

ADMINISTRATIVE PROCEEDINGS WITHIN THE LEGAL SYSTEM OF UKRAINE: AN EXAMINATION OF THEIR DIVISION INTO CONFLICT AND NON-CONFLICT

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DOI: <https://doi.org/10.61345/1339-7915.2024.6.9>

Annotation. The article examines the administrative proceedings within the legal system of Ukraine, focusing on their classification into conflict and non-conflict proceedings. The author, Mykola Mikheiev, analyzes recent developments in Ukrainian administrative law and compares them with practices in EU countries.

The study begins by highlighting Ukraine's candidacy for EU membership in 2022 and the subsequent need for legal system reforms to align with EU standards. It then delves into the concept of administrative proceedings, which are divided into jurisdictional (conflict) and non-jurisdictional (non-conflict) types.

Conflict administrative proceedings involve cases of administrative offenses and are conducted by state bodies, including courts. Non-conflict proceedings, on the other hand, relate to the implementation of citizens' rights and duties by state and non-state bodies.

The article discusses the adoption of the Law "On Administrative Procedure" in Ukraine, which came into force on December 15, 2023. This law aims to balance citizens' interests with state obligations and brings Ukraine closer to EU standards in administrative procedures.

A significant focus is placed on the role of electronic governance in modernizing administrative proceedings. The author notes that Ukraine is transitioning to a new form of public authority organization, with e-governance playing a crucial role in providing public services efficiently.

The study also examines the application of the Law "On Administrative Procedure" to digital public services, ensuring that the same procedural standards apply regardless of the service delivery method. This includes the development of electronic complaint mechanisms, which are currently in their initial stages in Ukraine.

Comparative analysis with EU countries reveals diverse approaches to administrative proceedings. For instance, countries like France, Denmark, and Belgium do not have separate procedures for administrative offenses, treating them within the criminal sphere.

The author concludes by advocating for the adoption of international best practices in Ukrainian administrative law. This includes expanding the subjects of administrative offense proceedings to include legal entities and adapting the institution of administrative liability to modern requirements.

Overall, the article provides a comprehensive overview of the current state and future directions of administrative proceedings in Ukraine, emphasizing the need for alignment with EU standards while maintaining national specifics.

Key words: administrative law, administrative process, administrative proceedings, conflicting administrative proceedings, nonconflicting administrative proceeding, classification of the administrative proceeding, administrative law of foreign countries, administrative law of EU countries, administrative and legal support, electronic governance.

1. Introduction.

Granting Ukraine the status of a candidate for EU membership in 2022 and, in connection with this, adapting Ukraine to the European legal space requires a full-scale reform of the legal system of Ukraine based on the principles and standards of the EU countries. In this regard, it is necessary to take into account European and international standards, carrying out reforms in the administrative process and public administration, as well as the positive practical experience of foreign states in the field of administrative law. The main object of the author's research is such a legal category as administrative proceedings, but in this work the author will take a broader look and consider the concepts of proceedings in cases of administrative offenses and administrative process.

2. Analysis of recent research and publications.

Legal regulation of administrative legislation of state authorities of Ukraine and EU countries, as well reform of administrative law of Ukraine were reviewed in the works of some Ukraine legal scientists, in particular: V. Averyanov, O. Andriyko, O. Kuzmenko, L.Kysil, V.Kuibida, V.Kolpakov, V.Nahrebelnyi, S. Bratelya, S. Petkov, V. Bevzenko, V. Tymoshchuk and others.

3.The aim of work.

The purpose of the article is to study the features and compare the proceedings in cases of administrative violations in Ukraine from the point of view of their division into conflict and non-conflict administrative proceedings, and to compare them with the experience of EU countries in order to choose the optimal path for the development of Ukrainian administrative legislation.

4. Review and discussion.

There is a statement that administrative proceedings are the most common among other legal proceedings. Administrative proceedings as an element of the administrative process are divided by researchers into non-jurisdictional and jurisdictional. In his work, the author examines the classification of administrative proceedings in the administrative process of Ukraine into conflict administrative proceedings and non-conflict administrative proceedings. Let us take into account that the second and largest type of administrative proceedings in Ukraine, non-conflict administrative proceedings, are proceedings conducted by state bodies and officials, as well as non-state bodies authorized by the state to implement various regulatory acts, regarding the exercise of citizens' rights and the performance of their duties. But the first type is conflict administrative proceedings, which are conducted by individual officials and state bodies, including courts of general jurisdiction. These proceedings concern violations committed by individuals and legal entities of established norms and rules and which entail administrative liability. Proceedings in cases of administrative offenses belong to jurisdictional administrative proceedings (they are classified as conflict administrative proceedings).

Ukrainian researchers define administrative process as the regulated by administrative and procedural norms activity of the bodies of the Ukrainian state executive power, their officials and other authorized subjects regarding the consideration and resolution of individual specific cases in the sphere of public administration. By administrative proceedings Ukrainian researchers understand regulated normatively defined procedure for performing procedural actions that ensure the lawful and objective consideration and resolution of individual administrative cases united by the commonality of the subject [2]. Administrative proceedings are the main element of the administrative process in Ukraine.

The author, in his previous scientific research works in the field of law, agrees with the conclusions of Ukrainian researchers that conflict proceedings belong to the judicial process, and non-conflict proceedings belong to the administrative procedure [3].

O. Kuzmenko defines proceedings in cases of administrative offenses as a normatively regulated activity of authorized entities to apply administrative liability for an administrative offense committed, such proceedings also concern the prevention of administrative offenses. Y. Bytyak considers such proceedings as a series of consecutive actions of authorized persons (official bodies), and in some cases other entities, who, in accordance with the norms of administrative legislation, carry out measures aimed at holding offenders accountable and ensuring the implementation of the issued resolution [4].

Ukraine is gradually improving its legislation to bring it closer to EU standards. On February 17, 2022, the Verkhovna Rada of Ukraine adopted the Law "On Administrative Procedure" (No. 3475), which should ensure the proper balance between the interests of citizens, society and the obligations of the state. On June 13, 2022, the President of Ukraine signed the Law, which entered into force on December 15, 2023 [5]. The adoption of the Law "On Administrative Procedure" is a new stage in the interaction of the executive authorities of Ukraine and local self-government with citizens and business. General rules allow to accelerate the adoption of decisions and optimize the communication of a person with public administration. The interaction procedure has become unified, effective, oriented towards the needs of citizens and business, and transparent. The introduction of a general administrative procedure brings Ukraine closer to the standards of the European Union, since similar laws are in force in all EU member states as an integral part of the "right to good administration" [6].

Article 2 paragraph 5 of this Law determines that an administrative procedure is a procedure for considering and resolving a case defined by law.

In 2015-2024, Ukraine underwent a transition to a new form of organization of public authorities, as well as a qualitatively new level of efficiency and convenience of production by organizations and citizens of public services and information on the results of government activities. An important role in this aspect is assigned to electronic government as a new form of communication between citizens and authorities. Defining electronic government, a number of Ukrainian authors emphasize the possibility of an alternative way of providing public services in electronic form. In other words, electronic government is the electronic provision of government information and services 24 hours a day, seven days a week [7]. As for the legislative definition of the concept of "electronic governance", in the Concept of the Development of Electronic Governance in Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 649-p dated September 20, 2017, electronic governance is defined as a form of public administration organization that contributes to increasing the efficiency, openness and transparency of the activities of state authorities and local self-government bodies using information and telecommunication technologies to form a new type of state focused on meeting the needs of citizens [8]. At the same time, M. Mikhrovska draws attention to the fact that with the approximation of Ukrainian legislation to European legislation, the term "public administration" is increasingly used in the science of administrative law [9, p. 301].

At the same time, digital transformation in the field of public, including administrative, services is underway in Ukraine, which aims to improve the "service component" of the most popular administrative services among citizens. As a result, more and more public (administrative) services are provided using digital technologies, through digital channels of access to them.

With the entry into force of the Law "On Administrative Procedure", there is no doubt that its provisions should apply to all types of administrative services. Administrative services provided through digital access channels, including special web portals and mobile applications, cannot be an exception.

Thus, regardless of how a person receives an administrative service, for example, by registering an individual entrepreneur, via the Internet, or by physically contacting the state registrar, he or she must be guaranteed the same standards of procedure: availability of information, accessibility, justification of the decision, right to appeal in cases of refusal, etc.

Therefore, the application of the Law "On Administrative Procedure" in the field of digital public (administrative) services aims to guarantee standards of administrative procedure and observance of the rights, freedoms and legitimate interests of individuals when they receive digital public (administrative) services [10]. In other words, the number of non-conflict administrative proceedings

in Ukraine will gradually increase as they are formalized via e-governance. This will also decrease the human involvement factor and thus decrease the level of corruption or benefit obtaining by the person conducting administrative proceedings.

The the Law "On Administrative Procedure" also created the legal prerequisites for the development of electronic complaint mechanisms (e-complaint). In particular, a complaint can be filed in written (electronic or paper) form. The complainant or his representative signs an electronic complaint using an electronic signature. Such a tool for protecting the rights of participants in administrative proceedings, such as the possibility of filing an "e-complaint", is currently at the initial stage of its development in Ukraine and has been introduced only in certain types of public services [10]. Thus, the author concludes that administrative e-governance in Ukraine will allow for the subsequent streamlining of the transition of non-conflict administrative proceedings, in the event of a participant in the administrative process's disagreement with the proceedings, into conflict administrative proceedings and the resolution of the case according to the administrative appeal procedure or through administrative judicial proceedings.

Next, in this article, we will discuss and turn to the EU and foreign experiences in the administrative process for adopting the benefits and best practices into the legal system of Ukraine. To implement changes in the Ukrainian legal system and bring it into line with the EU, it is important to understand that each country has its own specific legal framework for administrative proceedings. For example, in France, Denmark and Belgium, there is no procedure for proceedings in cases of administrative offenses. These offenses remain in the criminal sphere, since in cases of administrative offenses the guarantees provided for by the European Convention for those accused of committing a criminal offense must be observed [11].

The procedure for reviewing cases of administrative offenses in different European countries is carried out on the basis of the same principles, but has its own differences.

In Germany, there is no administrative appeal against decisions imposing a fine; decisions of district courts are subject to review (cassation) to the Higher Court of the federal state only in certain types of cases [12].

In Ukraine, there are ordinary and simplified proceedings. Simplified proceedings take place if the offender admits his guilt. For the offender, simplified proceedings often mean the possibility of paying the minimum amount of the sanction, but at the same time deprives him of the right to file a complaint about the results of simplified proceedings in court in the future [13].

In countries with administrative tort law of a criminal nature (Germany, Switzerland, Italy, Portugal, etc.), only judicial appeal of decisions is allowed. And in the system of separate procedural administrative tort law (France, Belgium, Greece), administrative and judicial appeal to the administrative court and tribunal are provided for [14].

Taking into account the above, in order to improve conflict proceedings, it is advisable to pay more attention to the international experience of regulating administrative proceedings. Despite the different attitudes towards administrative tort law, each country has its own important experience of conducting cases. The implementation of the proposed provisions will not only contribute to the improvement of domestic legislation, but will also ensure close cooperation with the EU.

5. Conclusions.

By examining the classification of administrative proceedings into conflict and non-conflict categories, the author provides a clear framework for understanding the current state of administrative law in Ukraine. The analysis of recent legislative changes, such as the Law "On Administrative Procedure," demonstrates Ukraine's commitment to aligning its legal system with EU standards, while also addressing the unique challenges and opportunities presented by the country's rapid digitalization efforts

The study's exploration of electronic governance and its impact on administrative proceedings is particularly timely and relevant. As Ukraine transitions towards a more digitalized public

administration system, the article underscores the importance of ensuring that procedural standards are consistently applied across both traditional and digital service delivery methods. This focus on e-governance not only reflects global trends in public administration but also highlights Ukraine's proactive approach to modernizing its administrative processes in line with EU best practices.

Among legal researchers in Ukraine, there is no unity of views on the classification of administrative proceedings. This is not surprising, since there is a significant number of views on the list of principles for the classification of administrative proceedings. The author adheres to the classification and studies the division of administrative proceedings into conflict and non-conflict administrative proceedings.

We propose to use the experience of foreign countries in expanding the circle of subjects of proceedings in cases of administrative offenses, since in most countries legal entities can be held administratively liable on an equal basis with individuals.

For effective reform of the institute of administrative responsibility, it is worth paying attention, first of all, to the international experience of regulating the institute of administrative responsibility.

Ukrainian legislation should adapt the institution of administrative liability to modern requirements, taking into account the trends in administrative liability of foreign countries and choosing the optimal model.

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