THE ROLE OF ADMINISTRATIVE JUDICIAL PROCEEDINGS IN THE SYSTEM OF LEGAL PROTECTION OF ENTREPRENEURIAL ACTIVITIES IN UKRAINE

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The article focuses on the study of the place of administrative judicial proceedings in the mechanism of protection of entrepreneurial activities in Ukraine. Various methods of protecting the right to entrepreneurship are studied, taking into account civil law, criminal law, constitutional law and administrative methods. Special attention is paid to the features of administrative judicial proceedings as an effective mechanism for countering unlawful actions and decisions of government officials that violate the rights and legitimate interests of entrepreneurs. The advantages and disadvantages of administrative judicial proceedings are analyzed in comparison with other methods of protection, and the prospects for its further development and improvement are outlined.

To further improve the system of administrative justice in order to protect the rights of entrepreneurs, the following should be done: it is necessary to facilitate processes in administrative courts, in particular, for small and medium-sized enterprises; it is important to raise the professional level of both judges and those representing government structures; it is necessary to increase responsibility for non-compliance with court decisions and create effective tools for their forced implementation; it is necessary to develop e-justice and more widely involve modern information technologies in the judicial system; A large-scale awareness campaign should be launched among entrepreneurs so that they know about their rights and the possibilities of judicial protection in the administrative court.

It is concluded that administrative justice plays a primary role among the methods of protecting the right to entrepreneurship in Ukraine. It acts as an effective and independent mechanism of judicial control over the actions and decisions of government bodies, which ensures the restoration of violated rights and legitimate interests of entrepreneurs. Despite certain shortcomings, continuous improvement of legislation and practice of administrative justice will contribute to strengthening legal guarantees for the development of entrepreneurship and increasing trust in the judicial system as a whole.

Keywords: administrative justice, administrative court, efficiency, right to entrepreneurial activity, protection, place, entrepreneurship, right to entrepreneurship, right to a fair trial, procedural form, judicial administrative jurisdiction, judicial protection, form of legal protection.

The right to entrepreneurial activity is one of the fundamental constitutional rights guaranteed by the state and is the basis of economic development. However, the implementation of this right often faces various obstacles that may arise from the side of state bodies and their officials. In this regard, the issue of effective protection of the right to entrepreneurship acquires particular importance. There is a whole range of legal mechanisms aimed at ensuring such protection, among which administrative proceedings occupy one of the leading places.

The purpose of this article is to analyze the place of administrative proceedings among other forms of protection of the right to entrepreneurship, identify its features, advantages and disadvantages, as well as identify areas for its further improvement.

According to Art. 3 of the Law of Ukraine "On Citizens' Appeals" dated 02.10.1996 No. 393/96-VR [1] a complaint is an appeal for the

restoration of rights, protection of legitimate interests violated by acts of public authorities. At the same time, according to Part 1 of Art. 2 of the Code of Administrative Offenses of Ukraine, the resolution of legal disputes is one of the tasks of administrative proceedings.

In view of the above, it is necessary to agree with O.V. Kapinos on the possibility of considering administrative proceedings as: a means of judicial control over administrative activities, which is carried out by checking the legality of administrative acts, as well as the restoration of violated subjective rights and legitimate interests; a set of measures to protect subjective rights and legitimate interests by considering and resolving administrative disputes on the legality of adopted administrative acts provided for by law [2, p. 47].

The proposals of some authors on improving the legislation attract attention. Thus, A.V. Oliynyk, based on the results of studying the issues of protecting socio-economic human rights in administrative proceedings, indicates that violations of these rights are of an ongoing nature due to the need for their regular and repeated implementation. Thus, the inexpediency of applying the general six-month limitation period to the specified claims is noted. At the same time, the researcher proceeds from the fact that the needs determined by such rights must be satisfied repeatedly and regularly [3, pp. 99-100]. In accordance with Part 2 of Article 122 of the Code of Administrative Offenses of Ukraine, fairly clear criteria for the start of calculating the period for applying to an administrative court are determined: the day when a person learned or should have learned about the violation of his subjective rights, freedoms, and legitimate interests. Thus, the ongoing nature of the violation means that the first day of the relevant period is the day when the person first learned or should have learned about the relevant violation. Therefore, the corresponding proposal of the researcher regarding the establishment of a special category of the limitation period requires further justification. The place of administrative proceedings in the system of forms of protection of the right to entrepreneurship is determined by the definition of administrative proceedings as a form of exercising judicial power (justice) [4, p. 50]. In the legal literature on civil procedural law, the following features of justice are distinguished: implementation only by the court (the exceptional nature of the judicial power); independence of the court in the exercise of justice from external influence; the authority of the court to apply the norms of law without the consent of any other authorities; the presence of specific goals of justice that determine the content of the relevant judicial activity; ensuring the availability of judicial protection (the presence of a system of special measures and guarantees); the nature of justice as a special procedural form, the compliance with the requirements of which determines the legality of the court decision; the generally binding nature of the court decision, its issuance on behalf of the state, the possibility of compulsory execution of the court decision; the possibility of reviewing the issued court decision; a special method of administering justice - consideration and resolution of cases in a court session; the possibility of applying state coercion measures to the participants in the case [5, p. 7-8]. These features are fully inherent in the activities of the administrative court in administrative proceedings. The doctrine of civil procedural law has developed positions on the forms of protection of rights, which are considered in the context of the authorized subjects provided for by law: the court, subjects of public authority, notaries, etc. [5]. In the theory of law, legal protection is considered from the position of the activities of authorized subjects in preventing and eliminating offenses, bringing offenders to legal responsibility. There are forms of manifestation of legal protection depending on the nature of the relevant activity: law-making activity or law enforcement. Law enforcement activity is aimed at protecting the legal status of subjects of law [6]. In view of the above, the place of administrative proceedings in the system of forms of protection of the right to entrepreneurship is determined, on the one hand, by its law-enforcement nature, and on the other - by the affiliation of the subject of its implementation to a separate branch of power - the judiciary, which distinguishes it from forms of protection by executive authorities, local self-government bodies and other authorized subjects of public power.

Entrepreneurial activity in Ukraine is based on the principles of freedom, economic initiative and independence, enshrined in the Constitution of Ukraine. At the same time, these

principles may be violated due to ineffective or illegal actions of state authorities, local governments or their officials. Therefore, legal protection of the right to entrepreneurship is one of the important tasks of the legal system. The system for protecting the rights of entrepreneurs in Ukraine includes the following main forms:

Administrative justice - aimed at protecting the rights of entrepreneurs from the actions of government authorities.

Commercial justice - resolving disputes between entrepreneurs and enterprises.

Constitutional justice - to protect rights that are violated within the framework of the Constitution of Ukraine.

Administrative justice as a mechanism for protecting the rights of entrepreneurs [7].

Administrative justice is a procedural mechanism that ensures the protection of the rights of individuals and legal entities, in particular entrepreneurs, from illegal or unlawful actions of government authorities and local governments. This may include appealing: decisions of licensing and permitting authorities; acts of tax authorities on the payment of taxes and fees; results of inspections and fines imposed; violations of the rights of entrepreneurs in the implementation of public procurement.

Administrative justice has a clearly defined jurisdiction, which allows for the rapid resolution of disputes between entrepreneurs and state authorities. One of the advantages of administrative justice is its accessibility, since entrepreneurs can apply to the administrative court without having to spend large amounts of money on lawyers.

Commercial courts are the main bodies that provide legal protection in relations between business entities, that is, between entrepreneurs and enterprises. Commercial justice is aimed at resolving disputes in the field of contractual relations, in particular regarding the fulfillment or non-fulfillment of contractual obligations, disputes about debts, bankruptcy, etc. However, these courts do not have jurisdiction over disputes between entrepreneurs and state bodies, which limits their possibilities in the context of protecting the right to entrepreneurship in administrative legal relations [8].

Constitutional proceedings are concerned with the consideration of cases concerning the violation of fundamental rights and freedoms of citizens, including the rights of entrepreneurs. Entrepreneurs may apply to the Constitutional Court with questions regarding the compliance of current legislation with the Constitution of Ukraine if they believe that their rights to entrepreneurial activity have been violated due to the unconstitutionality of acts or regulatory decisions.

Comparative analysis of administrative proceedings and other forms of protection of entrepreneurial rights.

Administrative proceedings differ from economic proceedings in the subject of the dispute. If administrative proceedings are focused on protecting the rights of entrepreneurs from illegal acts of government bodies, then economic proceedings resolve disputes between entrepreneurs themselves. Administrative courts have broad powers to appeal not only administrative acts, but also decisions of state authorities.

Constitutional proceedings are not a frequently used tool for protecting the rights of entrepreneurs, since they apply only to cases where there is a constitutional issue or a dispute over the compliance of the norms of the Constitution [9].

Problems and prospects for the development of administrative proceedings in Ukraine.

Modern judicial practice shows that administrative proceedings, despite their importance, have a number of problems, such as delays in considering cases, imperfect judicial practice, and insufficient understanding by entrepreneurs of their rights in this process. To improve the efficiency of administrative proceedings, it is important to: develop training and advanced training of judges in the administrative process; introduce new technologies to speed up the consideration of cases; increase the accessibility of courts for entrepreneurs.

Administrative justice has a number of significant advantages that make it an effective tool for protecting the rights of entrepreneurs: the ability to appeal decisions, actions and inaction of public authorities. Entrepreneurs can appeal illegal inspections, unjustified fines, refusal to issue permits, licenses, delays in making decisions, unlawful actions of fiscal authorities, etc [10].

Objectivity and independence of judicial control. The court is an independent arbitrator

that ensures impartial consideration of the case and an objective assessment of the legality of the actions of public authorities.

Specialization of courts. The presence of specialized administrative courts and judges who have deep knowledge in the field of public law contributes to the quality of consideration of cases.

The ability to suspend the action of the contested decision. In certain cases, the court may suspend the action of the contested decision of the public authority until the case is resolved on the merits, which allows avoiding negative consequences for the entrepreneur [11].

Restoration of violated rights. If the claim is upheld, the administrative court may oblige the subject of public authority to take certain actions, cancel the illegal decision or recognize its inaction as unlawful, which in fact leads to the restoration of the violated rights of the entrepreneur [12].

Publicity of the process. The openness of court hearings and the publication of court decisions contribute to increasing the transparency of the activities of state bodies and the formation of a sense of justice.

Along with the advantages, administrative proceedings also have certain disadvantages that require attention and further improvement:

Duration of court proceedings. Despite the general focus on efficiency, the consideration of complex administrative cases can take a significant amount of time, which negatively affects business.

The complexity of the process for entrepreneurs without a legal education. Administrative proceedings are quite formalized, which can create difficulties for entrepreneurs who do not have sufficient legal knowledge and experience [13].

Problems with the implementation of court decisions. Despite the binding nature of court decisions, sometimes there are problems with their actual implementation by government officials.

Insufficient effectiveness of mechanisms for liability for non-execution of court decisions. The system of liability of officials for non-execution of court decisions needs to be improved.

To further improve administrative justice in the context of protecting the right to entrepreneurship, it is necessary to: simplify administrative justice procedures, especially for small and medium-sized businesses; increase the professional level of judges and representatives of government officials; strengthen responsibility for non-execution of court decisions and implement effective mechanisms for their enforcement; develop e-justice and use of modern information technologies in judicial proceedings; conduct extensive explanatory work among entrepreneurs regarding their rights and opportunities for protection in administrative courts [14].

Administrative justice is an important tool for protecting the rights of entrepreneurs from illegal actions of state authorities, in particular in the context of licensing, tax control and other administrative processes; it occupies a specific place among other forms of protection, such as economic justice and constitutional justice, and is an effective tool for combating administrative violations affecting entrepreneurial activity.

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РОЛЬ АДМІНІСТРАТИВНОГО СУДОЧИНСТВА В СИСТЕМІ ПРАВОВОГО ЗАХИСТУ ПІДПРИЄМНИЦЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Стаття зосереджується на дослідженні місця адміністративного судочинства у механізмі охорони підприємницької діяльності в Україні. Проводяться дослідження різноманітних способів захисту права на підприємництво, враховуючи цивільно-правові, кримінально-правові, конституційно-правові та адміністративні методи. Особлива увага приділяється особливостям адміністративного судочинства як дієвого механізму протидії протиправним діям та рішенням суб'єктів владних повноважень, що порушують права та законні інтереси підприємців. Аналізуються переваги та недоліки адміністративного судочинства порівняно з іншими методами захисту, а також окреслюються перспективи його подальшого розвитку та удосконалення.

Для подальшого поліпшення системи адміністративного судочинства з метою захисту прав підприємців, треба зробити наступне: необхідно полегшити процеси в адміністративних судах, зокрема, для малих та середніх підприємств; важливо підняти професійний рівень як суддів, так і тих, хто представляє владні структури; слід збільшити відповідальність за невиконання судових рішень та створити дієві інструменти для їх примусової реалізації; потрібно розвивати електронне правосуддя та ширше залучати сучасні інформаційні технології в судовій системі; Має бути розгорнута масштабна роз'яснювальна кампанія серед підприємців, щоб вони знали про свої права та можливості судового захисту в адміністративному суді.

Зроблено висновок, що адміністративне судочинство відіграє першорядну роль серед способів захисту права на підприємництво в Україні. Воно виступає дієвим та самостійним механізмом судового контролю за діями та рішеннями владних органів, що забезпечує відновлення порушених прав і законних інтересів підприємців. Незважаючи на певні недоліки, постійне вдосконалення законодавства та практики застосування адміністративного судочинства сприятиме посиленню правових гарантій для розвитку підприємництва та зростанню довіри до судової системи загалом.

***Ключові слова**: адміністративне судочинство, адміністративний суд, ефективність, право на підприємницьку діяльність, захист, місце, підприємництво, право на підприємництво, право на справедливий суд, процесуальна форма, судова адміністративна юрисдикція, судовий захист, форма правового захисту.*