

# LAWSUIT AS A MEANS OF PROTECTING VIOLATED RIGHTS IN ADMINISTRATIVE PROCEEDINGS

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**Annotation.** The article is dedicated to the study of a lawsuit as a means of protecting violated rights in administrative proceedings. Considering the amendments to the legislation, the issue of the significance of a lawsuit in the context of protecting violated rights in administrative proceedings has become increasingly relevant. Under the previous version of the Code of Administrative Procedure of Ukraine, a lawsuit was the foundational document, without which the protection of violated rights in administrative proceedings would be nearly impossible. It has been demonstrated that the current version of the Code of Administrative Procedure of Ukraine has significantly detailed the right to apply to the court, particularly regarding the potential application of remedies by the court. A lawsuit, serving as the basis for initiating proceedings, addressing the case on its merits, and rendering a court decision, is a crucial tool in raising the question of whether the administrative court should apply remedies to protect violated rights. Simultaneously, the administrative law doctrine posits that an administrative lawsuit itself should be viewed as a means of protecting violated rights.

The author observes that doctrinal provisions, grounded in the current administrative procedure law and supported by an analysis of administrative court practice, indicate that an administrative lawsuit significantly influences the activities of an administrative court, particularly in its application of remedies to protect violated rights. Furthermore, some scholarly sources add that the importance of a lawsuit lies in its ability to guide the court's actions and provide individuals with appropriate guarantees. The author emphasizes that these doctrinal principles align fully with the provisions of the Code of Administrative Procedure of Ukraine, which is considered a conceptually comprehensive procedural document.

**Key words:** lawsuit, administrative proceedings, Code of Administrative Procedure, method of protecting violated rights, mechanism for protecting violated rights, administrative court, statement of claim.

## 1. Problem statement.

The administrative justice system is an effective mechanism and means of protecting violated rights. However, in this system, such protection will be impossible without the will of the relevant subjects. In fact, as stated in part one of Article 5 of the Code of Administrative Procedure of Ukraine (hereinafter – the Code) [1], every person has the right to apply to an administrative court in accordance with the procedure established by this Code if he or she believes that his or her rights, freedoms or legitimate interests have been violated by a decision, action or inaction of a public authority and to request their protection. In other words, in this case, we are talking about a person applying to an administrative court for the protection of his or her violated rights. In addition, pursuant to part three of Article 5 of the Code, administrative courts may be applied to in the interests of other persons by bodies and persons authorized by law to do so. The Code establishes a general rule that a person whose rights, freedoms and legitimate interests have been violated must file a lawsuit with an administrative court to protect them. However, there may be cases when, in the interests of the person whose rights have been violated, the bodies and persons authorized by law to do so may apply to the court. In furtherance of these fundamental provisions, it is worth pointing out parts one and two of Article

160 of the Code, according to which the plaintiff shall set forth in the statement of claim his/her requirements regarding the subject matter of the dispute and their justification.

2. **The aim of the article** is to study the lawsuit as a means of protecting violated rights in administrative proceedings.

### 3. Main results of the research.

A statement of claim is filed in writing by the plaintiff or by a person authorized by law to initiate court proceedings on behalf of others. Additionally, pursuant to Article 168(1) of the Code, a lawsuit is initiated by submitting a statement of claim to the court of first instance, where it is registered and forwarded to a judge no later than the following day. According to part two of Article 171 of the Code, a judge opens proceedings in an administrative case based on a statement of claim, provided there are no grounds for leaving the statement of claim without consideration, returning it, or refusing to open proceedings. As evident, the basis for initiating proceedings is the filing of a statement of claim that complies with the requirements specified in the administrative procedure law. V. V. Komarov writes that the structure of administrative justice is based on lawsuit proceedings, which are fundamental to civil procedure and its core classical institutions [2, p. 78]. In turn, D.M. Shadura points out that an essential feature of any legal dispute is, on the one hand, the assertion by an interested party before the court that the defendant has violated a specific right requiring judicial protection, and on the other hand, the existence of lawsuit proceedings in which this dispute is examined (lawsuit proceedings are central to administrative justice) [2, p. 199]. In this context, a lawsuit is filed with the court to obtain a court decision, which, according to paragraph 13 of part one of Article 4 of the Code, is understood as the decision of the court of first instance that resolves the claims made in the lawsuit.

In this context, the systemic connection of all the aforementioned norms with the provisions of part one and part two of Article 245 of the Code is of fundamental importance. These provisions state that, when resolving a case on its merits, the court may either fully or partially grant the lawsuit or deny it in full or in part. Moreover, if the lawsuit is granted, the court may decide to apply remedies for the protection of the violated right as specified in this article, as well as other effective remedies suited to the specific situation.

Furthermore, it is important to note that Law No. 2147-VIII of October 3, 2017, "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine, and Other Legislative Acts", established a clear framework. According to this framework, the methods for protecting violated rights in administrative proceedings are addressed both in Article 5 of the Code, titled "Right to Appeal to the Court and Methods of Judicial Protection", and in Article 245 of the Code, titled "Court Powers in Resolving Cases".

Thus, based on this, it can be concluded that a lawsuit, as the basis for initiating proceedings, reviewing the case on its merits, and rendering a court decision, serves as a crucial instrument for raising the issue of applying remedies for the protection of violated rights by the administrative court. At the same time, in administrative law doctrine, there is a position that the administrative lawsuit itself should be regarded as a means of protecting violated rights. For example, D. D. Hnap writes that an administrative lawsuit is indeed the primary means for an administrative court to protect the rights, freedoms, or interests of the plaintiff [3, p. 67].

In the context of analyzing a lawsuit as a means of protecting rights and freedoms in administrative justice, it is essential to consider the aforementioned provisions regarding the understanding of the term "means of protection" in the Constitution of Ukraine and contemporary legal doctrine. Furthermore, within this context, it is necessary to understand how the Code approaches the term "means" and how it interprets this term: from the perspective of individual possibilities or from the perspective of the powers of public authorities. A lawsuit can be viewed in terms of an individual's intention to seek judicial protection of their rights and freedoms, particularly when

they believe that these rights have been violated by a decision, action, or inaction of a subject of public authority.

An analysis of other provisions of the administrative law doctrine indicates the significant importance of an administrative lawsuit, which should be taken into account in the context of analyzing a lawsuit as a means of protecting violated rights in administrative proceedings. Thus, in the manual on administrative proceedings, the authors refer to an administrative claim as a procedural document with which a person applies to an administrative court with a request to resolve a public law dispute [4, p. 352].

Based on this, the authors formulate the functional purpose of a lawsuit as follows. First, it ensures the transition of a public law conflict between subjects of the relevant public law relations into a dispute that is submitted for consideration by the administrative court. Second, it initiates the activation of various administrative-judicial means of protecting the plaintiff's rights, such as preliminary protection. Third, it determines the most important features of administrative justice in a specific proceeding: the composition of its participants, the subject matter and focus of evidence, the amount of court costs, and so forth. Fourth, it influences the outcomes of the jurisdictional activities of administrative courts. The peculiarity of an administrative lawsuit is that its impact on the course and results of jurisdictional activities is of great significance, as it can serve as a means for the administrative court to determine the directions for protecting the plaintiff's rights [4, p. 357]. In this case, doctrinal positions based on the provisions of the current administrative procedural law and taking into account the analysis of administrative justice practice indicate a significant impact of the administrative lawsuit on the activities of the administrative court, including in terms of the application of remedies for protecting violated rights. Additionally, some scholarly sources complement this position by noting that the significance of a lawsuit lies in its ability to guide the court's activities and provide individuals with appropriate guarantees.

Doctrinal postulates fully align with the provisions of the Code of Administrative Procedure of Ukraine as a conceptually complete procedural document. However, these postulates gained particular significance with the enactment of Law No. 2147-VIII of October 3, 2017, "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine, and Other Legislative Acts", which established a clear framework in the Code of Administrative Procedure of Ukraine. This framework presented methods of protection both in terms of lawsuits and in terms of the court's resolution of administrative cases.

Before the enactment of this Law, the Code, in part four of Article 104, specified that an administrative lawsuit could include claims for: 1) the annulment or declaration of invalidity of a decision by the defendant – an authority body, either in full or in part; 2) an order for the defendant – an authority body – to make a decision or take specific actions; 3) an order for the defendant – an authority body – to refrain from taking certain actions; 4) the recovery of damages from the defendant – an authority body – caused by its unlawful decision, action, or inaction; 5) the performance of an action that was halted or not performed; 6) the establishment of the presence or absence of jurisdiction (powers) of the authority body; 7) the compulsory expropriation of land, or other immovable property located on it, for reasons of public necessity. In the previous version of the Code, there were no provisions outlining methods of judicial protection in the context of the right to appeal to the court. Instead, part one of Article 6 of the Code stipulated that every person has the right to apply to the administrative court in the manner established by this Code if they believe that their rights, freedoms, or interests have been violated by a decision, action, or inaction of an authority body.

As for the ways of protecting violated rights in the context of the court's powers, they were disclosed in Article 162 of the Code. It was established that the court may adopt another resolution that would guarantee the observance and protection of the rights, freedoms, interests of a person and citizen, and other subjects in the field of public relations from violations by public authorities.

#### 4. Conclusions.

Given the introduced amendments, the issue of the significance of the lawsuit in terms of protection of violated rights in administrative proceedings is significantly relevant. Undoubtedly, even under the previous version of the Code, the lawsuit was a basic document, mainly without which the protection of violated rights in administrative proceedings would be impossible. However, it is the current version of the Code that has significantly detailed the right to go to court in terms of the possible application of remedies by the court.

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