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PARTICIPATION OF A TRANSLATOR IN THE ADMINISTRATIVE TORT PRODUCTION ACCORDING TO THE LEGISLATION OF UKRAINE: PECULIARITIES OF REGULATION OF THE STAGE

УЧАСТЬ ПЕРЕКЛАДАЧА В АДМІНІСТРАТИВНО-ДЕЛІКТНОМУ ПРОВАДЖЕННІ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ: ОСОБЛИВОСТІ СТАДІЙНОЇ РЕГЛАМЕНТАЦІЇ

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The article is devoted to the definition of specific features of participation of an interpreter at certain stages of the administrative tort production. Conduct a thorough analysis of scientific research on the study of the stages of the administrative tort production. Noted the need to improve the procedural status of an interpreter at certain stages of the administrative tort of production in the future codified administrative tort act.

Key words: translator, administrative tort production, process status, stage of administrative production.

Статтю присвячено визначенню особливостей участі перекладача на окремих стадіях адміністративно-деліктного провадження. Проведено ґрунтовний аналіз наукових досліджень, присвячених вивченню питань стадій адміністративно-деліктного провадження. Наголошено на необхідності вдосконалення процесуального статусу перекладача на окремих стадіях адміністративно-деліктного провадження в майбутньому кодифікованому адміністративно-деліктному акті.

Ключові слова: перекладач, адміністративно-деліктне провадження, процесуальний статус, стадії адміністративно-деліктного провадження.

Статья посвящена определению особенностей участия переводчика на отдельных стадиях административно-деликтного производства. Проведен обстоятельный анализ научных исследований, посвященных изучению стадий административно-деликтного производства. Отмечена необходимость совершенствования процессуального статуса переводчика на отдельных стадиях административно-деликтного производства в будущем кодифицированном административно-деликтном акте.

Ключевые слова: переводчик, административно-деликтное производство, процессуальный статус, стадии административно-деликтного производства.

Under construction in Ukraine of the democratic state is updated question radical reform of administrative law, of which there are administrative tort, in particular, refers to the development and adoption of new codified administrative tort act that would be most consistent with European principles, norms of law, regulation developed by modern legal theory. In the context of this reform should take into account various aspects of administrative tort proceedings, including matters relating to their business, because they should recognize one of the central categories of the proceedings. By their status they can have both mandatory, leading, and those that contribute to the proceedings. In the latter group often about translation as an independent party administrative tort proceeding. General questions examined this issue in his writings scholars engaged in

research subjects of all, namely: V. Aver'yanov, S. Alekseev, V. Bevzenko, O. Bandurka, D. Bachrach, Y. Bytyak, A. Vasiliev, E. Dodin, E. Demsky, S. Kivalov, V. Kolpakov, T. Kolomoets, A. Komzyuk, O. Kuz'menko, D. Lukyanets, O. Mykolenko, O. Ostapenko, S. Stetsenko, M. Tishchenko and other scientists. However, it should be noted that the procedural status of the translator, his participation in the administrative and tort proceedings usually studied by scientists, not as an independent legal issue, but only when considering only the general features of the Institute, administrative and tort proceedings.

As the purpose of the need to define the characteristic features of phasic regulation interpreter participation in administrative and tort proceedings based on an analysis of existing doctrinal and normative sources, and separation problems such

participation and suggestions for their solution. Fixing the linguistic principles of administrative tort proceedings asserts the priority of universal values, provides linguistic sovereignty of each person, so using acceptable to the parties' language or use an interpreter language and legislative strengthening the implementation of administrative tort proceedings is very important. Analysis of the current administrative and tort law and recent publications makes it possible to assert that the interpreter involved in the administrative and tort proceedings not regulated, so exploring administrative procedural status of the translator in the administrative and tort proceedings should elaborate on his role, the characteristics of participation in each stage of the proceedings, which will enable more detail to find out the scientific objectives set.

Comprehensive interpreter involved in the administrative and tort proceedings examines VK Caps the study of the phenomenon of administrative misconduct [1, p. 23] O. Kuz'menko – when ordering administrative proceedings [2, p.40-41], A. Mykolenko – the classification of participants in the proceedings on administrative violations [3] A. Bandurka and M. Tishchenko – to characterize the administrative tort proceedings [4] D. Bachrach – the study of administrative tort proceedings and leading actors in the division and related [5], but it should be emphasized that there was no comprehensive monographs devoted interpreter directly participate in the administrative and tort proceedings. Thus, the lack of a theoretical study of topics of scientific importance and relevance determine the need to conduct thorough investigation indicated question. Note that the relevance of the topic chosen is due to the process of updating the content and radical ideology administrative tort law, the need to build it based on the theoretical issues and practice.

At various stages of administrative tort proceedings each party that promotes proceedings, does his personal function, the translator is also a full participant in the proceedings, and proof of this is fixed in the Administrative Code of Ukraine of his procedural rights and obligations. In the rules governing the administrative and procedural status of an interpreter, stated that he was involved in the proceedings in cases where the victim, legal representatives, a witness or a person who has committed a misdemeanor, not speaking the language of the proceedings (Article 274 of the Administrative Code of Ukraine [6]). It is therefore advisable to explore the legal norms regulating the participation of an interpreter in the administrative and tort proceedings highlight features of phasic regulation and make evidence-based suggestions for improving the regulation of participation interpreter under current legislation of Ukraine.

The structure of the administrative process as a form of legal process constitute separate proceedings, each of which is a unity consistently committed action in space and time, their gradual implementation specific to each administrative proceedings and ensures the final decision of an administrative case [7, p. 486]. Administrative tort proceedings, in turn, also provide a phasic. They are all united by a set of proceedings (so-called administrative procedures), subjects engaged in administrative jurisdiction of the other participants of the proceedings.

Consequently, administrative and tort proceedings consists of a set of stages, and the latter divided into simpler components – steps that are full of action. Any proceedings consist of separate operations research which shows signs specific to them. Firstly, they are carried out sequentially, ie one operation after another, forming a kind of action. Secondly, the sequence of operations is not accidental in nature, it is logically defined. The third, different type of administrative proceedings has various in character and purpose of the operation. Fourth, the implementation of a transaction in the proceedings determined by administrative procedural rules and realized by substantive administrative law [8, p. 209]. However it should be noted that the administrative proceedings tort is not peculiar too complicated procedure, the dominant thesis of available sources

is its simplicity. For example, Dr. Kolpakov justifies the simplified administrative tort proceedings and provides a detailed description of the administrative offense proceedings which is in simplified form [9]. P. Petukhov notes the variety of administrative and tort proceedings in the first instance: regular and simplified (accelerated) [10, p. 18-19]. Moreover, under an accelerated review proceeding understands overnight cases of violation for applying administrative detention, which requires the establishment of a number of procedural guarantees of the rights of the citizen, which attract liability. M. Zavalna identifies two forms of administrative jurisdiction: general and simplified proceedings, which, in turn, depend on the complexity of the procedure relating to the nature and degree of administrative misconduct [11, p.18-19].

The term «stage» is one of the main concepts used in the theory and practice of administrative and procedural activities. The Stage in the administrative and in tort proceeding – a sequence of connected person of the proceeding on the rights and mutual obligations, consisting of several stages of development, which successive. According to T. Kolomoets, the stage of the proceedings – an independent part, which, along with the overall objectives of the proceedings is unique to her goals and features, besides scientist administrative proves that the number of participants and different stages of the proceedings, the nature of the proceedings and their legal role. Implementation of each stage of the proceedings is made of special procedural documents (Act) that summarize the activity, and then begins a new stage. Stages organically linked, next usually begins only after the previous over, a new stage checked what was done previously [12, p. 237-238]. The authors of the textbook «Administrative Law of Ukraine» edited by V. Halunka under the stage of the proceedings realize a relatively independent part of it, along with the general objectives of the proceedings is unique to her goals and characteristics [13, p. 211]. E. Demskij considering the stage of the proceedings as a part of the consideration and resolution of specific issues in an administrative case in order to promote its consideration on the merits. In his view, the stage of the proceedings – a relatively closed population dynamics embodied by applicable law methods, techniques, forms, providing logical functional sequence to achieve the final procedural results, in turn, the stage of the administrative proceedings scientist defines as settled rules of administrative procedure law and order conditions implementation of relatively independent and logically related proceedings to address and solve problems of a specific administrative procedure [14, p. 115-127]. Research Position V. Kolpakov is that in the administrative proceedings, each step is important in its own way and necessary, so no reason for their opposition in importance. The stages are linked by common purposes and objectives, consistently changing each other, they form a single system, providing a fast and full disclosure violations expose and punish those responsible, comprehensive, full and objective investigations of the circumstances of each case [15, p. 266]. Given the above, we can conclude that the differences in doctrinal views on the concept of «administrative proceedings under» do not have the principal character, the essence of different approaches of an author to their research, a focus on individual properties. It is important that scientists are unanimous that stage – a component of administrative tort proceedings and are fully and accurately reflect its structure.

The Staging of administrative tort proceedings should be considered as an integral feature, thus during the administrative proceedings tort checking the legality and validity of regulations. This ensures proper investigation, review and resolution of the case, and for making the final decision procedure. Administrative tort proceedings consists of the stages, which is defined relatively independent of the ongoing series of proceedings, which, along with the general objectives of the proceedings are unique to their tasks and features that define the content and procedural purposes.

It should be noted that the issue of the allocation of administrative tort stages of the proceedings, their number and content of administrative law theory there are a number of ideas and suggestions that you can even group. One group of researchers (V. Aver'yanov, M. Tishchenko, J. Bytyak, V. Bogucki, T. Kolomoets) identifies four stages: 1) initiation of an administrative offense, 2) the proceedings on administrative violations, and 3) the appeal and protest regulations on administrative offenses, 4) execution, the application of administrative penalties [16, p. 280, 7, p. 519, 7, p. 202, 17, p. 166, 18, p. 101-102, 19, p. 78-79], according to the second group of scientists (including I. Holosnichenko, M. Stahursky and N. Zolotarev) such stages – five, with the stage independent scientists released preliminary administrative investigation [16, pp. . 280-281, 20, p. 27]. V. Yusupov, in turn, identifies seven stages of the proceedings: 1) initiation, 2) the collection and study of relevant information, and 3) initial research, 4) choice of law to be applied, 5) hearing bodies competent to adopt solution, 6) handling complaints and making the final decision, 7) the decision in the case of [21, p. 34-35], while A. Agapov, however, distinguishes only two-stage administrative tort proceedings [22, p. 233]. Depending on the will of the parties to the administrative proceedings and certain procedural actions performed in each of the proceedings, administrative proceedings, scientists administrative distribute stage of the proceedings into two main groups: 1) mandatory (constitutional), 2) optional (optional) [23, p. 56]. J. Bytyak identifies four stages: initiation of administrative violation hearing and ruling, appeal the decision, the execution of [24, p. 223-224], it supports V. Aver'yanov [7, p. 519]. S. Kivalov provides the following stages: initiation stage, the stage of analysis of the situation (administrative investigation), the stage of the proceedings and the decision stage of the decision [25, p. 262-263]. M. Danilkevych also identifies four stages, but offers to call them something different: an administrative investigation, hearing, review the resolution, the execution of [26, p. 129]. I. Holosnichenko and M. Stahursky distinguish five stages: initiation of administrative violation, preliminary administrative investigation, hearing and ruling, appeal and protest resolution, the execution of [27, p. 155]. E. Demsky says that the sequence of commitment of (procedural) action, which are called stages of proceedings of five titles: the opening of administrative proceedings, preparation of proceedings for consideration, review of administrative proceedings, an administrative act (decision) and its revision, appeal to execution of an administrative act (decision) [14, p. 188]. S. Stetsenko also has five stages: initiation, trial, decision in the case, appeal and protest resolution, the execution of [28, p. 273-277]. According to O. Kuz'menko in cases of administrative offenses also contains five stages of proceedings: criminal proceedings, administrative proceedings, consideration and decision in the case, appeal and appeal of the decision, the execution of [2, p. 160].

Based on a thorough analysis of the provisions of the scientific papers on the separation of administrative and tort proceedings under their names and content R. Sinyelnik offers traditional stick (four stages) variant stages of proceedings on administrative violations [29, p. 11], it supports A. Ivanov [30, p. 11]. It should support the overwhelming opinion of scholars administrative on distinguishing four stages and saving them traditionally accepted names. That is, given the huge presence of different positions and views of scientists administrative, we follow the classical approach to the legal definition of the names and number of stages: as a general rule of administrative tort proceedings has four stages: 1) initiation of proceedings and administrative proceedings, 2) hearing 3) appeal the decision, 4) implementation of resolution. At the first stage of the proceedings it appears the fact and circumstances of the offense committed the data on the guilty person, a protocol (Articles 276-282 of the Administrative Code of Ukraine). The second – the competent authority considers the material and takes the decision (Articles 283-285 of the Administrative

Code of Ukraine). The third (the optional, an optional step, it may not be) – decision may be appealed citizen revised at the initiative of a superior authority, this stage ends quash, modify, or abandonment regulations in force (Articles 287 – 297 of the Administrative Code of Ukraine). The fourth stage – implementation of Resolution (Articles 298-310 of the Administrative Code of Ukraine).

Interpreters possible at all stages of the administrative tort proceeding. Persons who do not speak the language of the proceedings shall be recognized persons who do not understand or poorly understood spoken language cannot easily speak or read that language, have difficulty understanding certain terms.

The first stage of the administrative tort proceedings begins with the discovery of a fact committed an administrative offense, then investigated the causes and circumstances of the offense, found guilty persons harmed, by fixing it in the appropriate procedural documents. Procedural documents, which legally formalized the first stage of the administrative proceedings tort is a protocol statement of offense or disposal (for legal entities – entities.) According to the content of art. 274 AC Ukraine translator appointed by the (official), in handling the case of an administrative offense. Thus, the translator is allowed in proceedings on administrative violations only after the protocol. Given this, the person called to administrative responsibility at the time of initiation, determine the causes and circumstances of the offense, procedural execution results of the investigation and referral of material for the proceedings by jurisdiction effectively denied the right to full and accurate translation, that is necessary in this case, the assistance of an interpreter. Of course, such a regulatory limitation does not allow the interpreter to implement its procedural rights during the first stage of the administrative tort proceedings. It may be a logical assumption that the current legislation of Ukraine concerning this issue are not sufficiently coordinated. In particular, the content of the above article AC Ukraine inconsistent provisions of the Constitution of Ukraine, which guarantee the free development, use and protection of Russian and other languages of national minorities of Ukraine (Article 10). Thus, these gaps should be eliminated by introducing amendments to Art. 274 of the Administrative Code of Ukraine, which noted that if a person commits an administrative offense against a person or a representative of a public authority, a protocol on administrative violation, such person actually enters into relationship with the state through the state agency or officer and is entitled to obtaining interpreter services, particularly since the protocol on administrative violation.

The second stage of administrative tort proceeding – the proceeding and make decision on it. This stage is recognized in the main proceedings, since it solved the major problem, it is called primary, basic, and central [20]. In accordance with the requirements of Administrative Code of Ukraine, this stage involves the following procedural steps: preparing the case for trial, hearing, a decision on the case and bring it to the notice. A procedural right of translation as a member of administrative tort proceeding as it is implemented in the second stage. In the preparation of the case for consideration of authority considering the case of an administrative offense shall carefully examine all the circumstances of the case, listen to the explanation of the person against whom a violation of administrative tort proceedings, victims, legal representatives, if necessary, appoint an interpreter and translator liabilities 'appear to challenge authority (official) and make a complete and accurate translation entrusted to him. Typically, the need for the appointment of an interpreter is confirmation or refutation of the circumstances contained in these materials.

Phase reopening is optional, that is optional and occurs only appeal adopted the decision on the merits. The right to appeal decisions of administrative tort proceedings is one of the most important safeguards to protect the rights of the person who brought to administrative responsibility. The role of

the interpreter at this stage, in fact, not significantly different from its role in the previous stage.

Stage of the imposition of an administrative penalty is the last and final stage of the administrative tort proceedings. For the imposition of fines established voluntarily and compulsory procedure execution. The first is the offender voluntarily, such as when he voluntarily paid the fine. Practical implementation of administrative penalties imposed offender ordinance, the general procedure is enforceable since its issuance. At this stage the role of the translator to ensure the right to a full and accurate translation of the person who brought to administrative, is quite important. In particular, at this stage, according to Art. 14 of the Law of Ukraine «On Enforcement Proceeding» (from 21.04.1999) translator is entitled to remuneration for the work that relates to costs associated with the organization and conduct of executive actions. The size of such compensation is determined in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

So, summing up, it should be noted that the participation of an interpreter in the administrative and tort proceedings at this stage as fully realized at the second center stage of the proceedings – the proceedings and make it orders. Complex procedural rights of translation into administrative tort proceeding enshrined in Art. 274 of the Administrative Code of Ukraine, but it is worth noting that over time the content of the procedural rights of translation has not been any change and still retains its structure, as proposed by the legislator in 1984, and he did not meet the needs of the present, ie the list of procedural rights of translation is not complete and meaningful. Thus, the procedural rights of translation can be divided into individual rights that are unique to the interpreter, which is the initiator of it, and those that can be implemented only if the manifestation of the will of the person who brought to administrative responsibility. Also, the right interpreter can be classified by the source of their regulatory consolidation. By this criterion, one group will be human rights under the Administrative Code of Ukraine (Article 274), the second – regulated by other legislation. According to the stage of the administrative procedural law of tort proceedings interpreter and their implementation can be classified into those that are carried out: at the stage of infringement proceedings pending, under appeal to the implementation stage of the imposition of administrative penalties and others. Thus, the procedural rights of translation into administrative tort proceedings – is fixed by the Code of Administrative Offences and other laws of Ukraine legally secured complex features interpreter to provide linguistic support (to overcome the language barrier) for people who need it.

The new codified administrative tort act, along with human interpreter in proceedings on administrative violations, it would

be reasonable to predict his duties. In particular, we can borrow the experience of legislators from the Criminal Procedural Code of Ukraine of 13.04.2012, which defines in detail as an interpreter. It should also provide Responsibilities: 1) non-disclosure of information which came to be known interpreter in connection with the provision of translation services to the person called to administrative responsibility, and 2) not to commit acts against the interests of the person who brought to administrative responsibility, and prevent the her proper rights.

It should be noted also that, in practice, sometimes Administrative Offences are committed by persons who because of physical (blind, dumb, deaf) or mental disabilities cannot independently exercise their right to free communication with a person who is attracted to administrative responsibility, or is a minor. In such cases, part interpreter (sign language interpreters) should be mandatory. However, the current codified administrative tort cases, the act does not provide for mandatory participation Interpreter (sign language interpreters). It appears that in the future codified administrative tort act to eliminate existing gaps and predict such occurrences, primarily focusing on the current provisions of the criminal procedure law in order to provide maximum assistance to the relevant linguistic category of persons. In addition, all out of sight of the legislator is the mechanism of compulsory participation interpreter in cases help to minors and persons with certain physical and mental disabilities. This gap can also be restored by analogy with the criminal procedure law, in which the existing provisions in detail and fully secured and has for some time successfully applied in practice.

Thus, we can conclude that the current administrative and tort law of Ukraine in the terms of reference interpreter in administrative proceedings tort is outdated and contains a number of inconsistencies. This creates additional obstacles to provide constitutional guarantees of human and civil rights, therefore, the provisions of the Administrative Code of Ukraine which regulate the procedural status of the translator in the administrative and tort proceedings require significant changes. In particular, the need to clearly fix the time of admission interpreter in administrative tort proceedings and provide the translator is allowed in the proceedings on administrative violations since the protocol or administrative detention, which is brought to administrative responsibility. It should be in the new administrative tort act more meaningfully and to regulate the rights and obligations of an interpreter, balance and harmonize their content. Furthermore, it should adopt certain rules of criminal procedure, taking into account international experience, particularly in terms of the mandatory participation of an interpreter in the administrative and tort proceedings.

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ПРАВОВЕ ТА ОРГАНІЗАЦІЙНЕ ЗАБЕЗПЕЧЕННЯ ДІЯЛЬНОСТІ ОРГАНІВ ПУБЛІЧНОЇ АДМІНІСТРАЦІЇ В УМОВАХ ВИНИКНЕННЯ НАДЗВИЧАЙНИХ СИТУАЦІЙ

LEGAL AND ORGANIZATIONAL SUPPORT OF THE PUBLIC ADMINISTRATION IN CONDITIONS OF EMERGENCY SITUATIONS

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У статті проведено аналіз змісту правового та організаційного забезпечення діяльності органів публічної адміністрації в умовах виникнення надзвичайних ситуацій. Наведена характеристика окремих елементів правового та організаційного забезпечення діяльності органів публічної адміністрації, зокрема нормативного, матеріально-технічного, фінансового, інформаційного забезпечення. Виокремлено недоліки в означній сфері та наведені окремі шляхи їх вирішення.

Ключові слова: надзвичайна ситуація, органи публічної адміністрації, нормативне забезпечення, матеріально-технічне забезпечення, фінансове забезпечення, інформаційне забезпечення.

В статье проведен анализ правового и организационного обеспечения деятельности органов публичной администрации в условиях возникновения чрезвычайных ситуаций. Приведенная характеристика отдельных элементов правового и организационного обеспечения деятельности органов публичной администрации, в частности нормативного, материально-технического, финансового, информационного обеспечения. Выделены недостатки в данной сфере и приведены отдельные пути их решения.

Ключевые слова: чрезвычайная ситуация, органы публичной администрации, нормативное обеспечение, материально-техническое обеспечение, финансовое обеспечение, информационное обеспечение.

The analysis of the theoretical and practical aspects of the comprehensive support of the activities of public administration in the context of emergency. The characteristics of individual elements of the comprehensive support of the public administration, in particular the regulatory, logistical, financial and information management. Highlighted shortcomings in this area and find separate solutions.

Key words: emergency, the bodies of public administration, regulatory support, logistical support, financial support, information provision.

Постановка проблеми. Конституцією України закріплено, що одним із пріоритетних завдань нашої держави є захист прав, свобод та законних інтересів людини і громадянина, що реалізуються в усіх сферах її діяльності. Особливої актуальності це завдання набуває в умовах виникнення надзвичайних ситуацій техногенного, природного або соціально-політичного характеру.

Реформи, що були проведені в Україні за останні десять

років, зумовили появу як позитивних, так і негативних явищ, зокрема: нестабільність політичної обстановки, низький життєвий рівень населення, що, у свою чергу, зумовлює наявність «соціальної напруженості у суспільстві», зростання злочинності, низький рівень правової культури населення, застарілість обладнання та технологічного процесу виробництва. Наведені явища безпосередньо можуть зумовлювати виникнення надзвичайних ситуацій різної генези.