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**DECISION-MAKING PROCESS IN ADMINISTRATIVE CASES**

*Annotation.*In the article investigated procedural aspect of administrative proceeding. Actual problems of structuring administrative-delict process are showed. Main scientific approaches to the structure of the administrative process are compared. Based on the analysis of modern administrative doctrine the new concept administrative proceeding structure proposed.

***Keywords:*** *administrative law, public administration, delict, offense, proceeding, decision-making process.*

In domestic law dominates the approach whereby analysis of existing administrative proceedings carried out by considering their stages, as “complexes of sequential proceedings, united by common aim, content, functional orientation and circle of participants”. Methodological validity of this approach are obvious.

Value ​​of procedural stages is determined primarily to the fact that they reflect the logical sequence of the administrative process. Each stage has its clear procedural purposes. Remedial actions at each stage united by common goals, which, in turn, serve the general purpose of the proceeding. Each stage is characterized by specific features related to the time and forms of implementation, list of participants, their legal status, available decisions etc. Disclosure of proceeding stages, on the one hand, allows us to consider it in its entirety, consistency and dynamics, on the other – to focus on local issues that arise during the procedural activities.

Compulsory presence of law regulated stages of administrative proceedings is a common procedural safeguards that determines the activity of public administration – wrote O.Kuzmenko [1, c. 146, 147]. Process stages are important organic elements that characterize the structure of each proceeding in particular and administrative process – in general adds M. Tishchenko [2, p. 213]. Primarily through the analysis of stages the content of administrative proceedings can be explored. To characterize a particular administrative proceeding generally means to analyze all its stages – sums V. Kolpakov [3, p. 330].

However, despite the overall recognition of high importance of procedural stages, modern lawyers for many years cannot agree on their amount and content in administrative-delict process.

For example, A. Agapov distinguishes only two stages of administrative-delict proceeding: procedural and executive [4, p. 233, 234].

Based on the three-stage concept for administrative and tort proceedings O. Riabchenko and A. Yatsenko mark out: the stage of drawing up the protocol on administrative offense; the stage of considering the case; the stage of the appeal decision.

According V. Aver'yanov, administrative-delict proceeding consists of four main stages: initiation of administrative case and its investigation; considering the case and making the decision; appeal (protest) revision of case; implementation of final decision and applying administrative penalty [5, p. 519]. As well, four stages of administrative-delict proceeding identifies M.Zavalnyy which demonstrates a slightly different perspective on their sequence. From his point of view, “appeal” stage is optional, and therefore – must follow the execution step [6, p. 208].

D. Bahrah, A. Koryenyev, I. Kartuzova, L. Koval and S. Stetsenko assert that proceedings in cases of administrative offenses is characterized by at least five stages. But these scientists agree only on the number of stages of administrative-delict process, – understanding of their content differs greatly. In summary “five-element” classification stages can be summarized as follows: 1) the initiation of proceeding stage (D.Bahrah, A.Koryenyev, I.Kartuzova, S.Stetsenko), an administrative investigation stage (L.Koval); 2) clarifying the facts of the case (D.Bahrah, A.Koryenyev) initiation of an administrative case (L.Koval), stage of hearing the case (S.Stetsenko) administrative investigation (I.Kartuzova); 3) proceeding stage (A.Koryenyev), hearing the case, making the decision, bringing its content to the attention of interested parties (D.Bahrah, I.Kartuzova, L.Koval), making decision in case (S.Stetsenko); 4) making decision in case (A.Koryenyev), review the resolution of the case (D.Bahrah, I.Kartuzova), appealing the decision in the case (L.Koval), implementation of decision in case (S.Stetsenko) 5) making decision in case (D.Bahrah, I.Kartuzova, L.Koval, A.Koryenyev), appealing the decision in case (S.Stetsenko ) [7, p. 269, 270; 8, p. 272; 9, p. 118; 10, p. 99; 11, p. 112].

Appealing to the current legislation, enforcement practices and modern scientific researches V.Kolpakov, O.Chernovskyy and V.Hordyeyev outline six separate stages, which consist of 19 phases. From their point of view, administrative-delict procedure comprising the steps of: initiating proceeding, administrative investigation, proceeding in case, making the decision, review of the decision, implementation of the decision [12, p. 13].

Finally, a Russian lawyer V.Yusupov distinguishes seven stages of administrative-delict process: 1) initiation of proceeding; 2) gathering and studying of relevant information; 3) preliminary investigation; 4) choice of law to be applied; 5) making the decision (by competent trial bodies); 6) consideration of complaints and adoption of the final decision; 7) implementation of the decision [13, p. 34, 35].

As for the wide variety of views on the structure of administrative-delict process should be said the next. In most cases the differences between the various scientific approaches are not fundamental, so they should not be opposed to each other. A wide range of ideas about the stages of administrative-delict process is determined by specific individual understanding of procedural stages’ nature, of their inherent characteristics, of their legal and factual content. Allocations of stages depend a lot on the subject of scientific research. It is clear those researchers on offenses and cases which provide a simplified procedure release fewer stages, than those who engaged in issues of administrative proceedings in the courts.

In short, almost every kind of scientifically based view at the structure of administrative-delict process has the right to life. Depending on the objectives of a particular research, the number of its stages can be increased or decreased, they can provide different number of steps, which can be named differently as well. Above all, the outlined stages should reflect the nature administrative-delict process, fully disclosing contents of all the implemented proceedings and steps.

However, when allocating structural elements of administrative proceedings is very important to follow the rules of formal logic, legal axioms and established views on these or other related procedural phenomena. As shows the analysis, not all scientists strictly follow this rule.

In our view, very debatable are the ideas: about the providing in administrative-delict process separate “procedural” stage; about the absence of implementation stage in its structure; about the existence of stages which don’t provide assembling of procedural acts; about implementation the appeal (protest) stage after the stage of providing the final decision etc.

In particular, it is clear that over-generalization of procedural stages, reducing them to a procedural and enforcement “units” can not form a clear picture of the structure of the administrative proceedings and the content of its individual components. Moreover, separation of so-called “procedural” stage contradicts traditional notions of administrative procedure as: “… special order of resolving administrative cases not connected with coercive measures [14, p. 84]. To our opinion, bringing down the self-dependent administrative proceedings (besides, not penalized) to the framework of a single stage of administrative-delict process – is unreasonable neither from theoretical nor from practical points of view.

Also, can not agree with the idea that the administrative-delict process completes by adoption of enforcement act and does not cover the stage of its implementation. The main argument in favor of this approach is its adherents consider the fact that under the current paradigm of the administrative process, its structure, along with the rule-making, control, registration, and other types of tort proceedings allocated proceeding of implementation. Given the existence of self-enforcement proceedings, they denied the possibility of making “executive” stages in other administrative proceedings.

Meanwhile, according to statistics, the majority (over 65%) of regulation on administrative offenses are carried out voluntarily. The relevant procedures are not coercive, and therefore – can not be covered by the scope of “implementation” proceeding. Thus, their exclusion from the structure of administrative-delict process seems impractical. In fact it will mean that stage of voluntary compliance penalties will drop out from all existing proceedings.

Given the above considerations, we find appropriate to distinguish five basic stages of administrative-delict process:

1) preliminary analysis of the situation and initiating the case;

2) administrative investigation;

3) making decision in the case;

4) appeal decision in the case;

5) implementation of decision in the case.

Of course, when considering specific administrative cases may not have all of these stages, but only some of them. Strictly speaking, binding are only the first three stages. The rest – not always implemented and are optional. However, without their analysis can not form a holistic view of the administrative-delict process, of its content, structure and logical order. Stated necessitates a detailed review of all stages of the proceedings (both core and elective) in chronological order.

**References:**

1. Kuzmenko O. V. Teoretychni zasady administratyvnoho protsesu : [monohrafiia]. – K. : Atika, 2005. – 352 s.
2. Administratyvne pravo Ukrainy : [pidruchnyk] / [Bytiak Yu. P., Harashchuk V. M., Diachenko O. V. ta in.] ; za red. Yu. P. Bytiaka. – K. : Yurinkom-Inter, 2006. – 544 s.
3. Kolpakov V. K. Administratyvne pravo Ukrainy : [pidruchnyk] / V. K. Kolpakov. – Yurinkom Inter, 2000. – 752 s.
4. Ahapov A. B. Admynystratyvnaia otvetstvennost : [uchebnyk]. – M. : Statut, 2000. – 251 s.
5. Administratyvne pravo Ukrainy. Akademichnyi kurs : [pidruchnyk] : u 2 t. / za red V. B. Averianova. – T. 1. Zahalna chastyna. – K. : Vyd-vo “iurydychna dumka”, 2004. – 584 s.
6. Zavalnyi M. V. Sutnist ta zmist administratyvno-deliktnoho provadzhennia / M. V. Zavalnyi // Mytna sprava. – 2011. – № 2 (74). – Ch. 2. – S. 204-209.
7. Stetsenko S. H. Administratyvne pravo Ukrainy : [navchalnyi posibnyk] / S. H. Stetsenko. – K. : Atika, 2007. – 624 s.
8. Admynystratyvnoe pravo Ukraynы : [uchebnyk] / [Kyvalov. S. V., Averianov V. B., Dodyn E. V. y dr.] ; pod. red. S. V. Kyvalova. – Kh. : Odyssei, 2005. – 880 s.
9. Bakhrakh D. N. Admynystratyvnaia otvetstvennost hrazhdan v SSSR : [uchebnoe posobye] / D. N. Bakhrakh. – Sverdlovsk : Ural. un-t, 1989. – 201 s.
10. Korenev A. P. Normы admynystratyvnoho prava y ykh prymenenye / A. P. Korenev – M. : Yuryd. lyt., 1978. – 142 s.
11. Koval L. V. Administratyvne pravo Ukrainy. Zahalna chastyna : [kurs lektsii]. – K. : Osnovy, 1994. – 154 s.
12. Porushennia pravyl dorozhnoho rukhu: koliziinist novel i pravove rehuliuvannia : [monohrafiia] / Kolpakov V. K., Chernovskyi O. K., Hordieiev V. V. – Chernivtsi : Chernivetskyi natsionalnyi universytet, 2010. – 328 s.
13. Yusupov V. A. Pravoprymenytelnaia deiatelnost orhanov hosudarstvennoho upravlenyia. – M. : Yuryd. lyt., 1979. – 33 s.
14. Belenchuk A. I. Administratyvne pravo Ukrainy : [navchalnyi posibnyk]. – K. : Vydavnytstvo ASK, 2004. – 174 s.