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## **LANGUAGE AS A PRINCIPLE OF ADMINISTRATIVE JUSTICE**

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*At the modern-day stage of social evolution, language barriers often pose an obstacle in solving some issues. This is especially applicable to the judicial branch, as the conflict is inevitable, and language barriers are occasionally in the way of its settlement. Since ancient times, the practice of administrative court proceedings, both domestic and international, is governed by principles of providing assistance in deciding linguistic issues.*

Implementation of “court proceedings language” principles has always aroused interest on the part of the state, legal and physical entities as parties to court disputes, as well as international institutions.

From time to time, imperfectness of the law brings about conflicts during litigations, including linguistic principles of court proceedings.

Imperfect system of arranging translation in administrative courts, insufficiently developed occupational upgrading of court translators, and growing number of foreign parties to legal relations make this topic especially relevant.

Taking into account sufficiency of regulatory instruments, linguistic principle of administrative proceedings needs improvement in the field of provision of official court translators. There is a need to develop a concept of interaction with European linguistic principles of administrative proceedings. At present, clear classification of linguistic identity is absent. In some cases, they still use the theoretical and methodological apparatus of linguistic principles, which was established as long ago as in Soviet times.

Among the many researchers of court proceedings linguistic problems, there is a significant number of present-day scholars who dedicated their works to this problem. The most well-known include A. Aleksandrov, R. Arakelian, S. Kivalov, V. Kim, D. Korobeinikova, Yu. Kravchenko, L. Nikolayeva, E. Sapir, A. Solovyova, M. Pasienuk, O. Cherednichenko, O. Kharitonova.

Despite an ample quantity of publications, the court language system requires further perfection. Nowadays, it is necessary to improve mechanisms of meeting European and global standards, upgrade qualification of court translators who render services in administrative courts, and simplify the procedure of providing

such translators' services. Applied aspects of court proceedings language issue are not exposed in full volume. The question of funding the arrangement of the proceedings linguistic aspect also requires constant attention.

It is practical importance, insufficient definition level, and acuteness of the mentioned problems that determined this article's subject.

***This article is aimed at*** finding out the core essence of linguistic principles of administrative court proceedings; theoretical analysis of the administrative proceedings linguistic principles stipulated in current legislation; determining prospective ways to improve the same, which are based on foreign experience.

The chapter on the judiciary in the basic document of Ukraine lacks the linguistic principle of court proceedings. Yet, Article 10 of the Constitution reiterates that the official language is Ukrainian [1].

While analyzing the linguistic principle of court proceedings, one should turn to the Ukrainian Law "On the judiciary and status of judges." Article 12 of this Law defines the language of courts in Ukraine [2]. The language of court proceedings is also defined in Chapter 2, Article 14 of the Law "On the basics of governmental language policy" [3].

According to Article 7, Part 1 of the Civil Procedural Code, the language of civil proceedings is Ukrainian [4].

The official language is the background of carrying out a judicial process, as well as composing court documents, and other procedures.

The Law "On the judiciary and status of judges" (Article 12, Part 3) underlines compliance with the international legislation in relation to applying linguistic principles, which stipulates enforcement of a civil right to use the language one knows.

The Law "On ratification of the European Charter for Regional or Minority Languages" allows using regional or minority languages in legal proceedings, which is guaranteed by the state, and translation into the official language is ensured and paid for using state budget funds of Ukraine [5]. According to Article 15 of the Administrative Proceedings Code dated July 6, 2005, No. 2747-IV, administrative legal proceedings are conducted in the official language of Ukraine [6].

Therefore, no matter what language legal proceedings are held in, all court documents are drawn up in the official language. The judge handles cases and drafts documents solely in Ukrainian language, while other parties to the process are allowed to use languages of ethnic minorities.

According to Article 12 of the Law "On the judiciary and status of judges," for general understanding of ethnic minorities languages, a translator paid from the state budget has to be engaged. This practice covers not only administrative, but also criminal area, which meets a number of international requirements. Thus, according to Clauses "a" and "f" Part 3 Article 3 of the International Covenant on Civil and Political Rights of December 16, 1966 [7], and Part 2 Article 5, Clause "e" Part 3 of the European Convention on Human Rights and Fundamental Freedoms of October 4, 1950 [8], everyone shall be informed immediately and explicitly, in the language they understand, of the character and basis of charges brought

against them and of the right to obtain free-of-charge assistance of a translator if they do not understand the language used in the court or do not speak it.

Among those who authored well known scholarly works on the problems of compliance with human rights and freedoms, an uncompromising position in the field of organizing court translations is taken by researcher L. A. Nikolayeva who dedicated a series of researches to resolution of the linguistic issue. Her work “Administrative justice and administrative legal proceedings” contains basic provisions she is focused on [9].

In accordance with the undeviating social tendency to establish monopoly of the Ukrainian language, national security is reinforced because using several languages creates some kind of dependence on the state whose language is a second one in administrative court proceedings.

E.g. under Article 17 of the Republic of Belarus Constitution, official languages are Belarusian and Russian [10]. This also concerns court proceedings. Although, as the experience of the neighboring Belarus shows, the overwhelming majority of court sessions, paperwork, etc. are performed in Russian.

On the other hand, in the conditions of economic globalization and spreading integration processes, the question of supranationality of the administrative legal proceedings principles has become very acute. First of all, it is caused by economic processes that result in geopolitical ones. All of these bring about a need for creating a joint regulator of administrative legal relations, whose language should be universal to the countries participating in such relations.

An example of developing supranational legal linguistic principles is the “eurolect”. It originates from official texts on the European integration, which embrace the fifty-year history of the European Union dating back to the 1957 Treaty of Rome. In the context of linguistic principles globalization, including the language of administrative court proceedings, the EU yielded new terminology: European Central Bank, EU citizenship, Structural Adjustment Facility, composite government, etc. [11].

Such approach stimulated considerable increase of translation activity inside the EU. A great number of written and oral translations in the area of politics, economy, jurisprudence, etc., contributed to emergence of new supranational concepts that required certain identity in languages.

Certainly, the pivotal reason why such concepts emerged was a factor related to the spread of the European idea to unite the nations on new democratic grounds. To solve the problem of translating the EU legal texts, experts worked out criteria of the European legal language. They enable distinguishing the terminology and corresponding notions of the European law.

Scholars have various opinions about this matter. E.g., Werner Vogt, a German researcher, compares the language of EU legislative acts with standard English language. He believes that English exerts pressure on the EU member states languages, which results in regular borrowings from English. The researcher perceives this as a real threat to national languages of world cultures [12].

Despite criticism of such ideas, there are much more adherents of common values of Supremacy of the law, which is proved by the course many countries chose, including Ukraine.

Basic principles of administrative legal proceedings, outlined in regulatory provisions and international norms, which concern linguistic area, are aimed at observance of civil rights and freedoms in various countries.

However, it is worth nothing that the translation quality plays a key role in the very process of administrative legal relations. Researcher V. V. Kim characterized it in the following manner, “Incorrect translation means distortion of questions and answers, as well as contents of testimonies, declarations, and documents” [13].

Administrative court proceedings require precise translation. The outcome of a case in court depends on how much correctly information is rendered by a person who has no command of the language of court proceedings.

The current situation in the national court translation necessitates improvement of the entire organizational procedure of this process. At present, when it concerns translator’s remuneration for participating in an administrative case, some courts refer to Decree No. 710 of July 1, 1996 of the Cabinet of Ministers [14]. But the remuneration amount does not meet actual financial requirements.

A number of judicial panels approached executive and legislative bodies for this matter, but unfortunately, this problem is quite hard to solve for now.

It is utterly dangerous to neglect rules of administrative legal proceedings. In addition to corresponding forewarnings, a prominent lawyer E. Sapir can be cited, “In any kind of reflections and reasoning in disputes, in the course of court trial in a criminal case, anywhere where people come to agreement or consent, no matter what social conventional signs are used, the agreement is reached with the help of linguistic processes or is not reached at all” [15].

As L.S. Aleksandrov stresses, “Adversary justice system is a game where players operate linguistic models — “stories.” Because the world is accessible to humans only in the form of stories, accounts about it. Cognition is in fact reading a text in the form of narration, i.e. it is narrative.” [16, 123–134].

Besides, the judge handling a case should have experience in cases involving foreigners. Depending on the judge’s command of the parties’ languages, he/she is obliged to evaluate the risks of the engaged translator’s incompetence. What is more, the law envisages criminal responsibility of the translator (Article 68 of the Administrative Proceedings Code of July 6, 2005 № 2747-IV [6]).

Ethnic and moral disposition of the judge deciding a case should also be taken in consideration.

If a translator is not on the list of persons taking part in dispute settlement, and translator should participate at the stage of preliminary case study, the judge must rule to appoint another person as translator. After that, the latter should be invited to court, told about their rights and duties, and warned of criminal responsibility for providing deliberately incorrect translation. Then they can be given materials for translation.

Thus, optimization of the administrative court proceedings linguistic principle by means of solving a few crucial issues including personal interest of court translators, their remuneration, and competence of judges, points to the necessity of finding new methods to clear language barriers on the way to improving justice principles both in this country and around the world.

**Conclusions.** Core essence of the administrative legal proceedings linguistic principle is based on domestic and international statutory and regulatory grounds targeted at observing human rights and freedoms.

Current legislation regulates all principles of administrative legal proceedings including linguistic ones. According to Article 10 of the Ukrainian Constitution, Article 12 of the Law “On the judiciary and status of judges,” Article 14, Clause 2 of the Law “On the basics of official language policy,” Article 7, Part 1 of the Civil Procedural Code, Article 15 of the Administrative Proceedings Code of July 6, 2005 No. 2747-IV, language of administrative court proceedings is Ukrainian only.

To solve the linguistic problem, there is a number of national and international decrees directed at overcoming language barriers in administrative courts. In particular, Article 12, Clause 3 of the Ukrainian Law “On the judiciary and status of judges,” Law “On ratification of the European Charter for Regional or Minority Languages,” Article 3, Part 3, Clauses “a” and “f” of the International Covenant on Civil and Political Rights of December 16, 1966, Article 5, Part 2, Clause “e”, Part 3 of the European Convention on Human Rights and Fundamental Freedoms of October 4, 1950 state that it is necessary to provide a court dispute party with a translator in case they do not understand the language of the administrative court proceedings.

Linguistics experts dealing with judicial sphere have two conceptual opinions on how to improve the linguistic principle in action. One vision consists in globalization approach that envisages formation of universal linguistic principles of court proceedings for a number of united countries. The other position inclines toward preserving national linguistic traditions of court proceedings and individuality of the judiciary.

As foreign experience demonstrates, bilingual system in administrative court proceedings can constitute a threat to the national language of court proceedings.

In order to ensure compliance with the linguistic principle of administrative legal proceedings, attention should be focused on the quality, arrangement, and funding of translation, as much as translators’ qualification level.

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*In the article the theoretical basis for the formation of principles of administrative justice in Ukraine and abroad. Determined, especially regulatory and legal framework to ensure the principles of justice and the principle of general language in particular. Selected positive and negative trends in the practice of software speech principle of justice. The ways to improve the linguistic principle of administrative justice in Ukraine.*

*Розглянуто теоретичні основи формування принципів адміністративного судочинства в Україні та за її межами. Визначено особливості нормативно-правових засад забезпечення принципів судочинства взагалі та принципу мови зокрема. Виділено позитивні та негативні тенденції у практиці забезпечення мовного принципу судочинства. Запропоновано шляхи покращення мовного принципу адміністративного судочинства в Україні.*

*Рассмотрены теоретические основы формирования принципов административного судопроизводства в Украине и за ее пределами. Определены особенности нормативно-правовых основ обеспечения принципов судопроизводства вообще и принципа языка в частности. Выделены положительные и отрицательные тенденции в практике обеспечения языкового принципа судопроизводства. Предложены пути улучшения языкового принципа административного судопроизводства в Украине.*

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