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## Subjects involved in administrative legal proceedings: legal regulations and their characteristics

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### ABSTRACT

The purpose of the research is legal regulation and characterization of subjects involved in administrative legal proceedings. Main content. The article considers scientific and regulatory approaches to the definition of “subject of administrative legal proceedings”, classification of subjects in administrative proceedings has been researched. Methodology: Materials and methods research based on the analysis of documentary sources. the basis is the dialectical method of cognition of the facts of social reality, on which the formal legal and comparative legal approaches are largely based. Conclusions. Legal status of subjects involved in administrative legal proceedings depends directly on its legislative definition, but its implementation is associated with active or passive forms of performing functions of the parties and other procedural participants in the respective legal proceedings. It is emphasized that the participants of the administrative process according to the instructions of the Code of Administrative Legal Proceedings (CALP) of Ukraine, depending on their interest are divided into persons involved in the respective case (parties, third parties, representatives of the parties and representatives of third parties) and other participants (witness, expert, specialist, etc.).

KEY WORDS: Administrative Law, judiciary, legal sciences, rule of law, supreme courts.

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## Sujetos involucrados en los procesos jurídicos administrativos: la normativa jurídica y sus características

### RESUMEN

El objeto de la investigación es la regulación jurídica y la caracterización de los sujetos que intervienen en los procesos judiciales administrativos. Contenido principal. El artículo considera aproximaciones científicas y normativas a la definición de “sujeto de proceso judicial administrativo”; se ha investigado la clasificación de sujetos en proceso administrativo. Metodología: investigación de materiales y métodos a partir del análisis de fuentes documentales; la base es el método dialéctico de conocimiento de los hechos de la realidad social, en el que se basan en gran medida los enfoques del Derecho formal y del Derecho comparado. Conclusiones. La condición jurídica de los sujetos intervinientes en el proceso judicial administrativo depende directamente de su definición legislativa, pero su realización está asociada a formas activas o pasivas de ejercicio de funciones de las partes y demás intervinientes procesales en el respectivo proceso judicial. Se enfatiza que los participantes del proceso administrativo, de acuerdo con las instrucciones del Código de Procedimientos Legales Administrativos (CALP) de Ucrania, dependiendo de su interés, se dividen en personas involucradas en el caso respectivo (partes, terceros, representantes de las partes y representantes de terceros); y otros participantes (testigo, perito, especialista, etc.).

**PALABRAS CLAVE:** Derecho administrativo, poder judicial, Ciencias Jurídicas, Estado de derecho, tribunales supremos.

### Introduction

The theory and practice of administrative legal proceedings attach special importance to an important element of the structure of administrative-procedural relations - subjects who, according to the Law, have the status of participants in legal proceedings. Attitude of subjects to the consideration of juridical cases in administrative proceedings is conditioned by the fact of achieving the legal result, the purpose which is provided by law. Thus, legal status of subjects involved in administrative legal proceedings depends directly on its legislative definition, but its implementation is associated with active or passive forms of performing functions of the parties and other procedural participants in the respective legal proceedings.

The purpose of the research is legal regulation and characterization of subjects

involved in administrative legal proceedings.

The main purpose of judicial power consists in administration of justice which is powerful due to its high ethics, social fairness as the basis for consolidation of the society, as well as due to supremacy of law, legal certainty, stability, protection of everyone's rights and protection of legal norms. In general, the Institute of judicial protection has a special role. On the other hand, it should be emphasized that administrative litigation being the youngest component of the judicial system is distinguished among all types of judicial process by the the most significant functional legal and procedural relations concerning settlement of disputes in the public sphere. That is why a certain number of theoretical and practical aspects concerning functioning of administrative justice require the deepest analytical understanding and scientific and systemic generalization with characterization of subjects in administrative legal proceedings being a component of such understanding and generalization.

### 1. Literature review

Despite the existence of a considerable number of scientific works devoted to the legal status of participants of legal relations in the sphere of administrative legal proceedings, it is worth noting a lack of comprehensive research of the generalized concept of "subject of administrative legal proceedings" and the related concept of "classification of subjects in administrative legal proceedings"; and such a research is set for the purpose of this article (Romanchenko, 2013).

Considerable attention is paid to the guarantors against abuses during determining conditions of reconciliation. There is no doubt about the correctness of O.D. Sidelnikov's position that there is an urgent need to develop clear criteria public administration bodies should be based on when deciding on settlement of disputes. As far as expansion of discretionary powers increases risks of misconduct of public officers and creates threats of corruption offenses, it is necessary to develop certain guidelines determining rules of exercising freedoms in this sphere. In addition to the criteria of legality, rationality and expediency it is necessary to analyze other possible standards and requirements that must be met by public administration entities when making management decisions within the lawful discretion (Sidelnikov, 2017), should be analyzed.

In addition, psychological factors reduce the likelihood of subject being involved in

conciliation procedures and their successful completion. Among other things, it is pointed out that the participation of subjects of power in conciliation procedures within administrative legal proceedings requires a proactive approach of such subjects as well as some changes in the mentality of public administration which was developed without extensive use of mediation practices. The success of the procedure of reconciliation with a subject of power depends on whether they really seek to work out a private solution mutually acceptable to them. Also, the point is that a public servant is often afraid to take responsibility for independent decision-making concerning a dispute (it is easier and safer to wait for a court decision and refer to it) (Krasilovskaya, 2017).

## 2. Materials and methods.

Research of materials and methods based on the analysis of documentary sources: the research is based on the dialectical method for cognition of social reality facts; this method to a large extent forms the ground for formally legal and comparatively legal approaches.

The dialectical method is used to formulate the legal regulation and characterization of subjects involved in administrative legal proceedings. The official dogmatic method contributed to development of the author's explanation of the current state, problems and practical role of legal technologies for further development and improvement of legal regulation and characterization of subjects involved in administrative proceedings. The official-legal method gave an opportunity to offer directions for improvement of legal regulation and characterization of subjects taking part in administrative legal proceedings.

## 3. Results and discussion

In the general theoretical sense subject of administrative legal proceedings appears as a legal abstraction which determines the legal status of a person in relations regarding protection of his/her rights, freedoms and interests by means of administrative legal proceedings. In the specific legal sense, subject of administrative legal proceedings is an individualized person who is a bearer of rights and responsibilities in administrative procedural relations in relation to the administration of justice by means of administrative courts (Bachun, 2010). The category "subject of administrative legal proceedings" includes two components - the legal capacity to acquire a status and administrative juridical personality, which specifies legal status of the respective subject. The category "subject" is

wider than the category “participant” in administrative legal proceedings. Applying a broad approach to the category “subject of administrative legal proceedings” gives grounds to state that any natural or legal person can be defined as such a subject. However, in order such a person could to exercise his/her/its constitutional right to appeal to an administrative court to protect his/her/its violated rights, freedoms, legitimate interests, he/she/it must have legal opportunities that are reproduced through administrative procedural capacity (legal standing) (Romanchenko, 2013).

Due to the large number of subjects entering into administrative procedural relations, it is important to study present-day types of participants in administrative legal proceedings and first of all their classification, which not only systematizes such participants into separate groups, but also allows to indicate specific features, tasks, powers of all those who are in one way or another involved in the respective administrative case.

Classification of participants in administrative legal proceedings is carried out according to various criteria: their social and state role; administrative procedural status and purpose of participation in the process; their organizational structure. (Leheza et al, 2022).

Depending on *the social and state role* participants in administrative legal proceedings are divided into subjects of coercive powers, natural persons and legal entities. The constitutional guarantee of judicial protection of legal rights and freedoms of human and citizen (Articles 8, 55 of the Constitution of Ukraine) was further developed in the Law of Ukraine “On Judiciary and Status of Courts” and the Code of Administrative Legal Proceedings of Ukraine (Law of Ukraine, 2016). In particular, Article 2 of the mentioned Code stipulates that the task of administrative legal proceedings is “court’s fair, impartial and timely resolution of disputes in the sphere of public relations in order to effectively protect rights, freedoms and interests of individuals, rights and interests of legal entities from violations by subjects of power” (Law of Ukraine, 2016).

In contrast to subjects of power who perform state functions, individuals and legal entities enter into administrative proceedings to ensure their own substantive and procedural interests. In addition, when summarizing provisions of the CALP of Ukraine (Chapter 4), which determine status of participants in legal proceedings, we can conclude that the subjects of power, natural persons and legal entities, in turn, are classified into two groups of persons involved in legal proceedings:



1) those who take part in legal proceedings in order to protect their own rights, freedoms and interests (such persons are the parties - the plaintiff and the defendant; third parties) (Article 46-49 of the CALP of Ukraine;

2) Those who take part in legal proceedings in order to protect rights, freedoms and interests of other persons (this group includes representatives of parties and third persons, bodies and persons who are entitled to defend rights, freedoms and interests of other persons in court) (Article 55, 56, 57 of the CALP of Ukraine). For example, in accordance with Part 2 of Article 37 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” interests of the Cabinet of Ministers of Ukraine in courts of general jurisdiction shall be represented by the Ministry of Justice of Ukraine, unless otherwise provided by laws or acts of the Cabinet of Ministers of Ukraine (Law of Ukraine, 2014).

The term “natural person” is a generalization and includes such concepts as citizens of Ukraine, foreigner and stateless person. The mentioned concepts have been captured in the national legislation.

Citizen of Ukraine is a person who has acquired the citizenship of Ukraine according to the procedure prescribed by the laws of Ukraine and international treaties of Ukraine (Article 1 of the Law of Ukraine “On Citizenship of Ukraine”) (Law of Ukraine, 2001).

As provided for in Article 1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, a foreigner is a person who is not a citizen of Ukraine and is a citizen (national) of another state or states. A stateless person is a person who is not considered as a national by any State under the operation of its law (Law of Ukraine, 2012).

The term “legal person” and its contents are fixed in the Civil Code of Ukraine; according to Article 80 of this Code legal entity is an organization established and registered in accordance with the law (Law of Ukraine, 2003).

*According to* their administrative procedural status and the purpose of participation in legal proceedings participants are divided into main and auxiliary ones. Main participants of administrative legal proceedings are: the parties (plaintiff and defendant), third parties, their procedural representatives. These persons initiate administrative proceedings, change these proceedings on the will of the parties, third parties, representatives which depends, in particular, on emergence of appeals, cassation appeals, commencement of enforcement proceedings (Leheza et al, 2022).

Auxiliary participants of administrative proceedings are those who do not significantly influence the course of such proceedings in general, but by virtue of their appointment and powers ensure its quality, completeness and objectivity. Such participants include: court session secretary, court administrator, witness, expert, specialist, translator (interpreter).

Classification of participants of administrative legal proceedings according to their procedural status has been to a certain extent determined in the CALP of Ukraine. In particular, Chapter 4 of the Code provides for a group of persons involved in legal proceedings (parties, third parties, representatives of the parties and third parties) and a group of other participants in administrative proceedings (judge assistant, court secretary, court administrator, witness, expert, specialist, translator (interpreter)).

Depending on their organizational structure participants of administrative legal proceedings may be divided into individual ones (natural persons) and joint ones (legal entities, collective entities without the status of a legal entity, association of residents of a house, neighborhood committees, street committees, etc.) (Halaburda et al, 2021).

In order to ensure the possibility for participants in administrative legal proceedings to exercise their subjective interests, perform their tasks, the administrative procedural legislation (Chapter 4 of the CALP of Ukraine) stipulates their procedural legal personality, which will be discussed in the following sections of our research (Leheza et al, 2021).

At the same time, it should be noted that the system of subjects of administrative procedural is considered as a single holistic set of subjects of various categories (individual ones and joint ones, private ones and public ones), and within this set they are in a state of structural and functional links between each other in order to ensure their optimal performance within the respective legal relations. For example, each organizational and legal form of a legal entity structurally and functionally complements other forms, subjects of private law implement their legal capabilities in direct interaction with public law entities; by means of combining their efforts individual subjects, form complex, multifaceted subjects of law, etc. (Leheza et al, 2022).

System of administrative procedural law subjects is determined by the corresponding system of legal regulation in the sphere of legislation. In the science of national administrative law there are various views on the system of administrative law subjects and



administrative process. Summing up the different points of view of scientists, the system of administrative process subjects can be presented as follows: Individual subjects; joint subjects (Kivalov, 2005).

## Conclusion

Thus, in our opinion, the most acceptable classification consists in dividing all subjects of administrative procedural legal relations into the following three groups: courts that administer justice; persons involved in legal proceedings; persons assisting in the administration of justice. The second group (persons involved in legal proceedings) includes three sub-groups of subjects exercising their rights and obligations depending on their purpose of participation in legal proceedings. These are persons whose purpose in the respective legal proceedings is to protect their subjective material and legal interests (the parties, third parties, applicants and interested parties); persons involved in the respective legal proceedings in order to protect interests of others, state interests (prosecutor, state bodies, local governments, other bodies); representatives - persons whose purpose in legal proceedings is to protect interests of others.

Individual subjects of administrative legal proceedings include citizens of Ukraine, foreign citizens, stateless persons.

Joint subjects of administrative legal proceedings should include: executive bodies of central and local level; other public authorities; executive bodies of local self-government; enterprises and institutions of various forms of ownership; public associations.

Civil servants and employees of local self-government bodies authorized to solve individually-specific proceedings (cases) in the sphere of public administration who act on behalf of the relevant bodies or by their actions initiate administrative proceedings within the respective administrative process.

Subjects of the first group (individual subjects) act in the administrative proceedings as: plaintiff; defendant; third person; authorized representative; individual protecting rights and interests of other participants in the proceedings; judge assistant, court secretary, court administrator, witness, expert, legal expert, translator (interpreter), specialist.

In each of the above cases, the administrative and legal status of an individual as a participant of the respective administrative process has its own specificity, due to the role performed by the individual in this process.

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