

FOREIGN EXPERIENCE OF THE ORGANIZATION OF THE JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES AND THE CURRENT STATE IN UKRAINE

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ABSTRACT

The article examines the features of the practice of foreign countries in organizing judicial settlement of administrative disputes and the current state of regulation of these issues in accordance with Ukrainian national legislation. The essence of the concept of the administrative dispute has been determined. The features of the legal regulation of the organization of judicial settlement of administrative disputes by analyzing the French, German, and Anglo-Saxon organizational forms of the functioning of administrative justice have been highlighted. The norms of the law that regulate the settlement of administrative disputes in Germany, France, England, and the current legislation of Ukraine have been analyzed. Based on the results of the analysis of the current legislation of foreign countries, the features of the organization of judicial settlement of administrative disputes in the respective states have been highlighted. The characteristic features inherent in the German and French organizational forms of administrative justice have been identified, and the features of the Anglo-Saxon model have been highlighted separately.

Keywords: Administrative Justice, Administrative Courts, Administrative Case, Administrative Disputes, Institute of Government Commissioners.

INTRODUCTION

In any legal democratic state, the high-priority task is to protect the fundamental rights, freedoms, and legitimate interests of the individual and the citizen, including against offenses by the executive authorities, local self-government bodies, and their officials. The settlement of disputes of public-law nature is determined by the use of an effective and efficient mechanism of judicial proceeding and resolution of administrative cases on the merits. Turning to the study of the features of international practice in organizing judicial settlement of administrative disputes, it is important to note that among the modern organizational forms of administrative justice, the French, German, and Anglo-Saxon models are common.

One of the priority directions on the way of the formation and development of Ukraine as a legal democratic state is the improvement of the organizational and legal mechanism related to the preservation and protection of rights and freedoms, the legitimate interests of the individual and citizen. At the same time, the existence of an effective judicial system in the country is an integral element of the functioning of such a mechanism; it must comply with the standards of the supremacy of the law in relation to the protection of human rights in public relations by appealing against decisions, actions, or inaction of power entities in a court of law. The study of the experience of foreign countries in settling administrative disputes is extremely important in the context of studying this issue.

LITERATURE REVIEW

Havryltsiv & Lukianova (2019) state that administrative disputes are the largest variety of public-law disputes in terms of volume and are characterized by the emergence in the field of state or public administration or the field of implementation of state power, as well as the presence of a special subject of the dispute-the power entity.

According to Macelik & Parantsa (2010), the administrative dispute is a type of public-law dispute that arises only from the legally significant actions of its participants and is aimed at realizing and protecting rights, freedoms, interests, and performance of the person's duties. At the same time, scientists draw attention to such a feature of the administrative dispute as the presence of contradictions between the parties caused by the conflict of interest in the field of public-law relations.

Karpa (2017) draws attention to the definition of the concept of administrative dispute in a narrow and broad sense:

1. In a narrow one, it should be considered as a dispute arising from exclusively administrative-law relations;
2. In a broad one, as a public-law dispute arising from all types of public-law relations in the field of public administration, ensuring the right to protection from violations by the public authorities.

METHODOLOGY

In order to study the practice of foreign countries in organizing judicial settlement of administrative disputes and the current state of regulation of these issues in accordance with Ukrainian national legislation, the dialectic, comparative-law, formal and legal, and system-structural methods were used. The dialectical method made it possible to determine the essence of the concept of administrative dispute. Using the comparative-law method, the features of the legal regulation of the organization of judicial settlement of administrative disputes by the analysis of the French, German, and Anglo-Saxon organizational forms of the functioning of administrative justice were highlighted. The formal and legal method was used to interpret the rules of law in relation to the settlement of administrative disputes in Germany, France, England, and the current legislation of Ukraine. Using the system-structural method, the features of the organization of court settlement of administrative disputes were distinguished. Using the system-structural method, the features of the organization of the judicial settlement of administrative disputes were highlighted.

FINDINGS AND DISCUSSIONS

In France, the administrative justice is an independent branch of justice, the main purpose of which is to resolve conflicts between:

1. Citizens and government bodies.
2. The bodies and departments themselves.

Based on the results of the settlement of administrative disputes between these entities, appropriate judicial settlements are made in accordance with and using the norms of administrative law (Bidei 2013). The French model of administrative justice has specific properties. Firstly, French administrative justice has been formed and is functioning today within the executive branch. The independence of administrative courts is achieved by separating them from bodies whose activities are related to direct participation in the management of public affairs. Secondly, the dualism of the judicial system is inherent in French administrative justice. The judicial system of France provides for the functioning of two types of courts-general and administrative ones. In accordance with the principle of separation of powers in the country, the activities of the administration are governed by the norms of administrative law. At the same time, only administrative courts are empowered to consider cases in which the administration is one of the parties (Ilkov, 2015).

According to the current French legislation, the modern model of administrative justice is represented by:

1. The Supreme Council of the Judiciary (like the Supreme Administrative Court of France).
2. Administrative courts of appeal; territorial (regional and specialized) administrative courts.

In accordance with the French Constitution of 1958, the Supreme Council of the Judiciary, in addition to resolving public-law disputes, is empowered to advise the French government on public administration issues (Constitution Française, 1958). The latter is a positive aspect of the functioning of the Supreme Council of the Judiciary, because this is precisely a type of an administrative justice body that can provide competent explanations and consultations in the field of management, because in day-to-day activities it deals with cases of violation of the rights, freedoms, and interests of persons in this field (Pchelin, 2017) . The jurisdiction of the Supreme Council of the Judiciary extends to the resolution of:

1. Cases related to the requirements for the abolition of a state decree, ruling or by-law, and other decisions of ministries;
2. Disputes regarding the status of civil servants appointed to positions in state bodies by presidential decrees;
3. Disputes regarding decisions of collegial bodies at the national level;
4. Cases concerning elections to the regional councils of France and the European Parliament;
5. Cases concerning the appeal of administrative acts, the application of which concerns a larger territory than is covered by one court of the administrative justice system of France;
6. Cases concerning the legality of decisions taken by the courts of appeal of administrative justice (cassation).

The rulings of regional courts are reviewed by the administrative courts of France. The lowest level of administrative justice is occupied by territorial (regional and specialized) administrative courts. The administrative process is characterized by the presence of procedural rules that are both common to all French courts and special, that is, inherent only in the administrative and judicial procedure (Hetman & Hetman, 2019).

Based on the provisions of the French Code of Administrative Procedure 2000 (Code of Administrative Justice, 2000), the following features of the organization of judicial settlement of administrative disputes can be distinguished:

1. The existence of a statement of claim filed in compliance with the current statutory requirements;
2. The adversarial proceedings of parties, namely the plaintiff and defendant;
3. The inquisitional manner of proceedings (the case is led by the court; in particular, the court may give instructions on the transfer of information by one party to the other, taking measures to conduct an examination and to make a request of necessary documents, etc.);
4. The combination of the principles of publicity and secrecy (the court session is public but the pre-trial investigation of the case materials is carried out behind the scenes and the decision is made behind closed doors);
5. The written nature of the proceedings (at the hearing during the oral debate, the parties are deprived of the opportunity to present new evidence and data, but use only those that are documented);
6. The participation of government commissioners, who are independent participants in administrative proceedings and express their own opinion in the interests of justice, etc.

Please note that government commissioners are authorized to conduct an independent investigation within the scope of the resolution of administrative cases. Thus, the functioning of the institution of government commissioners in the process of resolving administrative disputes plays an important role in helping to relieve judges in administrative courts.

The procedural basis for the organization of judicial settlement of administrative disputes in Germany is determined by the Code of Administrative Court Procedure, 1991. The system of administrative courts in Germany is represented by a three-link structure. It includes:

1. The Federal Administrative Court (headquarters in Leipzig);
2. The Supreme Administrative Court;
3. Administrative Courts.

The authority of the administrative courts in Germany provides for the monitoring of the legality and conformity of administrative acts with the purpose of the law (Code of Administrative Court Procedure, 1991).

Based on the analysis of the provisions of the Germany Constitution (1949), the Code of Administrative Court Procedure (1991), and the Courts Constitution Act (1975), it is important to focus on such features of the organization of the judicial settlement of administrative disputes as:

1. The presence of a statement of claim filed in compliance with the requirements of applicable law;
2. The possibility of combining several administrative proceedings into a single one provided that they relate to the same defendant, they are in the same context, and they are subject to the jurisdiction of the same court;
3. The hearing of the case as well as the adjudication of judgments and decisions are open; audio, television or radio recordings, as well as audio and film recordings intended for public presentation or for publication of their contents, are unacceptable;

4. The language of administrative proceedings is German;
5. The duration of the trial is evaluated taking into account the circumstances of a particular case, in particular, its complexity, the importance of the case at hand, and the behavior of the participants and third parties in this case.

It is important to focus on the features of decisions adopted by the court as a result of the consideration of administrative disputes. According to the Code of Administrative Court Procedure of Germany, by its decision in the case, the administrative court can cancel the regulatory legal act, its separate part, instruct the administration to bring this type of act into conformity with the law or take another action in favor of the plaintiff (Code of Administrative Court Procedure, 1991). The aforementioned makes it possible to say that administrative courts are not empowered to amend the contested act.

A striking example of the Anglo-Saxon model of administrative justice is the administrative court system of England. Administrative justice in England was characterized by a lack of principles of openness, fairness, and impartiality. It is important to note that the laws of England do not contain a separate regulatory legal act governing the implementation of administrative proceedings. Administrative justice bodies are represented by administrative tribunals or quasi-judiciary bodies. The tribunal is assigned to the ministry according to the profile of disputes that are resolved, namely:

1. Land dispute tribunals;
2. Insurance tribunals;
3. Utility taxes and fees tribunals;
4. Construction tribunals;
5. Labor dispute tribunals and the like.

The specificity of the modern English judicial system lies in the possibility of challenging any of the acts adopted by the administrative body in a court of general jurisdiction. An applicant can go to court immediately, bypassing quasi-judicial authorities (Birkinshaw & Varney, 2015).

Thus, the Anglo-Saxon justice system in the field of administrative disputes is based on principles that have specific features. In particular, they include:

1. The rule of judicial precedent;
2. The lack of dividing the right into private and public one;
3. The court acts as the main guardian of the law, rights, freedoms, and legitimate interests of the individual and the citizen.

In Ukraine, issues related to the organization and operation of the court system for the settlement of administrative disputes are regulated by the norms of the Constitution of Ukraine, 1996, the Code of Administrative Court Procedure of Ukraine, 2005, and the Law of Ukraine *“On the Judicial System and Status of Judges”*, 2016. The fundamental principles of exercise of justice in Ukraine are contained in Section VIII of the Constitution of Ukraine, in accordance with Art. 124 of which justice is exercised exclusively by the courts whose jurisdiction extends to any legal dispute and the delegation of the functions of the courts or the appropriation of these functions by other bodies or officials is not permitted. As well, Art. 125 of the Constitution established that administrative courts operate in order to protect the rights, freedoms, and interests of the individual in the field of public-law relations (Constitution of Ukraine, 1996).

The system of administrative courts in Ukraine is defined in the Law of Ukraine “*On the Judicial System and the Status of Judges*”. Local administrative courts are district administrative courts, as well as other courts defined by the procedural law (Article 21). Local administrative courts hear cases of administrative jurisdiction (administrative cases) (Article 22). Courts of appeal for administrative cases are administrative courts of appeal, which are formed in the respective appellate districts (Article 26) (Law of Ukraine, 2016).

Features relating to the jurisdiction and powers of administrative courts in resolving administrative disputes are governed by the rules of a special codified act—the Code of Administrative Procedure of Ukraine (hereinafter—CAPU). According to CAPU rules, the settlement of administrative disputes is based on the principles of the rule of law, the equality of all participants of legal proceedings before the law and the court, the adversarial proceedings of the parties, the disparity and official clarification of all circumstances of the case, the transparency of the trial, the openness of the information on the case, the language of the proceedings and clerical correspondence in administrative courts, binding nature of court decisions, etc. (Code of Administrative Procedure of Ukraine, 2005).

The characteristic features of administrative dispute include:

1. The sphere of legal relations (the sphere of realization of state power or state or public administration);
2. The particular subject of the dispute (mandatory participation on the side of at least one of the parties of the power entity);
3. The specific nature of the relationship in respect of which the dispute arose, and the like.

The administrative proceedings are initiated upon the submission of a statement of claim, which must comply with the requirements of the law. A specific feature of administrative legal proceedings is the authority of an administrative court to cancel an appealed decision of a state body, local government body, and their officials not only on the basis of a statement from an interested person but also on their own initiative (Code of Administrative Procedure of Ukraine, 2005). The judicial procedure for the settlement of administrative disputes provides for the establishment of specific life circumstances by the court in order to exercise subjective rights and freedoms, as well as the interests of interested persons.

RECOMMENDATIONS

Based on the results of studying the features of world practice in organizing judicial settlement of administrative disputes, it is important to pay attention to some aspects regarding the possibilities of using the experience of foreign countries in the context of the issue under study. In particular, the experience of France in introducing the institution of government commissioners in the administrative court system is positive. It significantly relieves the judges of the administrative court and helps them pay more attention to resolving the case on the merits. The practice of higher courts in advising the government and individual ministries in the area of taking management decisions also seems appropriate. The aforementioned is justified by the fact that these expert explanations of the highest judicial authorities make it possible to reduce the number of lawsuits to administrative courts regarding the appeal of decisions, actions (inaction) of executive authorities, local self-government, and their officials.

CONCLUSION

Among modern organizational forms of administrative justice, the French, German, and Anglo-Saxon models are common. The German and French models are characterized by the efficiency and professionalism of resolving administrative disputes through the specialization of the judicial institutions in the consideration of administrative and legal disputes; legislative definition of clear boundaries of the subjective jurisdiction of administrative courts. It is also important to note that the institution of administrative courts in Germany and France was introduced on the basis of the distribution of power on various branches. In turn, the Anglo-Saxon justice system in the field of administrative disputes is based on principles such as the rule of judicial precedent; lack of separation of the right into private and public; the court acts as the main guardian of the law, rights, freedoms, and legitimate interests of the individual and the citizen.

REFERENCES

- Bidei, O. (2013). Institute of administrative justice in foreign countries. *Pidprijemnytstvo, Economy and Law*, 6(1), 80-83.
- Birkinshaw, P., & Varney, M. (2015). *Administrative procedures in England and Wales and compliance with EU and ECHR requirements*. Retrieved from http://www.iuscommune.eu/html/activities/2015/2015-11-26/workshop_4_Birkinshaw_Varney.pdf
- Code of Administrative Court Procedure. (1991). *As amended up to Act of October 10, 2013*. Retrieved from http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.pdf
- Code of Administrative Justice. (2000). *As amended up to Act of January 01, 2019*. Retrieved from https://www.cjoint.com/doc/19_01/IAoo6JLlrhx_CJA2019.pdf
- Code of Administrative Procedure of Ukraine. (2005). *As amended up to Act of November 04, 2018*. Retrieved from <https://zakon.rada.gov.ua/laws/main/2747-15>
- Constitution Française. (1958). *As amended up to Act of July 23, 2008*. Retrieved from https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/constitution/constitution.pdf
- Constitution of Ukraine. (1996). *As amended up to Act of February 21, 2019*. Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>
- Courts Constitution Act. (1975). *As amended up to Act of October 30, 2017*. Retrieved from https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html
- Germany Constitution. (1949). *As amended up to Act of July 11, 2012*. Retrieved from <https://www.bundesregierung.de/breg-en/chancellor/basic-law-470510>
- Havryltsiv, M., & Lukianova, H. (2019). The concept and legal nature of disputes, which are considered in the order of administrative proceedings. *Pidprijemnytstvo Economy and Law*, 5(1), 136-141.
- Hetman, Y.A., & Hetman, K.O. (2019). Administrative justice of France and Ukraine: A comparative legal analysis. *Theory and Practice of Jurisprudence*, 1(15), 1-12.
- Ilkov, V.V. (2015). Development of the system of administrative justice in Ukraine taking into account the sources of law of foreign countries during the implementation of the Constitutional reform in Ukraine. *Rights*, 3(1), 194-198.
- Karpa, M. (2017). Public-law dispute as a way of establishing and differentiating of the public authorities competences (theoretical aspects). *Public Administration and Local Government*, 3(34), 26-34.
- Law of Ukraine. (2016). *On Judiciary and Status of Judges: As amended up to Act of August 05, 2018*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19>
- Macelik, T.A., & Parantsa, S.P. (2010). Administrative legal dispute as a category of legal dispute. *Yurydychnyi visnyk*, 4(17), 51-55.
- Pchelin, V.V. (2017). Organization of administrative justice of Ukraine: Legal basis. Monograph. Kyiv: TOV.