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T. M. Ivanenko

External PhD Student at the Department of Administrative
and Commercial Law
Zaporizhzhia National University

V. V. Tylchuk

Doctor of Law, Associate Professor, Head of the Department
of Administrative Law and Process and Customs Security,
University of State Fiscal Service of Ukraine

ACCESS TO ADMINISTRATIVE JUSTICE AS A KEY PRIORITY OF THE WORD BANK'S JUSTICE REFORMS

In this article author has provided characteristics of modern approaches of the World Bank in the sphere of administrative justice in economically leading countries, that provide complex implementation of the Rule of Law in domestic legal orders. Author paid attention to the differences in strategic plans of the World Bank for under-developed countries and well-developed countries, that have origin in peculiarities of implementation of the key elements of the Rule of Law, among them the key priority is granted to providing accessibility of administrative justice.

Author generalized, that the most of the domestic legislative acts do not contain elements, criteria for adherence to the Rule of Law demands, formulated proposals relating to improvement of effective legislation of Ukraine, development of the National plan, National strategy of administrative justice reform, that would have to contain as significant elements providing accessibility of administrative justice, it's efficiency, that corresponds to the strategies of the World Bank for reforms in economically developed countries.

Key words: *administrative reform, World Bank, the Rule of Law, access to administrative justice, administrative adjudication, human rights.*

Actuality of the chosen theme is substantiated by modern trends of developing the system of administrative justice in the well-developed countries, as granting fair, effective justice legal mechanism to all the people, but still needing special attention in Ukraine, as domestic legal system and the system of administrative courts still do not implement these aspects of the Rule of law fundamental principle into domestic doctrine and practice.

Access to administrative justice grants to all citizens new challenges, oriented on conflicts resolution via official judicial institutions that has strong connection to counter-acting corruption and any other illegal forms of relations in the society, having negative impact of good governance indicators. Thus developing doctrinal legal grounds for strengthening the Rule of Law and it's key elements leads not only to harmonization of the Ukrainian legislation, but also to development of domestic legal system and system of legislation, fixing the key priorities for justice reforms in Ukraine.

Unfortunately foreign grants programs often propose to the Ukrainian judges outdated reforms, that had already been sold to other countries of the world beforehand, and sometimes these as if proposals have nothing in common with domestic administrative traditions, thus it is necessary to underline the necessity to review modern priorities of justice system reform in Ukraine and to compare them with the ones defined by the World Bank for development of the leading countries of the world. Such an approach would made it possible not only to state a wide difference between the chosen objects for comparative legal analysis, but also to show how important is competent national revise for the proposed outdated reforms, leading to ineffective distribution of the State budget resources and misleading law drafting activities.

This article aims to review modern approaches of the World Bank to implementation of the key elements of the Rule of Law into domestic legal doctrine and judicial countries in the leading coun-

tries of the world and also in Ukraine in order to provide independent scientific view on the issue of accessibility of administrative justice. Among the main assignments of the present article we should define the following ones: 1) to review modern strategies of the World bank regarding implementation of the Rule of law principle in the sphere of administrative justice; 2) to evaluate modern state of implementation of the Rule of Law demands in the Ukrainian legislative acts; 3) to develop proposals as to implementation of demands on accessibility of administrative justice in Ukraine.

Methodological basis of this article constitute complex and system approach in legal studies, functional method and method of comparative legal analysis, providing grounds for research and development of domestic legal understanding of the actual issues relating implementation of demands on granting accessibility of administrative justice in Ukraine.

Reforms in the sphere of administrative justice of Ukraine cannot be considered from the negative point of view as a whole, but still there are negative trends regarding ignoring the Rule of Law demands implementation in the domestic legislation, thus leading to complex misunderstanding of the Rule of Law demands.

Constitutional reform, that had place in 2010, had led to revision of constitutional provisions relating to the status of judges and the system of national court of Ukraine, but still the necessary provisions as to the key elements of the Rule of law were not differentiated not at constitutional level, nor at the level of special legislative acts. In our opinion, it is very important to initiate such amendments to the Constitution of Ukraine, that would lead to concretization not only of the key elements of the Rule of law, for example, such as providing accessibility of administrative justice, but also to develop effective legal mechanisms for protection of the violated human rights via improper access to justice and modern mechanism of judicial review.

Administrative legal reform, initiated in 1998, had led to implementation in Ukraine of administrative justice and a separate system of administrative courts. In twelve years they've lost their specialization and became a part of general system of courts in Ukraine, that, in my opinion, constitutes a huge mistake. Such an approach doesn't lead to development of immanent to the administrative justice specialized categories of cases implementation as in European countries, moreover, we witness development of the categories of cases reviewed by administrative courts but specializing

in formally new areas, not common to administrative courts in Europe (rehabilitation issues etc.)

Justice reform in Ukraine is under control of grant institution, paying for the concrete results and demanding strong outputs, fixing core principles and legal mechanism for their implementation. But unfortunately these demands are often outdated reforms that had already been sold to other underdeveloped countries, thus it is important to stick attention of the wide scientific audience to modern problematic issues of administrative justice development in comparison with the strategic proposals formed for well-developed countries of the world. Results of such a comparison would make it possible to underline the key differences and to propose modern point of view at possible ways of domestic administrative justice development.

As it was defined in the Report of the World Bank (2012), administrative justice in the developing countries of the world should contain important key elements, such as accessibility of administrative justice, effectiveness of the judicial system, as well as enhancing implementation of the Rule of Law demands into domestic legislation, in such a way harmonizing & modernizing national legislative acts with provisions of international agreements and strategies.

Paying fair price for outdated reforms leads to misleading of the key reforms in the country, thus, in our opinion we should stick to the practice not to implement requirements of gent organizations at any price, but to find a complex solution, providing real grounds for future development of the domestic system of administrative justice in Ukraine.

Access to administrative justice is a key element of the Rule of Law and, at the same time, is a key demand of effective infrastructure development to provide public services to the wide population in any country. Still Ukrainian practice does not consider judicial services as a part of public services, thus we've not formed common doctrinal and legislative background to provide common grounds of access to public, administrative services, judicial services as a separate type of public services, but having much in common with a general order and accessibility demands in public sphere.

Modern strategies of the World Bank, defined in the Reports of the World Bank as to the key areas of the Rule of law implementation, do state necessity to implement accessibility of administrative justice in any country of the world that had used administrative courts as an effective mechanism for disputes resolution in public sphere.

Ukrainian strategic documents and plans still do not possess any provisions relating to complex implementation of demands on providing accessibility of administrative courts according to the international standards of justice.

Ukrainian legislative acts do aim to implementation of certain provisions stated in the Recommendations and Resolutions of the Council of Europe, oriented on review of administrative acts, protection of private persons from illegal actions of public administration, but they have general legal nature and do not support the idea of complex Rule of law demands implementation in the domestic legal system and the system of administrative courts.

In our opinion, we should pay special attention to developing National plan of administrative justice reform, that would concretize the necessary short- and long-run perspectives, stages, draft legislative acts and amendments to the Constitution and effective legislation in order to implement the Rule of Law demands, foremost demands as to accessibility of administrative justice in Ukraine, as these provisions are of rare attention from the side of grants stakeholders.

According to the results of the reviewed legislative acts in Ukraine, still more than fifty percent of special acts in public sphere do not contain any provisions on the Rule of Law principle realization, seventy percent of legislative acts, that contain the name of this principle, do not contain any elements or effective mechanisms as to Rule of law implementation in that sphere. It leads our thoughts to the conclusion, that the Rule of Law demands implementation in Ukraine faces significant barriers of administrative, legislative nature, not providing necessary grounds for implementation of the Rule of Law elements in the domestic doctrine and practice.

We would propose to list the main legislative acts, necessary for complex implementation of the Rule of Law demands in the National plan and National strategy of administrative justice reform, that would promote to normative fixation of the key elements of the Rule of Law in the legislation of Ukraine, as domestic approach is still based on positivist approach to legal understanding.

Together with that, we consider it necessary to review certain provisions of the Code on administrative adjudication of Ukraine, relating to definition of the Rule of Law, in our opinion, such a narrow

definition may serve as a part of manuals, but in a procedural code should have concretized elements, forms of protection, mechanism for realization and adherence in frame of administrative judicial proceedings.

To conclude the aforementioned, we should make the following conclusions:

Modern strategies of the World Bank reforms drafted for economically leading countries of the world contain a necessary element of the Rule of law implementation – providing accessibility of administrative justice. Thus Ukraine should foster doctrinal scientific studies in this area in order to provide better results in the long-run perspective.

Effective Ukrainian legislation contains rare definitions of the Rule of Law and needs implementation of the criteria that substantiate adherence of violation of the Rule of Law demands. In our opinion, prior role for realization of complex implementation of the Rule of Law demands in the effective legislation on the judiciary and the status of judges, should be paid to development of the National Plan and National Strategy of administrative justice reform, as developed by the proposals of the World Bank Report in 2012.

Accessibility of administrative justice in Ukraine should be developed at doctrinal level as a complex of demands relating to the Rule of Law as a founding principle.

National peculiarities of providing accessibility of administrative courts should be defined in the effective legislative acts, be comparable to common demands on granting public services, as well as being granted for proper realization through implementation of an effective legal mechanism for the Rule of Law realization in Ukraine.

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Іваненко Т. М., Тильчик В. В. Доступ до адміністративної юстиції як ключовий пріоритет реформ Світового банку

У цій статті актом охарактеризовано сучасні підходи Світового банку до впровадження реформ в сфері адміністративного судочинства у економічно розвинених країнах та які забезпечують комплексне впровадження вимог верховенства права в національних правопорядках. Автором звернуто увагу на те, що різниця між стратегічними планами Світового банку для відсталих країн та економічно розвинених відрізняються особливостями впровадження ключових елементів верховенства права, до яких віднесено, зокрема, забезпечення доступності адміністративного судочинства.

Автором узагальнено, що переважна більшість актів вітчизняного законодавства не містять елементів, критеріїв дотримання верховенства права, сформульовано пропозиції щодо удосконалення актів чинного законодавства, розробки Національного плану та Національної стратегії реформи адміністративного судочинства, в якій центральним елементом визначити забезпечення доступності адміністративного судочинства, його ефективності, що відповідає стратегіям Світового Банку для реформування економічно розвинених країн.

Ключові слова: адміністративна реформа, Світовий банк, верховенство права, доступність адміністративного судочинства, адміністративне судочинство, права людини.