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## THE CONCEPT AND LEGAL NATURE OF THE METHODS OF PROTECTION IN THE ADMINISTRATIVE JUDICIARY OF UKRAINE

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**Abstract.** The article is devoted to the problems of the legal nature of the methods of judicial protection in the administrative proceedings of Ukraine. Attention is drawn to the fact that this issue is insufficiently covered in science. The article indicates that jurisprudence theories have developed different approaches to the interpretation of the meaning of the concept of "methods of protection of rights and interests". The main attention in science is paid to this concept by civil law specialists, and this is explained by the fact that scientific research in this field has been developing for a long time. The author draws attention not to the fact that methods of judicial protection in legal science are considered as a type of demand, as a type of coercion and as an action of the subject of protection. In the article, it is proposed to understand the method of protection in administrative proceedings as a substantive legal requirement, which is provided for in the law, and which ensures the renewal of the violated right or interest of a person in public legal relations. It is substantiated that the methods of protection are a specific material and legal requirement, which is aimed at the protection of the right. This requirement is a final action (act) on the way to removing obstacles to the exercise of a subjective right or interest, termination of an offense and removal of obstacles to the exercise of a right (interest). The article proves that the methods of protecting the rights, freedoms, and interests of individuals when challenging the decisions of subjects of authority have the following features: they represent a procedural and legal requirement to the court enshrined in the law; are applied on the basis of the law; the basis of application is a violation of the right, freedom or interest of the person applying them; aimed at restoring the violated right, freedom or interest; conditioned by the object of protection represented by the decision of the subject of power.

**Key words:** administrative proceedings, administrative court, method of judicial protection, judicial protection, subject of authority, decision of the subject of authority.

**Introduction.** Article 5 of the Administrative Judicial Code of Ukraine defines the right of every person to apply to an administrative court for protection in cases where he believes that the actions or inaction of a subject of authority violate his rights, freedoms or legitimate interests. Part 1 of this article defines the methods of protection that a person can choose. In Art. 245 of the Administrative Judicial Code of Ukraine contains the methods of protection used by the court when considering a public legal dispute. The means of protection are important, because the opportunity to use them contributes to the efficiency of justice and the achievement of the tasks of administrative proceedings. The means of protection are certain actions of a person and the court, which are provided for by law and are directed directly to the protection of rights. They represent material and legal requirements, which, firstly, are aimed at eliminating obstacles in the exercise of a person's rights in the public legal sphere, and secondly, at stopping the offense and restoring the legal position of the person that existed before its violation.

Along with this, one cannot fail to pay attention to the fact that the legal nature of the methods of protection in administrative proceedings is not properly investigated, which in turn complicates law enforcement.

**The goal of the study.** The purpose of the study is to clarify the essence of the concept of methods of protection in administrative proceedings, their content, properties. For this, it is proposed to solve

the following tasks. To determine the place of the methods of protection in administrative proceedings in the system of measures to implement the right to judicial protection, to clarify the meaning of the concept of methods of judicial protection in administrative proceedings with such combined categories as the form of protection and the means of protection, to identify the properties inherent in the methods of judicial protection in administrative proceedings judiciary of Ukraine.

**Material and research methods.** The following research methods were used in the work, as a systemic and structural one, which allowed to investigate the methods of judicial protection in administrative proceedings, as a systemic category, in the mechanism of realization of the right to judicial protection, and in the structure of its elements. Juornal-legal allowed to formulate the concept of the method of judicial protection, the method of analysis and synthesis allowed to study the scientific positions of scientists whose works were devoted to the methods of judicial protection.

The author of the article drew attention to the fact that in legal science the methods of judicial protection were mainly studied by specialists in the theory of law and civil procedure, in particular O.P. Kulynych, Yu.D. Prytykiou, G.V. Churpita, T.M. Podlubna and others. In the science of administrative law, methods of judicial protection were mostly covered on the pages of textbooks and fragmentarily, in the context of other monographic studies with broader issues by such scientists as Ya.O. Bernazyukom, T.O. Kolomoets, O.V. Kuzmenko, T.P. Minkou, O.P. Ryabchenko and others. Along with this, the question of the legal nature of the methods of judicial protection in administrative proceedings has not been sufficiently investigated.

**Results and discussion.** In the theory of jurisprudence, different approaches to the interpretation of the meaning of the concept of "method of protection of rights and interests" have developed. The main attention in science is paid to this concept by civil law specialists, and this is explained by the fact that scientific research in this field has been developing for a long time. However, these scientific assets can also be applied in the field of solving public legal disputes, since it is about the general principles of the functioning of the state apparatus and the mechanism of legal regulation of the protection of the rights and interests of individuals, which was created in our country.

It should also be noted that there is no official definition of "methods of protection" in modern national legislation. For example, the Administrative Judicial Code of Ukraine provides only a general list of ways to protect the rights and interests of individuals (Kodeks administratyvnoho sudochynstva Ukraini, 2017). Therefore, it is no coincidence that there is a diversity of views on the studied concept in the scientific literature.

Thus, protection methods are considered as a type of requirement. The means of protection in such a case are presented as material and legal requirements provided for in the law, and the application of which ensures the renewal of violated rights or interests.

The means of protection are also considered as a type of coercion, namely, as material and legal measures of a coercive nature enshrined in the law, which allow to restore the violated right or interest, to exert influence on the person who violated it and, in the cases provided for by the law, to apply measures of responsibility ( for example, in the form of damages). So, it can be noted that the method of protection in this case is connected with the principles of law and order, as a result of the normal functioning of the state system of managing social relations. Obviously, in this context of understanding the methods of protection, the term "coercion" includes a broad concept that involves the influence of the state on a person through the positive influence of legal regulation. This influence can be exercised not only by actually forcing a person to act (comply with a court decision), but also by persuading him to perform certain actions (act in favor of the plaintiff).

Methods of protection in the scientific literature are also considered as an action of the subject of protection. That is, a person whose right or interest has been violated takes legal actions aimed at protecting the violated right or interest by applying to court. These actions can be of a different nature, including material and legal actions and jurisdictional measures aimed at eliminating the violation of

the right, at the termination of the violation of the right, as well as the restoration of the legal position of the person that existed before the violation. The application of a specific method of protection is the result of legal protection activities. One can agree with the last statement, but with the caveat that the application of a specific method of protection is embodied in the corresponding substantive legal requirement, which is a consequence of the actions of the person whose right or interest is violated.

Considering the methods of protection as “measures of state coercion” or as “action” of the subject whose rights or interests are violated, in our opinion, do not fully correspond to the very nature of the methods of protection of the rights, freedoms, and interests of individuals in administrative proceedings. The task of administrative proceedings is to effectively protect the rights, freedoms and interests of persons who submit their substantive and procedural claims to the court in order to protect their violated right, freedom or interest. For this purpose, persons perform the procedural actions prescribed by the Administrative Judicial Code of Ukraine (Kodeks administratyvnoho sudochynstva Ukraini, 2017). The consequence of the trial is the application by the court of certain adverse consequences to the subject of power, which are associated with the obligation to comply with the court decision and to compensate for the damage. That is, "actions" and "force" are derived concepts.

Judicial practice is ambiguous in matters of interpretation of the concepts we are studying. The analysis of the decisions of the Supreme Court shows some inconsistencies in the interpretation of the concept of the method of judicial protection. Yes, sometimes such concepts as "form" of legal protection and "methods" of legal protection are equated. For example, we can cite the Resolution in case № 140/13065/21, in which the Supreme Court notes that “...every person has the right, in accordance with the procedure established by this Code, to apply to the administrative court if he believes that the decision, action or inaction of the subject authority, its rights, freedoms or legitimate interests are violated, and ask for their protection; the protection of the violated rights, freedoms or interests of the person who appealed to the court can also be carried out by the court in any way that does not contradict the law... forms of protection, in particular, are recognition of the illegality and invalidity of a normative legal act or its individual provisions; recognition as illegal and cancellation of an individual act or its individual provisions; recognizing the actions of the subject of authority as illegal and the obligation to refrain from certain actions; recognition of the inaction of the subject of authority as illegal and the obligation to perform certain actions” (Postanova Verkhovnoho Sudu, 2023). So, we see that the forms of protection and methods of protection are identified in this resolution.

In other of its decisions, the Supreme Court stated that the protection of rights is understood as state coercive activity aimed at restoring the violated right of the subject of legal relations and ensuring the fulfillment of a legal obligation by the obligated party. The method of protection can be defined as a concentrated expression of the content (essence) of the measure of state coercion, with the help of which the desired legal result for the person whose right or interest is violated is achieved. The method of protection embodies the immediate goal that the subject of protection (plaintiff) seeks to achieve, believing that in this way the violation (or contestation) of his rights will be stopped, he compensates for the costs incurred in connection with the violation of his rights, or in other method eliminates the negative consequences of violation of his rights (Postanova Velykoyi Palaty Verkhovnoho Sudu, 2018; Postanova Verkhovnoho Sudu, 2022).

This is an example of a court decision in which the methods of protection are understood as coercive measures, with the help of which the violated rights or interests are restored. We can partially agree with this approach, because we believe that the methods of protection cannot be equated with state coercion, although we cannot fail to note that they, the methods of protection, have a certain coercive nature. Most likely, the methods of protection are material and legal measures (legal tools) of a coercive nature, the purpose of which is to stimulate the offender to behave appropriately, to prevent further violation of the subjective rights and interests of the person, as well as to restore the violated right and eliminate the negative consequences of its violation.

It can be agreed that the method of protection is related to the specific actions of a person whose rights and interests have been violated by a subject of authority (claims), is embodied in the form of the realization of the subjective right to judicial protection (the right to demand) and is transformed into a specific requirement (method of protection) to the court to protect the violated right or interest in the way provided for by law: to declare it illegal and cancel the decision; or oblige to perform certain actions; or refrain from certain actions; or recognize the actions or inaction of the subject of authority as illegal; or establish the presence or absence of competence (powers) of the subject of authority, etc.

It is also worth noting that the dispositive orientation of administrative proceedings is embodied in the ability of a person to freely, at his own discretion, choose the methods of protection provided for in the law and in the freedom to exercise the protection of his subjective right or interest. However, regardless of the dispositive nature of the choice of the method of protection of the violated right or interest, the law and judicial practice have formed certain rules for their choice – the methods of protection must be appropriate, provide effective protection and not contradict the law. Failure to comply with these requirements may be the basis for the court to conclude that the chosen method of protection is inappropriate or ineffective, or contrary to the law. Court practice follows the path of recognizing that a person can apply to an administrative court for the protection of a violated right or interest by a subject of authority, but the court may not satisfy the claim if the chosen method of protection is not provided for by law or contradicts it.

**Conclusions.** Summarizing the above, the following conclusions can be drawn.

Thus, the method of protection in administrative proceedings should be understood as a substantive legal requirement, which is provided for in the law, and which ensures the renewal of the violated right or interest of a person in public legal relations. Judicial protection of the subjective right and interest of a person against illegal decisions, actions or inaction of a subject of authority is implemented in certain ways of protection

“Form of protection”, “means of protection” and “methods of protection” are components of the concept of rights protection and integral elements of the process of removing obstacles that make it difficult or impossible to realize the subjective rights of a person and his interests. Forms of protection are an external manifestation of the jurisdictional activity of competent subjects who have the authority to directly protect the rights of individuals (jurisdictional and non-jurisdictional forms of protection). Remedies are certain actions addressed to authorized entities, and which help a person to exercise the right to protection (for example, filing a lawsuit, filing a complaint, statement or request). The means of protection are specific material and legal requirements, which are aimed at the protection of the right. This requirement is a final action (act) on the way to removing obstacles to the exercise of a subjective right or interest, termination of an offense and removal of obstacles to the exercise of a right (interest). The application of the method of protection is the result of the protection of subjective rights and interests.

Ways of protecting the rights, freedoms, and interests of individuals when challenging the decisions of subjects of authority have the following features: they represent a procedural and legal requirement to the court enshrined in the law; are applied on the basis of the law; the basis of application is a violation of the right, freedom or interest of the person applying them; aimed at restoring the violated right, freedom or interest; conditioned by the object of protection represented by the decision of the subject of power.

#### **References:**

1. Kodeks administratyvnoho sudochynstva Ukraini vid 03.10. 2017 [Code of administrative proceedings Ukraine]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>. [in Ukrainian]

2. Postanova Verkhovnoho Sudu vid 14.03.2023r. u spravi № 140/13065/21. [Resolution of the Supreme Court dated March 14, 2023. in case No. 140/13065/21.] Retrieved from: <https://opendatabot.ua/court/109601419-73d66ef7bae23889e3b732a4303f303f>. [in Ukrainian]
3. Postanova Velykoyi Palaty Verkhovnoho Sudu vid 27 lystopada 2018 roku u spravi № 905/2260/17. [Resolution of the Great Chamber of the Supreme Court of November 27, 2018 in case No. 905/2260/17]. Retrieved from: <https://zakononline.com.ua/court-decisions/show/78376916>. [in Ukrainian]
4. Postanova Verkhovnoho Sudu vid 03 serpnia 2022 roku u spravi 757/50149/19-ts [Resolution of the Supreme Court dated August 3, 2022 in case 757/50149/19-ts]. Retrieved from: <http://iplex.com.ua/doc.php?regnum=105637075&red=10000393bf8bb311f83c08a0ba3ce155fdfb79&d=5>. [in Ukrainian]