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POJĘCIE I STOSUNEK PRAWA ADMINISTRACYJNEGO DO STATUSU ADMINISTRACYJNO-PRAWNEGO MIGRANTÓW

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Adnotacja. Od wielu lat toczy się dyskusja naukowa dotycząca definicji i relacji pojęć statusu prawnego i osobowości prawnej w ogóle, a w szczególności administracyjnego stanu prawnego i sądownictwa administracyjnego.

Pojęcie prawa administracyjnego jest ściśle związane z pojęciami podmiot prawa administracyjnego i podmiot stosunków prawnych administracyjnych.

Powszechnie przyjęte jest rozumienie przez podmioty prawa administracyjnego osób, które posiadają prawa i obowiązki określone w przepisach prawa administracyjnego i mogą wchodzić w stosunki administracyjno-prawne. Jednocześnie, w przeciwieństwie do podmiotu stosunków administracyjno-prawnych, podmiot prawa administracyjnego ma jedynie potencjalną zdolność do wchodzenia w stosunki prawne.

Realizując prawo do swobody poruszania się, obywatel Ukrainy może znajdować się poza jej granicami, w tym przypadku nie bierze udziału w żadnych stosunkach administracyjno-prawnych, to znaczy nie będzie ich podmiotem, jednak zawsze jest podmiotem prawa administracyjnego, ponieważ jego jako obywatela normy administracyjno-prawne zostały obdarzone kompleksem praw i obowiązków.

Ważne dla tego badania jest również skupienie się na tym, że status administracyjno-prawny różni się obecnością praw i obowiązków dla obywateli Ukrainy, cudzoziemców, bezpaństwowców, uchodźców, a zatem osób, które reprezentują właściwie nasz interes naukowy – migrantów.

Status prawny migranta jest zapewniony przez system norm prawnych, za pomocą których Ukraina realizuje swoje prawa. W artykule zaproponowano autorską definicję pojęcia „administracyjna osobowość prawna migrantów" i wyjaśniono jej związek ze statusem administracyjno-prawnym.

Słowa kluczowe: osobowość prawna, status prawny, zdolność prawna, migrant, administracyjna osobowość prawna, status administracyjny.

THE CONCEPT AND INTERRELATION BETWEEN ADMINISTRATIVE LEGAL PERSONALITY AND ADMINISTRATIVE LEGAL STATUS OF MIGRANTS

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Abstract. For many years there has been a scientific discussion on the definition and correlation of the concepts of legal status and legal personality in general and administrative legal status and administrative legal personality in particular.

The concept of administrative legal personality is closely related to the concepts of the subject of administrative law and the subject of administrative legal relations.

It is generally accepted to understand the subjects of administrative law as persons who have the rights and obligations enshrined in the rules of administrative law and can enter into administrative legal relations. In this case, unlike the subject of administrative-legal relations, the subject of administrative law has only the potential ability to enter into legal relations.

Exercising the right to freedom of movement, a citizen of Ukraine may be outside it, in which case he does not actually take part in any administrative legal relations, will not be their subject, however, he is a subject of administrative law always, because as a citizen administrative legal norms endowed him with a set of rights and responsibilities.

Important for this research is also the emphasis on the fact that the administrative legal status is different in terms of rights and responsibilities for citizens of Ukraine, foreigners, stateless persons, refugees and, accordingly, persons who represent our own scientific interest - migrants.

The legal status of a migrant is ensured by a system of legal norms through which Ukraine exercises their rights. The article proposes the author's definition of the concept of "administrative legal personality of migrants" and clarifies its relation with the administrative legal status.

Key words: legal personality, legal status, legal capacity, migrant, administrative legal personality, administrative legal status.

ПОНЯТТЯ ТА СПІВВІДНОШЕННЯ АДМІНІСТРАТИВНОЇ ПРАВОСУБ'ЄКТНОСТІ З АДМІНІСТРАТИВНО-ПРАВОВИМ СТАТУСОМ МІГРАНТІВ

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Анотація. Протягом багатьох років точиться наукова дискусія щодо визначення і співвідношення понять правового статусу та правосуб'єктності в цілому й адміністративного правового статусу та адміністративної правосуб'єктності зокрема.

Поняття адміністративної правосуб'єктності тісно пов'язане з поняттями «суб'єкт адміністративного права» та «суб'єкт адміністративних правовідносин».

Загальноприйнятим є розуміння під суб'єктами адміністративного права осіб, які мають права та обов'язки, закріплені в нормах адміністративного права, і можуть вступати в адміністративно-правові відносини. При цьому, на відміну від суб'єкта адміністративно-правових відносин, суб'єкт адміністративного права володіє лише потенційною здатністю вступати у правовідносини.

Реалізуючи право на вільне пресування, громадянин України може перебувати за її межами, в такому разі він фактично не бере участі в будь-яких адміністративно-правових відносинах, тобто не буде їх суб'єктом, однак суб'єктом адміністративного права він є завжди, оскільки його як громадянина адміністративно-правові норми наділили комплексом прав і обов'язків.

Важливим для даного дослідження є також акцент на тому, що адміністративно-правовий статус є різним за наявністю прав і обов'язків для громадян України, іноземців, осіб без громадянства, біженців та, відповідно, осіб, які представляють власне наш науковий інтерес – мігрантів.

Правовий статус мігранта забезпечується системою юридичних норм, за допомогою яких Україна здійснює реалізацію його прав. У статті запропоновано авторське визначення поняття «адміністративна правосуб'єктність мігрантів» та з'ясовано її співвідношення з адміністративно-правовим статусом.

Ключові слова: правосуб'єктність, правовий статус, правоздатність, мігрант, адміністративна правосуб'єктність, адміністративно-правовий статус.

Introduction. Migrants, as subjects of administrative law, have the potential to enter into administrative relations. It is through administrative legal personality that they can exercise the rights and obligations set out in national executive law. Some issues of administrative legal status of migrants were studied by such scholars as O.M. Bandurko, S.M. Gusarov, V.G. Kravchenko S.F. Konstantinov AV. Olefir, S.Yu. Rimarenko, S.B. Chekhovych and others. However, the issue of the administrative legal personality of migrants has not been studied in detail.

Main part. The purpose of the research is to study of the administrative legal personality of migrants, identification of its components and the range of persons who could potentially enter into administrative legal relations. Therefore, the objectives of this study are to determine the administrative legal personality of the migrant, to distinguish it from the administrative legal status, to develop a unified approach to the definition of these concepts for further use in science. During preparation of this article, the general methods of scientific knowledge, such as analysis, synthesis, abstraction, generalization, induction, deduction, analogy, comparative method, were used.

Presentation of the main research material. The traditional understanding of the concepts of legal status and legal personality is the subject of research in the theory of law and, accordingly, defined by a whole cohort of scholars in this field. This question was investigated in the works of famous scientists in the field of theory of state and law: S.S. Alekseev, E.I. Buryanova, M.V. Vitruk, D.I. Golosnichenko, A.M. Kolodiy, V.L. Kostyuk,

V.M. Korelsky, B.M. Lazarev, A.V. Malko, G.V. Maltsev, N.I. Matuzov, A. Yu. Oliynyk, N.M. Onishchenko, A.V. Panchyshyn, V.A. Patyulin, M.P. Rabinovich, V.M. Selivanov, O.F. Skakun, M.S. Strogovich, O.V. Surilov and others. For a long period of time, they have been conducting a rather large-scale scientific discussion on the definition of the content and relationship of legal personality and legal status.

It can be stated that a clear understanding of the content of legal personality and its interrelation with the legal status or position has not yet been formulated.

It is necessary to support the position of V.L. Kostyuk that "one of the key in modern theory of law is the problem of forming an effective model of legal personality as the most conceptual property of legal entities, which ensures the implementation of legal norms, their activities" (Kostyuk, 2009: 14).

In our opinion, it is important to develop a unified approach to the definition of these concepts and their use in the future in various areas of law, including administrative.

It is more common among legal scholars to believe that the existence of legal personality is a prerequisite for the acquisition and basis of the legal status of individuals.

In our opinion, correctly noted E.I. Buryanova, and her position is shared by A.V. Chub that "legal personality is not equal to legal status, but is seen as its foundation, because legal personality contains a variety of rights and responsibilities that a particular individual may have, in a condensed, "unborn" state. Legal personality and legal status are directly related to the set of rights and responsibilities, but the sign of the first is the potentiality, and the second – the relevance of their use" (Chub, 2020: 57).

Based on this, we will begin our study by revealing the concept and essence of legal personality.

Today, the legal literature discusses various approaches to the definition of "subject of law" and "legal personality". But in the theory of law and in current international and national law, the subject of law is defined by the presence of legal personality, in other words, formally.

Thus, according to Article 16 of the International Covenant on Civil and Political Rights, "everyone has the right to recognition everywhere as a person before the law". That is, a pact recognizes a person as a subject of law regardless of the state in which that person resides, moreover, this provision does not depend on the legal system in which he operates (International Covenant on Civil and Political Rights, 1966: Art. 16).

In the theory of law, legal personality is defined as the ability of a person to be a subject of law, to have rights and responsibilities, to participate in legal relations. However, different views are expressed on the definition of the content of this legal category. Most of the authors do not give legal personality an independent meaning and consider it not as a separate legal and categorical means, but as a generalizing concept that reflects the presence of a participant in a legal relationship of certain legal properties in their inseparable unity (Pundor 2013: 60).

O.S. Ioffe notes that the origins of theoretical ideas about legal personality are closely related to the categories of "legal capacity" and "dispositive capacity". First, according to German doctrine, the term "legal personality" was identified with legal capacity, based on the fact that the subject of law was considered one who may have rights; second, according to French doctrine, the term "legal personality" was considered through the relationship of legal capacity and dispositive capacity (Ioffe, 2000: 84).

In the modern theory of law we find a statement that "the legal personality of individuals and legal entities means the presence of the properties of legal capacity and dispositive capacity" (Sanzharuk).

We cannot agree with the opinion of S.I. Arkhipov that dispositive capacity, as a higher degree of development of legal personality, includes legal capacity as one of its aspects (Arkhipov, 2004: 133).

We believe that legal capacity as well as dispositive capacity are separate, independent and very important components of legal personality, and therefore they cannot contain each other.

In addition, we support the view that the application of such constituent elements as legal capacity and dispositive capacity is possible only to individuals in the study of their legal personality. As for organizations, their legal personality finds its expression in the competence of their bodies, in the set of rights and responsibilities assigned to them to perform the relevant functions (General theory of state and law, 2009: 192).

In the theory of law delictual capacity is most often defined as the ability of a person to be responsible for the offense committed by him (Skakun, 2006: 359).

In the legal literature, one can find different approaches to determining delictual capacity and its place in the structure of legal personality, in particular, it is understood in three aspects: as an element of legal capacity, as an element of dispositive capacity and as an independent element of legal personality (Khutoryan, 2002: 62).

S.S. Alekseev defined delictual capacity as "the property of a person to bear independent legal responsibility for the offenses (torts) committed by him". Regarding the possibility of distinguishing this property as an element of the general structure of legal personality, the scientist took a rather pragmatic position: on the one hand, he believed that for most subjects of law there is no need, and on the other, stressed that "in some cases there is a need separation of delictual capacity" (Alekseev, 1964: 80).

We share, in our opinion, the most common opinion of M.V. Tsvik, O.V. Petryshyn, L.V. Avramenko that "legal personality consists of legal capacity, dispositive capacity and delictual capacity together" (General theory of state and law, 2009: 340).

Analyzing the above definitions, we can conclude that in the modern theory of law has established and prevails the approach according to which the elements of legal personality are legal capacity, dispositive capacity and delictual capacity (and it is more often attributed to dispositive capacity). Legal personality is an interdisciplinary concept, and therefore in relation to a particular branch of law it has its own special meaning.

Important the purpose of our study is to determine the legal status of subject of law. In a narrow sense, it is often understood as the totality of all rights, responsibilities and legitimate interests of subject of law. (General theory of state and law, 2011: 342).

P.M. Rabinovych reveals the legal status as a "complex of rights and legal obligations" (Rabinovych, 1995: 74).

Similarly, Yu.S. Shemshuchenko understands legal status as "a set of rights and responsibilities that determine the legal status of a person, state body or international organization; a comprehensive indicator of the position of a certain stratum, group or individual in the social system, one of the parameters of social stratification" ("Political encyclopedic dictionary", 1997: 225).

That is, these scholars take a narrow approach to defining the meaning of "legal status" only through a set of rights and responsibilities.

Other scholars define legal status in a broader sense and consider it as a system of rights and responsibilities and other legal elements established by regulations and guaranteed by the state.

O.V. Zaychuk and N.M. Onishchenko point out that "legal status is a system of legally established and guaranteed by the state rights, freedoms, legitimate interests and responsibilities of the subject of public relations" (Zaychuk, Onishchenko, 2006: 450).

V.M. Kravchuk and O.M. Yukhymyuk interprets the legal status as "a set of fundamental and inalienable rights, freedoms and responsibilities of man and citizen, as well as the powers of public authorities and local governments, their officials in various spheres of public relations regulated by the Constitution of Ukraine, public and private law" (Kravchuk, Yukhymyuk, 2010: 24).

O.F. Skakun believes that "legal status is the idea of a certain, socially and/ or politically established by law and guaranteed by the state set of rights, freedoms, duties and responsibilities of a person, according to which he coordinates his activities in society" (Skakun, 2006: 85).

It is necessary to agree with the above position that a really important feature that characterizes the legal status is its enshrinement in regulations, in which case it acquires its "legal" definition, while state guarantees eliminate the declarative rights and responsibilities of the person., ensuring their practical implementation.

L.V. Krupnova, in the course of scientific research, concludes that "all degrees of concretization of legal status differ in the levels of detail of the elements of legal status". She notes that "each of the level legal statuses consists of elements of general statuses and according to each level acquire special specific features that constitute the individual legal status of a particular entity**" (**Krupnova, 2010: 116).

A.M. Kolodiy and A.Yu. Oliynyk among the elements of legal status, is distinguished by: "status legal norms and legal relations; subjective rights, freedoms and legal obligations; citizenship; legal principles and legal guarantees; legitimate interests; legal personality; legal responsibility" ("Rights, freedoms and responsibilities of man and citizen in Ukraine", 2008: 129).

Some researchers include the structural elements of legal status: legal norms and principles that establish this status; legal personality; basic rights and responsibilities; legitimate interests; citizenship (or other relationship to the host country – statelessness, foreign citizenship or nationality); legal liability ("General theory of state and law", 2002: 133).

V.M. Korelsky analyzes and defines the legal status as one that "first, has a general, universal character, includes the status of various subjects of legal relations – the state, society, individuals, etc .; secondly, it reflects the individual characteristics of the subjects, their real position in the system of various social relations; thirdly, it cannot be realized without obligations corresponding to rights, without legal responsibility and legal guarantees in necessary cases; fourth, it defines the rights and responsibilities of the subjects in a systematic way, which allows for a comparative analysis of the status of different subjects to open new ways to improve them" (Korelsky, 2002: 130).

Based on scientific developments in the field of legal theory, we turn to the study of administrative legal personality and administrative-legal status.

The concept of administrative legal personality is closely related to the concepts of the subject of administrative law and the subject of administrative legal relations.

It is generally accepted to understand the subjects of administrative law as persons who have the rights and obligations enshrined in the rules of administrative law and can enter into administrative legal relations. In this case, unlike the subject of administrative-legal relations, the subject of administrative law has only the potential ability to enter into legal relations.

Exercising the right to freedom of movement, a citizen of Ukraine may be outside it, in which case he does not actually take part in any administrative legal relations, will not be their subject, however, he is a subject of administrative law always, because as a citizen administrative legal norms endowed him with a set of rights and responsibilities. Similarly, a person is not a subject of administrative-tort relations if he has not committed an administrative offense.

Unlike the subject of administrative legal relations, which in the theory of administrative law is defined as the actual bearer of legal relations, ie he necessarily takes a real part in them, the subject of administrative law acts as a so-called "contender" for this participation. But in order to be recognized as such a "contender" the person concerned must be a potentially capable bearer of subjective rights and responsibilities.

In general, administrative legal personality is understood as the ability of a person to have and exercise directly or through his representative the subjective rights and legal obligations granted to him in the field of public administration.

After analyzing the current scientific research of well-known scholars in the field of administrative law, we can identify three main approaches to the disclosure of the concept and essence of administrative legal personality.

Proponents of the first approach to the definition of administrative legal personality are A.P. Alyokhin, N.M. Konin, B.M. Lazarev, O.I. Kharitonova, who note that it consists of legal capacity and certain rights. As a result, legal personality is identified with the legal status of the subject.

The second approach assumes that the elements of administrative legal personality are administrative legal capacity and administrative dispositive capacity, it is supported by E.V. Dodin, S.V. Kivalov, Yu.M. Kozlov.

According to the third, most common approach, administrative legal personality includes administrative legal capacity, administrative dispositive capacity and administrative delictual capacity.

As already mentioned, this approach is shared by the vast majority of scholars in the field of administrative law. However, there is a lack of consensus on the place of delictual capacity in the structure of legal personality.

Some scholars, in particular D.M. Bahrakh, V.K. Kolpakov, believe that delictual capacity is part of legal capacity, others, in particular, M.V. Kostov, G.I. Petrov – give delictual capacity meaning of independent significance.

A.V. Chub proposes the following definition of administrative legal personality: "it is a legally established legal status of the subject, which potentially allows it to enter into administrative legal relations as a bearer of certain rights and responsibilities". At the same time, importantly, rights and responsibilities, as follows from the definition, are not part of legal personality; its elements are legal capacity, dispositive capacity and delictual capacity as characteristics of the subject that reflect its ability to have rights and responsibilities. It follows that subjective public rights are not direct components of legal personality; the relationship between these categories is much more complex (Chub, 2020: 58–59).

To address the issue of demarcation and the relationship between administrative legal personality and administrative legal status, it is necessary to clarify the approaches to determining the latter.

Regarding the general understanding, important, in our opinion, is the position of L.V. Koval, who notes that the administrative legal status of a citizen is part of the general legal status of citizens, enshrined in the Basic Law (Koval, 1996: 15).

The modern vision of the types of legal status of a citizen is to normatively enshrine his rights, responsibilities, taking into account the circumstances and conditions under which his rights and responsibilities are realized (observed). It is clear that the administrative-legal status is a kind or branch of legal status, which characterizes a person as a subject of administrative law, determining its position in the field of public administration.

The concept of "administrative legal status" in legal science is used in relation to both individuals and legal entities.

T.O. Kolomoyets defines administrative-legal status as "a set of subjective rights and obligations enshrined in the norms of administrative law for a particular body. At the same time, the obligatory sign of the subject's acquisition of administrative-legal status is the presence of specific subjective rights and obligations, which are realized within the framework of both administrative legal relations and outside them" ("Administrative law of Ukraine", 2011: 64).

E.E. Dodina, examining the administrative legal status of public organizations, defines it as "the legal position in relations with the executive branch, governed by the rules of state and administrative law" (Dodina, 2002: 54).

The study of elements of the administrative legal status of individuals has received attention in many scientific works of famous scholars in the field of administrative law. The analysis of these works makes it possible to distinguish between narrow and broad (classical) approaches to determining the elements of administrative legal status of individuals.

A narrow approach to the definition of elements of administrative legal status is characterized by the inclusion of only basic elements, without which in general there can be no legal status. Thus, I.P. Golosnichenko, following this approach, notes that "the content of the administrative-legal status is a set of rights and responsibilities of the person, enshrined in the rules of administrative law" (Golosnichenko, 2005: 198).

M.A. Boyarintseva defines the administrative legal status of a citizen of Ukraine as "established by law and other regulations of the rights and responsibilities of citizens, which are realized through public relations in the field of public administration, and is provided by a system of legal guarantees for participation in public administration affairs and satisfaction of public and personal interests through the activities of state authorities and local governments" (Boyarintseva, 2005: 16).

T.O. Kolomoyets follows the above approach, arguing that the rights and responsibilities that form the administrative legal status, which is part of the general legal status of the person, differ from other rights and responsibilities precisely in that they arise in the field of public administration (Administrative law, 2010: 90).

A. Elistratov adheres to the classical or broad approach in distinguishing the elements of administrative legal status. While studying the legal status of citizens, he drew attention to the fact that only in a state governed by the rule of law do citizens become individuals, and the state builds its relations with them on an equal basis. In fact, this means that in addition to human rights and responsibilities enshrined in the rules of administrative law, it is advisable to pay attention to the guarantees of their implementation and the mechanism of protection of these rights. An important conclusion made by A. Elistratov is that in determining the legal status of a citizen, he pointed to its triple content (negative status, positive status of the person and active status of the citizen) (Elistratov, 2017).

S.G. Stetsenko, who is also a supporter of the classical approach, notes that the concept of "administrative legal status" should be understood as "a set of rights, responsibilities and guarantees of their implementation, which are enshrined in the rules of administrative law". The scientist believes that the basis of administrative-legal status is

administrative legal personality and emphasizes that each subject of administrative law has its own version of its inherent administrative-legal status (Stetsenko, 2007: 87).

V. Zui also emphasizes that the obligatory elements of the administrative-legal status are duties, rights, guarantees of activity and legal responsibility (Zui, 1995: 107–108).

It is important when considering the issue of administrative legal status to clarify its legal regulations. Thus, the legal basis of the administrative legal status of citizens of Ukraine is the Constitution of Ukraine, the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, ratified by Ukraine by the Law of July 17, 1997, and others.

The basis of the administrative legal status of foreigners and stateless persons in Ukraine, in addition to the above, is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, the Convention Relating to the Status of Refugees 1951 and others, as well as bilateral and multilateral international agreements of Ukraine, which determine the peculiarities of the legal status of foreigners.

According to the Constitution and laws of Ukraine, citizens of Ukraine are endowed with full rights and responsibilities recognized and guaranteed by the state. As for foreigners and stateless persons, Art. 26 of the Constitution of Ukraine, Art. 3 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" stipulates that foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine. Exceptions to this rule for foreigners and stateless persons are established by the Constitution of Ukraine, laws or international treaties of Ukraine. (Constitution of Ukraine, 1996: Art. 26; Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", : Art. 3).

It follows from this provision that the administrative and legal status of such persons is similar in content to the status of citizens of Ukraine, but is narrower than the status of citizens of Ukraine. It is a question of depriving such persons of the opportunity to obtain and use rights and perform duties that are related exclusively to belonging to the citizenship of Ukraine (primarily political rights and rights to participate in public administration, the obligation to perform military service, admission to state secrets, etc.). They are also endowed with special tort (Articles 16, 24 of the Code of Administrative Offenses up to the possibility of deportation outside Ukraine). Thus, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" restricts a number of rights of foreigners. This applies to the order of their entry into Ukraine, stay on the territory of Ukraine, as well as transit through its territory, etc. ("Administrative law", 2020: 90–92).

As we can see, from the standpoint of the science of administrative law, which is observed in the relevant scientific studies of administrative legal personality and administrative-legal status, we can conclude that in modern conditions there is no common understanding and definition of these concepts.

It is also important for this study to emphasize that the administrative legal status is different in terms of rights and responsibilities for citizens of Ukraine, foreigners, stateless persons, refugees and, accordingly, persons who represent our own scientific interest – migrants.

The legal status of a migrant is ensured by a system of legal norms through which Ukraine exercises its rights. The peculiarities of the legal status of a migrant include the fact that he is established by the host state, and not by the state of his affiliation.

The legal literature expresses the view that the scope of legal capacity of citizens of Ukraine and foreigners is the same (Horban, 2009: 63). However, the legislation of Ukraine may establish certain exceptions and some restrictions on the legal capacity of foreigners.

For example, at the level of citizens of Ukraine, only those foreigners who permanently reside in Ukraine (have obtained an immigration permit and issued a permanent residence permit) are entitled to state assistance, such a rule is provided for in the Law of Ukraine "On State Assistance to Families with children". (Law of Ukraine "On State Assistance to Families with children", 1993).

Thus, the fullness of the legal capacity of foreigners largely depends on the legal grounds for their stay in Ukraine.

The position of the Ukrainian legislator on the establishment of restrictions on the rights and obligations of foreigners compared to the scope of rights and obligations of citizens of Ukraine are consistent with international legal instruments. Thus, in Art. 2 of the International Covenant on Economic, Social and Cultural Rights states: "Developing countries may, with due regard for human rights and their national economies, determine the extent to which they will guarantee the economic rights recognized in the Covenant to persons who are not their nationals" (International Covenant on Economic, Social and Cultural Rights, 1966: Art. 2).

In addition, we agree with the position of SF Konstantinov that the legal status of permanently residing foreigners is naturally broader than that of foreigners who are temporarily on the territory of Ukraine (Konstantinov, 2002: 28).

An interesting position is expressed by SB Chekhovych on the attribution to the constituent elements of the legal personality of migrants**:** migration capacity, migration dispositive capacity and migration delictual capacity.

According to S.B. Chekhovych, "Migration capacity means the ability to have migration rights and responsibilities, which is recognized in Ukraine equally for everyone, regardless of race, color, political, religious and other beliefs, gender, ethnic and social origin and property status. It arises from the moment of a person's birth and ends with his death" (Chekhovych, : 28).

But in our opinion, migration capacity, which is established by legal acts of different branches of law, in fact can be defined as the general legal capacity of the migrant, in other words, these two concepts are identical. What can not be said about the administrative capacity of the migrant, because it applies only to a certain range of rights in

the executive branch. Similarly, it is impossible to equate migratory dispositive capacity with administrative-legal, and migratory delictual capacity with administrative tort.

Moreover, taking into account certain properties and features, it is necessary to consider separately the legal capacity of such migrants as citizens, foreigners, stateless persons, refugees, internally displaced persons.

The legal status of Ukrainian citizens, foreigners and stateless persons is different. For example, foreigners are endowed with a special legal status in accordance with the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons". At the same time, there is a special category among citizens - internally displaced persons, whose legal status is determined by the provisions of the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons".(Law of Ukraine 2On the Legal Status of Foreigners and Stateless Persons"; Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons")

In turn, among foreign citizens, refugees have a special legal status in accordance with the "Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection". ("Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection", 2012).

According to V.M. Dashkovskaya, "the difference in the legal status of persons lies, firstly, in the differences related to natural factors (the status of a child, pensioner, woman) and, secondly, in the differences related to legal factors" (General theory of state and law, 2011: 343), in our case it is the status of a migrant.

In turn, the administrative legal personality of migrants largely depends on the natural factors that are inherent in a particular person. There is a special administrative legal personality of migrants: children, people with disabilities, women who have children, in particular, pregnant women, pensioners and the elderly, etc.

The legal status of a foreigner also has its own characteristics. In particular, this applies to the moment of his legal capacity on the territory of Ukraine.

In our opinion, the position on the allocation of limited legal capacity of a migrant is contradictory.

Thus, according to O.M. Bandurki, "a foreign citizen who arrived in our country first has a limited legal capacity (at the time of obtaining permission to enter and processing documents at the embassy or consulate), then full (from the moment of arrival in the country). Termination of legal capacity occurs in case of departure of a foreign citizen outside the state or change of citizenship" (Bandurka, 2011: 145–146).

But from the standpoint of the theory of law and administrative law, there is a general rule that the legal capacity of any individual comes at birth and terminates in connection with his death. General and special legal capacity (which includes administrative) is characterized by the fact that it is inseparable from the person, in other words, a person can not be deprived of legal capacity, just as it can not be "taken away" or "limited".

The provision that a person's legal capacity begins at birth and ends with his death is enshrined in the rules of international law. In particular, the analysis of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Convention for the Protection of Human Rights and Fundamental Freedoms of 1950) makes it possible to conclude that civil and political human rights have a very positive origin and belong to everyone from birth.

We find the same confirmation in the norms of the national Ukrainian legislation. Thus, according to Art. 25 of the Civil Code of Ukraine "Civil legal capacity of an individual arises at the time of his birth and terminates at the time of his death" (The Civil Code of Ukraine, 2003: Art. 25).

To better understand the legal personality of migrants, it is necessary to consider their dispositive capacity.

Scholars in the field of migration law distinguish the concept of "migration dispositive capacity", which means "the ability of an individual to carry out legal actions independently, ie of their own free will or conscious desire to enter into migration relations, acquire migration rights, exercise them, perform duties". It is emphasized that not all able-bodied individuals are able to migrate. For example, the migration dispositive capacity of such a category of migrants as immigrants is carried out according to the established national regime (Chekhovych, 2004: 28).

It is necessary to agree with the position that migration dispositive capacity can be partial or full. Full dispositive capacity comes from the age of majority – 18 years. Partial dispositive capacity occurs in case of departure outside Ukraine. For example, in accordance with Part 2 of Art. 4 of the Law of Ukraine "On the procedure for departure from Ukraine and entry into Ukraine of citizens of Ukraine" registration of a child's travel document is carried out on the basis of a notarized request of parents or legal representatives of parents or children in case of independent departure abroad. The application shall contain information about the child, as well as the absence of circumstances restricting the right to travel abroad in accordance with the above Law (only for children aged 14 to 18). When one of the parents does not consent to the departure of a minor citizen of Ukraine abroad, permission for such departure may be obtained on the basis of a court decision. (Law of Ukraine "On the procedure for leaving from Ukraine and entering into Ukraine of citizens of Ukraine", 1994 : Part 2 of Art. 4).

One more examples, minors are denied access to the exclusion zone in accordance with the provisions of the Order of the Ministry for Emergencies № 1157 of November 2, 2011 "On approval of the Procedure for visiting the exclusion zone and the zone of unconditional (compulsory) resettlement." (Order of the Ministry for Emergencies № 1157 of November 2, 2011 "On approval of the Procedure for visiting the exclusion zone and the zone of unconditional (compulsory) resettlement).

Certain restrictions are provided for citizens of Ukraine who have been declared incompetent by a court, leaving Ukraine for them may be allowed on the basis of a notarized request of their legal representatives or by court decision, in accordance with Art. 10 of the Law of Ukraine "On the procedure for leaving Ukraine and entering Ukraine for citizens of Ukraine". (Law of Ukraine "On the procedure for leaving Ukraine and entering Ukraine for citizens of Ukraine", 1994: Art. 10).

Without denying the possibility of allocating migratory delictual capacity, we also draw attention to the fact that it was already mentioned above that it cannot be equated with the administrative delictual capacity of migrants.

Scholars in the field of migration law propose "migration delictual capacity to understand the ability of the subject to bear a certain type of legal liability (civil, criminal, disciplinary, administrative, legal) for violation of migration law" (Migration law of Ukraine, 2016: 37). Whereas, the administrative delictual capacity of migrants concerns the prosecution for committing administrative offenses (misdemeanors). And this type of legal liability is the most common in relation to migrants.

In our opinion, administrative delictual capacity depends on which migrant has committed an administrative offense. Thus, only in relation to foreigners and stateless persons such a specific type of administrative penalty as forced expulsion can be applied. This provision does not apply to migrants – internally displaced persons, because they are citizens of Ukraine and, accordingly, are held administratively liable on general grounds.

Conclusions. Based on the reserch, in our opinion, the administrative legal personality of migrants can be defined as enshrined in international and national law the legal status of citizens, foreigners, stateless persons, refugees, internally displaced persons who carry out spatial displacement (change of residence or stay), which potentially allows them to enter into administrative legal relations and be holders of certain rights and responsibilities in the field of public executive and administrative activities.

Having analyzed various scientific views on the definition of concepts of interest to us, we believe that the presence of administrative legal personality of migrants is a prerequisite for the acquisition and basis of their administrative legal status.

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W SPRAWIE OKREŚLENIA PODSTAW PRAWNYCH OCHRONY DANYCH OSOBOWYCH W DZIAŁALNOŚCI SĄDU

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Adnotacja. W artykule dokonano analizy zabezpieczenia prawnego w działalności sądu. Przeanalizowano opinie naukowców dotyczące treści pojęcia „dane osobowe".

Uzasadniona jest potrzeba utworzenia specjalnej jednostki notyfikowanej lub wyznaczenia osoby odpowiedzialnej, która organizuje prace związane z ochroną danych osobowych podczas ich przetwarzania, a także upublicznienie tych informacji, ponieważ sąd jest instytucją, w której gromadzone i przechowywane są duże ilości danych osobowych.

Stwierdzono, że do obejmowania stanowiska sędziego przewidziano specjalną procedurę powoływania, która przewiduje pewne ujawnienie danych osobowych kandydata. Podczas składania dokumentów kwalifikacyjnych kandydat wyraża pisemną zgodę na gromadzenie, przechowywanie, przetwarzanie i wykorzystywanie informacji o sobie jako kandydacie, jednak w żaden sposób nie o innych osobach, które są jego krewnymi i/lub znajomymi. Dlatego udowodniono zasadność wprowadzenia wyraźnego rozróżnienia przez ustawodawcę danych osobowych kandydata na sędziego i danych osobowych związanych z nim osób poprzez uzyskanie od takich osób odrębnej zgody na gromadzenie, przechowywanie, przetwarzanie i wykorzystywanie informacji o sobie.

Słowa kluczowe: dane osobowe, informacje, informatyzacja, przetwarzanie informacji, zgoda na przetwarzanie danych osobowych.

LEGAL BASIS OF PERSONAL DATA PROTECTION IN THE JUDICIARY

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Abstract. The article analyzes the legal support in the judiciary. The opinions of scientists on the content of the concept of personal data are analyzed. Defined the need to create a special authorized unit or person who organizes the work related to the personal data protection during processing and publication of this information because the court itself is the institution where a large amount of personal data is collected and stored.

Stated that a special procedure for the appointment on the position of a judge is provided and it includes certain disclosure of personal data of the candidate. During submission of documents by participants of the selection, the candidate