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Foreigners and stateless individuals as subjects of administrative proceedings

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The right to appeal to a court, including an administrative one, is one of the key rights of citizens guaranteed by the Constitution and laws of Ukraine. Apart from the general constitutional right to judicial protection, Article 7 of the Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges" dated June 2, 2016, guarantees everyone the protection of their rights, freedoms, and interests within a reasonable time by an independent, impartial, and fair court established by law. Considering the relevance of this study, its purpose was to establish the main reasons for improper recognition of the legal status of all participants in administrative proceedings at the legislative level. The study used a set of methods and techniques of scientific cognition. The principal ones are as follows: the dialectical method, which determines the essence and content of the administrative legal status of Ukrainian citizens, foreign citizens, and stateless individuals; the comparative legal method, with the application of which the Ukrainian and foreign regulatory framework governing the status of foreign citizens and stateless individuals were compared; the formal legal method, which, together the method of logical analysis, allowed comprehensively investigating the modern system of legal norms that establish administrative procedural legal personality and the procedure for citizens and subjects of authority to exercise their rights

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and duties in an administrative court; the logical-semantic method allowed developing proposals for improving the legislation of Ukraine in the field of administrative proceedings. It was stated that access to justice for every person is ensured according to the Constitution of Ukraine and according to the procedure established by the laws of Ukraine. However, along with the guaranteed right to appeal to the court of foreigners, stateless individuals (refugees, migrants, immigrants), such a category of subjects of administrative proceedings as stateless individuals stayed outside the limits of Ukrainian legislation. The paper considered the administrative legal status of Ukrainian citizens, foreign citizens, and stateless individuals as subjects of administrative proceedings. To eliminate the shortcomings of the legislative regulation of the legal status of stateless individuals in Ukraine, the author concluded that it is necessary to eliminate the existing deficiency by amending the Law of Ukraine No. 3773-V "On the Legal Status of Foreigners and Stateless Individuals" dated September 22, 2011. The practical value of the obtained results is that the theoretical propositions, conclusions, and proposals formulated in the article can be used: in the research field (for further developments aimed at investigating the issues of administrative justice in Ukraine), in the law-making field (to improve the current legislation of Ukraine), in the field of law enforcement (to improve the activities of administrative courts, state executive authorities, local self-government bodies), in the field related to ensuring the rights, freedoms, and legitimate interests of individuals and legal entities

Keywords: legal status, foreigners, migrants, stateless individuals, judiciary, legislation

Introduction

The main purpose of the judiciary is the administration of justice, the power of which lies in high ethics, social justice as the basis of the consolidation of society, the rule of law, legal certainty, stability, protection of the rights of everyone, and the legal order. In general, the institution of judicial protection has a special role. Instead, it is necessary to emphasize that administrative proceedings, which are the youngest component of the judicial system, are distinguished among all types of judicial proceedings by the most significant functional legal and procedural relations regarding the resolution of disputes in the public legal sphere. That is why a certain number of theoretical and practical aspects of the functioning of administrative justice require the deepest possible analytical understanding and scientific and systematic generalization, one of which is the characterization of subjects in the legal relations of administrative proceedings [1].

One of the key issues of organizing administrative proceedings is establishing the composition and procedural status of participants in administrative proceedings. The analysis of procedural legislation and scientific studies indicate that at the legislative and doctrinal level, there are different ideas regarding the understanding of the composition of individuals taking part in the administrative procedure. Therewith, the category of legal status of any person is an essential component for every party to administrative proceedings; at the same time, the absence of a definition of the legal "status of a stateless individual" in Ukrainian legislation may adversely affect the scope of rights and obligations of the specified category of individuals during the trial in court.

Given the importance of the problem, the issue of determining the composition of the participants in administrative proceedings has always been in the centre of attention of scientists.

Among whom are O.M. Andronevych, O.V. Bachun, O.V. Haran, S.T. Honcharuk, E.F. Demskyi, A.V. Luzhanskyi, B.V. Malyshev, S.M. Oliinyk, Ye.Yu. Petrov, O.P. Svitlychnyi, I.V. Topor, and others. However, against the background of ongoing judicial reform in general and procedural legislation, not all issues regarding the composition of participants in administrative proceedings have been thoroughly investigated.

Results and Discussion

The analysis of scientific research indicates that, in contrast to the legal definition, scientists mostly use the term “subjects of the administrative procedure” and, accordingly, classify the subjects and participants in administrative procedural relations. In the matter of clarifying the circle of participants in the administrative procedure, the previous wording of Chapter 5 of the Code of Ukraine on Administrative Procedure (CUAP) was entitled “Participants in the administrative procedure”, but as a result of the amendments introduced by Law of Ukraine No. 2147-VIII “On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Ukraine on Administrative Procedure and other legislative acts” dated 03.10.2017, Chapter 4 of the Code of Ukraine on Administrative Procedure No. 2747-IV dated 06.07.2005, is entitled “Participants in the judicial procedure”, and Article 42 of the Code contains an indication that participants in the procedure are parties to the case, third parties, as well as bodies and individuals entitled to apply to the court in the interests of other individuals.

Therefore, the specified Article contains a list of persons interested in the resolution of an administrative case, while the nature of the interest in the administrative case of its participants is heterogeneous. Considering the provisions of the current CUAP and the complex of legislatively established rights and obligations

of persons taking part in administrative proceedings, considering the subject of this study, the specific features of the legal status of foreigners and stateless individuals as subjects of the judicial procedure should be considered.

According to Article 5.7 of the CUAP, foreigners, stateless individuals, and foreign legal entities enjoy the same right to judicial protection in Ukraine as citizens and legal entities of Ukraine. This provision corresponds to the fundamental principles of the legal status of foreigners and stateless individuals established by the Law of Ukraine No. 3773-V “On the Legal Status of Foreigners and Stateless Individuals” dated September 22, 2011, according to Article 1 of the Law, a foreigner is an individual who does not hold the citizenship of Ukraine and is a citizen (subject) of another state or states, while a stateless individual is a person who is not considered a citizen by any state due to the operation of its law and complies with ratified international agreements Ukraine.

According to Article 3.1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Individuals”, foreigners and stateless individuals who are in Ukraine on legal grounds enjoy the same rights and freedoms, and bear the same obligations as citizens of Ukraine, according to exceptions established by the Constitution, laws, or international treaties of Ukraine.

Article 8.2 of the CUAP points to the equality of all participants in the legal procedure before the law and the court, according to which there can be no privileges or restrictions on the rights of participants in the legal procedure based on race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language, or other characteristics, while Article 42 of the CUAP establishes an exhaustive list of participants involved in an administrative case.

Based on the provisions of the specified article, the legislator divided the participants in the legal procedure based on their legal interest in the results of the decision on the administrative case, dividing them, depending on the procedural rights and obligations granted to them in the legal procedure, into parties and third parties, as well as into bodies and persons entitled to apply to the court in the interests of other individuals. If the parties and third parties have a material and legal interest in the results of the decision on the administrative case, others have a procedural legal interest.

Foreigners and stateless individuals as subjects of administrative proceedings (court) are specified in Article 77 of the Law of Ukraine No. 1404-VIII "On Executive Proceedings" dated 02.06.2016, according to which during the execution of decisions regarding foreigners, stateless individuals, and foreign legal entities who, respectively, reside (stay) or are registered in the territory of Ukraine or have Ukraine's own property, which is owned independently or jointly with other persons, the provisions of this Law shall apply. In case of non-compliance with the decisions by the individuals specified in the first part of this article, the executor applies to the central body of the executive power, which ensures the implementation of the national policy on migration, to the state border protection authorities, with a request to prohibit the entry into Ukraine or the deportation of such individuals outside of Ukraine according to the Law of Ukraine "On the Legal Status of Foreigners and Stateless Individuals".

The Law of Ukraine No. 3671-VI "On Refugees and Persons in Need of Additional or Temporary Protection" dated 08.07.2011 specifies foreigners and stateless individuals as subjects of administrative proceedings. Article 12 of the Law prescribes the right to appeal decisions concerning the status of a refugee and an

individual who needs added protection is entitled to appeal to an administrative court, while Article 10.6 recognizes that a foreigner or a stateless individual is recognized as a refugee in Ukraine or an individual in need of added protection, and is considered to be an individual who permanently resides in Ukraine from the moment the decision to recognize them as a refugee is made or who is legally staying in the territory of Ukraine indefinitely.

The greatest expression of the recognition of foreigners and stateless individuals as subjects of administrative proceedings is found in the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", as indicated by Article 1.27 (regarding individuals in respect of whom the court decided on forced deportation and on detention for identification and ensuring forced deportation, including those adopted according to the international treaties of Ukraine on readmission); Article 4.18 (individuals released from the points of temporary stay of foreigners and stateless individuals illegally staying in Ukraine, based on a court decision to cancel the decision on their detention or forced deportation outside Ukraine); Article 5.17 (in case of receiving a written refusal to submit a submission or petition, a foreigner and a stateless individual may submit, together with the corresponding application, a court decision establishing the fact of their belonging);

parts 4-5 of Article 6-1; (the decision to cancel the decision to recognize an individual as stateless can be appealed to the administrative court within 20 working days from the day the person receives the notification about the cancellation of the decision);

Article 12.3 (the decision to cancel a visa can be appealed according to the legislatively established procedure); paragraph 6 of Article 13.1 (if during the previous stay on the territory of Ukraine, a foreigner or a stateless

individual did not comply with a court decision); Article 22.3 (departure of a foreigner or a stateless individual from Ukraine may be temporarily postponed by a court decision until they perform their property obligations to individuals and legal entities in Ukraine, unless otherwise stipulated by international treaties of Ukraine); Article 26.4 (the decision on forced return can be appealed to the court); part 1, 3, 5 of Article 30 (forced deportation of foreigners and stateless individuals by decision of an administrative court).

Notably, the Law of Ukraine "On Immigration" includes immigrants in the category of foreigners or stateless individuals. According to para. 2 Art. 1 of the Law, an immigrant is a foreigner or stateless individual who received a permit to immigrate and arrived in Ukraine for permanent residence, or, being in Ukraine on legal grounds, received a permit to immigrate and stayed in Ukraine for permanent residence. Article 13.4 of the Law of Ukraine "On Immigration" states that if a person has appealed the decision to revoke an immigration permit to a court, the decision to deport them shall not be taken until the court's decision becomes final. Article 15 of the same law establishes an appeal according to the prescribed procedure to the court against the inactivity of officers and officials.

It is worth adding that Article 1.1.14 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Individuals" contains the term "illegal migrant", which includes foreigners or stateless individuals who crossed the state border outside checkpoints or at checkpoints, but with the avoidance of border control and did not immediately apply for refugee status or asylum in Ukraine, as well as foreigners or stateless individuals who legally arrived in Ukraine, but after the expiration of the period of stay determined for them, lost the grounds for further stay and avoid leaving from Ukraine.

Therefore, according to the Laws of Ukraine "On Refugees and Individuals in Need of Added or Temporary Protection" and "On Immigration", the category of foreigners or stateless individuals is covered by the categories "refugees" and "immigrants".

The specified individuals as participants in administrative proceedings are indicated by the Standard Provisions on the Point of Temporary Stay of Foreigners and Stateless Individuals Illegally Staying in Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1110 dated July 17, 2003. According to the Regulations, foreigners and stateless individuals who are illegally staying in Ukraine may be the following individuals: in respect of whom the court has decided on forced deportation outside of Ukraine; in respect of which the court decided to detain for identification and ensuring forced deportation outside Ukraine, including those adopted according to Ukraine's international treaties on readmission; detained by the State Migration Service, its territorial bodies and subdivisions for the terms and according to the legislatively prescribed procedure; detained by a court decision until the completion of consideration of an application for recognition as a refugee or a person in need of added protection in Ukraine, or a stateless individual.

Having ratified the Convention on the Status of Stateless Individuals dated 28.09.1954 by the Law of Ukraine No. 23-VII "On the Accession of Ukraine to the Convention on the Status of Stateless Individuals" dated 01.11.2013. Ukraine has recognized that stateless individuals are subject to administrative proceedings. According to Article 1 of the Convention, the term "stateless individual" means a person who is not considered a citizen by any State according to its law, which according to Article 16 of the Convention has the right of free appeal to courts on the territory of all Contracting States.

In the territory of the Contracting State of their habitual residence, a stateless individual enjoys the same position as citizens of the State in matters related to the right to appeal to courts. In Article 12.1 of the Convention on the Status of Stateless Individuals, it is also indicated that the personal status of a stateless individual is determined by the laws of the country of their domicile or, if they do not have one, by the laws of the country of their residence.

In the absence of a special law in Ukraine that would regulate the legal status of stateless individuals, in relations with stateless individuals, officials of public authorities and judges should be guided by the provisions of the Convention on the Status of Stateless Individuals. Article 31 of the Convention refers to stateless individuals as subjects of administrative proceedings, which indicates that under certain circumstances, a stateless individual is deported only according to the decisions made in court.

Investigating the subjects of administrative proceedings in Ukraine, O.M. Andrunovich concluded that "the right to judicial protection in an administrative court is an inalienable right of an individual and a citizen, which constitutes a set of norms of international and national legislation, which prescribe the right of an individual to go to court to resolve a legal dispute, as well as the procedure for its resolution in court, which, furthermore, acts as the main right to protect other rights and freedoms of an individual and a citizen. It covers the right to appeal to an available court; consideration of the appeal by the court; fair trial and decision; appeal and cassation appeal of the court decision; reasonable terms for consideration of the appeal by the court; public hearing and announcement of the decision; independent and impartial court; legal aid; ensuring the execution of the court decision" [2] The above is covered by the principle of inadmissibility of

deprivation of the right to protection, rights and legitimate interests of foreigners and stateless individuals, which is directly stated in the CUAP. Furthermore, the right to judicial protection before an administrative court should also cover the right to respect for the rights and interests of other participants in administrative proceedings; to protect a legitimate interest; to demand proper conduct from the subject of power; to apply measures to restore the violated subjective right; to enforce a court decision.

This is based on the rights and obligations arising in the presence of these circumstances, and may also arise from other legal facts.

This also follows the norms of the Constitution of Ukraine or other laws. In particular, attention is drawn to the above in the resolution of the Plenum of the Supreme Court of Ukraine No. 9 of 01.11.1996, according to which the Constitutional provisions on the legality of judicial proceedings and the equality of all participants before the law and the court (Article 129 of the Constitution) oblige the court to ensure equal opportunities for all of them regarding the provision and examination of evidence, the submission of motions and the exercise of other procedural rights. Considering the constitutional provision that justice in Ukraine is administered exclusively by courts, the jurisdiction of which extends to all legal relations arising in the state (Article 124 of the Constitution), all disputes about the protection of the rights and freedoms of citizens are subordinate to the courts.

The right to judicial protection of a person, guaranteed by the Constitution and laws of Ukraine, must be substantiated by the person who applied to the court for the protection of the violated right. As noted in the decision of the Supreme Court of Ukraine dated November 15, 2016 in case No. 800/301/16, guaranteed by Article 55 of the Constitution of Ukraine and

the right to judicial protection specified in the laws of Ukraine makes provision for the possibility of applying to court for the protection of the violated right, but requires that the allegation of violation of rights be substantiated. A mandatory condition for the provision of legal protection by the court is the existence of a corresponding violation of the rights, freedoms, or interests of the individual by the subject of power at the time of their appeal to the court. The violation must be real, relate to the individually expressed rights or interests of the individual who claims their violation.

One should agree with the opinion that “Judicial protection of the rights and freedoms of an individual and a citizen in Ukraine needs further improvement, which can be achieved by improving the quality of the application of constitutional principles of judicial administration by courts. Adherence to the constitutional principles of the administration of justice unambiguously contributes to the strengthening of constitutional legality and is aimed at the development of legal means that ensure the development and protection of constitutional values, guarantee the provision and protection of human and citizen rights and freedoms” [3].

Conclusions

The author of this paper, fully sharing the above positions of scientists regarding the need for agrochemical certification of agricultural land

as one of the basic measures for determining the qualitative composition of soils, proposes as one of the steps to regulate the estimation of agricultural land for organic production, to establish the obligation to conduct agrochemical certification of land on which organic crop production activities are planned. Therewith, to operate with relevant data, the author proposes to determine the terms of agrochemical certification of such lands no later than one year before the submission of an application for certification of organic production. For this, it proposed to amend Part 5 of Art. 37 of the Law of Ukraine “On Land Protection”; Clause 3 of the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020; clauses 1.5 and 1.6 of the Procedure for maintaining the agrochemical passport of the field, land plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011. This allows objectively estimating the quality of such lands and will serve as a guarantee of the production of organic plant-based goods.

Further scientific research in the field under study should focus on the development and regulatory consolidation of criteria for the quality of land (soils) suitable for growing individual agricultural crops in organic production of plant-based goods.

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Іноземці та особи без громадянства як суб'єкти адміністративного судочинства

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Анотація

Право на звернення до суду, у тому числі адміністративного, є одним із найважливіших прав громадян, гарантованих Конституцією і законами України. Окрім загального конституційного права на судовий захист, зокрема, ст. 7 Закону України «Про судоустрій і статус суддів» від 02.06.2016 р. № 1402-VIII, гарантує кожному захист його прав, свобод та інтересів у розумні строки незалежним, безстороннім і справедливим судом, утвореним законом. Враховуючи актуальність статті, метою є з'ясування основних причин неналежного визнання правового статусу всіх учасників адміністративного судочинства на законодавчому рівні. У дослідженні було використано сукупність методів і прийомів наукового пізнання. Основні з-поміж них: діалектичний метод, за допомогою якого визначено сутність і зміст адміністративно-правового статусу громадян України, іноземних громадян та осіб без громадянства; порівняльно-правовий метод, із застосуванням якого здійснено порівняльну характеристику вітчизняної та зарубіжної нормативної бази, що регламентує статус іноземних громадян та осіб без громадянства; формально-юридичний метод, який у поєднанні з методом логічного аналізу дозволив усебічно вивчити сучасну систему правових норм, які закріплюють адміністративну процесуальну правосуб'єктність і порядок здійснення громадянами та суб'єктами владних повноважень своїх прав та обов'язків в адміністративному суді; логіко-семантичний метод уможливив розроблення пропозицій щодо вдосконалення законодавства України у сфері адміністративного судочинства. Було зазначено, що доступність правосуддя для кожної особи забезпечується відповідно до Конституції України та в порядку, встановленому законами України. Проте поряд із гарантованим правом звернення до суду іноземців, осіб без громадянства (біженців, мігрантів, іммігрантів), така категорія суб'єктів адміністративного судочинства, як апатриди, залишилася поза межами вітчизняного законодавства. Розглянуто адміністративно-правовий статус громадян України, іноземних громадян та осіб без громадянства як суб'єктів адміністративного судочинства. З метою усунення недоліків законодавчого регулювання правового статусу апатридів в Україні, автор прийшов до висновку про необхідність усунення існуючого недоліку, шляхом внесення змін до Закону України «Про правовий статус іноземців та осіб без громадянства» від 22.09.2011 р. № 3773-V. Практична цінність одержаних результатів полягає в тому, що сформульовані в статті теоретичні положення, висновки та пропозиції можуть бути використані: у науково-дослідній сфері (для подальших розробок, спрямованих на вивчення проблематики адміністративної юстиції в Україні), у правотворчій сфері (для удосконалення чинного законодавства України), у сфері правозастосування (для поліпшення діяльності адміністративних судів, органів державної виконавчої влади, органів місцевого самоврядування), у сфері, пов'язаній із забезпеченням прав, свобод і законних інтересів фізичних та юридичних осіб

Ключові слова: правовий статус, іноземці, мігранти, апатриди, судочинство, законодавство