional guarantees of protection for individuals if public authorities and local self-government bodies violate their rights and interests. Such guarantees include the provisions of the Law of Ukraine "On Administrative Procedure" on the right to administrative appeal, which is implemented within the framework of the administrative procedure, and the provisions of Article 91 on compensation for damages in connection with the cancellation, recognition, invalidity or unlawfulness of an administrative act [1].

The adoption of the Law of Ukraine "On Administrative Procedure" and the improvement of the provisions of the appeal procedure within the framework of the general model of administrative procedure is based on the need to create conditions for individuals to exercise their rights and freedoms in the process of making individual decisions, to create an effective administrative mechanism for the protection of the rights of individuals by public authorities, and to effectively implement the principle of state responsibility for damage caused to individuals by unlawful acts of administrative bodies. The principle of state responsibility is inseparable from the principle of the rule of law, which must be observed in administrative proceedings. Damage caused by decisions, acts or omissions of administrative bodies should be made good via administrative procedure. The obligation of the State to compensate for damage caused by administrative bodies is provided for by Ukrainian legislation, namely Article 56 of the Constitution of Ukraine, Article 21 of the Code of Administrative Procedure of Ukraine, the Law of Ukraine "On the Procedure of Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Performing Operational and Investigative Activities", Pre-trial Investigation Bodies, Prosecutor's Office and Court', Articles 1173-1176 of

the Civil Code of Ukraine, the Law of Ukraine 'On Execution of Judgments and Application of the Practice of the European Court of Human Right.

The compensation in an administrative order caused by administrative authorities has a number of advantages over the judicial procedure, including the saving of time and judicial resources, the establishment of a simplified dispute resolution procedure that is more understandable and favourable to the individual, and the fact that it is free of charge. Therefore, the consolidation of provisions on the out-of-court mechanism of damage compensation is necessary and important for every citizen of our country. Ukrainian scientists say that a separate law should be adopted to regulate the mechanism of compensation for damage caused by state and local authorities, their officials and employees. However, it is logical and timely to include the provisions on compensation for damages in the Law of Ukraine "On Administrative Procedure", since the procedure for appeals is regulated by this Law, which ensures a comprehensive regulation of issues related to the procedure for considering an appeal and making a decision, including compensation for damages [2, c.167].

The legislator has changed the approach both to the administrative procedure by extending and improving the provisions on the procedure and on the participation of the authorities, which now play an active role instead of a passive role, waiting for a complaint to be filed by the person whose rights and interests they have violated, and an active role, having the power to decide on the annulment or nullity of an administrative act and, at the same time, to decide on compensation for damages.

The issue of compensation for damage caused by an administrative body as a result of an unlawful administrative act shall be resolved within the framework of the administrative procedure for complaints and shall be carried out in accordance with the requirements of the Law of Ukraine "On Administrative Procedure" in accordance with the rules of administrative procedure in cases at the request of a person, taking into account the peculiarities provided for in Section 6 of this Law – administrative appeal.

Thus, the inclusion in the Law of Ukraine "On Administrative Procedure" of provisions on compensation for damage caused by unlawful administrative acts of public authorities is a positive step, but the nature of these provisions is rather superficial, lacking details on the procedure for compensation.

Reference

1. On administrative procedure: Law of Ukraine of 17.02.2022 No. 3475. Verkhovna Rada of Ukraine: official web portal. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68834

2. Markova O.O. Conceptual foundations of legal regulation of administrative procedure. Sumy, University Book, 2022. 368 c.