

A PERSON VS THE STATE: STUDYING ACCESS TO JUSTICE

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Annotation. *The purpose of this article is to expand the access to justice research agenda by focusing on a person's identity in dispute with state authority. Keeping in mind that everyone should be able to challenge governmental actions and decisions adverse to their rights or interests, in-depth research on access to justice in "a person vs the state" disputes which takes place in courts of administrative jurisdiction, is needed. The methodology of the research acknowledges the unavailability of statistical data about the litigants, and the finding of the study which shows that different groups defended their rights with varying degrees of success. Thus, an innovative approach to the analysis of the Supreme Court judgements was used. It envisions leaving aside legal issues such as statutory interpretation, and instead examines the judgements through the lens of litigant's characteristics. The findings show that the judgements of the Administrative Court of Cassation within the Supreme Court reflect the diversity of characteristics of persons who apply to administrative courts, including categories directly named in the Constitution of Ukraine as well as not specifically mentioned in it, such as war veterans, IDPs, etc. The financial status of the litigants varies from low-income to quite wealthy, and a certain category of plaintiff is not limited to one type of specific legal problem. For example, "property owners" challenge the decisions of state agencies in a wide range of areas: taxation, urban planning, social benefits, freedom of movements, etc. However, the vast majority of "a person vs the state" disputes concern the refusal to provide some benefits rather than action against a violation of human rights and fundamental freedoms. This can be seen as a Soviet legacy to perceive the state as a welfare provider. Following the people-centered approach to access to justice is essential to reorient the court statistics from "cases and files" to litigants and their characteristics which allow to relay on data to find out whether there is any connection between some features (characteristics) of litigants and types of lawsuits.*

Key words: *access to justice, a person, state authority, people-centered approach, administrative courts.*

1. Introduction.

The importance of building trust and countering mistrust between people and the institutions that serve them, including across legal and justice sector, was acknowledged during the *Global Dialogue of Justice Leaders* on December 2021. Justice Leaders endorsed the *Riga Justice Agenda "Transforming justice for a vibrant social contract"*, which emphasized that countries need to work towards transforming justice systems by putting people at the centre. Transformation of justice systems needs to be grounded in empirical data on people's justice needs and structural injustices. Responsive strategies, management approaches and capacity building should be in place to ensure transformation. Justice actors need to increase their understanding of what the most common justice problems are, who faces them, what impact they have, how they are addressed, how people experience justice pathways and what works to resolve and prevent justice problems [1]. In this context, increasing access to justice is necessary to bridge the current gap between people and institutions, bringing justice closer to the citizens and reducing bias in justice processes and procedures [2, p. 5].

Access to justice, as a concept, encompasses all the elements needed to enable people to identify and manage their everyday legal needs and address their legal problems, seek redress for their grievances, and demand that their rights be upheld [3, p. 4]. The landmark *Report on The Rule of Law*, adopted by

the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011), clearly stressed, that “[e]veryone should be able to challenge governmental actions and decisions adverse to their rights or interests. Prohibitions of such challenge violate the rule of law” [4, para. 53]. In Ukraine, in case of violation or restriction of the person’s rights or legitimate interests by a state (any state or municipal agency or their officials), everyone can challenge such decisions, actions or inactions in an administrative court. So, keeping in mind that it is an administrative court in which people seek protection from violations of their rights by the state and its agents, there is a need for in-depth research on access to justice in administrative courts.

The trial in administrative courts, however, has some features that distinguish it from the civil and other jurisdictions. First, an administrative court not simply resolves the dispute between a private person and a state authority on the basis of the evidence presented by the parties, but in doing so it is guided by the principle of “official clarification of the circumstances of the case”. That means that an administrative court can demand evidence on its own initiative (para 4. Art. 9 of the Code of the Administrative Proceedings [5], hereafter – the CAP) and initiate other actions necessary for clarification of the circumstances of the case. It also authorized to go beyond plaintiff’s requests, if the court finds it necessary for effective protection of the rights and legitimate interests of a person from violations by state authorities (para 2 Art. 9 of the CAP). Second, unlike in civil trials with a classic adversarial procedure, which requires each party to prove the circumstances it refers to, in administrative courts – regardless of who initiates the case – it is the state (state agencies or officials) that is obliged to justify its decision, action or inaction. In other words, regardless of whether a person is the plaintiff or a defendant (when a state agency has filed a lawsuit against a person), in every case the state agency bears the burden of proving that the state acted lawfully, in accordance with the law and within the limits of its authority.

Such a combination of the principle of official clarification of the circumstances of the case according to the para 4. Art. 9 of the CAP [5], mentioned earlier, and shifted burden of proving the lawfulness of the decision to the state authority makes the courts of administrative jurisdiction more people-oriented compared to courts dealing with civil cases where two private parties involved.

The jurisprudence of administrative courts, therefore, is not only an important source of information about legal regulation in a certain sphere that caused a legal dispute, or about certain conclusions of the Supreme Court (so-called “legal position”), but also, it allows to find out certain established institutional practice of the state authorities and their officials. Also, the review of judgments in administrative cases may enlighten of how such institutional practices might relate to violation to people’s rights and protected interests, the nature of legal problems people face in their relationships with the state and the pathway they follow to protect their rights.

Following the people-centered approach I believe it is quite useful to analyze jurisprudence of administrative courts through the prism of characteristics of a person – individual litigant in the disputes with the state and its agencies, and explore potential access to justice issues. I use the approach to look at “a person vs the state” dispute analyzing the Supreme Court judgements in which “legal positions” have been expressed. In other words, a person is placed in the context of the larger research agenda of access to justice that allows – in the unavailability of statistical data on litigants their characteristics – use the Supreme Court judgements to see the person behind the legal dispute, leaving aside the legal issues of statutory interpretation or application of legal norms.

2. Review of academic publications.

Access to Justice is defined by the United Nations Development Programme (2004) as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances” [6]. Put it another way, adequate access to justice means that people have access to the resources and services necessary to deal with legal problems.

As A. Storgaard (2022) noted, “In the course of the last 20-30 years, access to justice research has gradually emancipated from the narrow spectrum of pure law research and emerged as a topic within social and political sciences and to some degree humanities as well” [7, p. 4]. In his paper titled “Access

to justice research: *On the way to a broader perspective*" (2022), he summarized findings and structural characteristics in access to justice research as of yet [7, p. 4]. According to A. Storgaard, three scholars are central figures in the contemporary debate on access to justice: Dr. Deborah L. Rhode (former professor at Law at Stanford University), Dr. Francesco Francioni (professor Emeritus of International Law and Human Rights at the European University Institute in Florence) and Dr. Rebecca L. Sandefur (professor of Sociology at Arizona State University) [7, p. 4]. Apart from a brief history and a baseline of contemporary access to justice research, A. Storgaard also presented five recommendations for future research on access to justice, namely: (1) reach a clearer understanding of the problem; (2) consider a multidisciplinary approach; (3) support and develop evidence-based policy by committing to empirical research; (4) study a wider variety of social realities; (5) look for quality [7, p. 14–18]. His recommendations have echoed those of other academics and practitioners, such as Albert Currie, Ab Currie, Trevor C. W. Farrow, Alice Woolley, and others.

The problem has also more recently been framed by Catherine R. Albiston and Rebecca L. Sandefur. In the Essay *"Expanding the empirical study of access to justice"* (2013) the authors sketched out what they saw as the elements of a research agenda and suggested several dimensions through which to expand the study of access to justice. According to Albiston and Sandefur, researchers should consider not only individuals, but also institutions, such as courts, administrative bodies, and other potential structural constraints on access to justice. Researchers should consider how access to justice is impeded not only by lack of resources, but also by constructed social meanings, such as the stigmatized identity of rights claimants or the failure to understand a problem as a legal one. [8, p. 119]. They also urge that scholars consider the diversity of legal concerns, and not presume a one-size-fits-all solution is appropriate or even available. [8, p. 120]

3. Research objectives and methodology design.

A call for researchers to rethink the current focus on studying the access to justice and expand a research agenda by focusing on a person's identity in dispute with state authority shapes the aim of this article.

The purpose of the article is to reveal the problems of access to justice in disputes with state authorities through a better understanding of characteristics of a private person. Who are the people submitting applications to administrative courts, challenging the decisions or actions of state authorities? Is there any connection between some features (characteristics) of litigants and types of lawsuits?

The methodology of the research acknowledges the unavailability of statistical data about the litigants, and the finding of the study which shows that different groups defended their rights with varying degrees of success described below in greater details. Therefore, guided by the call to researchers to "dig deeper", given the lack of statistical data on litigants and their characteristics, I examine the judgement of the Administrative Court of Cassation within the Supreme Court (hereafter – SC-ACC) through the lens of litigant's characteristics.

The annual review of the legal positions of the SC-ACC was analyzed. However, the legal positions, expressed by SC-ACC, had not been an object for analysis *per se* but they have been used as a reason to identify SC-ACC judgements in the cases involving "a person" as a litigant in a dispute with state authority. For the purpose of this research a "person" simply means non-legal entity or non-enterprise, i.e., any person acting as an individual or private entrepreneur.

Thus, an innovative approach to the analysis of the Supreme Court judgements was used – leaving aside the legal issues of statutory interpretation or application of legal norms, the purpose of the analysis was to see the person behind the dispute. This perspective requires attention be paid not just to the rights at stake but also to the factual circumstances of case established by administrative courts which allow to picture the identity of a litigant, to find out some of his or her characteristics.

The *Review of the Administrative Court of Cassation within the Supreme Court caselaw for 2022* [9] (hereafter – the 2022 Review) includes 209 legal positions, grouped into four sections – the first three sections accumulated legal positions expressed by each of the three SC-ACC chambers respectively, and the fourth section covered procedural issues.

Within each section, legal positions were outlined in terms of a certain field of law (tax issues, customs regulations, urban planning, social protection, etc.) or more narrow issues within the field, if necessary (for example, by types of taxes, accounting deadlines, powers of controlling bodies, etc.) with reference to the SC-ACC judgements, which could easily be accessible if necessary.

The review of the judgements made it possible to select those in which one of the parties – the plaintiff who initiated a case against the state authority or the defendant if the state agency (for example, tax administration) initiated a case against a person – were not legal entities but individuals, including natural private-entrepreneurs. This approach resulted in 77 judgements out of 209 assembled in the *2022 Review*, selected on the ground of the natural person as a litigant, which is 36.84 per cent. Legal entities were not the object of this research, as it is assumed that their resources (financial, human, organizational, etc.) and, therefore, the possibilities of access to justice are more significant as to compare to individuals.

Below, I outline two important considerations for the design of this research methodology.

(1) *File-oriented statistics and unavailability of data on litigants*

The answer to the question who are the people applying to administrative courts is not as simple as it may seem at first glance due to the lack of person-oriented court statistics. Existing statistics tells us nothing about litigants.

Traditionally, in Ukraine, the data collection within courts is file-oriented, which mean that focus on the collection of any data linked not to a litigant but rather to “cases and files”.

For example, *Analysis of the state of administration of justice by administrative courts in 2022* [10] (hereafter – the *Analysis*) operates with indicators of receipt and consideration of cases and files by three levels of administrative courts – district (trial) administrative courts, administrative courts of appeal and SC-ACC. Other indicators are:

- the average number of cases and files received by one judge (of the district administrative court, administrative court of appeal or Supreme Court respectively);
- the average number of cases considered by one judge;
- the results of consideration – the number of judgements in favor of applicants (or decision in which the court satisfied the claims), by categories of cases; as well as share “in favor of applicants” judgements in the total number of considered cases;
- results of review by administrative courts of appeal – the number of district administrative court judgements that were overruled or changed and their share in the total number of reviewed cases; the results of the review by the SC-ACC, etc. [10]

At the same time, the data analysis contains no information about the litigants.

For example, during 2022, local administrative courts received 382,527 claims and other applications [10, p. 3], but this number of “cases and files” say nothing about applicants. How many people submitted applications more than once? In how many cases the same state agency has been identify as a defendant?

The availability of statistical data on litigants, its generalization and analysis would allow to reveal, firstly, the number of persons who address same-type disputes; secondly, a series of interrelated lawsuits involving the same applicants/litigants; thirdly, litigants who consume the resources of the judicial system, thereby taking them away from important cases.

For example, in the claim (case № 380/9988/20) a plaintiff asks the court to exempt him from paying the court fee on the grounds of difficult financial situation, and after examining evidence the court comes to the conclusion that the plaintiff may indeed have difficulties in paying the court fee in the amount of UAH 840.80 (around 20 EUR). However, the judge reveals that the plaintiff in less than two years filed 64 lawsuits in only one district administrative court, and overall the Unified State Register of Court Decisions contains several thousand court decisions (rendered in civil, administrative, and criminal proceedings by courts of various jurisdictions and instances) under lawsuits, claims and complaints initiated by this plaintiff who habitually asked courts to exempt him from paying the court fee in view of

his difficult financial situation. Obviously, such procedural activity of a person as a plaintiff/complainant is extremely high comparing to an average citizen of Ukraine and caused by the fact that he enjoys an exemption from paying court fees. Having analyzed and evaluated the given circumstances, the court decided not to exempt from but to postpone the payment of the court fee until judgement is rendered. Such postponement would be sufficient for a court fee not to become an obstacle to person's access to a court as an element of the right to a fair trial, guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – ECHR). If claims are justified, the costs will be covered by the defendant. At the same time, the plaintiff is expected to act in good faith, so if the claims are found to be baseless at the end of the trial, the plaintiff will be required to pay the court fees [11].

This example illustrates that availability of statistical data of applicants and defendants and further analysis will allow both researchers and practitioners to rely on official data rather than on cases accidentally discovered while searching through the myriad of decision in the Unified State Register of Court Decisions.

For some people who benefit from the exemption from paying court fees, various legal lawsuit to administrative court have become their main activity and a source of income – taking into account their high level of education, the low retirement age, especially based for years of service for some categories of public employees, and familiarity with the state agencies work style. Such plaintiffs filed lawsuits to declare the inactivity of officials unlawful – most often, regarding failure to provide a timely (within 5-day) response to a request in accordance with the Law of Ukraine “On Access to Public Information”, and in the case of success – subsequently filing next claims for moral damages caused by unlawful inactivity of officials. Therefore, statistics on cases filed by the same person will allow to identify the savvy retired or unemployed low-income plaintiffs who “commercialized” certain shortcomings in the state agencies’ work and turned it for their own benefit, taking advantage of the exemption from paying the court fee.

(2) Varying degrees of success of defending one's rights

The *Third nationwide study “What Ukrainians Know and Think of Human Rights”* (2016–2018–2020) [12] shows that different groups try to defend their rights with varying degrees of success. The share of respondents who said they had attempted to protect their rights increased from 42 percent in 2016 to 60 percent at the end of 2020. In addition, the share of those who said they had successfully managed to defend their rights increased from 15 percent in 2016 to 19 percent in 2020. The study found that police officers and journalists successfully protected their rights more effectively than the general population, but the results were still mediocre: 44 percent and 41 percent respectively. At the same time, only a quarter of civil servants said they had managed to defend their rights. Meanwhile, judges (75 percent of successful cases), politicians (61 percent) and human rights activists (51 percent) are the groups that most effectively defended their rights if they were violated [12, p. 12].

The finding from the study doesn't relate to administrative courts specifically, however, when it comes to the protection of the rights of such persons as civil servants, police officers, judges and politicians, they most likely took place in administrative courts.

4. Analysis and discussion.

An analysis of the judgements of the SC-ACC on disputes between an individual and a state authority led to some observations:

1. From the people's access to justice perspective, only a certain proportion of disputes challenging the actions or decisions of state authorities will need further attention of researchers. As noted above, 77 out of 209 “legal positions” of the SC-ACC judgements included in the *2022 Review*, were decided in cases in which natural person was a litigant. The share of “natural persons' cases” (compared to cases in which legal entities are involved) varies in different categories of disputes. Obviously, there more such legal positions in disputes regarding public service (7 out of 7), social protection (13 out of 13) or pension disputes (8 out of 8) – in all cases in these categories, one of the parties (mostly, the plaintiff)

was a natural person. On the other end of the spectrum are the taxation disputes, where only 8 out of 66 cases included in the 2022 *Review* involved natural persons or private entrepreneurs as plaintiffs or defenders. That is, many legal positions in administrative jurisdiction, especially in taxation matters *de facto* concern enterprises rather than lives of ordinary people, and consequently are beyond the issues of “people’s” access to justice.

This is exacerbated by the difference in the “weight” of tax disputes in the “case portfolio” in different instances: among the cassation appeals that were received and considered by the SC-ACC in 2022, tax cases dominate – 49% (18,506) [10, p. 36], while in the first instance the share of these disputes is 8% (25,626) [10, p. 6] and in the appeal – 22.4% (10,233 of 45,662) [10, p. 25]. Thus, almost a third of the legal positions expressed by the SC-ACC during the year (66 out of 209 estimating 31,57%) relate to cases which in the 1st instance courts estimate only 8%, and in where mostly legal entities, not individuals, are involved. However, social disputes, in which a natural person is always a party have lion’s share in the 1st instance – up to 71% (235,061) [10, p. 6]), cutting down to 33% in appeal (15 054) [10, p. 25]; and modest 13% (4,882) [10, p. 36] in the SC-ACC.

Therefore, not all cases heard by administrative courts concern people’s access to justice issues, and “a person’s case” share vary depending on category of cases and instances.

2. The judgements of the SC-ACC reflect the diversity of characteristics of persons who apply to the administrative court.

If one looks at the categories of persons (or their characteristics) directly mentioned in the Constitution of Ukraine, in addition to “everyone” and “citizens”, there are also “citizens of Ukraine who are beyond its borders” (Art. 25), “citizens who belong to national minorities” (Art. 53), “foreigners and stateless persons” (Art. 26), “foreigners and stateless persons who are in Ukraine on legal grounds” (Art. 26), “citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations, as well as members of their families” (Art. 17), “citizens in need of social protection” (Art. 47), “orphans and children deprived of parental care” (Art. 52), “those who are employed” (Art. 44), “everyone who is employed” (Art. 45), “consumers” (Art. 42), “subjects of the right of property” (Art. 13) (meaning owner of property rights), “women and men” (Art. 24), “a woman and a man” (Art. 51), “each of the spouses” (Art. 51), “family” (Art. 48), “pregnant women and mothers” (Art. 24), “women and minors” (Art. 43), “parents” (Art. 51), “parents who are incapable of work” (Art. 51), “children” (Art. 51, Art. 52), “a child” (Art. 52), “adult children” (Art. 51) and others. So, in the Constitution of Ukraine it is not just about “everyone” or “citizen” – quite a lot of statuses or characteristics are specifically detailed.

Almost all of these persons (categories of persons) can be found in the judgments, which were the object of the analysis. For example, “minors” appeared in several cases, in particular, in case No. 440/1066/19, the mother challenged the refusal of the tax office to exclude information about her underage son (a minor) from the State Register of natural persons – taxpayers, due to religious beliefs. A pregnancy as a characteristic of a plaintiff appeared in case No. 400/770/19, in which a woman who had been registered as a private entrepreneur for a few months before the birth of her child, challenged the refusal to pay her pregnancy and childbirth allowances, while the Social Insurance Fund (the defendant in the case) justified this refusal by the fact that such short-term registration aimed to receive maternity benefits in inflated amounts and before that, the applicant resigned from her job, where she received the minimum wage as an employee. A “foreigner” (whose minor son is a citizen of Ukraine and lives in Ukraine with his mother) was the plaintiff in case No. 200/9761/20-a, and appealed the decision to prohibit him from entering the territory of Ukraine on the basis of unfulfilled debt obligations for court decisions. Also, “citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations, as well as members of their families”, “citizens in need of social protection”, “those who are employed” were litigants in many cases.

In addition to persons whose characteristics or status are directly indicated in the Constitution, among the litigants there are many categories of persons who are not directly mentioned in it, for example, law enforcement officers (current and retired), military personnel released into the reserve or retired, war veterans, etc.

Thus, it can be concluded from SC-ACC judgements that a wide variety of people, of different statuses, lodge applications to the court. This means that an administrative court is not an exclusive, but an inclusive institution.

3. Most individuals who initiated cases in the administrative court seek for certain social benefits and challenge the state agency's refusal to grant some payment (or the amount of such payment) rather than trying to protect their rights and fundamental freedoms. Disputes over the protection of constitutional rights do occur, for example, the abovementioned case regarding the exclusion of personal information from the State Register due to religious beliefs, but the vast majority of disputes concern the reduction of the amounts of certain allowances, or benefits and privileges provided by a special law, but subsequently cut down due to the financial inability of the state to support social payments in this amount. This is a legacy of the Soviet past and shows that even after 30 years of independence of Ukraine people still continue to perceive the state as providing welfare. From the judgements analyzed, it is impossible to determine how much a particular applicant really needs the payments or other benefits in question. It well might be the case that the welfare level of, for example, ex-policemen or war veterans is quite sufficient. However, since many benefits for certain categories of persons are provided for by law, and is determined only by belonging to this category, administrative courts are flooded with such lawsuits.

4. There are many cases where plaintiffs have several legal and social statuses and seek to receive different types of benefits provided by different laws.

For example, a person can simultaneously have the statuses of a "Chernobyl disaster survivor" and war veteran or military serviceman, policeman and internally displaced person (IDP), pensioner and private entrepreneur, etc.

In case No. 480/762/19, a serviceman who has a "Chernobyl disaster survivor" status requested from the Ministry of Defense of Ukraine a one-time monetary assistance envisaged for a person with a disability under the law on social protection of serviceperson. In case No. 819/1275/17, also a "Chernobyl disaster survivor" and simultaneously a police veteran and a disabled war veteran, requested from the regional Police Department to provide him with a health resort voucher in accordance with the Law on the Status of Military Service Veterans. In case No. 640/22585/20, a police officer, who is an internally displaced person from the Donetsk region, requested a judicial review of the governmental act claiming as a discriminatory provision to submit in the package of documents necessary to receive compensation for renting housing a certificate that the person needs to improve housing conditions. In case No. 640/17107/21, a private entrepreneur, who reached retirement age and received a pension in a foreign state, appealed the refusal of the tax administration to exempt her from paying the "single social contribution", from which Ukrainian pensioners by age are exempted.

Such lawsuits, on the one hand, demonstrate that certain people are very aware of the benefits due to them based on different statuses. That is, one of the problems that usually arises in the access to justice – namely, that people often fail to see the legal nature of the problem or are unaware of their rights – is obviously less typical for Ukraine. At least as social protection issues are concerned, a benefit-oriented society in general is aware of the types of allowances and subsidies it can claim for, does not want to refuse their reduction or cancellation and took their justiciable problems to court. The lack of statistics does not allow to draw a conclusion about the scale of the problem, but it is clear that the availability of data on litigants seeking in courts certain types of benefits would also contribute to the long-awaited reform of the social security system.

5. The various legal problems people try to solve in administrative court indicate the level of their financial status from low-income to quite wealthy.

For instance, in case No. 401/676/17, the owner of an apartment purchased under the sales contract dated 12.01.1996, who actually lived in it, appealed the refusal of subsidy to reimburse the costs for housing services. The reason for the refusal was that he was registered not at this apartment but in different one, in a room not suitable for housing according to technical and sanitary standards, as it lacks heating and electricity.

The legal issue in this case is whether the government act linked the possibility of granting a subsidy with registration, and whether the provisions of the Law on Freedom of Movement and Free Choice of Residence in Ukraine extend its effect as to the reimbursement for housing services. However, if one looks at the situation more broadly than its legal aspect, from the point of view of an “average person” – what is the point of registering in another place 2 years after buying your own apartment? Why does the owner not change the registration for almost 20 years? Did the room in which the plaintiff is registered meet the sanitary and technical conditions at the time of his registration? Did someone live in his apartment, maybe he rented it out to other people, and he himself lived for a certain time in the registered room? In order to apply for a subsidy for housing and communal services, a person's income must be low, on the other hand, a person owns an apartment. Why did he apply for a subsidy only in 2016?

The court's decision does not provide answers to all these questions. However, applying for a subsidy outside of the place of registration is quite common. There is no statistical data available, but if it was – on the one hand, from state authorities – how many people applied for a subsidy without registration, on the other hand - from courts, how many people appealed such refusals, then it would be possible to understand the extent of the problem and how widely the legal position of the SC-ACC will be used.

On the other hand, in case No. 160/8533/20 a private entrepreneur, who simultaneously is employed in the state medical school, tried to challenge as unlawful decisions of the Tax administration, where the amount of the main payment was more than UAH 9,17 million, financial sanctions – over UAH 2.2 million and a fine of over UAH 4.5 million. The legal issue is the qualification of the services provided by the plaintiff as a researcher on the basis of agreements with foreign pharmaceutical or biotechnological companies. In particular, whether the data in individual patient registration cards meet (or do not meet) the definition “databases” as an object of intellectual property rights – as a result of which they are (or are not) subject to VAT exemption. In total, about UAH 16 million were at stake, and if the main VAT payment is more than UAH 9.17 million, then one can be happy about the financial well-being of pharmaceutical researchers. It is unlikely that such a person appealed against the refusal to grant a subsidy.

6. A certain type of plaintiff is not limited to some specific type of legal problem. In fact, the picture is much more complex. For example, “property owners” challenge the decisions of state agencies in a wide range of areas: taxation, urban planning, social benefits, freedom of movements and registration, etc.

In addition to the previously mentioned case of an appeal by the apartment owner against the refusal to grant a subsidy for housing and communal services due to the lack of registration (case No. 401/676/17), the following cases can serve as illustrative:

- the owner of an apartment located in a temporarily occupied territory in Donetsk challenged its taxation (case No. 280/5185/19),
- the owner of a country house, which meets the requirements of the state building regulations for residential buildings, challenged the refusal of the city council to register the place of residence (her and a minor child) in it (case No. 420/1066/21),
- co-owners of apartments in the building tried to recognize as unlawful the actions and decision of local self-government bodies regarding reconstruction project (case No. 1304/10452/12).

The analysis identified several shortcomings in the rule of law requirements related to access to justice.

Thus, analysis of the judgements in the case No. 1304/10452/12 raised a serious issue with respect to compliance with the rule of law requirements related to access to justice and mentioned in the *Report on The Rule of Law* [4, para. 54-55].

The judiciary must be not only independent but also impartial. While independence means that it is free from external pressure, and is not controlled by the other branches of government, especially the executive branch, and the judges should not be subject to political influence or manipulation, impartiality means that the judiciary is not – even in appearance – prejudiced as to the outcome of the case. [4, para. 55] Therefore, in the case No. 1304/10452/12 one might ask whether the standard of impartiality

was met if the judge of the Supreme Court reviewed the same case twice – first in the panel on March 1, 2018 [13], which upheld the referral the case for a new review, and then in the panel on February 8, 2022, in the cassation review of the same case [14], which become final? It might be important to take note of the fact that the legislative provision (para 3 of Art. 37 of the CAP) was not violated, but the whole idea of the prevention the judge from considering the same case more than once is to ensure the case will be resolved without the prejudice by particular judge.

Another important aspect of rule of law requirement is a “court established by law” standard. This dispute was initiated in 2012 when local courts had jurisdiction to review decisions of local self-government councils. In 2017 the law had been changed by amendments to the CAP (Law of Ukraine No. 2147-VIII dated October 3, 2017) and transferred jurisdiction of that kind of disputes to the district administrative courts. So, the issue remains whether local court of general jurisdiction, which considered in 2018-2020 this dispute (after it was referred for a new review), fulfill the requirement a “court established by law” within the meaning of Art. 6 of the ECHR, although after the 2017 amendments to the CAP it did not have the jurisdiction to consider this dispute?

7. It should be noted that vulnerable groups successfully defend their rights. In addition to various groups or special status holders challenging refusal to grant some benefits, for example, in case No. 260/4268/21, the SC-ACC ruled in favor of a persons with disabilities and granted a compensation for transport services in the appropriate amount, stressing that compensation for transport services is a state-guaranteed payment to eliminate barriers and restrictions on the disabled person’s life and ensure his professional and social activities.

In general, the variability of the characteristics of the individual litigants allows to conclude that administrative justice is equally accessible to all, regardless of the level of income, citizenship, place of residence, employment status, etc.

5. Conclusions.

In this research, I used an approach to look at a person in a dispute with the state authority analyzing the Supreme Court judgements in which “legal positions” have been expressed withing a year of 2022. Taking into consideration the unavailability of statistical data on litigants’ characteristics and by placing a person in the context of the larger research agenda of access to justice, I reviewed the judgements of the Administrative Court of Cassation within the Supreme Court (SC-ACC) to see the person behind the legal dispute, leaving aside the legal issues of statutory interpretation or application of legal norms.

The “natural person” disputes, mentioned in the 2022 Review, acknowledge the existence of such cases, including involving vulnerable groups of people. The findings confirm accessibility of administrative justice – since a wide variety of people, including members of vulnerable groups, have succeeded in defending their rights at the Supreme Court level. Importantly, I observed that the judgements of the SC-ACC reflect the diversity of characteristics of persons who apply to the administrative court. It includes both: specifically mentioned in the Constitution of Ukraine, such as “citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations, as well as members of their families” (Art. 17), “citizens in need of social protection” (Art. 47), “those who are employed” (Art. 44), “consumers” (Art. 42), “subjects of the right of property” (Art. 13) “pregnant women and mothers” (Art. 24), etc., and many categories of persons who are not directly mentioned in the Constitution, for example, law enforcement officers, war veterans, IDPs, etc.

The financial status of the litigants varies from low-income to quite wealthy. However, most disputes initiated by the individuals in the administrative court concern the decision of state agencies regarding certain social benefits. Disputes over the protection of human rights (like right to respect a private and family life) and fundamental freedoms (like freedom of religious belief or freedom of movement) do occur, however social security issues prevail. There are many cases where plaintiffs have several legal and social statuses (a “Chernobyl disaster survivor” and war veteran or military serviceman, policeman and IDP) and seek to receive different types of benefits provided by different laws.



Yet, the absence of country-wide statistics on litigants' characteristics does not allow at this stage of research to scale up above-mentioned assumptions that the proposed sampling of the research is representative. Traditionally, in Ukraine, the data collection within courts is file-oriented, however, there is a need for statistics not only regarding cases and files, but also about litigants, especially natural persons/individuals.

At the same time, it's obvious that in assessment of access to justice regarding disputes challenging governmental actions and decisions, the analysis of judgements through the prism of a person's characteristics could be used as an innovative and informative method of research.

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