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PRINCIPLES OF ADMINISTRATIVE RULE-MAKING ARE IN UKRAINE AS AREAS OF LEGAL SCIENCE

The article is sanctified to research of the administrative rule-making, as areas of legal science that comes forward as the objective phenomenon. It is reflected, administrative rule-making in two values, as an area of legal science and as industry of legislation and their signs are described. Thus, it is marked that the administrative rule-making, as an area of legal science examines a legislation and judicial practice of his application that gives possibility is more deep to get to know principles of this sphere of public relations.

Keywords: administrative rule-making, legal science, legislation, public relations, legal norms, administrative process, imperative method.

Actuality. Becoming and development of public relations in the conditions of the independent, legal, democratic state is accompanied by continuous development and further improvement of administrative processes in the different spheres of vital functions of civil society. The questions, related to the guard of rights and freedoms of citizens, that belong to the competense of public organs activity of that needs a permanent improvement, acquire in this key of the special weight. Such process is stipulated by the modern necessities of economic, political and social life of society.

And administrative rule-making comes forward, as guarantees of judicial protection of rights, freedoms and legal interests from violations in the field of public relations that for today are extremely a necessity for physical and legal persons. For such, research of this subjects from the prism of area of legal science, that unites a legislation and judicial practice is expedient and actual in present tense.

The aim of the article is determination of main signs of the administrative rule-making as areas of legal science, establishment of totality of facilities of influence on the circle of public relations in relation to finding out of his methods.

Analysis of the last researches. In modern science during realization of certain steps of legislative and practical character there are quite a bit discussions concerning finding out of essence of the administrative rule-making. All the time

scientists carry out researches, and the labours with this subjects were devoted by such scientists of V. B. Aver'yanov, Yu. P. Bytyak, Yu.V. Dodin, A. Puddle, S. V. Kivalov, T.O. Kolomiec', A. T. Kozmyuk and other however, without regard to considerable fundamental researches of scientists this problem and until now it remains scantily explored, and thus - and actual

Exposition of basic material. The administrative rule-making forms homogeneous norms, that forms the separated industry of legislation on adjusting of public relations. The accumulation of homogeneous legal norms needs their selection and dissociation industry. Industry the right is totality of the homogeneous legal norms sent to adjusting of certain part of public relations.

The administrative rule-making can be considered the new field of judicial law, sent to realization of norms of administrative law as material. The administrative rule-making as examines the area of legal science current legislation and judicial practice of his application, his history and theory, legislation of other states, that regulates certain legal relationships [1].

Thus, administrative rule-making», it follows to examine in two values:

1) administrative rule-making as area of legal science;
2) administrative rule-making as industry of legislation.

The administrative rule-making is totality of the legal norms sent to finding out of such questions [2]:

- whether circumstances that was ground the requirements of administrative lawsuit and denials against him took place, and what proofs they are confirmed;
- whether there are other fact sheets (key-in of term of address to the court and others like that) that matter and proofs for the decision of business on their confirmation;
- what legal norm it is required to apply to the debatable legal relationships;
- whether it is required to satisfy lawsuit requirements;
- how to distribute legal expenses between parties;
- whether there are grounds to assume direct execution of resolution of court;
- whether there are grounds for abolition of measures of security for an administrative claim.

By the personal touches of the administrative rule-making as industries of legislation can be defined such [3]:

-it is the form of realization of administrative law as rights material;
- it is sent to adjusting of public relations;
- one of subjects the subject of imperious plenary powers always comes forward;

- specific, inherent only method him - non--mandatory with certain features;
- his norms are set by Verkhovna Rada of Ukraine that is the supreme body of legislature;
- it reaches a display both in the laws of Ukraine and in international normatively-legal acts.

The administrative rule-making as includes industry of legislation for itself [4]:

- generals (task of the administrative rule-making, determinations of concepts, that is used at CAS, legislation about the administrative rule-making, principles of the administrative rule-making, position in relation to a legal aid at the dispatch of businesses in an administrative court);
- organization of the administrative rule-making (administrative jurisdiction and cognizance of administrative businesses, composition of court, taking, judicial calls and reports, jigging of administrative process, norm in relation to the participants of administrative process and others like that);
- realization is in a trial (address to the administrative court and opening of realization on administrative business, preparatory realization, judicial trial of business and others like that) court;
- revision of court decisions (appellate realization, appeal realization, realization on exceptional circumstances, realization on new circumstances);
- judicial questions related to implementation of court decisions in administrative businesses;
- measures of judicial compulsion;
- final and transitional positions [5].

The administrative rule-making has a certain result for the sake of achievement of that it comes true. To Tom, there was it in connection with the necessity of realization of protection of rights, freedoms and interests of physical persons in the field of public - of legal relations from violations from the side of public and organs of local self-government, their public and official servants, other subjects authorities at realization by them imperious administrative functions.

A task to the protection of rights, freedoms and interests is predefined by that the participants of public relations have, as a rule, unequal possibilities. In fact from one side in the marked legal relationships the subject of imperious plenary powers - public organ comes forward or him public/official servant or other subject at realization given them by the state of imperious administrative functions, id est, as a rule, from one side it actually the state, and from other is a physical or legal person rights for that are broken or limited to this subject of imperious plenary powers [6].

Thus, on an administrative court a duty actively to assist physical and legal persons in the protection of their rights, freedoms and interests is fixed, that reaches a display, in particular, in realization of parts 3, 5 century of 71 CAS.

But, it does not mean that a court in an administrative process carries out the role of defender of physical or legal persons and preconceived behaves the same to the subject of imperious plenary powers, what limits to him rights. Parties in an administrative process are provided with equal judicial rights and duties, a court identically assists an and plaintiff, and defendant in providing of possibility to execute fixed on them a law duties, if there are complications at implementation of them independently. For example, according to ч. From the century of 71 CAS a court promotes in realization of duty to give proofs and necessary proofs, if a person that takes participation in business does not can independently to give them, will mark to the court reasons in force of that these proofs can not be given, and also where and which one proofs are or can be.

At consideration of administrative businesses courts must find out necessarily, or, actions or inactivity made (perfect) decision [7]:

- on founding, within the limits of plenary powers and in a method, that envisaged by Constitution and laws of Ukraine;
- with the use of plenary powers with an aim with that these plenary powers are given;
- taking into account all circumstances that matter for a decision-making (feasance of action);
- taking into account a right for personality on participation in the process of decision-making;
- during a clever term;
- impartiality;
- honestly;
- reasoning;
- with the observance of principle of equality before a law;
- with the observance of necessary balance between any unfavorable consequences for rights, freedoms, interests of person and aims to the achievement of that this decision is sent.

The criteria of division of right on industries are an object and method of the legal adjusting. The article of the administrative rule-making are relations that arise up as a result of address to the administrative court with an administrative lawsuit for the decision of spores [8]:

- physical or legal persons with the subject of imperious plenary powers in relation to the appeal of his decisions (normatively-legal acts or legal acts of individual action), actions or inactivity;

- concerning the acceptance of citizens on public service, her passing, liberation from public service;

- between the subjects of imperious plenary powers concerning realization of their competense in the field of a management, including the delegated plenary powers, and also disputes that arise up concerning a conclusion and implementation of administrative agreements;

- after the appeal of subject of imperious plenary powers in the cases set by a law;

- in relation to the legal relationships related to the electoral process or process of referendum.

For such, the article of the administrative rule-making are relations that arise up in connection with violation of publicly-individual right for a subject. And that is why a right for the administrative rule-making as judicial right is sent exactly to providing of clear application of norms of material right to the concrete vital situations thus, to do impossible an origin here of actual and legal errors [2].

By means of totality of methods and facilities of outpouring on the circle of public relations certain the article of the legal adjusting, that show a soba the method of the administrative rule-making.

The methods of the administrative rule-making are [1]:

- non-mandatory;

- method of autonomy and equality of parties.

The feature of non-mandatory method of the administrative rule-making is that he is combination of method characteristic for a public law, with a method, that is used for adjusting of relations that arise up in a private right.

An imperative method is the method of imperious binding overs, that, usually, contains prohibitions of feasance of certain actions. The imperativeness of method of the administrative rule-making consists in that administrative court, in addition, that operates in limits and in a method, certain CAS, the observance of requirements of CAS provides also by all persons that participate in business [4].

A non-mandatory method gives possibility of choice of variants of behavior to the subjects, however within the limits of law. The non-mandatoryness of method finds the display in that parties of administrative process have equal judicial rights that be under an obligation honestly to use, and duties that must steadily to execute.

At the same time the non-mandatoryness of method of the administrative rule-making has the certain feature, related to public character of relations that is regulated by the administrative rule-making. The marked feature consists in that without regard to equality of judicial rights and duties of parties, however certain inequality takes place them judicial position, that ч is envisaged. 2 century of 71

CAS, according to that a duty in relation to finishing telling of legitimacy of the decision, action or inactivity depends upon a defendant, if he denies against an administrative lawsuit [6].

Under the method of autonomy and equality identical judicial position before each other of plaintiff and defendant and their equality understand before a law and court. Each of parties is independent in the choice of the behavior and marketability of given by the judicial law of rights her and realization of the duties fixed on her [7].

Conclusions. Thus from the above-mentioned seen, that the administrative rule-making consists of homogeneous legal norms, that is sent to adjusting of certain part of public relations, that form the certain area of legal science, that has the object, aim, task and methodology, that represent nature of material and judicial norms that is correlated inter se as maintenance and form, judicial norms are the form of realization of norms of material right. The administrative rule-making can be defined by the new area of legal science, that regulates public relations that are substantial for the protection of the broken rights for legal and natural persons from the side of the state.

References:

1. Administrative law of Ukraine. Academic course: textbook: In two volumes: Tom 1. General part / of Red. is a college: V. B. Aver'yanov (chairman) and other - К.: LTD. The «Legal idea», 2007. -592 p.
2. Bases of the administrative rule-making and administrative law : train aid / gen. rel. by Kujbida P.O., S V.I. Shushkina: the Old world, 2006.
3. An administrative judicial (judicial) law of Ukraine / gen. rel. by S. V. Kivalov. Odesa: Legal literature, 2007. -312 p.
4. Dimitrov Yu. the Administrative justice is an attribute of the democratic legal state / by Yu. Dimitrov // Right for Ukraine. - 1996. - №4. - p. 7-14.
5. Kolomiec' T.O. Administrative rule-making / by. O. Kolomiec' , Yu.V. Pyrozhrjva, O.O. Gazenko, O.Yu. Melihova, I.O. Skvirsrij. - К.; Zaporizhzhya: Truth, 2009. - 344 p.
6. Kuz'menko O.V. An administrative justice is in Ukraine / of Kuz'menko O.V. - К.: Atiка, 2007. - 156 p.
7. Pasenyuk O. M. The Administrative rule-making of Ukraine : textbook / The Higher administrative court of Ukraine / V. B. Aver'yanov , V. P. Bazov, L.Ya. Potter/ - К.: Yurinkom. - 2009. -672 p.
8. Ped'ko Yu. S. Becoming of administrative justice in Ukraine: Monograph. - К.: In-t of the state and right NAN of Ukraine by V. M. Korec'kogo, 2003. -208 p.

Гречана С. Принципи адміністративного судочинства в Україні як галузі правової науки.

Стаття присвячена дослідженню адміністративного судочинства, як галузі юридичної науки, що виступає об'єктивним явищем. Висвітлено, адміністративне судочинство у двох значеннях, як галузь юридичної науки і як галузь законодавства та охарактеризовано їх ознаки. При цьому, зазначено, що адміністративне судочинство, як галузь юридичної науки розглядає законодавство і судову практику його застосування, що надає можливість більш поглиблено пізнати засади цієї сфери публічних відносин.

Ключові слова: адміністративне судочинство, юридична наука, законодавство, публічні відносини, правові норми, адміністративний процес, імперативний метод.

Гречана С. Принципы административного судопроизводства в Украине как отрасли правовой науки.

Статья посвящена исследованию административного судопроизводства, как отрасли юридической науки, которое выступает объективным явлением. Освещено, административное судопроизводство в двух значениях, как отрасль юридической науки и как отрасль законодательства и охарактеризованы их признаки. При этом, отмечается, что административное судопроизводство, как отрасль юридической науки рассматривает законодательство и судебную практику его применения, дает возможность более углубленно познать основы этой сферы публичных отношений.

Ключевые слова: административное судопроизводство, юридическая наука, законодательство, публичные отношения, правовые нормы, административный процесс, императивный метод.

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Orientation of our country on the construction of the legal, democratic state and including to European Community envisage the presence of effective of mechanism protection of rights and freedoms of man, one of elements of that there is the effective and responsible system of judicial defense of physical and legal persons from violations of their rights and legal interests from the side of organs of state administration in the field of public relations.

The administrative rule-making forms a homogeneous norm, that forms the separated industry of legislation on adjusting of public relations.

The accumulation of homogeneous legal norms needs their selection and dissociation industry. Industry the right is totality of the homogeneous legal norms sent to adjusting of certain part of public relations.

The administrative rule-making can be considered the new field of judicial law, sent to realization of norms of administrative law as material.

The problem of place of the administrative rule-making in legal science closely constrained with the problem of differentiation of maintenance of the administrative rule-making and contiguous with him concepts to that belong : «administrative justice», «administrative process» and «administrative jurisdiction».

The administrative rule-making as examines the area of legal science current legislation and judicial practice of his application, his history and theory, legislation of other states, that regulates certain legal relationships.

For such, the administrative rule-making is folded by relations that arise up in connection with violation of publicly-individual right for a subject. And the administrative rule-making as judicial right is sent exactly to providing of clear application of norms of material right to the concrete vital situations thus, to do impossible an origin here of actual and legal errors.

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