

Artículo de investigación**Regarding the Problem of Defining the Concept of «Administrative and Legal Provision of Citizens' Rights»****До проблеми визначення поняття «адміністративно-правове забезпечення прав громадян»**

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Abstract

The purpose authors of this article aim to analyze the scientific literature on understanding the concept of “administrative and legal provision of civil rights”, its structural components and on this basis to offer our own view in regard to this administrative and legal category.

To achieve this goal, such methods of scientific knowledge were used as: formal-logical; comparative analysis; logical and legal.

Different scientific approaches and concepts to defining the notion of citizens' rights have been analyzed in the article. On this basis the understanding of the category of “administrative and legal provision of citizens' rights” has been improved. It includes two interrelated components – “administrative and legal” and “provision”. It has been determined that the term provision in the general sense means the creation of conditions, security, protection of something from danger. The rights of citizens as a subject matter of administrative provision have been analyzed. The features of human and civil rights have been outlined. It has been stated that human and civil rights, freedoms and legitimate interests in the modern world must be both declared in regulatory acts, and must be really guaranteed

Анотація

Мета статті – здійснити аналіз наукової літератури на предмет тлумачення поняття «адміністративно-правове забезпечення прав громадян», його структурних складових, на основі чого запропонувати власне бачення даної адміністративно-правової категорії.

З метою досягнення поставленої мети використані такі методи наукового пізнання, як: формально-логічний; порівняльного аналізу; логіко-правовий.

У статті проаналізовані різні наукові підходи та концепції до визначення поняття прав громадян, на підставі чого вдосконалено розуміння категорії «адміністративно-правове забезпечення права громадян», що включає в себе дві взаємопов'язані складові — «адміністративно-правове» та «забезпечення». Визначено, що термін забезпечення у загальному змісті означає створення умов, охорону, захист чого-небудь від небезпеки. Проаналізовано права громадянина, як предмет адміністративного забезпечення. Окреслено ознаки прав людини і громадянина. Констатовано, що в сучасному світі права, свободи та законні інтереси людини та громадянина повинні бути не

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and secured by the state. It has been emphasized that officials of the state authorities, including law enforcement system, play a crucial role in the development of interaction between society, government and citizens. The main directions of ensuring the rights, freedoms and legitimate interests of citizens by the norms of administrative legislation, as well as the mechanism of their implementation have been determined. The authors have offered own definition of the concept of “administrative and legal provision of citizens’ rights”.

Key words: rights of citizens, administrative and legal mechanism, provision, administrative and legal provision.

Introduction

Human and civil rights in Ukraine are recognized and protected by law, and therefore, must be guaranteed and ensured by public authorities and their officials at all levels. These prescriptions were directly reflected in the provisions of the Art. 3 of the Constitution of Ukraine, because the characteristic feature of a democratic, constitutional state is precisely reflected in this principle. On the one hand, the attribution of the state as constitutional one means recognizing human and civil rights and freedoms as the highest value, and on the other – observance of the principles of the rule of law and legality as the basic principles of the organization and activity of the state apparatus and its officials. The practical implementation of these fundamental principles of the constitutional state leads to the sustainable development and provision, without exception, of all rights and freedoms guaranteed to a man and a citizen.

The practical implementation of these fundamental principles of the constitutional state leads to the sustainable development and ensuring all the rights and freedoms guaranteed to a man and a citizen, without exception.

There is a growing tendency to increase the socialization of economy, politics and law in the current world. It is, first of all, explained by the fact that social rights and freedoms of a man and a citizen are among the most urgent problems of the world community in the whole and of certain states at the beginning of the XXI century. Ukraine, which is on the way to implementing

тільки задекларовані у нормативно-правових актах, але й реально гарантуватися їй забезпечуватися державою. Наголошено, що саме посадові особи органів державної влади, в тому числі правоохоронної системи, відіграють вирішальну роль в розвитку взаємодії суспільства, влади та громадян. Визначено основні напрямки забезпечення нормами адміністративного законодавства прав, свобод і законних інтересів громадян, а також механізму їх реалізації. Запропоновано авторське визначення поняття «адміністративно-правове забезпечення прав громадян».

Ключові слова: права громадян, адміністративно-правовий механізм, забезпечення, адміністративно-правове забезпечення.

European legal standards in the field of protecting human rights, freedoms and legitimate interests, is not an exception to this issue.

Besides, the rights and freedoms are also crucial for each individual, since they are designed to provide the most important vital needs and interests, to guarantee a decent and sufficient standard of living and free development. Nowadays, the fundamental human rights and freedoms are not only recognized by the world community, but also enshrined in many international legal acts in various spheres of legal regulation. As a result, they have become a kind of international norms and standards (norms and requirements), the violation of which is negatively perceived by the European community.

Thus, there is a need for rethinking, and in some cases even re-evaluating some of the priorities in the area of legal provision of human rights by the state on the path to civil society and the constitutional state. In these circumstances, human rights should be positioned as an absolute dominant, which requires no explanation in part of their observance, unhampered implementation and full provision.

Theoretical framework

It should be noted that the issue of ensuring the rights of citizens by various law enforcement agencies has been the subject matter of scientific research in the writings of Aleksandrova Z. E.,

Alekseev S. S., Bousel V. T., Chuiko Z. D., Evhenieva A. P., Halperin I. M., Ioffe O. S., Kopieichykov V. V., Kozlov Yu. M., Nersesians V. S., Ovsianko D. M., Sharhorodskii M. D., Vasetskyi V. Yu., Volynka K. H. and other scholars. However, considering the scientific efforts of these and other researchers, it will be fair to note that there is no single approach to interpreting the term of “administrative and legal provision of civil rights”.

Methodology

In order to achieve this goal, such methods of scientific cognition were used as: formal and logical - to clarify and deepen the understanding of the concept of "administrative and legal provision of civil rights"; comparative analysis - in generalizing the opinions of scientists on the content of "administrative and legal provision of civil rights" and its structural components; logical and legal - to substantiate and formulate one's own vision on the concept of "administrative and legal provision of civil rights". The interrelated use of these methods has made it possible to formulate scientifically sound conclusions.

Results and discussion

The rights and freedoms of a man and a citizen are ensured in various ways, including through the performance of the duties provided by the law and assigned to the state authorities and their authorized representatives. Thus, the level of guaranteeing, ensuring and observance of the fundamental rights, freedoms and legitimate interests of a person in the state reflects the extent, to which the state authorities and officials perform the tasks and functions assigned to them, which are within the scope of their powers. In our opinion, that is the reason why administrative and legal provision of civil rights by state authorities, including law enforcement agencies, is an urgent problem of modern legal science. This problem is exacerbated by the fact that it is the state authorities and law enforcement agencies that play a crucial role in the development of interaction between society and the government. Besides, with the adoption of the Constitution of Ukraine in 1996, the central category for the further development of Ukrainian society and the state in the whole was the category of “human and civil rights and freedoms”, which still has no single approach in its definition within legal science.

In regard to the set objective and in order to formulate our own vision of the concept of “administrative and legal provision of civil rights”, first of all, we consider it appropriate to clarify the understanding of the definition of the “right”.

According to O.S. Ioffe and M. D. Sharhorodskii, the right is a complex social phenomenon with different properties and features (Ioffe, Sharhorodskii, 1961, p. 46). The right is studied by various scholars in terms of the degree and level of personal internal freedom and human freedom in society, in regard to the action of law and legislation, and in relation to other social and legal categories.

At the same time, according to another prominent researcher S.S. Alekseev in the field of law, both as multifaceted category and specifically human rights, the first and very urgent problem affecting inalienable human rights – is their rendering lifeless, erosion of this category in the slogan political life and, unfortunately, in science (Alekseev, 1998, p. 735). The author appropriately emphasized the vagueness, erosion and, in most cases, the abstractness of the scientific category of “human rights”, which is quite often detached from practice and exists only in the speeches and slogans of our power holders.

According to V.V. Kopieichykov, the presence of civil rights testifies to the special relationship between a person and the state, the content of which lies in a specific mutual responsibility: the state is obliged to take care of its citizens, wherever they are, to protect their rights and freedoms, and a citizen, in his turn, must adhere to the regulations established by the state for the benefit of the whole society (Kopieichykov, 1998, p. 66–67). This statement is quite true, however, it needs some clarification. In particular, the mutual responsibility of citizens and the state must be based on the primacy of human and civil rights. Thus, all the bans and rules should be precisely for the purpose of protecting the rights and freedoms of the absolute majority of citizens, which is precisely the public interest. If the state begins to create artificial, unjustified legal prescriptions that unlawfully restrict the rights and freedoms of a person and a citizen in order to meet the needs of a ruling or more affluent group, then such a state cannot be called the constitutional and democratic. Besides, lawmakers should not forget that constitutional rights and freedoms are guaranteed and cannot be abolished, and when adopting new laws or amending existing laws, the content and scope of

existing rights and freedoms cannot be restricted. In this context it is worth mentioning the statement of V. S. Nersesians that the right is a form of freedom of people, that is, freedom of their will (Nersesians, 1999, p. 23). Thus, the author pays attention, first of all, to the internal side (subjective) action of the right. At the same time, one should remember that freedom of one person ends where the rights of another person are violated. In this regard, it should be pointed out on the common view in the legal science that the right should be considered subjectively and objectively.

According to V. Yu. Vasetskyi, human rights and freedoms in the objective sense – is the system of international and national legal norms that establish the legal status of a person, as well as establish its provisions, rules of relations between people, relations between a person (a citizen) and the state. Human rights and freedoms in the subjective sense – is an opportunity that belongs to a particular person, which is stipulated by a legal norm, and actions protected by the state (Vasetskyi, 2005, p. 11).

This definition of the objective and subjective value of human rights is not sufficiently clear, since it does not make it possible to determine the main essence of the difference between these two values. In our opinion, “civil rights” represent a subjective opportunity for every citizen to act in a certain way and to demand certain actions from other subjects (citizens, the state in the face of state authorities and local self-government agencies). This should in no way depend on the origin, sex, religious affiliation, beliefs and other characteristics of a person, since it is carried out with the aim of the realization, provision and protection of the person’s capabilities against unlawful interference, which is established by administrative and legal norms and provided with special means of state protection.

Thus, human rights, determine, first of all, the minimum conditions for the preservation of life, human dignity and honor; secondly, it is a universal category, which is an opportunity for a person to enjoy the basic, most important benefits and conditions of a safe, free existence of an individual in society.

On the basis of the above, it is possible to distinguish the basic features of human and civil rights:

- 1) they are recognized in the constitutional state as the highest social value and are enshrined in the law of that state;

- 2) they are protected by public authorities that is the main purpose and priority tasks of their activity;
- 3) they are guaranteed by the possibility of applying state coercion to protect or ensure fundamental human and civil rights;
- 4) they form the entire system that includes personal, political, economic and other types of rights;
- 5) fundamental rights are granted to a person from the birth and are not dependent on the activity of his actions to exercise these rights, since such realization is not related to the person’s entry into any legal relations (for example, the right to life, the right to respect his personality, etc.);
- 6) the possibility of realization of fundamental human and civil rights should not depend on the material status, nationality, education, etc.;
- 7) the law of the constitutional state guarantees the equality of rights of all citizens.

Human and civil rights, freedoms and legitimate interests must not only be declared in legislative acts, but also ensured and guaranteed by the state, enabling their transition from a potential state to a real one. It should be emphasized that natural human rights, according to internationally recognized standards, are the same for everyone and belong to a person since the birth.

In turn, the issue of ensuring the rights and freedoms of citizens is the central problem in the research of scholars of different branches of law. Our state is not an exception. Thus, the Art. 3 of the Constitution of Ukraine established that a person, his life and health, honor and dignity, integrity and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and orientation of the state’s activity. The state is responsible to the person for its activities. Promoting and ensuring human rights and freedoms is a major responsibility of the state (Constitution of Ukraine, 1996). However, there is no currently official interpretation of the term of “ensuring human rights and freedoms”, which is enshrined in the Constitution. This leads to its ambiguous understanding by both scholars and practitioners and civil servants. The solution of this theoretical problem was considered, first of all, in the theory of state and law and the science of constitutional law. However, there is no consensus among scholars about the definition of this concept.

Thus, there is a need to clarify the meaning of the term of “administrative and legal provision”, which includes two components – “administrative and legal” and “provision”.

The concept of “administrative and legal” is directly related to the administrative law itself, the external expression of which is administrative and legal norms; it is traditionally defined as the rule of conduct established by the state, secured by the possibility of applying administrative coercion and enshrined in the sources of administrative law, regulating relations in the sphere of public administration (Kozlov, 1999, p. 8). Therefore, a characteristic feature of administrative and legal norm is the sphere of regulation – public administration, as well as the possibility of applying administrative coercion. At the same time, it is fair to point out that not only administrative, but also criminal or disciplinary liability may arise for the violation of administrative norms.

According to some scholars, such as D. M. Ovsianky, numerous administrative and legal norms are divided into such types of norms, which: 1) enshrine the rights, duties and responsibilities (status) of the subjects of administrative law: citizens, executive agencies, civil servants, enterprises, institutions and organizations; 2) determine the forms and methods of implementation of the executive power; 3) establish administrative liability for non-criminal offenses; 4) regulate administrative and procedural activities; 5) ensure legitimacy in the activity of executive agencies (Ovsianko, 2000, p. 23). Thus, administrative and legal guaranteeing of human and civil rights and freedoms includes all the above elements.

Regarding the second component, “provision” is interpreted in the explanatory dictionary of the Ukrainian language, as the creation of reliable conditions for the implementation of anything; guaranteeing of something; protection, security of someone, anything from danger (Bousel, 2004, p. 281). Therefore, “provision” in the context of legal science, means the legislative consolidation of the rights (the creation of legal conditions for their implementation), the definition of guarantees of observance and protection of such rights.

I. M. Halperin defines the term of “provision” as the creation of material means necessary for the activity, operation of something (Halperin, 1983, p. 75); we believe that the concept of “provision” can be defined as an action from the concept of “to provide”. In turn, the term of “to provide” is

considered in philology in three meanings: 1) to supply something in sufficient quantity, to satisfy someone, something in any need. To provide anyone with sufficient material means of subsistence; 2) to create reliable conditions for the implementation of anything; guaranteeing something; 3) to protect, secure someone, something from danger (Bousel, 2004, p. 375). The Dictionaries of the Russian language understand the concept of “provision” as the generation of a complete and sufficient set of conditions necessary for the implementation of something and guaranteeing anything (Aleksandrova, 1986, p. 291; Evhenieva, 1958, p. 724). Therefore, provision in the general sense, means creating the conditions, securing, protecting something from danger.

In this context, let us give the opinion of Z. D. Chuiko, who believes that the term of “provision” has a broad meaning, which is interpreted as: creation of reliable conditions for the implementation of anything; guaranteeing something; security, protection of someone, anything from danger (Chuiko, 2006, p. 85).

Considering the concept of “provision” within legal science, that is, the concept of “legal provision”, we can distinguish several its definitions provided by different authors. Legal provision is most often understood in legal literature as respecting, recognizing and guaranteeing the realization of human rights and freedoms (Volynka, 2000, p. 5). The Great Explanatory Dictionary defines the concept of “legal provision” as the set of legal norms regulating legal relations and legal status (Bousel, 2004, p. 375). At the same time, this interpretation is unambiguous, since it is not appropriate to include legal status in this definition. It is explained by the fact that the most widespread position is the position when the legal status is the status of any subject within the legal reality, which is reflected in its relations with society and the state; set of rights and responsibilities. Therefore, the legal status must acquire its legal provision in the relevant legislative norms.

Conclusions

Administrative and legal provision of civil rights, freedoms and legitimate interests, as well as the mechanism of their realization are carried out in the following main directions:

- 1) norms of administrative law are primary element in the legal regulation of the specific rights and duties of citizens, as

- well as determine the mechanism of realization of fundamental rights, freedoms and duties of citizens;
- 2) norms of administrative law determine the legal status and competence of state authorities, their structural units and officials, designed to ensure the observance of the rights and freedoms of citizens in their entirety or certain issues. Administrative and legal norms also regulate the competence of various sectoral agencies and officials, as well as the procedure for their activity in regard to realizing specific rights and freedoms belonging to citizens;
 - 3) administrative and legal norms determined disciplinary and, in some cases, administrative liability for the violation of the rights, freedoms and legitimate interests of citizens by state authorities, their officials.

The provision, observance and protection of the rights and legitimate interests of citizens under the current legislation relate to the general basic responsibilities of all state authorities and their officials. Administrative and legal norms regulate the procedure of consideration and the possibility of appealing to the public authorities and organizations in regard to the realization and protection of their rights and freedoms.

Therefore, we can identify the main features of administrative and legal provision of human and civil rights: 1) it is the system of legal means and techniques; 2) it has an organizational character; 3) it is aimed at protecting human and civil rights; 4) it determines the powers of law enforcement agencies in ensuring human and civil rights.

Administrative and legal provision of the rights and freedoms of Ukrainian citizens can be defined as the system of administrative and legal methods, techniques, means and ways, which are used by the relevant state authorities in their activity within the limits of their powers, in order to create necessary conditions for the realization of citizens' rights, their security and protection.

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