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Protection of the Legitimate Interests of Ukrainian Citizens in the Field of Property by Public Administration Bodies

At present, an attempt has been made to give a priority role to a qualitatively new approach to administration, planning and organisational support of administrative activities in solving administrative issues in Ukraine. The process is taking place of introducing a human-centered ideology in all state processes, expanding public service activities of public bodies and system strengthening for the provision of information technology across administrative structures.

The administrative and legal protection of legitimate interests of citizens is an extremely wide category as for its content, and the activity of public administration bodies is concerned with only a part of the established system of administrative and legal influence on social relations concerning possession, use and disposal of property and satisfaction of the legal interests of citizens associated with it.

Promotion of ensuring such a legitimate interest, regulation by means of legislation and other legal means of social relations concerning possession, use and disposal of property, control and supervision over protection conditions of the legitimate interests of citizens in the field of property by the introduction of clear criteria for compliance with the common rules and standards in the state are the main functions of public administration bodies directly related to the system of legitimate interests of citizens in the field of property².

It is worth mentioning that some of powers connected with the cases concerning administrative offenses in the field of property, resolutions on

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² E.N. Dorosheva, T.I. Odegova, *Konstitutsionnye garanti prav i svobod cheloveka i grazhdanina v Ukraine*, „Pravnichiy chasopis Donets'kogo universitetu” 2011, Vol. 1 (25), p. 30–35.

individual cases concerning possession, use and disposal of property, implementation of administrative enforcement measures, etc. are right-protecting. However, such powers are exercised by authorities having all the characteristics of public administration bodies.

It fully reflects the close relationship between administrative and right-protecting functions in activities of subjects of administrative and legal protection of the legitimate interests of citizens in the field of property representing the state as the most influential guarantor of the exercising of these legitimate interests. It is through the complex application of a whole set of means influencing public relations in the field of property that the subjects of administration can bring them to the conditions required by the state, society and individual citizens having legitimate interests in possession, use and disposal of property.

Executive bodies are capable of carrying out power and political as well as power and administrative functions which are difficult to limit by the scope of administrative activity. At the same time, administrative functions can be delivered outside the activity of executive bodies. In view of the above, any executive body empowered with the competence in administrative and legal protection of the legitimate interests of citizens in the field of property is the subject of public administration in the field³.

At the same time, not all public administration bodies being capable of implementing the methods and means of administrative legal protection of the legitimate interests of citizens in possession, use and disposal of property are acting as executive bodies. Municipal administration bodies are also subjects of public administration and subjects of the protection of the legitimate interests of citizens in the field of property. They implement public authority in a separate territory.

A peculiarity of municipal administration lies in the fact that it is implemented within the limits of local self-government, the object of administration is a local territory and the social and economic processes taking place there and the bodies carrying them out are local self-government bodies. The activity of municipal administration bodies is distinguished from public administration by impact exerted on various social processes, in particular, the protection of the legitimate interests of citizens in the field of property. An enforcement mechanism is much weaker in municipal administration and methods and ways to pursue common interests and corporate participation prevail.

Municipal administration bodies as well as other subjects of public administration have their own set of special principles of organisation and activity. These are the principles of representing the interests of territorial

³ A.V. Zaritskiy, *Garantii prav lichnosti pri realizatsii yuridicheskoy otvetstvennosti. (Voprosy teorii i praktiki)* Diss. kand. yurid. nauk, Kolomna 1999, p. 195.

community, electability, accountability, controllability and responsibility towards the territorial community, collectivity, the public, etc.

The existence of local self-government's authority concerning the protection of the legitimate interests of citizens in the field of property is derived from the content of legislation. In accordance with the Act on Local Self-Government in Ukraine of 21 May 1997 no 280/97-VR⁴, local self-government bodies ensure that necessary measures are taken in the event of an emergency according to the Act on people's protection and preservation of their material values.

Local self-government's powers as regards the implementation of measures aimed at preventing administrative offences, detecting and eliminating causes and conditions facilitating committing them are enshrined in Article 6 of the Ukrainian Code of Administrative Offences ('CUAO'). In order to protect the legitimate interests of citizens in the field of property, municipal administrative bodies may take prompt measures to stop or terminate various activities, actions by enterprises, operations of objects and shops, terminate economic activity in the event of illegal activities through administrative offences in executive bodies of city councils, in order to carry out court proceedings in cases on administrative offences in the field of property.

They can also interact with other subjects of protection of the legitimate interests of citizens in the field of property (by joint organisational measures, participation in the activities of coordinating bodies, by promptly informing the competent authorities of offences infringing on the right of property)⁵.

Public administration in the field of protection of the legitimate interests of citizens is most effectively implemented by municipal bodies through coordination and organisation of work of all bodies and organisations dealing with the prevention of administrative offences in a respective territory. Relevant interaction can become apparent in the process of joint development of measures to eliminate the causes of committing offences in the field of property, information exchange relating to the system of factors affecting the dynamics of illegal activity that violates the legitimate interests of citizens in the field of property. The administrative agreement is the most effective form of interaction.

Unfortunately, this interaction form's potential in protecting the legitimate interests of citizens in the field of property is still not fully used. Increasing the level of protection of the legitimate interests of citizens in possession, use and disposal of property is closely linked with the establishment of proper organisation of public administration of important social processes in this field, establishment of an optimal system of public admin-

⁴ Act on Local Government in Ukraine [Electronic address] – Access mode: <http://zakon2.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80>.

⁵ O.V. Pabat, *Administratyvno-protseural'ni harantiyi prav ta svobod hromadyan*, Avtoref. dis. kand. yurid. nauk, Kharkiv 2008, p. 194.

istration bodies that are subjects of administrative and legal protection of the rights and legitimate interests of citizens.

It can be stated that the fulfillment of subjective functions concerning the administrative and legal protection of the legitimate interests of citizens in the field of property by public administration bodies is related to the implementation of administrative, right-protecting, and control functions of these bodies. The administrative function is implemented to the fullest extent in law enforcement activities of subjects; and right-protecting and control functions provide an opportunity to detect and stop illegal encroachments in the field of the legitimate interests of citizens as well as restore their legal status.

The fulfillment of the above-mentioned functions characterises typical and relatively independent intrinsic demonstrations of the activities of subjects of public administration and gives an opportunity to provide an integrated approach to solving problems related to the exercise of the legitimate interests of citizens in possession, use and disposal of property. As for protecting the legitimate interests of citizens, it should be borne in mind that the protection of violated or disputed rights is, at the same time, attributable to the protection of the legitimate interests associated with the exercise of these rights. Protecting freedom or a right, public administration bodies thereby protect a number of derived legitimate interests indirectly.

Public administration bodies are able to exercise their competence in protecting the legitimate interests of citizens in the field of property by law enforcement activities, in particular, by prevention and cessation of administrative offences in the field of property as well as the adoption of legally binding decisions on the legality of acts and actions of the authorities creating barriers to possession, use and disposal of property, etc. Such activities of public administration bodies may refer to the protection of the rights and legitimate interests of citizens in the field of property simultaneously.

Thus, the exercise of public administration bodies' competence as for protection of the rights and legitimate interests of citizens in the field of property may be of complex nature, refer to the protection of the rights and related legitimate interests of citizens in the field of property and may become apparent by the application of measures of legal as well as organisational nature aimed at the implementation of the inevitability principle of a person's punishment for violation of rules, norms and standards relating to the implementation of the procedure for possession, use and disposal of property.

However, one should not associate the protection of the legitimate interests of citizens by public administration bodies with the protection of their subjective rights only. There is a whole range of legitimate interests of citizens in the field of property which are not stated in the legislation in the form of subjective rights due to various circumstances; However, this does not render them less meaningful for their holders.

The Ukrainian state faces the fundamental task of establishing an administrative and legal mechanism for protecting the legitimate interests of citizens not detailed on the form of subjective rights. The guarantee of the exercise of diverse legitimate interests of citizens in the field of property is an indicator of democratic processes in the state, an indicator of the legal culture as regards the protection of citizens' legitimate interests and the effectiveness of the administrative and legal mechanism of social-relations regulation concerning property possession, use and disposal.

It is impossible to carry out an administrative reform without an effective systemic formation of public administration bodies having a set of powers sufficient to protect not only the rights but also the legitimate interests of citizens in the field of property. At present, the protection of the legitimate interests of Ukrainian citizens in the field of property is carried out by a dedicated state apparatus.

The bodies of state control over use and protection of land, structural units of a specially authorised central executive body in the field of ecology and natural resources of Ukraine, a specially authorised central executive body in the field of water industry, forestry authorities, state architectural and construction inspection of Ukraine, and its territorial bodies, bodies of railway, sea and river transport, internal affairs bodies, and public prosecutor's authorities, bodies of the state fiscal service, control bodies on the application of intellectual property rights, etc. have relevant powers.

These public administration bodies not only direct their activities to ensure the implementation of the owner's ability to possess, use and dispose property in various fields of public relations, but also have the right to draw up reports on administrative offences and act as subjects of cases considered regarding administrative offences that may cause damage to the citizens' legitimate interests as well as subjects of decisions re-examined by other bodies in this field⁶.

The system of domestic administrative bodies being the subjects of the administrative legal protection of the legitimate interests of Ukrainian citizens in the field of property was formed back in Soviet times. The achievement of Ukrainian independence has set new main tasks for public administration. Public administration and the executive power have been granted a common set of values and purpose under the conditions of formation of a legal, democratic, and social state which is to ensure the rights and freedoms of people and citizens. In other words, the 'human-centered' ideology has become the basis for the harmonisation of relations between the state authorities and the citizens.

Completing this statement, it should also be emphasised that the construction of a 'human-centered' model of public administration is inextricably

⁶ *Demokratychnie uriaduvannia ta publichne administruvannia: problemy vymirivannia ta audytu*, A.F. Kolodiia, M.Z. Bunyka, P.M. Petrovskoho (eds.), Vydavnytstvo NADU, Kyiv 2011, p. 56.

cably linked with the protection of the legitimate interests of citizens. The latter have a priority place among today's values of a democratic state. The whole system of public administration bodies acting as subjects of administrative and legal protection of the legitimate interests of citizens in the field of property ensures their practical implementation and protection.

The system of public administration bodies being the subjects of the protection of the legitimate interests of Ukraine in the field of property is characterised by functional and organisational unity. This unity is defined by the integrity of the organisational state influence on the protection of the legitimate interests and national significance of these functions in ensuring the implementation of citizens' needs related to the acquisition and preservation of property objects, use and disposal of property benefits in the state, termination of illegal activities and renewal of legal possibilities of citizens in the field of property by administrative means.

Despite the unity of the system mentioned above, each public administration body has a certain legal status in the system determined by the scope of its competence, the specificity of the hierarchically constructed apparatus of the body, procedure for its formation, organisational and legal forms of activity, by peculiarities of subordination, control, accountability of activities towards other bodies, as well as the enforceability of relevant resolutions⁷.

The general description of the classification of public administration bodies being the subjects of the administrative legal protection of the legitimate interests of Ukrainian citizens in the field of property provides a way to formulate certain general provisions, namely:

- 1) the system of these public administration bodies is a set of organisationally separated, independent, legally established structures which according to the law have powers and necessary material means to exercise powers in the field of protection of the legitimate interests of citizens in possession, use and disposal of property;
- 2) these public administration bodies may have different places in the system of state bodies, differ in their scope of competence, organisational and legal forms of activity, the purposes of formation, procedure for administrative decision-making, territorial scope of activity and other features, yet they fulfill a joint task of the protection of the legitimate interests of citizens in relation to possession, use and disposal of property, in particular, prevention of violations in this field, cessation of encroachments on property, taking of administrative measures towards violators under the procedure established by law and compensation for the damage caused, consideration of disputed issues in relation to possession, use and disposal of property, taking of administrative enforce-

⁷ V.V. Subochev, *Zakonnnye interesy*, Vydavnytstvo Norma, Moscow 2011, p. 496.

ment measures, execution of proceedings concerning complaints from citizens in this field, etc.;

- 3) The status of these public administration bodies is clearly governed by the provisions of normative legal acts and they execute their functions through the exercise of state authority powers, by adoption of administrative decisions in the form of legal acts.

A wide list of public administration bodies having powers as regards the administrative and legal protection of the legitimate interests of citizens in the field of property is not a guarantee of a model formation for the effective public administration of processes in the field of property⁸.

Conducting effective reforms in this field is closely linked with the change in the general principles of administration in our state. The low level of citizens' trust in these state institutions confirms vital problems in the activities of public administration bodies.

Reforming the system of public administration bodies vested with powers to protect the legitimate interests of citizens in the field of property and the process of improving the efficiency of their activities in this field should primarily take place due to the harmonisation of the functioning of the administrative system with European standards that include: reliability and predictive power (legal certainty); openness and transparency; reporting; efficiency and effectiveness; the most efficient use of resources; partnership, unification of efforts of public authorities and the public in order to solve vital problems of social development.

Conclusion

Therefore, we believe that the state has an important task of the optimisation of administrative structures whose powers relate to the protection of the legitimate interests of citizens in the field of property, improvement of the legal support of their activities, decentralisation of the scope of the legal protection of the legitimate interests of citizens in possession, use and disposal of property, use of various means of democratic control over the activity of authorities in the field of property, involvement of the public, training and education of the public, local self-government bodies in the administrative and legal protection of the legitimate interests of citizens in the field of property; formation of an effective model of practical implementation of democratic control forms over processes that may damage the legitimate interests of citizens in the field of property, enhanced professional competence, legal culture of administrative activity subjects, and the introduction of a monitoring system for administrative decision to be more effective in this field.

⁸ *Yevropeiski pryntsyipy derzhavnoho upravlinnia*, O. Yu. Kulenkovoï, transl., Vydavnytstvo UADU, Kyiv 2000, p. 52.

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Abstract

This article concerns the protection of the legitimate interests of Ukrainian citizens by public administration bodies in the field of property. The author focuses on the postulates of optimising public administration towards improving the protection of Ukrainian citizens in the field of property taking into account the realities of public administration in Ukraine.

Keywords: protection of property by public administration, public administration in Ukraine

Ochrona uzasadnionych interesów obywateli Ukrainy w zakresie własności przez organy administracji publicznej

Streszczenie

Artykuł dotyczy ochrony uzasadnionych interesów obywateli Ukrainy w zakresie własności przez organy administracji publicznej. Autorka skupia się na postulatach optymalizacji administracji publicznej w celu lepszej ochrony własności obywateli Ukrainy, uwzględniając ukraińskie realia administracji publicznej.

Słowa kluczowe: ochrona własności przez administrację publiczną, administracja publiczna na Ukrainie