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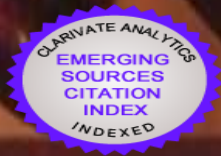
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Contents Vol. 27 Issue/2-2021

- 1-** PAVEL P. BARANOV AND OTHERS IMPROVEMENT OF MODERN REGULATORY POLICY IN RUSSIA IN CONSERVATIVE LEGAL. P. 9.
- 2-** RAED ADNAN NAZEM HAJ ASA'D AND OTHERS: THE CONSEQUENCES OF INTERNATIONAL RECOGNITION OF PALESTINE—p 34.
- 3-** SALEENA KUZHUPPIL BASHEER: ENSURING INNOVATION AND ACCESS IN COVID 19 TREATMENT: CHALLENGES UNDER SAUDI ARABIAN PATENT LAW.—p. 71.
- 4-** E.A. APOLSKI AND OTHERS: SOCIALIST LEGAL CONSCIOUSNESS AS A CONSERVATIVE PROJECT: AN EPISTEMOLOGICAL AND PRAXEOLOGICAL DIMENSION. P. 101.
- 5-** OSAMA AL-HANAINEH AND OTHERS: THE CONTRIBUTION OF ADMINISTRATIVE JURISDICTION IN ESTABLISHING THE FOUNDATIONS OF THE LEGAL STATE. P. 139.
- 6-** ANDRIY IVANYSHCHUK AND OTHERS: FOREIGN EXPERIENCE OF INVOLVING CITIZENS IN COMBATING CRIMINAL OFFENSES. P. 139.
- 7-** ABED AL- HAMEED RAJEH KURDI: HALF THE DOWRY OF THE WOMEN'S PEERS IN THE JORDANIAN PERSONAL STATUS LAW NO. 15 OF 2019 A DESCRIPTIVE CRITICAL STUDY IN THE LIGHT OF THE PROVISIONS OF ISLAMIC LAW. P. 161.
- 8-** MUSA ABDUL HAFIZ MANAHI AL-MHEIRAT: THE CRIMINAL RESPONSIBILITY OF THE PLASTIC SURGEON AND ITS CORRELATION WITH PATIENT'S CONSENT. P. 190.
- 9-** PHAN ANH TU AND OTHERS KNOWLEDGE AND ENTREPRENEURIAL INTENTION: MEDIATING ROLE OF ENTREPRENEURIAL COMPETENCY: p. 238.
- 10-** IRYNA ODYNTSOVA AND OTHERS: INTERNATIONAL LEGAL STANDARDS FOR PROVIDING PUBLIC SERVICES IN COMBATING CORRUPTION. p. 276.
- 11-** DINH HONG LINH AND OTHERS: SOLUTIONS TO ENHANCE PEOPLE'S SATISFACTION ABOUT ENVIRONMENTAL CRITERIA IMPLEMENTATION IN THE NEW RURAL PROGRAM: A CASE STUDY IN VIETNAM. P. 297.

(10)

**INTERNATIONAL LEGAL STANDARDS FOR
PROVIDING PUBLIC SERVICES IN COMBATING
CORRUPTION**

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ABSTRACT

Problems of implementation of international legal standards for the provision of public services as a way of reforming the economy into the legal system of Ukraine requires doctrinal vision and definition of the main theoretical and methodological directions of the research, since legal standards influence the modern legal doctrine, and consequently, and at the practice of functioning of all state-legal institutions.

The article is devoted to the analysis of scientific concepts and the legal framework of the concept of information support for administrative legal proceedings. Features and peculiarities of information provision for administrative legal proceedings are studied; its differences from information support for the administrative court are stressed. The author's definitions of the concept of information support for the administrative procedure and information support for the administrative court are proposed. Three stages of formation of national legislation regulating information provision of administrative legal proceedings are singled out. The system of laws and regulations, which provisions consolidate legal fundamentals of information support for administrative legal proceedings, is clarified. Prospective directions for the development of scientific inquiry in the field of

information support for administrative legal proceedings and its legal regulation are revealed.

The conditional stages of the formation of the legal regulation of the information provision of administrative legal proceedings determined by us were based on events of key importance for the formation of the information support system of administrative legal proceedings and were accompanied by secondary fragmentary changes that concerned only information provision of certain types of administrative cases.

Keywords: administrative jurisdiction, administrative legal proceedings concept, administrative procedure, courts rules, subject.

1. INTRODUCTION

For the effective functioning of the state and all state mechanisms, information provision of administrative legal proceedings of Ukraine is of key importance. As V. B. Pchelin notes, the proper functioning of administrative legal proceedings of Ukraine, within which the consideration and resolution of public-law disputes related to the protection and restoration of violated, unrecognized, disputed rights, freedoms, and interests of individuals and legal entities take place, may be only in the case of its effective information support¹. The content and scope of information relations arising in the field of administrative legal proceedings with each stage of development of

¹ Pchelin, V.V. (2011). Re-examination of administrative acts of organs in internal reference: dis. ... Phd: 12.00.07 "Administrative law and processes; financial law; Information law". H., 121.

JOURNAL OF LAW AND POLITICAL SCIENCES

domestic information and procedural legislation are increasingly specified. At the same time, the growth of the circle of such relations, the increase of the types of information used within the administrative legal proceedings, and the growing importance of information support for administrative legal proceedings are observed. The current legal community of Ukraine is looking for ways to optimize the work of the entire judicial system in general and administrative legal proceedings in particular.

The volume of cases handled by administrative courts remains significant every year. Thus, in 2016, 215 319 administrative cases were received for consideration by local administrative courts, and 76 184 cases - by administrative courts of appeals. In 2017, 121 692 cases were submitted for consideration to the local administrative courts and 73 496 cases - to the administrative courts of appeal. Accordingly, the amount of information used to resolve such a circle of cases invariably grows; the need for optimization of information databases, their integration, and improving the efficiency of the search for the necessary information increases.

2. LITERATURE REVIEW

Problems of increasing the transparency and efficiency of providing public services are considered in the writings of scholars from both administrative law and practitioners: V. I. Siverina, M. B. Ostrakh, V. V. Petyovki, D. O. Vlasenko, K. V. Khimichuk, O. V. Levchenko, M. O. Kolesnikov, A. V. Miskevich and others. In the

works of some scientists, the issue under consideration was highlighted through the presentation of opinions on the prevention of certain crimes. Others studied public involvement in law enforcement separately by country.

3. Legal fundamentals of information provision of administrative legal proceedings in Ukraine and the stages of their formation

In the dictionaries, the term «provision» is interpreted in similar terms, but they have certain differences. Thus, in the new explanatory dictionary of the Ukrainian language, it is considered in two meanings: 1) the provision or creation of material resources; 2) guaranteeing something ². In the great explanatory dictionary, the term «provision» is explained through the verb «to provide», which is used in several meanings: «to create reliable conditions for the implementation of something»; «to guarantee something»; «to defend, to protect someone, anything from danger». The above interpretation of the concept of «provision» allows considering it as an activity, a system of measures aimed at improving something specific. So, one can agree with the conclusion of V.B. Pchelin that the category of «provision» is denoted by a long process aimed at guaranteeing the functioning of the relevant institution, maintaining it in good condition in order to fulfil its tasks ³.

²Yudin, O.K., Bogush, V.M. (2005). Informational security powers: Manual. Kh. P.52

³ Pchelin, V.V. (2016). Legal ambush of information security of the administrative court of Ukraine. Entrepreneurship, statehood and law.. No.

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The term «provision» can be used in various areas of legal regulation and have some peculiarities depending on it. However, for the purpose of studying the issues of information provision of administrative legal proceedings, the results of the search of scientists are important in terms of approaches to the content of the concept of information provision. So, R. A. Kaliuzhnyi, investigating information provision of a management system, proposes to understand it as a combination of all the information used, specific means and methods of its processing, as well as the activities of specialists on the efficient use of data, information, knowledge in the management of a particular system⁴. Studying the information provision of management, S.M. Petrenko believes that it is a set of implemented decisions on the volumes of information, its qualitative and quantitative composition, location, and forms of organization, the purpose is timely provision of necessary and sufficient information for the adoption of managerial decisions that ensure the effective operation of both the enterprise as a whole and its structural subdivisions⁵.

O.K. Yudin and V.M. Bohush, studying the provision of information security, define it as a set of measures designed to achieve

8. P. 120.

⁴ Kalyuzhny, R.A., Gavlovsky, V.V., Gutsalyuk, M.A. (2001). To the informational suspension of Ukraine and the legislation (today, reform in the sphere of informational information). Legal, regulatory and metrological protection systems and information protection in Ukraine. No. 2. P. 11.

⁵ Petrenko, S.M. (2007). Information security of internal control of economic systems: monograph. Donetsk. S. 20.

the state of protection of the needs of individuals, society, and the state in information⁶.

Directly informational support as an independent concept, L. V. Balabanova proposes to understand as a set of actions to provide the necessary management information in the specified place on the basis of certain procedures with a given periodicity⁷; A. V. Chernovanenko - as a system for managing the totality of representations, concepts, data, and as activities related to means of collecting, registering, transmitting, storing, processing, and presenting information⁸.

Under the legal principles of information provision of administrative legal proceedings, V.B. Pchelin proposes to understand the totality of legal acts of various legal force, which, taking into account their hierarchical links, carry out statutory regulation of the activities of authorized entities and the functioning of automated information systems with the operation of information in order to ensure proper activities of administrative courts for the consideration and resolution of public-law disputes.

The current state of legal regulation of information provision of

⁶ Yudin, O.K., Bogush, V.M. (2005). Informational security powers: Manual. Kh. P.52

⁷ Balabanova L.V., Alacheva T.I. (2003). Information support for the justification of managerial decisions in the conditions of marketing orientation of the enterprise: monograph. Donetsk: DonGUET named after M. Tugan-Baranovsky, P.9.

⁸ Chernovanenko A.V., Galunko V.V. Information on the preparation, adoption and implementation of management decisions: theoretical review before understanding. URL: <http://www.kbuapa.kharkov.ua/e-book/conf/2009-1/doc/35.pdf>.

JOURNAL OF LAW AND POLITICAL SCIENCES

administrative legal proceedings preceded the long period of development of domestic administrative-procedural and information legislation. The general principles of information provision of administrative legal proceedings are determined by the following laws of Ukraine: «On Personal Data Protection» on June 1, 2010; «On Court Fees» on July 8, 2011; «On Appeal of Citizens» on October 2, 1996;

«On State Secrets» on January 21, 1994; «On Electronic Documents and Electronic Document Circulation» as of May 22, 2003; «On Electronic Digital Signature» on May 22, 2003; «On Information » dated October 2, 1992; «On Access to Public Information» on January 13, 2011; «On Information Protection in Information and Telecommunication Systems» dated July 5, 1994; etc. Special laws and regulations detail the order of information provision of administrative legal proceedings.

The stages of formation of the legal regulation of information provision of administrative legal proceedings, determined by us, are based on large-scale structural changes that have led to global processes in the field of information provision of administrative legal proceedings.

We associate the first stage of the formation of legislation regulating the information provision of administrative legal proceedings with the adoption of the Code of Administrative Legal Proceedings of Ukraine (hereinafter referred to as CALP) on July 6, 2005. Thus, the first edition of the CALP identified such important

components of the information provision of administrative legal proceedings as the principles of transparency and openness of the administrative process (Article 12), the principles of recording the court session by technical means (Article 41), reproduction and printing of the technical record of the court session (Article 44); types of procedural information and its carriers.

The second stage of the formation of legal norms regulating information provision of administrative legal proceedings is connected with the introduction of an automated system of document circulation in administrative courts. The Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Introduction of Automated System of Document Circulation in Administrative Courts» on June 5, 2009, No. 1475-VI supplemented the CALP by Art. 15-1 «Automated System of Court Documents». By the Order of the State Judicial Administration of Ukraine as of 03.12.2009 N° 129, the provision «On Automated System of Document Circulation in Administrative Courts» (The Legislation of Ukraine, 2010) was approved, which expired pursuant to the Decision of the Council of Judges of Ukraine as of 26.11.2010 No. 30, which introduced the Regulation on the Automated System of Document Circulation of the Court⁹.

The second stage in the formation of information provision of

⁹ About the automated document management system in administrative courts: The order of the State Ship Administration of Ukraine, 3 days, 2009 p. No. 129 / State Judicial Administration Ukraine. Official newsletter of Ukraine. 2010. No. 101.P. 393. Article. 3566.

JOURNAL OF LAW AND POLITICAL SCIENCES

administrative legal proceedings is also characterized by a fragmentary development of certain rules regulating the information provision of certain categories of administrative cases. One of such legal acts, which caused changes in this area, is the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Elections of the President of Ukraine» as of August 21, 2009, N° 1616-VI, which identified the features of the use of procedural information under the proceedings in cases related to the election of the President of Ukraine. The Law of Ukraine «On Alienation of Land Plots and Other Immovable Property Located Thereon, Which are in Private Property, for Public Needs or Social Necessity» on November 17, 2009, N° 1559-VI, supplemented the CALP by Article 183-1 «Peculiarities of the Proceedings in Administrative Cases Concerning the Compulsory Alienation of a Land Plot, Other Objects», this article defines a circle of procedural information characteristic for this category¹⁰. Also, at this stage, there was an extension of the circle of legal norms regulating the information provision of certain stages and types of proceedings in administrative legal proceedings (Article 174, Article 183-2 of the CALP), the circle of information used in administrative legal proceedings was expanded, etc.

At this stage, the formation of the legal regulation of the

¹⁰ About the automated document management system in administrative courts: The order of the State Ship Administration of Ukraine, 3 days, 2009 p. No. 129 / State Judicial Administration Ukraine. Official newsletter of Ukraine. 2010. No. 101.P. 393. Article. 3566.

information provision of administrative legal proceedings also introduces changes to Art. 12 «Publicity and Openness of Administrative Process» regarding the recording of the trial by technical means.

The third stage of the formation of the legislation regulating information provision of administrative legal proceedings began on November 22, 2017, with the signing of the Law of Ukraine «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts». This stage is characterized by the introduction of the electronic justice system at all stages of the process and the transition to the Single Judicial Information and Telecommunication System, the creation of the possibility of remote participation in the trial, the presentation of various documents, familiarization with the case. The specified system provides for the exchange of documents in electronic form between courts, between the court and participants in the trial, as well as recording the trial and participation of participants in the court proceedings in a court session in a video conferencing mode.

In accordance with the said law, the system of organization of legal proceedings in Ukraine undergoes certain changes, namely: obligatory registration of procedural documents in the system on the day they are received; committing any actions in electronic form using an electronic digital signature; automatic determination by the system of a judge or panel of judges for consideration of a particular case in accordance with the procedure established by the Codes; storage of

JOURNAL OF LAW AND POLITICAL SCIENCES

case materials in electronic form; preservation of the right of the parties to the case to apply to the court in paper form and receive the relevant documents after the introduction of the system; obligation to broadcast a court session in a video conferencing mode via the Internet; functioning of the Unified State Register of Executive Documents¹¹. The information provided indicates the phased development of the legal norms that are in the CALP and regulate the information relations in the administrative legal proceedings.

The general direction of reforms for the governments of foreign countries is to increase the transparency and efficiency of providing services. For example, in order to increase the transparency and quality of the system of services provided by government authorities, the Department of Transport in the United Kingdom annually develops and provides a report on the services provided and their compliance with standards. Increasing transparency and speed of service delivery, focusing on the urgent needs of society is characterized by Bulgaria, which is characterized by a kind of approach to identifying the needs of society, which has a certain degree of managerial character. In the Republic of Finland, in order to increase transparency and efficiency in providing public services, the results of state reform programs are evaluated. The criteria for assessing such results are, as a rule, the opinion of the population about the quality of public services, the degree of controllability of state bodies and the effectiveness of their

¹¹ Roik, O.V. Electronic judicial system [URL: http://yur-gazeta.com/dumka-eksperta/elektronne-sudochinstvo-chi-mae-ukrayina-shansi.html](http://yur-gazeta.com/dumka-eksperta/elektronne-sudochinstvo-chi-mae-ukrayina-shansi.html)

activities, motivation of civil servants, the quality of implementation of programs necessary for reform, the importance of the objectives of these programs for the society and their consistency.

4. 'PETTY' CORRUPTION: BRIBES FOR SERVICES

One kind of corruption is when people are expected to pay bribes in order to get the service they are entitled to from a public employee. The employee is making use of his or her position to get extra income, at the expense of citizens or the service itself. Typical examples are the payment of bribes to water workers to record false meter readings; to health workers for providing treatment at an earlier date; or to customs officials to allow goods to be smuggled without paying duties. This is sometimes described as 'petty corruption' to contrast it with the 'grand corruption' of large-scale fraud by politicians and companies. It seriously damages public services. Citizens are cheated. It breaks the principle of fair and equal treatment. It undermines the integrity of public servants. Those who most need services find themselves having to pay as if the service was just a matter of private profit. What should be a public service is converted into another commercial transaction. It also weakens public resolve to tackle bigger corruption. It must be eradicated. The best-known picture of corruption is the index published by Transparency International (TI) which ranks countries "according to their perceived levels of public-sector corruption." ¹ Developing countries consistently appear as the most corrupt, and OECD countries as least corrupt. The problem of

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corruption is thus presented as a problem of the third world, and specifically of corrupt public employees. It is often incorrectly attributed to the culture of these countries being much more tolerant of corruption than the cultures of the OECD countries. The index – and the analysis – are unsatisfactory. The index is not based on actual experiences or documented cases of corruption. It is based on the perceptions of people who participate in surveys. The survey participants consist almost entirely of business executives, consultants, or unspecified ‘experts’ many of whom are foreign, and businessmen some of whom may themselves have paid bribes or be part of corrupt networks. The perception of international business executives is not a reliable indicator of the culture of ordinary people.² In fact, surveys of the public in various countries show that very few people, in any country, believe that corrupt behaviour is acceptable. Overwhelming majorities in Eastern Europe, and over 90% of Africans believe it is unacceptable.

By contrast, there is clear evidence of a corrupt culture amongst executives themselves in rich countries. A 2012 survey found that 24% of financial sector executives in the USA and the UK believed that they had to engage in illegal or unethical activity in order to be successful.⁴ The evidence does not support the view that there are distinctive corruption-tolerant cultures in developing and transition countries. The great majority of people surveyed in developing and transition countries do think that corruption is a big problem in their country.

In many states, people have anything but good experiences with

the authorities when it comes to securing their and their families' basic needs. In these countries people are often forced to give and receive assistance from relatives, friends, or members of their community. Without good governance, without functioning, transparent public services equally accessible to all, giving gifts or money is often the only way people can obtain health care, building permits, court decisions and so on. There is strong evidence that the most important factor affecting the extent of petty corruption is the pay of the workers concerned. When pay is too low to provide the necessities of life, or where it is significantly lower than the pay of other people with similar qualifications, then corruption is used as a way of making extra money. Studies in countries as diverse as Madagascar and Ukraine show that inadequate civil service pay is linked to petty corruption. In a number of Asian countries, water meter readers demanded bribes when their pay was below subsistence levels, but not after their pay was increased substantially. This has been known for a long time – customs officials in 18th century England were accepting bribes from smugglers because they were paid so little.⁶ (See annexe) This basic material factor is key to reducing the incentive for corruption. Effective disciplinary and criminal sanctions provide further deterrence. Building and maintaining confidence in effective and democratically accountable public services depends on more political actions – especially addressing the problem of 'grand orruption.' Where there is a lack of confidence in the state itself, people may fall back on informal mechanisms, including

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reliance on friends, family and the economic reliability of petty corruption¹².

5. RESULTS

5.1. EMPIRICAL EVIDENCE OF THE LEVELS OF CORRUPTION.

Africa. A comparison between the views of a panel of ‘experts’, and reliable data from household surveys in eight African countries in 2006 found that the experts’ estimates (52%) were four times higher than data on actual experiences (13%). The experts’ scores had no correlation whatsoever with reality – countries were ranked in the wrong order, and the errors were worst for those countries ranked lowest in the international indices. The only consistency was that in every country nearly all experts made inaccurate overestimates¹³.

The study also showed that the results were strongly affected by the ideology of the experts. Those experts who expressed support for neoliberal policies of more liberalisation and a weaker state, and smaller civil service were significantly more likely to over-estimate the extent of corruption.

¹² Hellman, Joel S, Geraint Jones, and Daniel Kaufmann, (2003). Seize the State, Seize the Day: State Capture and Influence in Transition Economies’, *Journal of Comparative Economics*, 31 751–773.

¹³ Razafindrakoto, Mireille, and François Roubaud. (2010). Are International Databases on Corruption Reliable? A Comparison of Expert Opinion Surveys and Household Surveys in Sub-Saharan Africa. *World Development* 38 (8) (August): 1057–1069. doi:10.1016/j.worlddev.2010.02.004.

<http://www.sciencedirect.com/science/article/pii/S0305750X10000239>

The experts are also wildly wrong about a ‘culture’ of corruption. In the household surveys, less than 5% of citizens, on average, considered that receiving a bribe in the exercise of one’s duties is acceptable behaviour. The experts however expected that 32% would have thought so – based on their incorrect belief that Africans are more inclined to accept corruption.

Nevertheless, the Africans in the household survey overwhelmingly believed that corruption is a major problem in their country. As in other countries, this perception may rather be a judgment about those at the top of the system.

5.2. LATIN AMERICA.

In Latin America, evidence from Peru and Ecuador shows the same picture of a low level of petty corruption: between 2% and 6% of people had experienced the payment of bribes to workers in public services in the previous year. ⁶⁵ In India, the data shows a higher level of petty corruption than elsewhere, but it appears to be falling. In 2010, 28% of rural households had to pay a bribe for some public service - but this is half the level among rural households in the 2005 survey. Moreover, there is a wide variation between different states: the lowest level of petty corruption is in Kerala and Andhra Pradesh, which suggests that there may be some features of the political system in these states which helps limit corruption. Kerala for example is noted for its policies of open and public ‘participatory budgeting.

5.3. BALTIC STATES.

JOURNAL OF LAW AND POLITICAL SCIENCES

A similar picture emerged in a study of 10,000 households and health services in Estonia, Latvia and Lithuania. The proportion who had actually paid bribes to health service workers was less than 1% in Estonia, 3% in Latvia, and 8% in Lithuania in their most recent experience of healthcare, either before or after treatment. Moreover, a large majority regarded such payments as bribes and considered them unacceptable – there was no ‘culture’ of accepting bribes as normal. The belief that there is such a culture has no supporting evidence. A much higher proportion of people - about 13% - had made gifts of flowers, chocolates or drinks to doctors and nurses, but this was clearly distinguished from bribery and seen as part of a positive relationship with health workers: “people overwhelmingly supported the practice of giving gifts to health care professionals, stating that gifts were an expression of gratitude for care”. Despite the actual levels bribery and positive views towards health workers, about half the people in the study thought that there was a high level of corruption in their health services. This may reflect media influence, or a belief that the system is being corruptly exploited by those at the top of the system - for example, the excessive profits made by pharmaceutical firms as in the example of Bulgaria, below. These ‘perceptions’ do not mean that there is a high level of corrupt demands for bribes by health workers.

6. CONCLUSIONS

On the basis of a comprehensive analysis of available scientific and normative sources, the international legal standards for the

provision of public services as a direct reform of the economy are highlighted, that the deliberate implementation of the principles and criteria for evaluating the provision of public services in foreign countries (USA, France, Great Britain, etc.) should include the features of public the relations that have developed in Ukraine, as well as the sequence of the implementation of international norms and institutions of law, because their similarity, at first view, may at the same time have significant differences in the implementation, leading to no implementation, as well as conflicts in the legal acts of Ukraine. The conditional stages of the formation of the legal regulation of the information provision of administrative legal proceedings determined by us were based on events of key importance for the formation of the information support system of administrative legal proceedings and were accompanied by secondary fragmentary changes that concerned only information provision of certain types of administrative cases.

When investigating the information support of administrative proceedings, it is necessary to distinguish it from the information support of the administrative court. In our view, the information support of the administrative court is a part of the administrative activity for the analysis, planning, and preparation of management decisions, which is an uninterrupted process of processing and using information on the state of functioning of the court apparatus and work of judges, which is carried out with the help of information tools and methods, leads to the formation of information funds, and is aimed at ensuring the proper functioning of the administrative court. At the same time, as information provision of administrative legal proceedings

JOURNAL OF LAW AND POLITICAL SCIENCES

of Ukraine, this is, based on the requirements of the current national legislation, a set of measures related to the circulation of procedural information, which are implemented in the framework of their functions by authorized agents and through the functioning of automated systems and aimed at ensuring the proper functioning of administrative courts on consideration and resolution of public-law disputes.

At the current stage of development of domestic legislation, the legal regulation of information provision of administrative legal proceedings is carried out in accordance with the following laws and regulations: Laws of Ukraine «On the Judiciary and Status of Judges», «On Amendments to Certain Legislative Acts of Ukraine on the Introduction of Automated System of Documentation in Administrative Courts»; «On Access to Court Decisions», «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Justice of Ukraine, and other legislative acts», the Code of Administrative Legal Proceedings of Ukraine, as well as the Regulation «On Automated System of Documentation of the Court», the Procedure for the Management of the Single State Register of Court Decisions, the Regulation on the Single Database of Electronic Addresses, Fax Numbers (Telefaxes) of the Authorities. Some aspects of the information provision of administrative legal proceedings of Ukraine are regulated at the level of subordinate legislation adopted by the State Judicial Administration of Ukraine, which approve the Typical Job Instructions for Employees

of the Administration of the Local General Court; Instruction on the Procedure for Working with Technical Means of Recording Court Proceedings (Court Sessions); Instruction on Case Management in Administrative Courts, etc.

The nearest changes in the system of information provision of the administrative process in accordance with the Action Plan on the implementation of the Law of Ukraine as of 03.10.2017 N° 2147-VIII «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts» is the introduction of the Unified State Register of Executive Documents and the Single Judicial Information and Telecommunication System.

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