УДК 342.9:347.91](477)
DOI https://doi.org/10.24144/2788-6018.2025.01.156

ОСОБЛИВОСТІ ТЛУМАЧЕННЯ ОЦІНОЧНИХ ПОНЯТЬ АДМІНІСТРАТИВНОГО СУДОЧИНСТВА: АНАЛІЗ ДОКТРИНАЛЬНИХ ПІДХОДІВ

Білоус О.В.,
доктор юридичних наук,
суддя Верховного Суду України
м. Київ
ORCID: 0000-0002-9755-6800

Білоус О.В. Особливості тлумачення оціночних понять адміністративного судочинства: аналіз доктринальних підходів.

У статті автором зроблено спробу визначити крізь призму аналізу доктринальних підходів особливості тлумачення оціночних понять адміністративного судочинства. Підкреслено, що актуальність цього дослідження зумовлена необхідністю глибшого теоретичного осмислення доктринальних підходів до тлумачення оціночних понять у адміністративному судочинстві. Доктринальний аналіз таких понять, як «обґрунтованість», «розсуд», «належність доказів», «пропорційність», має важливе значення для формування стабільної судової практики та підвищення рівня правової визначеності.

Наголошено, що важливість дослідження також полягає у тому, що адміністративні суди здійснюють контроль за діяльністю органів державної влади, забезпечуючи дотримання принципів законності та справедливості. Відтак, правильне розуміння та узгоджене застосування оціночних понять сприятиме ефективному захисту прав громадян, прозорості судового процесу та зміцненню довіри до судової влади. Аналіз доктринальних підходів у цьому контексті дозволить розкрити різні методологічні засади, що використовуються у тлумаченні таких понять, та сприятиме їх систематизації в науковій і судовій практиці.

Підкреслено, що в цілому поділяючи думки згаданих у статті вчених щодо проблем тлумачення оціночних понять адміністративного судочинства, і запропоновані окремими із них шляхи їх вирішення, відзначено, що переконання автора будь-яка нормативна стандартизація тлумачення оціночних понять, закріплення уніфікованих підходів до їх використання та інші аналогічні кроки жодним чином не будуть сприяти вирішенню проблем, пов'язаних з їх правильною та ефективною інтерпретацією. Наголошено на тому, що законодавче унормування таких питань суперечить правовій природі оціночного поняття, суть якого головним чином зводиться до того, щоб у тій чи іншій спірній ситуації суд, маючи належні (фактично надані адміністративним розсудом) дискреційні повноваження, міг сприяти не тільки захисту прав і свобод особи, але і їх ефективній реалізації.

Ключові слова: оціночні поняття, адміністративне судочинство, доктринальні підходи, судовий розсуд, правова визначеність, дискреційні повноваження.

Bilous O.V. Peculiarities of the interpretation of evaluative concepts in administrative proceedings: analysis of doctrinal approaches.

The author of the article attempts to determine, through the lens of doctrinal approaches, the peculiarities of interpreting evaluative concepts in administrative proceedings. It is emphasized that the relevance of this study is driven by the need for a deeper theoretical understanding of doctrinal approaches to the interpretation of evaluative concepts in administrative adjudication. A doctrinal analysis of concepts such as "justification," "discretion," "admissibility of evidence," and "proportionality" is of significant importance for the formation of stable judicial practice and the enhancement of legal certainty.

The study underscores that the significance of this research also lies in the fact that administrative courts exercise control over the activities of state authorities, ensuring adherence to the principles of legality and justice. Consequently, the proper understanding and consistent application of evaluative concepts will contribute to the effective protection of citizens' rights, the transparency of judicial proceedings, and the strengthening of public trust in the judiciary. The analysis of doctrinal approaches

in this context allows for an exploration of various methodological foundations used in the interpretation of such concepts and facilitates their systematization in both academic and judicial practice.

It is highlighted that, while generally supporting the views of the scholars cited in the article regarding the issues of interpreting evaluative concepts in administrative proceedings and the solutions proposed by some of them, the author asserts that any normative standardization of the interpretation of evaluative concepts, the establishment of unified approaches to their application, and other similar measures will in no way contribute to resolving the problems associated with their proper and effective interpretation. It is emphasized that legislative regulation of such matters contradicts the legal nature of evaluative concepts, whose essence primarily lies in ensuring that, in any given dispute, the court exercising the discretionary powers granted through administrative discretion is able to facilitate not only the protection of individual rights and freedoms but also their effective realization.

Key words: evaluative concepts, administrative proceedings, doctrinal approaches, judicial discretion, legal certainty, discretionary powers.

Introduction.

The development of administrative adjudication in Ukraine necessitates a detailed analysis of legal categories applied in administrative proceedings. One such category is evaluative concepts, which are used in legislation and judicial practice to provide flexible regulation of legal relations and ensure an individualized approach to each case. However, their ambiguity and the absence of clear legislative criteria often create difficulties in their interpretation, which may affect the consistency of judicial practice and legal certainty.

The relevance of this study is driven by the need for a deeper theoretical understanding of doctrinal approaches to the interpretation of evaluative concepts in administrative adjudication. A doctrinal analysis of concepts such as "justification," "discretion," "admissibility of evidence," and "proportionality" is of critical importance for the formation of stable judicial practice and the enhancement of legal certainty.

The significance of this research also lies in the fact that administrative courts exercise oversight over the activities of public authorities, ensuring compliance with the principles of legality and justice. Accordingly, a proper understanding and consistent application of evaluative concepts will contribute to the effective protection of citizens' rights, the transparency of judicial proceedings, and the strengthening of public trust in the judiciary. The analysis of doctrinal approaches in this context will allow for an exploration of various methodological foundations employed in the interpretation of such concepts and will facilitate their systematization in both academic and judicial practice.

Thus, the study of the peculiarities of interpreting evaluative concepts in administrative adjudication through the lens of doctrinal approaches represents an essential step toward improving the administrative judicial process, enhancing legal certainty, and ensuring the coherence of judicial practice in Ukraine.

Purpose and objectives.

The purpose of this article is to determine, through the analysis of doctrinal approaches, the peculiarities of interpreting evaluative concepts in administrative adjudication.

Research methods.

The logical-semantic method was employed to refine the conceptual framework, particularly by clarifying the essence of terms such as "evaluative concept," "evaluative concept in administrative adjudication," and "interpretation of legal norms."

Modeling, analysis, and synthesis methods were utilized to develop proposals for improving scientific approaches in this area. The grouping method and the system-structural approach facilitated the generalization of doctrinal scientific perspectives on the given issue.

The complex nature of the research object necessitates the application of a wide range of scientific approaches, including the fundamental approach, the organic unity of theory and practice, the combination of critical and rational analysis, the comparative-retrospective approach, as well as the unity of logical and systemic approaches.

Literature review.

It should be emphasized that the issue of evaluative concepts in the norms of administrative procedural law has been actively explored by Ukrainian scholars specializing in administrative law. In particular, these issues have been and continue to be the subject of research by scholars such as V.B. Averyanov, V.M. Bevzenko, T.O. Kolomoiets, V.K. Kolpakov, A.T. Komziuk, O.V. Konstantiy, Ye.V. Kurinnyi, O.I. Kostenko, D.V. Luchenko, P.S. Liutikov, H.V. Moyseyenko, R.S. Melnyk, A.O. Selivanov, S.H. Stetsenko, and others.

Results.

In legal literature, there is no unanimous approach to defining the essence and content of evaluative concepts. V. V. Ignatenko asserts that evaluative concepts are those whose content generalizes "typical features of certain legally significant phenomena" [1, p. 9].

T.V. Kashanina defines this category as follows: "An evaluative concept in law is a provision expressed in legal norms (a legislative prescription) that establishes the most general features, properties, qualities, connections, and relationships of various objects, phenomena, actions, and processes ..." [2, p. 63].

V.M. Kosovych argues that a legally evaluative concept is an abstract characteristic expressed in a legal norm that reflects the social (personal, group, etc.) significance of real or potential facts. This characteristic must necessarily be concretized during its application or implementation, thereby ensuring the legal response of the state to all individualized facts possessing the significance established in the legal norm [3, p. 43].

O.V. Verenkiotova, in turn, formulates the definition of evaluative concepts in both a broad and a narrow sense. Specifically, an evaluative legal concept is a notion (an abstract idea) enshrined in legal norms that reflects various empirical properties of phenomena by establishing their legally significant types. This, in turn, conditions the exercise of individual sub-normative regulation and the concretization of social relations or the independent assessment of a specific situation by the law enforcement entity (broad understanding). An evaluative concept of a normative legal act is a general prescription embedded in a legal norm, the content of which does not contain a clearly defined or finalized system of characteristics, thereby necessitating individual sub-normative regulation by the law enforcement entity through discretionary assessment within a specific legal context (narrow understanding) [4, p. 14].

O.I. Kostenko, who specifically analyzes evaluative concepts (it is worth noting that the scholar considers it necessary to use the term "assessment concepts") in administrative legislation as a particular issue of its interpretation, emphasizes their structural complexity. The administrative law scholar identifies both legal and non-legal characteristics of these concepts.

The legal characteristics include:

- A concept that is not definitively defined by the legislator or another public administration body;
- It is clarified and specified through law enforcement practice;
- It implies judicial and/or administrative discretion;
- It carries a normative burden;
- It enables sub-normative regulation, considering the specifics of a particular administrative case or situation.

In contrast, the non-legal characteristics identified by O. I. Kostenko include:

- Logical aspects (an open structure of the concept's content and an undefined scope);
- Contextualization in each specific case;
- Epistemological aspects (uncertainty regarding the facts enshrined in such concepts);
- Linguistic aspects (designation through words or phrases that are predominantly commonly used terms).

Based on these characteristics, the Ukrainian researcher defines evaluative concepts in administrative legislation as concepts enshrined in administrative law norms that take the form of specific articles within individual normative legal acts. Their content does not contain a clearly defined or finalized set of characteristics, necessitating their concretization in each individually determined case through judicial and/or administrative discretion by the relevant law enforcement entity [5, pp. 154-155].

The research conducted by H.V. Moyseyenko is the most relevant to our subject matter. Based on the generalization of numerous scholarly opinions regarding the definition and characteristics of evaluative concepts, the author outlines a list of permanent features of evaluative concepts in administrative adjudication and formulates their definition. According to the scholar, the features of evaluative concepts in administrative adjudication include the following:

1. The number of features that form the content of an evaluative concept remains constant, but these features are inherently vague and not entirely precise. For instance, considering the practical ability to determine and specify an unspecified address of the respondent in a statement of claim, one judge may deem the period for leaving the claim without movement to be reasonable, while another may not.
2. Evaluative concepts are abstract in nature, meaning their definitions are derived through abstraction or the exclusion of insignificant characteristics, properties, and attributes. In other words, an abstract concept carries an abstract semantic load, without detailing irrelevant aspects. Evaluative legal concepts capture the most general features of phenomena.
3. The concretization of evaluative legal concepts, as well as the identification of phenomena and facts within their scope concerning the legislative context, is carried out through assessment in the process of law enforcement. That is, the factual circumstances of an administrative case, as well as other factors (e.g., moral considerations), serve as the basis for concretizing an evaluative concept

by assessing its essential degrees and correlating them with specific life circumstances (e.g., the reasonableness or unreasonableness of missing a procedural deadline).

4. The accuracy and correctness of defining the content of evaluative concepts in administrative adjudication depend not only on the specific circumstances of the case but also on the legal consciousness, professional competence, and degree of procedural independence of the law enforcement official (typically, an administrative court judge).

5. Evaluative concepts do not possess an exclusively administrative-procedural nature but rather a mixed, predominantly legal-ethical (moral-legal) character. Evaluative administrative-procedural concepts sometimes overlap with moral categories, such as good faith, reasonableness, proportionality, and timeliness. Due to this, such assessments may acquire an axiological character.

6. The content of an evaluative concept in administrative adjudication is essentially determined by the law enforcement entity (typically an administrative court) within the framework of administrative discretion, as outlined by the Code of Administrative Procedure of Ukraine and through the application of the imperative method of legal regulation.

7. The purpose of applying evaluative concepts in administrative adjudication is to grant the law enforcement entity the minimally necessary powers to maximize consideration of the individual circumstances of a case and to effectively adapt the administrative-procedural norm containing the evaluative concept to a specific life situation [6; 7, pp. 98–100].

Furthermore, the researcher substantiates the position that practical issues in the interpretation of legislation containing evaluative concepts in administrative adjudication can be conditionally divided into three groups: (1) issues related to the object and subject matter of interpretation, including the multiplicity and diversity of normative legal acts, including those from different legal branches; the large number of interpretative acts issued by the Higher Administrative Court of Ukraine; the existence of a significant number of decisions by the European Court of Human Rights (ECtHR), lack of systematization, and absence of a clear mechanism for considering ECtHR rulings when issued in cases involving states other than Ukraine; the continuous updating of legal terminology and general absence of official definitions, including terms borrowed from European legislation; the ambiguity of the grounds for utilizing legal expertise as a resource, among other factors; (2) Issues related to the interpreting subject, which, despite the professional nature of judicial interpretation, include variations in the professional training of judges; differences in legal consciousness, ethical standards, and general personal development, all of which contribute to diverse interpretative approaches to the same legal provisions; (3) Issues related to standardization and methodology of interpretation, such as the absence of clearly defined standards for assessing evaluative concepts; the diversity of methods for their fixation; the predominantly fragmented and, at times, contradictory nature of legislative provisions containing evaluative concepts, particularly in light of interdisciplinary legal specificities [8, p. 11].

What is most notable is that H.V. Moyseyenko not only outlines the existing issues in the interpretation of evaluative concepts but also proposes solutions to address them. In particular, the researcher suggests: (a) systematizing the practice of the European Court of Human Rights (ECtHR) at the level of the Ministry of Justice of Ukraine, selecting the sectoral characteristic of legislation as the optimal criterion; legislatively establishing the obligation of authorized state bodies to consider ECtHR case law regarding other states in their professional activities, with a focus on preventing legal challenges to law enforcement acts; clearly defining the principles of applying scientific-legal expertise (at the level of the Law of Ukraine "On Scientific-Legal Expertise"), including in the process of legislative interpretation; (b) Revising the principles of professional training and retraining of judges, particularly by increasing the number of courses directly related to developing skills and competencies in legislative interpretation, including the interpretation of evaluative concepts, and enhancing the monitoring of professional training levels; intensifying efforts to summarize judicial practice in administrative cases involving legislative interpretation, preparing scientific-methodological guides for judges, and creating educational video materials with model case studies; strengthening the role of civil society and judicial self-governance in monitoring adherence to ethical standards for judicial appointments and judicial conduct in professional activities; (c) Developing and adopting the Law of Ukraine "On Normative Legal Acts", which should establish a unified approach to the use of common evaluative concepts across all legal fields; regulating terminology usage to avoid ambiguous, outdated, rarely used, foreign words, and professional jargon; adapting the terminological framework of national legislation to the standards of European Union law; and explicitly stipulating that the evaluation of relevant provisions should be conducted based on standards—normatively established lists of approximate characteristics inherent in facts, actions, and decisions, which the interpreting entity uses to compare with the circumstances of a real case [8, p. 13].

Discussion.

While generally supporting the views of the aforementioned scholars regarding the issues of interpreting evaluative concepts in administrative adjudication and the solutions proposed by some of them, we emphasize that, in our opinion, any normative standardization of the interpretation of evaluative concepts, the establishment of unified approaches to their application, and other similar measures will in no way contribute to resolving the problems associated with their accurate and effective interpretation.

It appears that the legislative regulation of such matters contradicts the legal nature of evaluative concepts, the essence of which primarily lies in ensuring that, in any given dispute, the court exercising its discretionary powers granted through administrative discretion is able to facilitate not only the protection of individual rights and freedoms but also their effective realization. As noted earlier, this is one of the fundamental requirements of the domestic system of judicial protection, a criterion of its effectiveness, and a prerequisite for aligning with the best European standards of judicial protection.

Of course, both judicial practice and the numerous scholarly studies based on it confirm a significant number of procedural errors and abuses, caused either by deliberate misinterpretation or erroneous understanding of the content of a particular evaluative concept. However, the resolution of these problems does not primarily depend on an attempt to normatively generalize the rules for interpreting evaluative concepts, but rather on the same subjective and objective factors we have previously outlined—the proper and systematic application of ECtHR case law by domestic courts in the adjudication of public law disputes.

First and foremost, this requires enhancing the professional training of judges, creating conditions for recruiting highly moral professionals who adhere to universally recognized ethical standards of the legal profession and uphold fundamental legal values.

Conclusions.

Finally, it should be noted that all these organizational conditions and measures primarily depend on the quality of legal education in the country, its competitiveness, and its alignment with global educational practices in legal training. In general, when discussing the field of legal education as a prerequisite for implementing the best European human rights protection standards within Ukraine's legal system, it is essential to acknowledge the overall rather low level of training for future legal professionals, an issue that requires urgent resolution.

Despite the martial law regime, it is already necessary to lay at least a conceptual foundation for positive and, most importantly, effective transformations in the field of higher legal education.

REFERENCES:

1. Ignatenko, V.V. (1989). *Otsenochnye ponyatiya v zakonodatel'stve ob administrativnoy otvetstvennosti* [Evaluative concepts in legislation on administrative liability] (Candidate of Legal Sciences dissertation). Sverdlovsk, Russia.
2. Kashanina, T.V. (1974). *Otsenochnye ponyatiya v sovetskom prave* [Evaluative concepts in Soviet law] (Candidate of Legal Sciences dissertation, Specialization 12.00.01). Sverdlovsk, Russia.
3. Bezrukov, S.S. (2001). *Otsenochnye ponyatiya i terminy v ugolovno-protsessual'nom zakonodatel'stve* [Evaluative concepts and terms in criminal procedural legislation] (Candidate of Legal Sciences dissertation, Specialization 12.00.09). Moscow, Russia.
4. Verenkiotova, O.V. (2013). *Otsinochni ponyattya v pravovykh akhtakh: teoriya ta praktyka realizatsiyi* [Evaluative concepts in legal acts: Theory and practice of implementation] (Abstract of the Candidate of Legal Sciences dissertation, Specialization 12.00.01). Kyiv, Ukraine.
5. Kostenko, O.I. (2011). *Tlumachennya aktiv administratyvnoho zakonodavstva* [Interpretation of acts of administrative legislation] (Candidate of Legal Sciences dissertation, Specialization 12.00.07). Zaporizhzhia, Ukraine.
6. Moyseyenko, G.V. (2015). *Zagalnoteoretychnyy analiz katehoriyi «dokazy» yak osnovy ponyatiynoho aparatu administratyvnoho sudochynstva Ukrayiny* [General theoretical analysis of the category «evidence» as the basis of the conceptual apparatus of administrative proceedings in Ukraine]. In *Suchasnyy stan i perspektyvy rozvytku derzhavy i prava: Materialy mizhnarodnoyi naukovo-praktychnoyi konferentsiyi* (pp. 89-90). Lviv, Ukraine: Hromadska organizatsiya «Tsentr pravnychykh initsiatyv.»
7. Moyseyenko, G.V. (2017). *Otsinochni ponyattya v administratyvnomu sudochynstvi Ukrayiny* [Evaluative concepts in administrative proceedings of Ukraine] (Candidate of Legal Sciences dissertation, Specialization 12.00.07). Zaporizhzhia, Ukraine.
8. Moyseyenko, G.V. (2017). *Otsinochni ponyattya v administratyvnomu sudochynstvi Ukrayiny* [Evaluative concepts in administrative proceedings of Ukraine] (Abstract of the Candidate of Legal Sciences dissertation, Specialization 12.00.07). Zaporizhzhia, Ukraine.