

REVIEW OF THE STATE OF ADMINISTRATIVE AND PROCEDURAL REGULATION IN THE FIELD OF PROVIDING ADMINISTRATIVE SERVICES

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In this article, the author reviews the administrative-procedural regulation of the provision of administrative services through the prism of types of non-jurisdictional administrative procedure. Within the framework of non-jurisdictional procedures, we will consider the state of regulation of the application (permitting, registration), as a result of which a significant number of administrative services are provided by private individuals, and we will also formulate proposals regarding the content of the regulatory structure of the Law of Ukraine «On Administrative Procedure». Having analyzed its normative construction, the author came to the conclusion that it is suitable only for administrative proceedings that concern the adoption by administrative bodies, within the scope of their exercise of discretionary powers, decisions that limit the rights of individuals or legal entities or create additional burdensome obligations for them. At the same time, the specified normative construction is unsuitable for administrative proceedings related to the provision of administrative services, which should formally be covered by the subject of regulation of this Law.

The provisions of the Law of Ukraine «On Administrative Procedure» regarding the appeal of private individuals should apply to the provision of administrative services regardless of the area in which they are provided. In the Law of Ukraine «On Administrative Procedure», we propose to devote a separate chapter to administrative proceedings for appeals by individuals or legal entities, in which the requirements regarding the content, form and registration of the appeal are directly established.

Keywords: administrative procedure, provision of administrative services.

The relevance of this study is due to the insufficient study of the state of the procedural component of the external law enforcement activities of the bodies and the absence of uniform procedural rules fixed at the legislative level for various types of administrative proceedings, including for proceedings on the provision of administrative services. The existing administrative and procedural regulation as a whole is characterized by a fragmentary nature and is a consequence of the fact that the body of executive power, local self-government establishes its own procedural rules, as a result of which the rights and interests of individuals and legal entities are violated. The inequality of the parties to administrative legal relations is determined by their nature, since these relations are characterized by the power of one of the parties (the executive authority), which is expressed in the right to make decisions regarding the subordinate subject (private person). The resulting imbalance in relations should not be expressed by authorities in excess or abuse of their powers.

The primary task of the state is not only to provide private individuals with appropriate means of legal protection, but also to develop a unified procedural mechanism in the country. Currently, the level of legal protection of citizens in relations with bodies of executive power and local self-government is low due to the partial legal validity of the decisions they make and

the actions they take, which makes it necessary to develop a general model of administrative procedure within which to form and consolidate basic provisions on various types of administrative proceedings. Analyzing the state of Ukrainian administrative-procedural legislation for the purpose of enshrining procedural norms, it should be noted that they exist, but they are scattered among numerous legislative and sub-legislative legal acts, often with norms of substantive law.

To date, the Law of Ukraine «On Administrative Procedure» has been adopted in Ukraine, but it has not yet entered into force. Having analyzed its normative construction, the author came to the conclusion that it is suitable only for administrative proceedings that concern the adoption by administrative bodies, within the scope of their exercise of discretionary powers, decisions that limit the rights of individuals or legal entities or create additional burdensome obligations for them. At the same time, the specified normative construction is unsuitable for administrative proceedings related to the provision of administrative services, which should formally be covered by the subject of regulation of this Law. The author believes that the Law should define not only the procedures for consideration by executive authorities and local self-government bodies, their officials of issues related to the implementation and protection of the rights, freedoms and legitimate interests of individuals and legal entities, but also the procedures for granting administrative (management) services.

The provision of administrative services occupies a key place in the system of means of ensuring the realization of the rights, freedoms and legitimate interests of private individuals in the public sphere. In order to receive them, private individuals should contact the entities providing such services.

The legal basis for the realization of the rights, freedoms and legitimate interests of individuals and legal entities in the field of administrative services are defined in the Law of Ukraine «On Administrative Services» [1], which contains provisions on the procedure for providing services, documents, in particular, information and technological cards, and the legal status of the center provision of administrative services

and officials responsible for the provision of services, timeliness of provision and payment, quality of services.

However, this law does not clearly regulate the procedure for providing administrative services, stages, stages and actions. That is, the question of the structure of the administrative procedure for the provision of administrative services remains uncertain. As a result, in practice, there is a real danger of violation of the rights of citizens, since the administrative procedure is focused more on identifying actions that deviate from the norms, than on ensuring the proper implementation of the rights and freedoms of citizens and stimulating authorities to active, lawful behavior in relation to private individuals. Therefore, the issue of a systematic and unified approach to administrative and procedural regulation remains relevant.

The unified nature of the administrative procedure model depends on whether it establishes general provisions for various types of administrative proceedings that arise in the activities of public administration bodies. Currently, there is a large array of laws that regulate various types of administrative procedures: application (permitting, registration), control and supervision, rulemaking, competition.

However, a single procedural standard should be formed for all these procedures at the level of the Law of Ukraine «On Administrative Procedure», general provisions and rules specific to them should be established using a general approach and taking into account special regulation.

Regarding the procedure for providing administrative (management) services, the provisions of the Law of Ukraine «On Administrative Procedure» [2] should apply to the general procedure for providing such services, while the procedure for providing administrative services in different areas should be determined by separate legal acts. For example, the Law of Ukraine «On Licensing of Certain Types of Economic Activity» [3] regulates the general procedure for obtaining licenses by economic entities, and the Law of Ukraine «On State Registration of Legal Entities and Individual Entrepreneurs» [4] regulates in detail the procedure for the registration

of entities economic entities. The provision of administrative (management) services by judicial bodies is defined by the Laws of Ukraine «On Association of Citizens», «On Charity and Charitable Organizations», «On Political Parties in Ukraine», «On Professional Creative Workers and Creative Unions», according to which the Ministry of Justice of Ukraine legalizes all-Ukrainian associations of citizens, registration of all-Ukrainian and international charitable organizations, political parties and their symbols, all-Ukrainian creative unions.

The provision of administrative services on the stock market is carried out by the National Securities Commission and is defined in the Law of Ukraine «On the Stock Market and Securities» [5], in the Regulation on the National Securities and Stock Market Commission», in the Procedure for Issuing, Stopping actions and cancellation of a license to carry out professional activities on the capital markets.

The purpose of this article is to review the state of administrative-procedural regulation in the field of providing administrative services through the prism of types of administrative procedure, based on their jurisdictional and non-jurisdictional character. The main attention should be paid to non-jurisdictional procedures, the key characteristic of which is law enforcement activity. Within the framework of non-jurisdictional procedures, we will consider the state of regulation of the application (permitting, registration), as a result of which a significant number of administrative services are provided by private individuals, and we will also formulate proposals regarding the content of the regulatory structure of the Law «On Administrative Procedure».

Depending on the scope of providing administrative services, the application procedure may be characterized by the presence of special requirements regarding the application form, the procedure for its consideration and decision-making, for example, the provision of administrative services on the stock market. In this article, we focus on the analysis of the provisions of the Law of Ukraine «On Administrative Procedure» and their comparison with the laws in the field of providing administrative services for the purpose of establishing the provisions on the procedure for their provision.

The elements of the application procedure are presented in the Law of Ukraine «On Appeals of Citizens» [6], which remains the only act in which the elements of legal regulation of the administrative procedure, which apply to all spheres and types of appeals from citizens, associations, organizations, regardless of the form of ownership, are fixed. As a result of a detailed study of the norms of the current law, the absence and illogicality of many existing legal constructions, pointed out by A.M. Shkolyk, are revealed. in his monograph, in particular: the controversial name of the law «appeal of citizens», from which it follows that the norms of the law do not formally apply to legal entities, under the term «appeal» three significantly different forms of realization of citizens' rights and others are combined. This act has more objections than positive aspects regarding the regulation of procedural relations [7, p. 35]. It contains meaningful gaps in the regulation of issues related to the adoption of burdensome (negative) decisions by bodies in relation to private individuals. As a result, private individuals have the option of appealing the decision by filing a complaint with a higher authority or going to court. This Law does not establish the relevant procedural obligations of the body to make reasoned and justified decisions.

The norms of this Law have more declarative norms than content-procedural norms. If we compare the provisions of the Law of Ukraine «On Appeals of Citizens» and the Law of Ukraine «On Administrative Procedure» on the subject of a detailed and complete settlement of the issue related to the procedure, it becomes clear that the current law does not contain even half of the necessary norms that ensure the functioning declaratory administrative procedure. We are talking about the lack of establishing clear principles of the procedure, the composition of subjects of administrative proceedings, unlike the draft, there is no provision for dividing them into participants. The Law «On Appeals of Citizens» contains almost no provisions on evidence and proof when considering appeals, there is no structure regarding the stages of administrative proceedings and procedural actions that are taken at each of them. This act regarding the regulation of appeals is quite

fragmentary, there is legal uncertainty in matters related to the order of consideration of an appeal. The law does not meet the European standards of «good administration», it reflects only the tip of the iceberg of the procedural mechanism, leaving out of consideration important issues of resolution and consideration of the case after the appeal.

Therefore, in the Law of Ukraine «On Administrative Procedure», we propose to devote a separate chapter to administrative proceedings for appeals by individuals or legal entities, in which the requirements regarding the content, form and registration of the appeal are directly laid down. Pay detailed attention to the stages of administrative proceedings: the opening of administrative proceedings based on an appeal, the resolution of an administrative case in the appeals proceedings, and the adoption of an administrative act. The provisions of the Law of Ukraine «On Administrative Procedure» regarding the application of private individuals will also apply to the procedure for providing administrative services, regardless of the area in which it is provided. The Law of Ukraine «On Administrative Procedure» may establish features of the administrative procedure in various areas, however, such features must comply with the principles of the administrative procedure and the general provisions defined by this Law.

The most common types of application procedures are permit and registration and others related to the provision of services to the population. The licensing procedure is one of the most difficult in the matter of forming a unified legal regulation, given the variety of spheres and forms of licensing activity. However, the procedural mechanism plays a key role in streamlining actions on the part of the subjects of permitting activities, in creating a legal framework for authorities to exercise their powers over applicants and their limitations, as well as in the guaranteed formation of a single, common procedural mechanism in the country.

The procedural nature of the permit system is manifested in the establishment by the executive authorities of special standards of conditions and requirements for the implementation of relevant activities or the use of resources under the control of the authorities, which are introduced, as a rule, to ensure the safety and

stability of economic and other social processes. The permissive procedure can be considered as a special guarantee of the constitutional rights and freedoms of a person and a citizen.

Only in the conditions of the proper functioning of the permit system, which supports legality and security, it is possible to talk about the full realization of their rights by private individuals. With the help of the permit procedure, the safety of society and the state is ensured; protection of rights and freedoms, public health and the environment; regulation of permissible limits in the field of economic activity; protection of the country's foreign economic interests.

At the moment, the legislative regulation of licensing activities at the legislative level is carried out, as a rule, by including a «licensing component» in laws that regulate multi-sectoral relations. In view of the variety of forms of permitting activity and the specific legal regime of objects in relation to which such activity is carried out, we note the presence of a wide range of legislative acts: The Law of Ukraine «On the Permit System in the Field of Economic Activity», the Law of Ukraine «On Licensing of Certain Activities», Laws of Ukraine «On Veterinary Medicine», «On Basic Principles and Requirements for the Safety and Quality of Food Products», «On the Electric Energy Market», «On the registration of individual entrepreneurs and legal entities and public formations»; Law of Ukraine «On valuation of property, property rights and professional appraisal activity in Ukraine» and others.

The presence of reference norms in the law, the blanket nature of dispositions, the lack of clarity in the formulation of legal norms clearly contribute to their extended interpretation and at the same time create an opportunity for committing acts of a corrupt nature. Administrative-procedural relations that arise in the licensing sphere cannot be regulated in detail by one legislative act, due to the difference in the main elements caused by the specifics of the considered relations.

At the same time, leaving the existing fragmentary non-systemic regulation at different levels means leaving the interpretation and interpretation of administrative and procedural norms to the discretion of administrative

bodies. In this regard, we consider it reasonable to enshrine at the legislative level the main principles of administrative procedure, which act as a common denominator for various types of administrative procedure, which form the limits for the powers of executive authorities through the formulation and consolidation of mechanisms for ensuring the implementation of relevant norms. It is necessary not only to formulate general provisions on administrative proceedings, but also to develop them for each type of proceedings. In essence, the permit procedure, regardless of the field, accumulates all the features of the declaratory procedure, since the initiative in opening proceedings belongs to private individuals who apply for a permit to the authorized body in a specific field.

We believe that it is necessary to review the regulatory structure of the Law of Ukraine «On Administrative Procedure» with a view to enshrining in the framework of a single model of administrative procedure some of the most common administrative procedures that are used in the law enforcement activities of executive and local self-government bodies [8].

We are talking about administrative proceedings on the appeals of individuals and legal entities. These proceedings form the basis of the model of administrative procedure in Ukraine and their provisions should be used and extended to various types of proceedings that arise in various spheres, in particular in the field of permits. We suggest that in the regulatory structure of the draft law «On Administrative Procedures», along with the general provision on administrative proceedings, we should develop a separate chapter to be devoted to administrative proceedings on the appeal of individuals and legal entities, in which to form the main provisions on the resolution of an administrative case in the appeals procedure, the procedure for considering the case and adoption of an administrative act. These provisions can be used as a model for all types of declarative administrative procedures, including those for permits, which by their very nature are such. As foreign experience shows, the greatest guarantee against administrative abuses and violations of the rights and freedoms of citizens can be provided only by the general Law «On Administrative Procedure» in contrast to the

existing practice of branch legislative regulation of administrative and procedural activities of public administration entities.

To review the state of legal regulation of registration procedures, which occupy an important place in the structure of a positive management process. A wide range of relationships that arise in registration proceedings are characterized by their own features related to regulation. Despite the large array of norms of an administrative and registration nature, in general, the regulation of registration activity is incomplete, and in most cases conflicting, and therefore requires further unification and systematization. The idea of concentrating the norms that will regulate all registration activities in one normative act is correct only at first glance, but the pluralism of types of state registration cannot objectively be regulated by one law. The specificity of various types of state registration is reflected in separate framework laws dedicated to a specific type of registration and in numerous by-laws.

State registration activity is regulated by more than 750 regulatory and legal acts, which, unfortunately, do not solve problems and do not eliminate legal gaps arising in this area. The system of normative legal acts that regulate registration activity must be considered, applying the classification according to the nature of the competence of public administration bodies that issue acts: general; industry; functional management. However, as part of the study of our issue, we will focus on reviewing the state of administrative and procedural regulation of the registration procedure.

The legislation of Ukraine, which regulates the registration activity, has an extensive system. One of the main legal acts of this category, which directly concerns the specifics of registration activity, is the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs”, which regulates relations arising in the field of state registration of legal entities, as well as individual entrepreneurs. It should be noted that the legislator does not give a direct answer to the question to what extent other registration procedures, in addition to the state registration of the creation of a legal entity, are mandatory for entities for which special laws have been adopted. Important are the Laws of Ukraine “On

bodies for registration of acts of civil status” [10], “On state registration of property rights to immovable property and their restrictions” [11], “On securing creditors’ claims and registration of encumbrances”.

Current legal acts provide for differentiated regulation of the registration procedure depending on the objects of registration and the specific goals of its implementation. The analysis of the current legislation allows us to record more than twenty normative acts that regulate various types of registration procedures, including by laws.

In Ukraine, there is no single regulatory act that would clearly define: general rules of registration proceedings; rules and principles of interaction between public administration bodies that carry out registration activities (i.e. general standards of the registration system), principles on which registration proceedings should be based. Such an act is necessary because a significant number of public administration bodies that carry out registration activities act inconsistently, often duplicate each other, indirectly cause material damage to persons interested in registration, abusing the deadlines for registration actions. Questions arise regarding many aspects of the implementation of registration proceedings by public administration bodies. All this, in our opinion, determines the need, first of all, to adopt the Law of Ukraine “On Administrative Procedure”, which will establish a single procedural standard for all types of proceedings, regardless of the types.

Without procedural systematization and standardization of various types of proceedings, the state cannot effectively perform the function of protecting public safety and order, and citizens are significantly limited in the ability to exercise their constitutional right to protect their interests in the field of public administration. The administrative procedure is a kind of benchmark, according to which the legality of the actions of the subjects of registration proceedings is evaluated and the registration powers of the executive authorities are implemented. On the basis of this legal axiom, we propose to amend the Law of Ukraine “On Administrative Procedure” to establish and formulate general provisions for administrative proceedings at the request of an individual or legal entity, which will apply to all types of application procedures (permit-

ting, registration). Such a proposal is logical and well-founded, since we are trying to formulate general provisions for various types of proceedings, which most often arise in the activities of executive authorities, local self-government, using various methods.

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**ОГЛЯД СТАНУ АДМІНІСТРАТИВНО-
ПРОЦЕДУРНОГО РЕГУЛЮВАННЯ В
СФЕРІ НАДАННЯ АДМІНІСТРАТИВНИХ
ПОСЛУГ**

У цій статті автор здійснює огляд адміністративно-процедурного регулювання сфери надання адміністративних послуг крізь призму видів неюрисдикційної адміністративної процедури. В рамках неюрисдикційних процедур розглянуто стан регулювання заявної (дозвільної, реєстраційної) в результаті якої приватним особами надаються адміністративні послуги, а також сформуємо пропозиції щодо змісту нормативної конструкції Закону України «Про адміністративну процедуру». Проаналізувавши його нормативну конструк-

цію, автор прийшов до висновку, що вона є придатною лише для адміністративних проваджень, які стосуються прийняття адміністративними органами, в межах реалізації ними дискреційних повноважень, рішень, які обмежують права фізичних чи юридичних осіб або створюють для них додаткові обтяжуючі обов'язки. В той самий час зазначена нормативна конструкція є непридатною для адміністративних проваджень, пов'язаних із наданням адміністративних послуг, які формально мають охоплюватися предметом регулювання даного Закону. Положення Закону України «Про адміністративну процедуру» в частині звернення приватних осіб мають поширюватися на надання адміністративних послуг незалежно від сфери. В Законі України «Про адміністративну процедуру» пропонуємо присвятити окрему главу адміністративному провадженню за зверненнями фізичних чи юридичних осіб в якій прямо закріпити вимоги щодо змісту, форми та реєстрації звернення.

Ключові слова: адміністративна процедура, надання адміністративних послуг.