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THE FACTORS DETERMINING THE FEATURES OF THE ADMINISTRATIVE PROCEEDINGS

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In the article, the author focuses on the factors determining the features of the administrative proceedings. The author concluded that without the development and definition of state management procedures, without the formation of a modern legal institution of administrative proceedings, it is not possible to have effective management, including limiting the number of illegal acts adopted by entities holding public authority in the field of management, as well as guarantee the effective implementation and protection of human and citizen rights. The author emphasizes that the separation of certain features for the purpose of classification of administrative proceedings and their coordination is primarily intended to facilitate the analysis of a separate type of administrative proceedings and the extraction of its substantive characteristics, thus also evaluating the justification of the initiative of the Legislator to define administrative proceedings as a separate type in some areas of relationship regulation.

Keywords: *Administrative proceedings, human rights, state authority, public relations, right to be heard, administrative act, administrative bodies*

Depending on the extent to how human and citizen rights and freedoms are preserved, whether these rights are protected, and most importantly, how they are realized by the state authority, predetermine the course and development of society and the state.

Thus, Article 3 of the Constitution of the Republic of Armenia stipulates that the human being shall be the highest value in the Republic of Armenia, the inalienable dignity of the human being shall constitute the integral basis of their rights and freedoms, so the respect for and protection of the basic rights and freedoms of the human being and the citizen shall be the duty of the public power.

Thereby, human beings is are of the highest value, and the respect and protection of the basic rights and freedoms of a human and a citizen are the responsibilities of the public authorities.

These cornerstone provisions established by the Constitution are the most important basis of the legal system of Armenia in general and are particularly fundamental for the administrative proceedings itself. The mere recognition of the rights and freedoms by the State is not enough. It is also necessary to create conditions for the realization of these constitutional values, to define the content and order of realization of the powers of the executive power and officials, understandable for all participants of public relations.

It is also no coincidence that the right to proper administration has been enshrined in the Constitution, which includes everyone's right to an impartial, fair, and reasonable examination of the cases related to him by the administrative authorities, to get acquainted with all the documents related to him during the administrative proceedings, until the adoption of the individual administra-

tive act which can intervene the right and the right to be heard.

Article 40 of the Constitution of the Republic of Armenia stipulates, that everyone shall have the right to impartial and fair examination by administrative bodies of a case concerning him or her, within a reasonable time period: in the course of administrative proceedings, everyone shall have the right to get familiar with all documents concerning him or her, except for the secrets guarded by law, State and local self-government bodies and officials shall be obliged to hear the person prior to the adoption of an interfering individual act thereon, except for the cases prescribed by law.

Administrative proceedings, as a type of administrative procedural activity, are inseparably connected with state administration and public power-bearing bodies. It is a part of managerial activities.

Social management and one of its types, state management, are one of the most important conditions of society's life activity and derive from the social nature of society itself. The joint activity of people presupposes its organization, which in turn represents, first of all, bringing people together for a common activity and secondly, a certain defined procedure of their activity. Thus, we can state that the essence of state administration is its organizational activity, the nature of which comes down to the following: form one or another body of public authority, develop an action plan, provide the necessary resources for its implementation, distribute common problems among the participants of the relationship and unite their actions and efforts, regulate daily activities (establishing rules of conduct), monitor compliance with set goals and activities (monitoring and control), to apply means of persuasion and coercion to the participants of managerial relations. [1]

The proper provision and effective protection of human and citizen rights and freedoms is one of the most important tasks of the legal state. In those areas where the legal status of a person or the organization created by him is "vulnerable", a more detailed legislative regulation is required. Such a sphere, of course, can also be considered the sphere of activity of public authority, where the body holding public authority, in the form of an official, has dominant powers. In dealing with authorities, a person may be in a "vulnerable" legal situation, so it is the establishment of appropriate structures by law for the realization and proper protection of his rights and legitimate interests that can protect him from any kind of arbitrariness. Thus, the development of effective structures regulating administrative, legal relations and, in particular, administrative proceedings is an important tool for the development of democracy and the formation of civil society and one of the fundamental problems faced by any legal state.

Moreover, the presence or absence of an administrative procedure in this or that area cannot be evaluated as a mere technical issue because the presence of an effective procedure in a specific area has a decisive effect on achieving the expected result.[2]

[1] Administrative procedures: monograph / ed. L.L. Popov, S.M. Zubarev. – M.: Norma: INFRA-M, 2018, page 14.

[2] **Deirdre Curtin, Herwig C. H. Hofmann, Joana Mendes**, "Constitutionalising EU Executive Rule-Making Procedures: A Research Agenda", European Law Journal, Vol. 19, Issue 1, 2013, page 3

In administrative law, perhaps, the term "administrative proceedings" is given a broad definition: the latter is mainly used as a procedure for any function performed by the executive branch. In this case, it is not taken into account whether the given activity is aimed only at the solution of internal organizational problems or also causes certain legal consequences in external.

In the administrative law of foreign countries, the term "administrative proceedings" is mostly used in its narrow sense. In particular, the activity of administrative bodies is aimed at the adoption of an administrative act with external influence. Exactly this meaning is fixed in the Law "On Fundamentals of Administrative Action and Administrative Proceedings[3]" (hereinafter - the Law). In this case, we are talking about the adoption of such an act that leads to the emergence, modification or termination of rights and duties for entities outside the intra-organizational influence of the administrative body.

Thus, the term "administrative proceedings" is interpreted as an activity directed at the adoption of an administrative act by an administrative body and, on that basis, includes all the processes that are necessary to ensure the adoption and application of such an act.

In light of the above, we can come to the conclusion that without the development and definition of state management procedures, without the formation of a modern legal institution of administrative proceedings, it is not possible to have effective management, including limiting the number of illegal acts adopted by entities holding public authority in the field of management, as well as guarantee the effective implementation and protection of human and citizen rights.

The law does not exclude the existence of separate types of administrative proceedings.[4] Quite a few legislative acts define separate types of administrative proceedings. In particular, independent types of administrative proceedings are defined by the RA Code on Administrative Offenses, the RA Tax Code, the RA Law "On Licensing", the RA Law "On Enforcement of Judicial Acts", the RA Law "On the Organization and Conduct of Inspections in the Republic of Armenia", etc.

Regarding the types of individual administrative proceedings, the following questions are particularly important:

a) Are the general provisions of the Law related to administrative proceedings applicable in case of certain types of proceedings?

b) How relevant is the institution of defining separate types of proceedings. Doesn't this undermine the principle of the prohibition of arbitrariness?[5]

At the same time, different administrative bodies use special procedures to solve individual issues assigned to them, so it is also dangerous to overgeneralize the procedures.[6]

Basically, the current legislative acts do not exclude the possibility of ap-

[3] Article 19. Administrative proceedings is the activity of administrative body directed at the adoption of an administrative act.

[4] Article 2, part 3: Peculiarities of certain types of administrative proceedings are laid down by laws and international treaties of the Republic of Armenia.

[5] Administrative proceedings and litigation. Educational manual / G. Danielyan. - Yer.: "YSU" ed., 2022, page 30.

[6] Fox, William F. Understanding Administrative Law/William F. Fox, Jr.—4th ed. p. cm.—(Legal text series), page 18.

plying the basic provisions of the Law within the framework of a separate type of proceeding. The extent to which the principles of the Law are applicable depends on the state of the legal regulation in each case In particular, in the case of a "contradiction" between the law regulating a separate type of administrative proceedings and the Law " On Fundamentals of Administrative Action and Administrative Proceedings" on the basis of a special norm, preference is given to the first one, which is also consistent with the requirements of the same Law. In this case, it is simply necessary to clearly assess the nature of the norms and find out whether it is a contradiction in the classical sense or a contradiction manifested in the form of a feature.[7]

It is worth addressing the question of which norms of the Law, in particular, are applicable in the case of certain types of administrative proceedings. Thus, the approach according to which the fundamental principles of administration laid down in the Law are applicable to all types of administrative proceedings is considered to be the most justified. As for the specifics, they can refer only to such procedural provisions that will not be in conflict with the fundamental principles. And if the special law defines only specifics regarding the type of administrative proceedings, then the provisions of the Law are taken as the basis for the regulation of other relations, if they do not contradict the general logic of the given special law. This last situation is more widespread, because the special laws mostly regulate only certain procedural issues, in which case the necessity of applying the general law does not decrease at all.[8]

Defining separate types of proceedings is not a negative phenomenon in itself and does not contradict the principle of prohibition of arbitrariness, but it should not be a goal in itself. Establishing separate types of administrative proceedings should be dictated by the need to establish more guaranteed procedures for the implementation and protection of people's rights in the field of administration, and not be determined only by fixing the easiest and "special" conditions for the activity of administrative bodies in this or that field of administration, which is often not consistent with the legal interests of other subjects of law related to these administrative bodies.

Therefore, at the theoretical level, separating the factors determining the features of administrative proceedings, we believe, in practice, at the stage of lawmaking activity, it will be possible to ensure the unity of the principles of administrative proceedings even in the conditions of defining separate types of proceedings.

The systematic analysis of the Law and other laws regulating separate types of administrative proceedings shows that the Legislator has a tendency to differentiate between separate types of administrative proceedings in comparison to the administrative proceedings generally regulated by the Law in the fact that not all of its stages are mandatory, also differ in the order of notifying the participants of the proceedings about the initiation of the proceedings, the actions carried out within the proceedings and the conclusion of the proceedings, the legal consequences of the appeal of the administrative act concluding the proceedings.

[7] Administrative proceedings and litigation. Educational manual / G. Danielyan. - Yer.: "YSU" ed., 2022, page 30.

[8] Administrative proceedings and litigation. Educational manual / G. Danielyan. - Yer.: "YSU" ed., 2022, page 33.

As a result of the study of the domestic legislation, we can draw out the features on the basis of which the administrative proceedings can be subjected to a certain classification.

Thus, one of the characteristics is the basis for initiation of administrative proceedings.[9]

According to the basis for initiation of administrative proceedings, administrative proceedings can be classified as:

1) Administrative proceedings initiated by a person (on the basis of an application or complaint).

Administrative proceedings initiated by a person can be separated by conditioning them on the existence of a dispute between the subjects, like this:

a) administrative proceedings initiated on the basis of an application.

b) administrative proceedings initiated on the basis of a complaint.

2) administrative proceedings initiated by the administrative body.

The separation of administrative proceedings with the mentioned feature allows highlighting certain procedural features of the proceedings, which are present in one case and not in the other.

For example, as a rule, administrative proceedings initiated by a person's initiative are considered to have been initiated from the date of receipt of the relevant application or complaint in the administrative body[10]. Therefore, in administrative proceedings initiated by a person, the presumption that the person is informed about the initiation of the proceedings legally applies. However, in this case, the question arises as to what is the burden of the regulation of the Law, which obliges to notify the participants of the proceedings or their representatives about the initiation of the administrative proceedings within three days after the initiation of the administrative proceedings based on the application to the administrative authorities. In our opinion, such a regulation does not have an objective justification; therefore, burdening the administrative body with additional actions within the framework of the proceedings does not follow the principle of efficiency[11] of the proceedings stipulated by the Law.

At the same time, the approach to notify a person about the initiation of administrative proceedings is different within the framework of administrative proceedings initiated by the administrative body. According to the Law, when the administrative body initiates administrative proceedings on its own initiative, it notifies the participants of the proceedings or their representatives in accordance with the procedure established by law if the period between the initiation of administrative proceedings and the adoption of the administrative act is more than three days.

In this case, as well, the Law connects the duty of the administrative body

[9] Article 30, part 1: Grounds for initiating administrative proceedings are: (a) the application or complaint of a person; (b) initiative of the administrative body

[10] Article 30, part 2: In cases provided for in point (a) of part 1 of this Article, administrative proceedings shall be considered initiated from the date when administrative body received the application or complaint, except for the cases when application or complaint was readdressed to the competent administrative body or was returned to the applicant (complainant) pursuant to Article 33 of this Law..

[11] Article 11: In excercising its powers the administrative body shall act in such a manner as to, without undermining the performance of its powers, ensure the most effective utilisation of means submitted to its disposal, in shortest possible term and for assuring the most favourable results.

to notify the addressee about the administrative proceedings initiated by the administrative body with the fact that the period between the initiation of the proceedings and the adoption of the administrative act should not exceed three days, which, in our opinion, is not an effective solution from the point of view of protecting the rights of individuals, taking into account the fact , that the maximum duration of the administrative proceedings is defined by the Law or by the laws defining the features of separate types of administrative proceedings. According to the law, the maximum period of administrative proceedings is 30 days; however, in order to avoid notifying the addressee of the administrative proceedings, the administrative body can bring the proceedings initiated on its own initiative to the final stage within three days after the initiation, essentially bypassing the right to be heard, which is a component of proper administration established by the Constitution. In this regard, in our opinion, it is appropriate to formulate the norm in such a way that, according to the administrative body, when initiating administrative proceedings on its own initiative, the participants of the proceedings or their representatives are notified of the initiation of administrative proceedings in accordance with the law, except if the administrative proceedings are limited only to the final stage in cases provided for by law.

As a characteristic of the classification of administrative proceedings, it also could be the legal norm underlying the proceedings and implemented within its framework.

Thus, according to the nature of the norm implemented during the administrative proceedings, we can distinguish:

1) administrative procedure of authorizing nature, which in turn can be divided into subtypes;

a) administrative procedure aimed at granting the right;

b) administrative procedure aimed at registration of the right;

c) administrative procedure aimed at encouraging a person;

2) administrative proceedings of a coercive nature.

3) protective-restrictive administrative procedure, which in turn can be divided into the following subtypes:

a) administrative procedure aimed at licensing-permitting.

b) administrative proceedings aimed at supervision.

Such a classification, in our opinion, is important for ensuring an optimal balance between private and public interests, taking into account the priorities of preserving private interests in one case and public interests in others.

Another distinguishing feature may be the form of the administrative act concluding the administrative proceedings.

According to the forms of the administrative act concluding the administrative proceedings.

1) proceedings aimed at the adoption of a written administrative act.

2) proceedings aimed at the adoption of an oral administrative act.

3) proceedings aimed at adopting a different form of administrative act.

In summary, we can state that the separation of certain features for the purpose of classification of administrative proceedings and their coordination is primarily intended to facilitate the analysis of a separate type of administrative pro-

ceedings and the extraction of its substantive characteristics, thus also evaluating the justification of the initiative of the Legislator to define administrative proceedings as a separate type in some areas of relationship regulation.

ՏԱԹԵՎԻԿ ՆԱՀԱՊԵՏՅԱՆ – ***Վարչական վարույթի առանձնահատկությունները պայմանավորող գործոնները*** **–** Հոդվածում հեղինակը եզրահանգել է, որ առանց պետական կառավարման ընթացակարգերի մշակման և սահմանման, առանց վարչական վարույթի արդիական իրավական ինստիտուտի ձևավորման հնարավոր չէ ունենալ արդյունավետ կառավարում, այդ թվում՝ սահմանափակել հանրային իշխանություն կրող սուբյեկտների կողմից կառավարման ոլորտում ընդունվող ոչ իրավաչափ ակտերի քանակը, ինչպես նաև երաշխավորել մարդու և քաղաքացու իրավունքների արդյունավետ իրացումն ու պաշտպանությունը: Հեղինակն ընդգծում է, որ վարչական վարույթների դասակարգման նպատակով որոշակի հատկանիշների առանձնացումը և ըստ դրա համակարգումը առաջին հերթին նպատակ ունեն դյուրին դարձնել առանձին տեսակի վարչական վարույթի վերլուծությունը և դրա բովանդակային բնութագրի վերհանումը, ինչն իր հերթին թույլ կտա գնահատել հարաբերությունների կարգավորման որոշ բնագավառներում վարչական վարույթը որպես առանձին տեսակ սահմանելու օրենսդրի նախաձեռնության արդարացվածությունը:

Բանալի բառեր – *վարչական վարույթ, մարդու իրավունքներ, պետական կառավարում, հանրային հարաբերություններ, լսված լինելու իրավունք, վարչական ակտ, վարչական մարմին*

ТАТЕВИК НАГАПЕТЯН – ***Факторы, определяющие особенности административного процесса.*** **–** В статье автор акцентирует внимание на факторах, определяющих особенности административного производства. Автор пришел к выводу, что без разработки и определения процедур государственного управления, без формирования современного правового института административного производства невозможно эффективное управление, в том числе ограничение количества неправомерных актов, принимаемых субъектами публичной власти в сфере управления, а также гарантировать эффективную реализацию и защиту прав человека и гражданина. Автор подчеркивает, что выделение отдельных признаков с целью классификации административных производств и их координации призвано, прежде всего, облегчить анализ отдельного вида административного производства и выделение его содержательных характеристик с целью оценки обоснованности инициативы законодателя выделить административное производство в отдельный вид в некоторых сферах регулирования отношений.

Ключевые слова: *административное производство, права человека, государственная власть, общественные отношения, право быть выслушанным, административный акт, административные органы*