**PREREQUISITES FOR PROTECTION OF RIGHTS, FREEDOMS, AND INTERESTS OF PARTICIPANTS OF ADMINISTRATIVE AND LEGAL RELATIONS IN ADMINISTRATIVE PROCEDURE**

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The practical experience of work of public administration subjects as well as an assessment of their administrative activity (public administration) by administrative courts has persuasively shown that the requirements of the Code of Administrative Court Procedure of Ukraine (namely, Part 1 of Article 2, Part 2 of Article 4, Part 1 of Article 6, Article 17) describe only in general the prerequisites for protection of subjective rights, freedoms, and interests and do not always provide (guarantee) both unconditional and substantiated initiation of proceedings in administrative cases and prospective of judicial protection initiated by the plaintiff.

In fact, many other circumstances have been left beyond the scope of regulation of the Code of Administrative Court Procedure of Ukraine revealed by the practical experience of administrative legal proceedings that affect both success of the administrative claim consideration and the adoption of a favorable resolution on the merits by the administrative court.

In particular, the lack of unambiguous criteria in law for determining the fact of violations of a subjective right, freedoms, and interests which causes the errors of establishing and proving the fact of such violation is the circumstance that affects success of the administrative claim consideration and adoption of a favorable resolution on the merits by the administrative court.

Obviously, the fact of violation of rights, freedoms or interests is evaluative one and is determined at the discretion of the parties and the administrative court.

Objectively, judicial protection of public rights, freedoms, and interests must be preceded with an assessment of the actual circumstances of the case, namely, taking into account the judicial practice, and examination of the conformity of these circumstances with the requirements of the national legislation.

It is essential to evaluate not only the availability but also the sufficiency of the prerequisites for the protection of rights, freedoms, and interests of participants in the administrative procedure in public law relations. Such prerequisites have administrative and legal nature; they are substantiated by the theory of administrative law and are examined within the limits of procedural discretion of the administrative court. Accordingly, it seems urgent to us to substantiate the prerequisites for protection of subjective rights, freedoms, and interests in the administrative procedure.

One of the prerequisites for protection is the observance of administrative jurisdiction rules which, in general, are written down in the norms of the Code of Administrative Court Procedure of Ukraine. Thus, administrative court jurisdiction covers legal relations that arise in connection with the exercise of administrative functions by the subject of administrative powers as well as in connection with the formation of the subject of administrative powers through elections or referendum (Part 1, Article 17 of the Code of Administrative Court Procedure of Ukraine) [1] .

The fact that the subject has a constitutional right to apply to the court to appeal against resolutions, actions or inactions of state bodies, local self-government bodies, governmental officials and officers should be recognized as the prerequisite for the protection of subjective rights, freedoms, and interests (Articles 8, 55 of the Constitution of Ukraine) [2]. Therefore, when preparing a statement of claim, a plaintiff, the administrative court authorized to make decisions on initiation of proceedings in the administrative case and to carry out legal proceedings, should examine the prospects of protection of rights, freedoms, and interests of participants in administrative legal relations in the administrative procedure, having analyzed as a whole the prerequisites for protection and the need for exercise of the constitutional right to apply to the court and appeal against resolutions, actions or inactions of state bodies, local self-government bodies, and governmental officials and officers by the subject.

It is worth studying and evaluating all the constituent parts of the controversial legal relations, their content, quality and features, and the relevant rules of substantive and procedural legislation in each administrative case. The examination of correlation of administrative discretion with the discretion of the administrative court requires evaluation. The legality and validity of intervention of the administrative court in the administrative discretion should be judged, taking into account the provisions of Articles 6, 19, and 120 of the Constitution of Ukraine. Thus, the legislative, executive and judicial bodies exercise their powers within the limits established by the Constitution of Ukraine and in accordance with the laws of Ukraine (Article 6 of the Constitution) [2]. Accordingly, administrative courts can not assume the powers of other bodies of state power, state bodies.

Using the categories of determination (evaluation) of the administrative discretion of the public administration subject, the court may only give an evaluation of such discretion; the administrative court has no right to assume the powers of a public administration subject, executing procedural actions instead of it, approve decisions or carry out administrative procedure in full.

However, the administrative court may intervene in the administrative discretion of the public administration subject and oblige him to act or approve a decision without the necessary administrative procedure.

Such interference is possible if the court finds that the individual (legal entity) has complied with all the requirements of the legislation in the administrative procedure, and the public administration subject failed to take proper action unreasonably and illegally or failed to take the necessary decision in response.

The reason for the legitimate and justified interference of the administrative court in the administrative discretion of public administration subject is the illegality or groundlessness of its decisions executed (approved), actions, and inactions.

Assessing the prospects of protection of rights, freedoms, and interests of participants in administrative legal relations in the administrative procedure, one should also take into account the following **prerequisites**:

- A plaintiff has a right to claim;

- A plaintiff is in administrative legal relations with the public administration subject defined by the defendant;

- The method of judicial protection proposed by the plaintiff in the statement of claim complies with the methods of protection provided for by the legal norms of the Code of Administrative Court Procedure of Ukraine (Articles 105, 162) and which (the method of judicial protection) corresponds to the actual disputed administrative legal relations;

- There is a relevant precedent practice in resolving administrative legal disputes by the Supreme Court of Ukraine.

Therefore, it is not enough to only identify and analyze the prerequisites of protection in the administrative procedure of rights, freedoms, and interests of participants in administrative legal relations. These prerequisites should also be evaluated as a whole; the absence of at least one of the prerequisites makes it impossible to protect subjective rights, freedoms, and interests in the administrative procedure.