DOCTRINAL AND LEGISLATIVE APPROACHES TO THE DEFINITION OF SUBJECTS AND PARTICIPANTS IN THE ADMINISTRATIVE PROCESS

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The paper examines the existing contradictions between scientific terminology and terminology of legislation on the definition of subjects and participants in the administrative process. It is noted that acquaintance with the scientific and educational literature shows that even today there is no clear justification for the relationship between the concepts of “subject of administrative process” and “participant in the administrative process”. The main reason for this state of affairs is due to differences in the laws of development of national administrative procedural law and the laws of development of the science of administrative procedural law. It is concluded that it is long overdue to offer the scientific community and legal practitioners a concept of the relationship between the concepts of “subject of administrative proceedings” and “participant in administrative proceedings”, which would reconcile the contradictions of otological and epistemological terminology used in CAP of Ukraine. The necessity to use in science of administrative law and process the concept according to which administrative process should be considered as law enforcement activity of administrative courts connected with consideration and the decision of public law disputes is proved. In this case, the subject of the administrative process will always be the administrative court, while the parties, third parties, representatives, assistant judge, court clerk, court administrator, witness, expert, legal expert, translator, specialist are only participants in the administrative process, i.e. persons who take part in the law enforcement activities of the administrative court.

Key words: administrative process, subject of administrative process, participant of administrative process, scientific terminology, legislative technique.

У роботі досліджено існуючі суперечності між науковою термінологією та термінологією законодавства щодо визначення суб’єктів і учасників адміністративного процесу. Зазначається, що ознайомлення з науковою та навчально-методичною літературою показує, що і сьогодні не існує якогось чіткого обґрунтування співвідношення понять «суб’єкт адміністративного процесу» та «учасник адміністративного процесу». Основна причина такого стану речей обумовлена розбіжностями у закономірностях розвитку національного адміністративного процесуального законодавства та закономірностях розвитку науки адміністративного процесуального права. Робиться висновок, що вже давно незважаючи на те, що відбувається каузально-логічні взаємозв’язки, в науці адміністративного права і процесу концепція, згідно з якою адміністративний процес співвідноситься як правозастосовну діяльність адміністративних судів, пов’язану з розглядом і вирішенням публічно-правових спорів. У такому випадку суб’єкт адміністративного процесу завжди буде виступати адміністративний суд, тоді як сторони, треті особи, представники, помічники судді, секретар судового засідання, судовий розпорядник, свідки, експерти з питань права, перекладач, спеціаліст експерти – лише учасники адміністративного процесу, які приймають участь в правозастосовній діяльності адміністративного суду.

Ключові слова: адміністративний процес, суб’єкт адміністративного процесу, учасник адміністративного процесу, наукова термінологія, законодавчая техніка.
Statement of the problem in general and its connection with important scientific or practical tasks. Disclosure of the peculiarities of the implementation of procedural rights and obligations by the parties to the administrative case leads to a comprehensive analysis and characterization of a number of theoretical problems in this area. In particular, it is important to define the definition and correlation of the concepts «subject of administrative proceedings», «participant of administrative proceedings», «subject of administrative proceedings», «participant of administrative proceedings», «subject of administrative proceedings», «subject of administrative proceedings», «relations», «participant in administrative-procedural relations», «and other related concepts, which, unfortunately, in the theory of administrative procedural law and in national law are sometimes used without a clear meaning.

This indicates the need to resolve at the theoretical level of the existing contradictions between scientific terminology and the terminology of legislation on the definition of subjects and participants in the administrative process.


However, the peculiarities of the methodological approaches of each scientist significantly influenced the results of research in this area. The science of administrative law and process is only taking the first steps in this area.

Formulation of the goals of the article (task statement). The main tasks to which this article is devoted are the following:

1. Investigate the existing contradictions between scientific terminology and terminology of legislation on the definition of subjects and participants in the administrative process. 2. To suggest probable ways of solving the existing theoretical problems in the science of administrative law and process.

Presentation of the main research material. It is traditional in the legal literature to compare the concepts «subject of law» and «participant in legal relations», the relationship of which we will not dwell on, because this is one of the basic provisions of the program of the first (bachelor’s) level of higher legal education. At the end of the first year of study at a higher education institution, students should already be able to distinguish and relate the content of the concept of «subject of law» and «participant in legal relations». The modern development of scientific thought on the legal process and judicial proceedings is associated with the emergence in the categorical apparatus of administrative law of such concepts as «subject of administrative proceedings» and «subject of administrative proceedings». However, acquaintance with the scientific and educational literature shows that even today there is no clear justification for the relationship:

- the terms “subject of administrative proceedings" and “participant in administrative proceedings" and, respectively, “subject of administrative proceedings" and “participants in administrative proceedings";
- the terms «subject of administrative proceedings» and «subject of administrative proceedings» and, respectively, «participant in administrative proceedings» and «participant in administrative proceedings».

The main reason for this state of affairs is due to differences in the laws of development of national administrative procedural law and the laws of development of the science of administrative procedural law.

In order to reveal the outlined issues, we turn to the provisions of the current CAP of Ukraine:

1) the term «participants in the trial» (this term is identical in meaning to the term «participants in the administrative process») is used by the legislator in determining the basic principles (principles) of administrative proceedings (paragraph 2, part 3 of Article 2 and Articles 8, 10 CAP Ukraine), in determining the peculiarities of the norms of the
CAP of Ukraine in time (Part 4 of Article 3 of the CAP of Ukraine), in formulating the requirements for the language of proceedings and proceedings in administrative courts (Article 15 of the CAP of Ukraine), etc.

2) the term «participants in the case» is used in determining the content of written proceedings (paragraph 10 of Part 1 of Article 4 of the CAP of Ukraine), in determining the requirements for consideration of the case and the commission of certain procedural actions in closed court (Part 10 of Article 10 of the CAP) Ukraine), in determining the range of persons who have the right to review the case and appeal the court decision (Part 1 of Article 13 of the Criminal Procedure Code of Ukraine), in formulating the grounds for removal (self-removal) of a judge (Article 36 of the Criminal Procedure Code of Ukraine), etc.

The following logic of the normative-legal act is traced (it is a question of CAP of Ukraine). The Administrative Court is a body of state power, the competence of which includes the consideration and resolution of administrative cases in accordance with the requirements of the CAP of Ukraine. Its procedural status is not defined by any special term. This is followed by «participants in the trial» (Chapter 4 of Section I of the CAPS of Ukraine), which by administrative procedural law is divided into three types: a) representatives; b) other participants in the trial (assistant judge, court clerk, court administrator, witness, expert, legal expert, translator, specialist).

Analysis of the provisions of the CAP of Ukraine without involving the theory of administrative procedural law allows us to draw only the following conclusions:

1) the administrative court does not apply to the participants in the administrative process;

2) the representatives are participants in the administrative process, but are not participants in the case. In addition, their procedural status is regulated separately from other participants in the administrative process.

It should be emphasized that such an approach to the use of the terms “participant in the case” and “participant in the process” is common in the procedural legislation of Ukraine (for example, in civil procedural and economic procedural). That is why most representatives of the science of administrative law and procedure, referring to these general ideas about the participants in the trial, suggest that the subjects of administrative proceedings include administrative courts and participants in administrative proceedings [1, p. 54]. I. Ditkevych, for example, notes that the subjects of administrative procedural relations are the administrative court and participants in the judicial administrative process [2, p. 48-49]. That is, attention is drawn to the fact that every participant in the process is a subject of the process, but not every subject of the process is a participant in the process. Such, at first glance, the tautology arises because the concept of «participant in the process» has acquired a clear content in national law and this, in turn, has contributed to confusion in the theory of administrative law and process on the relationship between «subject of process» and «participant in the process».

Thus, it turns out that the administrative court is only a subject of the administrative process, and, for example, the parties are both subjects and participants in the administrative process. From a scientific point of view, such a conclusion is illogical, because the administrative court is also a party to administrative procedural relations. According to the third paragraph of the first article. 4 of the Criminal Procedure Code of Ukraine «litigation is a legal relationship that develops during the implementation of administrative proceedings.» Then it would be logical to say that the administrative court is also a participant in the administrative process.

These contradictions are periodically drawn attention to in the special literature devoted to various types of legal process. For example, S. Fursa, as a representative of the science of civil procedure, notes that the separation of the court from the participants in the process does not give a clear idea of the subjects, because in fact there is a separation of one of the mandatory subjects of civil procedure from other participants [3, p. 117]. T. Stepanova agrees with this. If we literally interpret the provisions of civil procedural law, she notes, we can conclude that the judge does not belong to the circle of participants in the process. If the analysis of the provisions of the current procedural legislation is carried out with the involvement of the achievements of the theory of civil procedural law, it can be concluded that the legislator «de facto» refers the judge to the circle of participants in the economic process. After all, T. Stepanov continues the explanation, referring to the works of V. Tertyshnikov and S. Vasiliev [4, p. 44; 5, p. 54], the court (judge) is the main and obligatory subject of civil procedural legal relations [6, p. 42-46].

At the same time, a serious error has crept into the logic of the above opinions, which consists in identifying the subject of the process and the subject of procedural relations. Why these concepts should be considered as identical none of the above scientists explains. That is, the scientific conclusion is derived from the grounds that have not been proven before.

A similar conclusion was made by A. Komzyuk, V. Bevzenko and R. Melnyk, when in their textbook on the administrative process of Ukraine in the section «Participants in the administrative process» consider and characterize the procedural status of the administrative court, parties, third parties, representatives and persons given the right to protect.
the rights, freedoms and interests of others [7, p. 120-206].

Most scholars who consider the legal status of administrative courts and participants in administrative proceedings bypass this theoretical problem. For example, A. Ageev in his research work, which is devoted to the prosecutor as a subject of administrative proceedings, does not care at all about the relationship between the concepts of subject of administrative process, subject of administrative proceedings and subject of administrative-procedural relations and, accordingly, uses them in different contexts as identical concepts [8, p. 70-73, 89].

The fact that all these concepts characterize different spheres of legal life (the form of activity of a public authority, law, public relations, etc.) is not taken into account at all. A. Ageev also uses the concept of «participants in the proceedings» without explanations and clarifications of its content. Only a reference is made to the fact that the term «participants in the proceedings» is used in the same sense as proposed by the CAS of Ukraine [8, p. 155-156]. M. Baranovsky, in particular, analyzing the administrative-procedural legal personality of a police officer (police), does not distinguish between the concepts of «participants in the administrative process» and «participants in the administrative case», using them as identical [9, p. 57-58].

Is there any need to clarify the content of the above concepts? We believe that for the development of the theory of administrative procedural law it is desirable to explain the logic of the terminology used in the legislation and to scientifically substantiate the relationship between the concepts of «subject of administrative proceedings» and «participant in administrative proceedings».

If the administrative process is considered as law enforcement activity of administrative courts related to the consideration and resolution of public law disputes, the subject of the administrative process is exclusively the administrative court. Parties, third parties, representatives, assistant judge, court clerk, court administrator, witness, expert, legal expert, translator, specialist are only persons who participate in law enforcement activities (participants in the administrative process). It may be misleading that, for example, an assistant judge, a court clerk and a court administrator exercise authority during a court hearing. For example, the authors of the scientific and practical commentary to the CAS of Ukraine, edited by A. Komzyuk, note: witnesses, experts, specialists, translators and other persons present in the courtroom «[10, p. 263]. However, these powers, firstly, are not properly documented, and secondly, are not related to the resolution of the case on the merits, but are purely organizational and technical in nature. Therefore, the assistant judge, the secretary of the court session and the court administrator, although exercising their powers during the court session, are not subjects of the administrative process.

If administrative proceedings are considered as one of the forms of administration of justice, then, again, the subject of such justice is only the administrative court. All other persons who take part in the consideration of an administrative case are only participants in administrative proceedings.

In addition, it is possible to draw an analogy with sports games such as football, hockey, basketball, etc. There is a referee of the game, who monitors the observance of the rules by all participants of the game, and there are participants of the game, whose roles are distributed, and each of whom performs a certain function - goalkeeper, defender, midfielder, striker and others. That is, the participant of the game is a clearly defined status of the person within the game, and therefore the issues of citizenship, gender, age and other characteristics that may characterize the person are secondary, because they are taken into account on the eve of the game. field and whether there are certain obstacles to this.

This happens in all legal proceedings, including in administrative proceedings. Law enforcement activities for the consideration and resolution of public law disputes require compliance with clear rules, which are prescribed in the CAP of Ukraine. The administrative court is the arbitrator of compliance with such rules and the subject who finally decides the case on the merits. The participants in this action are clearly divided according to the role assigned to the parties to the case, third parties, representatives, assistant judges, court clerks, court administrators, witnesses, experts, legal experts, translators and specialists. In the background are the issues of citizenship of the person involved in the case, his age, professional status and skills, because the administrative procedural legal personality is the filter that allows to participate in administrative procedural relations only those persons who meet the requirements of applicable law, and is indeed entitled to take part in administrative proceedings in one of the prescribed statuses, for example, of the defendant or a third party. Therefore, a participant in an administrative process (administrative proceedings) can be said not as a person who in a certain status participates in the administrative process, but as clearly defined by law procedural statuses, within which a person can participate in the administrative process. Such an opinion regarding the understanding of the participant of the administrative process has not yet been expressed in the scientific literature, although, in our opinion, it is the most balanced.

This conclusion helps to draw the line between the participant of administrative procedural relations and the participant of administrative procedure.
Participants in administrative procedural relations are individuals (citizens of Ukraine, foreigners, stateless persons) and legal entities (subjects of power, public associations, etc.), while participants in administrative proceedings may be only the plaintiff, defendant, witness, expert, translator, specialist and other persons listed in Chapter 4 of Section I of the CAP of Ukraine. This is the main difference between the concepts of «participant in administrative procedural relations» and «participant in administrative proceedings». This is an important conclusion that will put an end to the contradictions of terminology used in science and law. That is, a natural person who has administrative procedural legal personality is a participant in administrative procedural relations. If, for example, a natural person acts as a plaintiff in an administrative case, then the participant in the administrative process is not a natural person, but the plaintiff.

Conclusion. Summarizing the analysis of the contradictions between the scientific terminology and the terminology of the legislation on the definition of subjects and participants in the administrative process, we can draw the following conclusion.

The scientific community and legal practitioners should be offered the concept of the relationship between the concepts of «subject of administrative proceedings» and «participant in administrative proceedings», which would reconcile the contradictions of otological and epistemological terminology used in the CAP of Ukraine. We are convinced that such a concept can be a concept according to which the administrative process should be considered as law enforcement activity of administrative courts related to the consideration and resolution of public law disputes. In this case, the subject of the administrative process will always be the administrative court, while the parties, third parties, representatives, assistants, court clerk, court administrator, witness, expert, legal expert, translator, specialist are only participants in the administrative process, i.e. persons who take part in the law enforcement activities of the administrative court.

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