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REGARDING THE CONCEPT OF "ADMINISTRATIVE PROCEDURE"

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SUMMARY

In the article, the author presents the pluralism of approaches that have developed in the scientific community regarding the concept of "administrative procedure": functional, formal-logical, activity oriented and integrative. The author analyzes these approaches and formulates the author's definition based on the purpose of the administrative procedure and its tasks.

Key words: administrative procedure, regulatory procedure, form of activity, law enforcement.

ЩОДО ПИТАННЯ ПРО ПОНЯТТЯ «АДМІНІСТРАТИВНА ПРОЦЕДУРА»

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АННОТАЦІЯ

У статті автор показує плюралізм підходів вчених до поняття «адміністративна процедура»: функціональний, формально-логічний, діяльнісний та інтегративний, аналізує ці підходи та пропонує власне авторське визначення, враховуючи мету та призначення адміністративної процедури.

Ключові слова: адміністративна процедура, правова процедура, правова форма діяльності, правозастосування.

Statement of the problem. Introduction to scientific circulation and conceptual understanding of the category of "administrative procedure" was a significant step in the development of administrative law, but at the same time it complicates understanding and research due to the lack of a legal regulation mechanism, a unified doctrinal approach to understanding this institution, and its consideration through the prism of a broad concept administrative process. In the science of administrative law, the most controversial is the issue of the content of the concept of "administrative procedure".

The relevance of the research topic a significant number of publications have appeared in the legal literature, in which the conceptual positions of scientists on understanding the essence and significance of administrative procedures have been widely reflected, but a "unified" definition of the doctrine has not yet been developed. Scientists differently interpret not only the very concept of "administrative procedure", but also its connection with the categories of "administrative process", "administrative proceedings" using various approaches. The existing legal uncertainty in the scientific environment regarding the concept under consideration complicates the study and understanding, generates variations and duality. The role of legal determination is very significant, since inaccurate, incomplete definition or lack of it leads to the possibility to manipulate the content, form complex representations, and in turn, as a result, mistaken decisions are made by law enforcement authorities.

The purpose of the article is to analyze the existing approaches to determining the administrative procedure, demonstrating the existing pluralism among scientists, and try to formulate an author's definition of this concept.

Status of research. Analyzing the domestic doctrine for the definition of the concept of "administrative procedure", we note that it is considered by scientists in conjunction with the activities of executive authorities, therefore, the following approaches are used: functional, activity, formal logical, integrative.

Presentation of the main material. Proponents of the functional approach (V.B. Averyanov, O.V. Kuzmenko, V.P. Timoshchuk, O.V. Lagoda, Yu.A. Tikhomirov, E.V. Talapina, Yu.N. Starilov) consider the administrative procedure as a specific order: as a procedure for the exercise of administrative powers aimed at resolving a legal matter or performing an administrative function [1, p. 59]; as a procedure established by law for consideration and decision by public administration bodies of individual administrative cases [2, p. 284]; as a procedure for the sequential performance by an administrative body of certain actions aimed at resolving an individual legal case [3; 4]; as the procedure for the activity of executive bodies in the consideration and resolution of individual cases, the result of which will be the issuance of an individual administrative act and which is aimed at ensuring the realization of the rights and legitimate interests of individuals in the process of their interaction with executive bodies in the framework of the latter fulfilling its tasks and functions [5, p. 7]; the normatively established procedure for the exercise by authorized entities of the right to sequentially performed actions in order to exercise their competence and provide services [6, p. 41].

The concept of order in legal literature is associated with the concept of law and order, which, according to Yu.E. Avrutin should be taken "not just as a certain state of legal ordering of social relations, but as a legal regime for the establishment and implementation of these relations based on law and legality". He considers the procedure as an administrative and legal toolbox, oriented "on the formation of a regime of legality and quality of public administration, the protection of rights and legitimate interests of citizens and legal entities, and on the search for social harmony between public authorities and the population" [7, p. 5].

Proponents of the activity approach (M. Lazarev, O.S. Berkutova) consider the administrative procedure as the activities of state authorities, local authorities and their officials. In particular, as regulated by the rule of law enforcement

activities of the executive authorities to resolve their legal affairs [8, p. 7]; as the enforcement activities of executive authorities regulated by administrative-procedural norms, aimed at exercising their powers in relations with citizens and their organizations not subordinate to them and not related to the settlement of disputes or the application of coercive measures [9, p. 7]; as a normatively regulated, focused on achieving a specific result documented activity of various entities (at least one of which is a state, municipal body or official), which consists of successive acts of behavior (steps, stages of a procedure), during which the competence of these entities is realized, the norms of various branches of law are applied and various management acts (both intermediate and final) are adopted, but not associated with judicial consideration of disputes on subjective public law or with administrative enforcement [10, p. 125].

From the position of the activity approach, the administrative procedure is primarily identified with the activities of the administrative-public body. However, it is obvious that the activities of this body related to the resolution of an administrative case are carried out in accordance with the administrative procedure. In other words, an administrative-public body within the framework of an administrative case, in essence, performs actions and makes decisions in accordance with a system of formally defined rules, which actually form the administrative procedure. Accordingly, this kind of activity of an administrative public body turns into an administrative proceeding, which is an independent administrative and procedural form of activity of a public administration.

The third group of scientists (A.B. Zelentsov, P.I. Kononov, A.I. Stakhov), **proponents of the formal logical approach**, consider the AP from the perspective of regulatory control, which determines the special (executive administrative-procedural) order of actions and decisions of administrative public authorities committed (accepted) by these bodies independently without interacting with the judicial authorities and legislative bodies for the purposes and during the resolution of the administrative case; as a regulatory control or a system of administrative-procedural norms that determine the urgency, consistency, type and nature of a number of typical, interrelated actions and decisions of public authorities on the application of certain administrative and legal measures [11, p. 191].

It should be noted that the administrative procedure as a normative regulator determines the sequence, normative duration in time (urgency), type, nature, and also the procedure for documenting the actions of not all public authorities and their officials, but only the actions of public administration and other public administration bodies. It is on the bodies and officials of the public administration, as well as organizations and individuals with the status of an administrative-public body, that the state assigns a complex of specific administrative and legal functions and provides the right to implement these functions in the manner determined by administrative procedures.

A system (complex) of norms that determine the cyclical nature, focus, type, nature, sequence, regulatory duration (urgency), the procedure for documenting administrative and procedural actions by bodies and officials of a public administration [10, p. 211].

Developing a formal logical approach to understanding the administrative procedure, it should be emphasized that these procedures are applied not only by the bodies that are directly included in the public administration system (executive bodies and local governments), but also by organizations that are vested with relevant administrative and public authority and have the status of a state or other body – other administrative-public bodies, for example, an administrative commission, a commission for affairs of juveniles and others.

The fourth group of scientists (Yu.N. Starilov, E.O. Markova, P.I. Kononov, A.I. Stakhov), **supporters of the integrative approach**, consider the administrative procedure both as an order and as an administrative-procedural form of public administration activity" [12]; as a form of exercising executive power [13, p. 134].

Administrative procedure is a form of administration's activity, a procedure for cooperation with private individuals, which is prescribed by law or judicial practice for the administration. In terms of traditional concepts, the administrative procedure (in other words, administrative coercion) is not coercion of individuals, but the administration to act in this way, and not otherwise, coercion of officials to good governance. The administrative procedure is considered in the legal plane, therefore, it is associated with the officially established procedure for the discussion, conduct of any business, activity, etc. [14, p. 223]. In this case, scientists are talking about a legal procedure, linking it to such a category as the "legal form". For example, I.M. Zaitsev, under the legal procedure, means the normatively established procedure for carrying out legal activities, i.e. a certain legal form [15, p. 223]; Yu.I. Grevtsov considers the legal procedure as the method (conditions) for the performance of certain actions in the legal sphere [16, p. 73]. Yu.N. Starilov comes to the idea of recognizing the legal procedure as an integral part of the procedural form [17, p. 325].

Recognizing the relationship between the legal procedure and the legal form, almost all researchers agree that legal procedures are related to certain types of activities or certain actions of public authorities (state authorities or local governments) and their officials, but so far have not come to unanimous opinion on the list of such types of activities (actions). So, for example, Yu.N. Starilov believes that legal procedures are associated with the legislative, law enforcement and judicial activities of public authorities, and accordingly distinguishes legislative, administrative, and judicial procedures [10, p. 85].

The procedural form should be understood as a set of homogeneous procedural requirements for the actions of participants in the process and which is aimed at achieving a specific substantive result. In other words, the procedural form is a special legal construction objectifying the principles of the most appropriate procedure for implementation certain powers. Such a definition is equally suitable for characterizing the activities of all organs of the state, and not just the judiciary, for which the category of "procedural form" has traditionally been used [18, p. 126].

In 1864 the Austrian professor Merkl in the field of administrative law defined the administrative procedure – Verwaltungsverfahren – and considered it as a form in accordance with which the activities of the authorities are carried out.

It is believed that all of the aforesaid points of view have a right to exist due to the fact that they illuminate the studied concept from various angles. Administrative procedure is a complex, multidimensional phenomenon. However, comparing the above approaches to understanding the administrative procedure, we come to the conclusion in favor of an integrative approach. Administrative procedures, regardless of their interpretation in the theory of administrative law and the practice of public administration, are associated with the creation of a special legal order in the implementation of certain managerial actions, or the adoption of appropriate administrative decisions. Consequently, administrative procedures must be considered as the most important administrative and legal institution that logically fits into the structure of administrative and legal regulation [19, p. 126].

It is advisable to study the legal procedures appearing in the legislation, including administrative and legal procedures, from the standpoint of legal significance, practical utility, and fundamental sectoral legal affiliation. Thus, it is noted that the first task of the procedures is to formulate the course of activity of administrative bodies, the second is to realize the gen-

eral values of administrative law in practical administration. According to Yu.A. Tikhomirov, administrative procedure is a means of limiting administrative discretion, preventing administrative arbitrariness and lawlessness [20].

Conclusions. The administrative procedure is aimed to limit arbitrary administrative discretion and introduce legal criteria for the actions of employees, officials, state and municipal structures, citizens and legal entities. Streamlining activities gives it an open and predictable character, which contributes to its democracy, transparency and effectiveness.The administrative procedure clearly allows avoiding the possibility of applying administrative discretions of a negative nature, since the discretion itself is expressed in the action or inaction of the authorized administrative public body or its official. In the absence or ambiguous interpretation of the relevant procedural rules, in turn, the procedure, being essentially a system of procedural rules that clearly regulates any action and (or) inaction of the administrative public body and (or) its official, does not allow alternative actions if it is not provided by law.

From the foregoing, we offer the author's definition of the concept of administrative procedure: an administrative procedure is a normatively established procedure for carrying out activities by administrative bodies aimed at limiting administrative discretion in relations with citizens and legal entities in the form established by law.

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