ADMINISTRATIVE AND LEGAL ENSURING THE IMPLEMENTATION OF THE RIGHTS OF PERSONS WITH DISABILITIES: SEPARATE ISSUES OF THEORY AND PRACTICE

АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ РЕАЛІЗАЦІЇ ПРАВ ОСІБ З ІНВАЛІДНІСТЮ: ОКРЕМІ ПИТАННЯ ТЕОРІЇ ТА ПРАКТИКИ

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The article is aimed at justifying the model, summarizing the principles and setting out the main directions for improving the legal basis of control in the field of banking activity. The methodological basis of the research was modern general and special methods of scientific knowledge, the systematic application of which ensured the solution of the formulated problems and the achievement of the goal of publication. Thanks to the use of the dialectical method, the general characteristics of the administrative and legal support for the realization of the rights of persons with disabilities, etc., are given. With the help of the system-structural method, the system of relevant legal norms regulating the specified group of social relations is outlined. The formal legal method made it possible to identify controversial aspects and shortcomings of the current national legislation and to formulate proposals for its improvement. The dogmatic method was applied when defining the content of such categories and concepts as "administrative and legal support", "protection", "protection". The structure and content of the legal basis for ensuring the realization of the rights of persons with disabilities are considered. The article highlights the issue of disclosure of normative legal acts on the protection of the rights of children using the example of children with disabilities. The demarcation of the definition of the terms "administrative and legal support" is revealed in detail; "protection"; "protection", a legal description of these categories is provided in order to determine the essence of administrative and legal support for the realization of the rights of persons with disabilities. It was established that the state should promote the realization of mental, educational, professional, and physical abilities of children with disabilities, ensuring their individual mobility, accessibility to all institutions and institutions. However, as the analysis of the actual state of affairs shows, violations of the rights of children with disabilities continue in Ukraine. The current norms of legislative acts regarding their protection do not work in practice. This leads to the fact that these subjects of administrative legal relations have to independently defend their rights and interests in administrative or judicial proceedings. The Institute of Administrative-Legal Protection of the Rights of Children with Disabilities remains a purely declarative component of administrative law due to the lack of unity in the understanding of the definitions of "protection" and "protection". Type of article: theoretical.

Key words: administrative and legal support; defense; administrative and legal protection; protection; person with a disability.
INTRODUCTION

Statement of the problem in a general form and its connection with important scientific or practical tasks. Society is always in the stage of evolution, the relations between people, as their participants, and between people and the state are constantly changing. This development of society is based, first of all, on socially oriented measures and programs implemented by the state for the benefit of the person, since it is the person who is the highest value of the state. The main measure of the level of development of society is the attitude of the dominant part of society to its least protected, and therefore most vulnerable, members. Given such rules of existence and functioning of society, the issues of social integration and protection of the rights of children with disabilities receive great attention throughout the civilized world. Today, every country in the world faces such a social phenomenon as disability.

The official portal of the Fund for Social Protection of Persons with Disabilities provides statistical data from the Ministry of Social Policy, the Ministry of Health and the Pension Fund of Ukraine for the beginning of 2019, according to which there are 161,600 children with disabilities in Ukraine. Back in 2001, 154,300 people received the status of a child with a disability in Ukraine.

As we can see, this indicator has significantly increased and indicates the acuteness of the problem of children's disability. Because of their mental or physical condition, such children need the state, public organizations and society as a whole to take measures aimed at administrative and legal protection of their rights and ensuring full participation in public life on a par with other children.

LITERATURE REVIEW

Issues of protection and protection of the rights of persons with disabilities were the subject of research in the works of M. Shcherbatiuk, whose scientific ear will focus on certain issues of violation of the rights of people with disabilities [1], E. Sobol, who in particular studied the issue of legal provision of social protection of disabled children in Ukraine in modern conditions [2], D. Pereverziev, who quite thoroughly analyzed the essence of administrative and legal protection of the rights of children with disabilities, and others [3].

The problems of administrative and legal protection were considered in their works by S. Pietkov [4], O. Stukalenko [5], S. Vavzhenchuk [6], V. Galunko [7].

The issue of legal mechanisms of control in the field of banking activity, taking into account international experience, was practically not considered.

The conducted analysis of scientific works makes it possible to determine that the issue of administrative-legal protection of the rights of children with disabilities has not been resolved at a sufficient level and requires further research in terms of improving the content of the concept of protection and solving urgent problems in this area of administrative legal relations.

AIMS AND OBJECTIVES

The article is aimed at justifying the model, summarizing the principles and setting out the main directions for improving the legal basis of control in the field of banking activity.

METHODOLOGY AND RESEARCH METHODS

The methodological basis of the research was modern general and special methods of scientific knowledge, the systematic application of which ensured the solution of the formulated problems and the achievement of the goal of publication. Thanks to the use of the dialectical method, the general characteristics of the administrative and legal support for the realization of the rights of persons with disabilities, etc., are given. With the help of the system-structural method, the system of relevant legal norms regulating the specified group of social relations is outlined. The formal legal method made it possible to identify controversial aspects and shortcomings of the current national legislation and to formulate proposals for its improvement. The dogmatic method was applied when defining the content of such categories and concepts as «administrative and legal support», «protection».

RESULTS

Having ratified the UN Convention on the Rights of Persons with Disabilities, Ukraine undertook to...
protect and implement the rights of such persons. In accordance with these obligations, one of the important goals of state policy in the field of protection of the rights of persons with disabilities, including children with disabilities, is to create an environment in society in which the opportunities for these children are equal to other children, measures have been introduced and the conditions for their integration into social life are ensured, a support system is created that enables the social activity, mobility and independence of a child with a disability to be realized.

As noted by M. Shcherbatyuk, program director of the Ukrainian Helsinki Union for Human Rights, unfortunately, the state reports «Unobstructed access of persons with disabilities to social, transport infrastructure and communication facilities» (2012), «Education of persons with disabilities in Ukraine» (2012), «On the situation of persons with disabilities» (2013), do not fully reflect the real situation with respect to the rights of persons with disabilities after the ratification of this international agreement [1].

Having embarked on the path of European integration, Ukraine undertook a number of obligations to implement standards recognized by the European and international community on the rights of children with disabilities in all spheres of their life.

That is why, according to E. Sobol, it is important to legislate equal rights and opportunities of disabled children for medical, social security, education, and employment [2]. Such legislative consolidation of rights, in turn, will become a driving measure in the sphere of protection of the regulated rights of such participants in administrative-legal relations.

According to many administrative scientists, the human-centered theory of administrative law, the priority direction of which is human rights and freedoms, should become dominant in the field of administrative and legal protection.

On this occasion, S. Petkov rightly expressed himself, noting that it is necessary to update the legal framework of relations between the state and the individual, which should be carried out not only in the direction of modernizing the responsibility of a person before the state, but also, on the contrary, of power before a person, which under modern conditions is a way of organizing power of the entire Ukrainian society [3].

According to O. Stukalenko, the reformation of the political system taking place in Ukraine today, the implementation of administrative reform based on the correlation between the interests of the state and the interests of citizens, prompt administrative science to search for effective and qualitatively new ways of regulating administrative relations. One of the ways is the coordination of the conceptual apparatus used and the development of scientific categories that would reflect the realities of today [4].

Therefore, in order to establish the essence of the administrative and legal protection of the rights of children with disabilities, it is worth clarifying the meaning of the concepts of «protection» and «protection» of rights. According to S. Vavzhenchuk, regarding the ratio of protection and protection of rights, the analysis of the current legislation shows that these terms are used side by side, but mostly have different meanings [5].

This is the position held by the majority of scientists who studied this issue, paying attention to the prevention of equating the concepts of «protection» and «protection» and believes that «protection» in the legal sense means a positive state of legal norms aimed at preventing the violation of subjective rights and legitimate interests of individuals, reflects the statics of legal relations. In turn, «protection» is characterized by dynamics due to the implementation of means and forms provided by legislation for restoring the legal position of the victim, bringing the guilty to legal responsibility, and are applied when the subjective right has already been violated [6].

An analysis of the norms of the UN Convention on the Rights of Persons with Disabilities, the Laws of Ukraine «On the Basics of Social Protection of Persons with Disabilities» and «On the Protection of Childhood» shows that such legal categories as «protection» and «protection» of rights are really applied in parallel and have different semantic and legal meanings [7].

For example, the UN Convention on the Rights of Persons with Disabilities in Art. 1 defines its purpose as follows: promotion, protection and provision of full and equal exercise of all human rights and fundamental freedoms by all persons with disabilities, as well as promotion of respect for their inherent dignity [8]. That is, this normative act is directed only to the protection of the rights of persons with disabilities, without paying attention to their protection. The term «protection» in the Convention is used only to refer to measures related to purely health care [9].

In turn, the Law of Ukraine «On the Protection of Childhood», on the contrary, operates under the category «protection», defining in Art. 1 that childhood protection is a system of state and public measures aimed at ensuring a full-fledged life, comprehensive upbringing and development of the child and protection of his rights [10].

Thus, we can talk about the fact that the normative acts, which are aimed at settling the issues of the realization of rights by a child with a disability, regulate the procedure for protection in the event of their violation, and not protection as a means of preventing the violation of such rights [11].
As S. Vavchenko notes, the laws regulating the procedure for the protection of certain objects contain both norms that establish the rules of behavior of subjects in relation to the protected object, and the procedure for protecting these objects from illegal behavior and encroachments. At the same time, the laws governing protection issues (consumer rights, economic competition, the population against infectious diseases, etc.) are aimed at regulating the actions of legal entities with the aim of preventing the violation of guaranteed rights, maximally eliminating the possibility of such a violation or the procedure for recovery violated rights by securing the corresponding rights, powers of these subjects and state authorities, public organizations, etc. [5].

The use of the concepts of “protection” and “protection” in regulatory acts and in practical activities, as identical concepts in the field of the rights of children with disabilities, makes it difficult to understand the processes and prevents the proper realization of their rights, freedoms and interests. Given the existing scientific visions of the meaning of these terms, it can be concluded that the concept of “protection” is much broader than the concept of “protection”. Protection of the rights of children with disabilities includes legal means and grounds for their implementation and prevention of violations, is a form of regulation of relations between such children and public administration bodies. In turn, the protection of the rights of children with disabilities is a means of imperative implementation of the protected rights of such subjects of public legal relations [7].

As O. Pravotorova points out, administrative-legal protection is such that to some extent it is related to the protective function of law, but it is not identical to it, because the subject of administrative-legal protection includes issues of preventing violations of the law, and according to the classical rule, the protective function of law is included into effect already after a violation of a certain intangible or material good of a person [12].

Therefore, the administrative-legal protection of the rights of children with disabilities is an institution of administrative law, the constituent elements of which are homogeneous norms of this field, which are aimed at preventing violations of the rights, freedoms and legitimate interests of children with disabilities, which is carried out by public administration bodies to ensure the implementation of full and equal exercise of all human rights and fundamental freedoms by such children, and encouragement to respect their inherent dignity [13].

DISCUSSION

Therefore, Ukraine, like other participants of the UN Convention, must create conditions for the involvement of children with disabilities in all spheres of public life, promote the proper realization of their rights, freedoms and interests, while excluding all possible circumstances of discrimination of such persons on the basis of disability.

CONCLUSIONS

It has been proven that the State should promote the realization of the mental, educational, professional, and physical abilities of persons with disabilities, ensuring their individual mobility and accessibility to all facilities and institutions.

However, as the analysis of the actual state of affairs shows, violations of the rights of persons with disabilities continue in Ukraine. The current norms of legislative acts regarding their protection do not work in practice. This leads to the fact that these subjects of administrative legal relations have to independently defend their rights and interests in administrative or judicial proceedings. The institute of administrative-legal protection of the rights of persons with disabilities remains a purely declarative component of administrative law due to the lack of unity in the understanding of the definitions of “protection” and “protection”.

REFERENCES:


