УДК 342.9.03

JUDICIAL REVIEW OF ADMINISTRATIVE ACTS IN ESTONIA AND LATVIA

This article represents actual issues of judicial review of administrative acts in Estonia and Latvia. The article reveals several important issues concerning the established procedures of administrative acts review in Estonia and Latvia.
Here're found special place the compliance of Estonian and Latvian legislation in the field of reviewing of administrative acts. The compliance with European requirement and the ability to meet all the recommendations of the Council of Europe are also examined. Moreover, the implementation of modern innovations and computerization of documentation are taken into account with underlining of possibility to bring the procedure to electronic way of reviewing.
Here're also been explained the guaranteeing of every person rights to bring the application for review regardless of their physical capabilities if his or her rights have been violated or his or her freedoms have been restricted by an administrative act.

Key words: administrative act, review, appeal, Estonia, Latvia, administrative procedure, procedural act, European requirements, human rights, administrative comparative law.

Svitlychna Anastasiia,

student Taras Shevchenko National University of Kyiv

The mechanism of judicial review of administrative acts has been developed to prevent violations of human rights and interests and for executing Convention for the Protection of Human Rights and Fundamental Freedoms which provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judicial review of administrative acts is an essential element of the human rights protection system. Development of legitimate, open and fair procedures of review in the national system is one of the biggest challenges posed before the government. At this point, it is very important to investigate all the aspects of current procedure to determine advantages as well as disadvantages in the effective legislation.

Judicial review of administrative acts is the subject of research of many foreign scientists such as R. Seerden, E. Fox, I. Ceica, B. Bebre, L. Gjortlere, A. Meuwese, Y. Schuurmans, W. J. M.Voermans and others. Among domestic researchers who have studied this issue should be noted: V. Averianov, I. Hrytsyak, R. Kuibida, I. Koliushko, O. Riabchenko, L. Kyssil, V. Kolpakov. At the

same time particular specificity was not examined at the appropriate level, therefore, this article is highly relevant at the current stage of development of the legal ways to protect human rights and interests.

The purpose of the article is to outline the most important aspects of the procedure of judicial review of administrative acts in Estonia and Latvia, and comparing them with each other. Analysis of compliance to the European recommendation and requirements in terms of protecting human rights and interests in relation with authority.

Purpose of the article defines its main objectives that are, first of all, to determine the concept of an administrative act in both countries. Secondly, to reveal different approaches to legal regulation of the procedure of judicial review of administrative acts in Estonia and Latvia, and, after all, to underline the main aspects of the procedure that require attention with regard to borrowing European experience in the regulation of the procedure in Ukraine.

By judicial review is meant the examination and determination by a tribunal of the lawfulness of an administrative act and the adoption of appropriate measures, with the exception of review by a constitutional court.

The judicial review of administrative acts and measures taken by public authorities is aimed at submitting administrative authorities to law and protecting individual rights, in other words the rule of law. Moreover, to ensure the observance of basic democratic, law-governed state principles, especially human rights, in specific public legal relations between the State and a private person.

According to Administrative Procedure Law of Latvia (12 June 2003) «an administrative act is a legal instrument directed externally, which is issued by an institution in an area of public law with regard to an individually indicated person or individually indicated persons establishing, altering, determining or terminating specific legal relations or determining an actual situation» [1].

Another definition is given in Administrative Procedure Act of Estonia (6 June 2001) where «an administrative act is an order, resolution, precept, directive or other legal act which is issued by an administrative authority upon performance of administrative functions in order to regulate individual cases in public law relationships and which is directed at the creation, alteration or extinguishment of the rights and obligation of persons» [2].

It is important to note, that the first definition gives an additional function of the administrative act that is determination. Determination implies the conclusion by the rendering of a final decision. After consideration of the facts, a determination is generally set forth by any type of formal decision maker, such as the head of an Administrative Agency.

Recommendation Rec (2004)20 of the Committee of Ministers to member-states of the Council of Europe «On judicial review of administrative acts» defines that all administrative acts should be subject to judicial review. Such review may be direct or by way of exception. Estonia and Latvia established the

following rules in accordance with this Recommendation, the tribunal entitled to review an administrative acts for any of these reasons it is not objectively discernible who has issued it; it has been issued by an institution that does not have jurisdiction to issue the specific administrative act; the norms of law applied are not listed in an administrative act which is issued in writing and is unfavourable to the addressee; or it requires the addressee to violate the norms of law or to perform actions that practically or legally are not possible.

In Estonia only a person who finds that his or her rights have been violated or his or her freedoms have been restricted by an administrative act or measure has the right to apply to administrative court. That means that an action for the establishment of the existence or absence of a public law relationship or the unlawfulness of an administrative act or measure may be filed by a person who has legitimate interest in the case.

Administrative Procedural Legal Capacity of Private Persons in Latvia is characterized by that:

1) a natural person having the capacity to act;

2) a private law legal person; and

3) an association of persons, which has been recognised as having procedural legal capacity.

Obviously, this rule should be used in regard with Section 35 Administrative Procedure Law of Latvia that sets the participants in administrative proceedings may participate in the proceedings with the assistance of or through their representatives. The representative may be any natural or legal person with capacity to act.

As it is seen from the effective legislation, Estonia and Latvia meet the requirements and suggestions set in the mentioned Recommendation of the Committee of Ministers to member states of the Council of Europe: «Judicial review should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests. Member states are encouraged to examine whether access to judicial review should not also be opened to associations or other persons and bodies empowered to protect collective or community interests» [3]. It is substantiated by the rule of legitimate interest protection.

Although, Estonian and Latvian legislation defines, that administrative act should have a statement as to the period for review, but the regulation of exact period is different.

According to Administrative Procedure Act of Estonia, the text of the administrative act shall indicate on the possibility of a review, as well as its terms, conditions and place. Lack of information about review doesn't affect the legal validity of the act, doesn't affect the terms of its appeal. This period is thirty days after the date on which the administrative act was made public. But at the same time, this rule doesn't infringe human rights, because of the possibilities to lack of information be served as a basis for the resumption of the appeal period.

Latvia solved the problem in another way that is more close to people. According to it an administrative act may be disputed within a one-month period from the day it comes into effect, but if there's not set out in an ad-

ministrative act issued in writing a statement as to where and within what time period it may be disputed – within a one-year period from the day it comes into effect.

Regarding to the application form, it should be submitted in writing in both countries. Administrative Procedure Law of Latvia established that in an application shall be set out: «the name of the court to which the application is submitted; the given name, surname and place of residence or other address where the person is reachable, of the applicant, and of his or her representative if the application is submitted by a representative. If the applicant or his or her representative is a legal person, its name, registration number, if any, and the legal address shall be indicated; the name and address of the institution; the grounds for the application and evidence, if it is at the applicant's disposal; the claim; the amount of the claim, if it contains a claim for compensation for losses; a list of documents appended to the application, if they have been appended; and the place and time of the completion of the application» [1].

However, Estonian legislation determines that the application has to be presented in writing, using computer or a typewriter. The Supreme Court of Estonia also has established that the application can also be presented in readable handwriting.

An important point about the possibility of bringing proceedings via information technologies. In Latvia according to the Electronic Documents Law there is a possibility to submit an application or any other document electronically. The court as well may send its decision to the participants electronically.

Not the same in Estonia, the possibility of bringing proceedings via the Internet is provided by procedural laws. This happens only when the applicant is able to prove his or her identity by specific certification with Estonian Identification Card (using digital signature). Reading of the digital signature requires special technical possibilities, which all courts in Estonia possess. Estonian government has set an objective to collect and maintain the data concerning judicial proceedings in digital form and to implement an e-file system for that purpose.

And last but not the least, decisions regarding disputed administrative acts. A higher institution shall re-adjudicate the matter on the merits in general or in the part to which the objections of the submitter are applicable.

A higher institution by its decision may:

1) leave the administrative act unvaried;

2) revoke the administrative act;

3) set aside the administrative act in a part thereof;

4) issue a different administrative act in terms of its substance; or

5) determine whether an administrative act was legal or illegal.

Considering that Ukraine became the 37th member state of the Council of Europe on 9 November 1995 our legislation in regulation of the procedure of judicial review of administrative acts should also meet the basic European requirements that are imposed to member states. Thus, the project

Administrative Procedure Code guarantees the right to appeal against decisions, actions or inaction of the administrative authority in an administrative proceeding before the court, and in the other, prescribed by law form. The Code also regulates in detail the procedure of reviewing.

However, Ukrainian legislation in this area requires improvement. First of all, in the Code should be clearly defined that access to judicial review is opened only to person (his/her representative) who finds that his or her rights have been violated or his or her freedoms have been restricted by an administrative act or measure, when currently exist only list of persons such as citizen of Ukraine, foreigner or a stateless person of full age and not recognized by the court as incapable and those under that age, in cases involving public law relations in which they are in accordance with the legislation can independently participate.

It should be also taken into account the possibility of bringing proceedings via information technologies. That means the realization of the principle of accessibility, where information technologies are the easiest way to provide it. Seen as appropriate borrowing the Estonian experience of an e-file system for that purpose.

In general characteristic, it should be noted, legal regulation of judicial review of administrative acts in Ukraine meets all the essential requirements and principles of accessible, independent and fair protection of violated rights and restricted freedoms of a person.

To conclude, although some aspect of the procedure for review of administrative acts in Estonia, Latvia and Ukraine are more democratic and suitable for people in one country then in another, such as rules to the time periods for disputing administrative acts, the possibility of bringing proceedings via information technologies, to form of application, overall the regulation of judicial review ensure the observance of basic democratic, law-governed state principles, especially human rights, in specific public legal relations between the State and a private person and meet the European requirements such as access to judicial review, an independent and impartial tribunal, a fair hearing. The most important that these tree countries, including Ukraine, established the ability of tribunals to review any violation of the law, including lack of competence, procedural impropriety and abuse of power, that is the basis for this type of protection of the rights and interests of private persons in the specific relation with the state.

Bibliographia:

1. Administrative Procedure Law of Latvia from 12 June 2003 [Electronic resource]. – Mode of access: http://unpan1.un.org/intradoc/groups/public/ documents/untc/unpan018406.pdf.

2. Administrative Procedure Act of Estonia from 6 June 2001 [Electronic resource]. – Mode of access: http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweest.htm.

3. Recommendation Rec (2004) 20of the Committee of Ministers to member states of the Council of Europe on judicial review of administrative acts [Electronic resource]. – Mode of access: https://wcd.coe.int/ViewDoc.jsp?id=802925&Site=COE.

Світлична А. Е. Судовий перегляд адміністративних актів в Естонії та Латвії.

У статті розкрито загальну характеристику процедури судового перегляду адміністративних актів в Естонії та Латвії. Проведено порівняння їх основних елементів, а також етапів здійснення цієї процедури. Проаналізовано відповідність норм законодавства обох країн, що регулюють процедуру перегляду, європейським вимогам та рекомендаціям.

Ключові слова: адміністративний акт, оскарження, адміністративна процедура, захист прав людини, порівняльне адміністративне право.

Светличная А. Э. Судебный пересмотр административных актов в Эстонии и Латвии.

В статье раскрыта общая характеристика процедуры судебного пересмотра административных актов в Эстонии и Латвии. Проведено сравнение их основных элементов, а также этапов проведения данной процедуры. Проанализировано нормы законодательства обеих стран, регулирующих процедуру пересмотра, на соответствие европейским требованиям и рекомендациям.

Ключевые слова: административный акт, обжалование, административная процедура, защита прав человека, сравнительное административное право.

Стаття надійшла до редакції 10.06.2014