

WAYS OF IMPROVING THE APPEAL PROCEDURE OF ACTIONS OR OMISSIONS OF PUBLIC AUTHORITIES

The main indicator of the development of democracy and the establishment of rule of law in any country is the level to guarantee the protection and the rights and freedoms of a person and citizen. One of the ways of the implementation of these mechanisms is a citizens' appeal against decisions, acts or omissions of public authorities. It is established at the international and national levels. In domestic law the right of citizens to appeal is reflected in the provisions of the Constitution of Ukraine, laws, including the Law of Ukraine "About application of citizens" and other legal acts that are of subordinate character. Under the provisions of Art. 40 of the Constitution, all people have the right to individual or collective petitions, or to personally appeal to the state authorities, local self-government and officials of these bodies are obliged to consider the appeal and give a reasoned reply within the prescribed statutory period. Art. 50 sets that everyone has a right to challenge in court the decisions, actions or inaction of state authorities, local self-government officials. Everyone has the right to seek protection of their rights from the Ombudsman on human rights of Ukraine. Thus in Ukraine appeals against decisions, actions or omissions of public authorities can be realized in court procedure and extrajudicial procedure. The latter is often called administrative appeal, in our opinion, it's not correct, because the administrative appeal - is appealing against decisions, actions or omissions to superior executive body or official. Also non-judicial procedure includes an appeal to the Ombudsman on human rights, the Prosecution Office.

European documents relating to human rights and the rule of law are based on the fact that the right to appeal against decisions, actions or inactivity is one of the most important rights and an essential characteristic of law. According to Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

everyone whose rights and freedoms recognized by this legal act are violated shall have an effective legal protection in the national authority notwithstanding that the violation has been committed by persons who acted in an formal authority.

The democratization of the Ukrainian state and the European vector of its development, causes transformation in the domestic legal system. This fully applies administrative law as the leading sectors of Ukrainian law.

Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe about alternative methods of settling disputes between administrative authorities and private individuals on the 5-th September, 2001 provides several alternative ways, namely: internal (meaning the institutional, administrative) review of cases, a reconciliation, mediation, contract settlement and arbitration.

Therefore deemed necessary to conduct a brief review of procedures for appeal of decisions, actions or inaction of authorities in European countries, including Britain, France, Germany and Australia in order to improve the national system of appeal.

In Australia, there are judicial and non-judicial procedures for appealing against decisions, actions or inaction of the executive power, but along with those in the country there are specially created bodies and institutions, which are aimed at resolving conflicts between the citizen and the state. These specially constituted authorities and institutions are Administrative Appeals Tribunal, as well as State Service Commissioner.

In the United Kingdom of Great Britain there are the following mechanisms to protect their rights from the actions of the administration: Complaint Procedure superior authority; system tribunals, ombudsmen and judicial review.

The next country which you should pay attention to is France. Except the trial, the French administrative law also recognizes other means of dispute resolution, including conciliation, mediation, agreement and arbitration. With the exception of mediation, alternative methods of settling disputes is used in the administrative process rather reluctantly.

In Germany, the judicial procedure to appeal decisions, actions or inaction of the state and its agencies is prevailing, but there is also an alternative procedure for

settling disputes. The method of alternative dispute resolution is not developed in Germany. The ombudsman at the federal level is absent. There are parliamentary committees to review the application to which citizens can appeal, but they are not binding and not an effective way of appeal. Mediation is theoretically possible, but usually not used, except some specific areas.

So, it seems appropriate to use the experience of other countries and establish in Ukraine an alternative solution of administrative and legal conflicts, namely complaint to the Tribunal, as well as special body authorized to consider such applications. Institute of conciliation, mediation and arbitration, in our opinion, has a civil law nature, and therefore can be used in civil and commercial relations, but not in the administrative. Although it should be noted that some countries that were referred by us used conciliation, mediation and arbitration for resolving civil law and administrative law disputes.