

THE HISTORY OF ADMINISTRATIVE JUSTICE IN UKRAINE: ORIGIN, DEVELOPMENT AND CURRENT STATE

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Summary. This article is devoted to the study of the history of administrative justice in Ukraine. Throughout the country's history, administrative justice has come a long way. For decades there were disputes about the need for its introduction into the legal system of Ukraine. This article describes the historical conditions for the development of administrative justice and analyzes the key legislative acts for this process. The author reveals the problems and difficulties that arose during the development of administrative justice in Ukraine and its current state.

Keywords: history, administrative justice, development, judicial system, the Code of Administrative Proceedings of Ukraine (the CAP of Ukraine), judicial reform, procedure, strategy.

Introduction

The type of law enforcement that involves state activity, as a result of which judicial power is exercised, is usually called administrative justice.

In Ukraine, administrative justice “is the activity of administrative courts in

the consideration and resolution of administrative cases in the manner established by the Code of Administrative Proceedings in Ukraine.”¹ Thus, the content of administrative justice is the implementation of justice in administrative cases through the settlement of public legal disputes.

“The main task of administrative justice is a fair, impartial, and timely resolution of disputes in the field of public relations to effectively protect the rights, freedoms, and interests of individuals, rights, and interests of legal entities from violations by government officials.”¹ In turn, throughout the history of mankind, administrative justice has undergone significant development.

In the process of the development of the state, an essential component is the emergence of effective administrative justice. Without this, it is impossible to imagine the existence of a modern progressive European Union member state. There are many issues under development that are different in nature. This is an issue for any state, including Ukraine. As a result, there is a need to analyze the emergence of administrative justice in Ukraine, its development, and its current status. This involves research from its first stages to the present day.

As of today, Ukraine is in the process of reforming following European standards. Administrative justice is no exception. That is why the correct choice of transformation in this sphere is important. It is also worth paying attention to reforming the administrative judicial system of Ukraine, noting that defining the role of administrative justice in the system of justice bodies in Ukraine is a very important process today.

Even though the process of the development of administrative justice in independent Ukraine began more than 20 years ago, today there is an objective necessity for its transformation. The gradual introduction of administrative justice in Ukraine was envisaged by the Concept of judicial and legal reform, approved by

1 “The Code of Administrative Proceedings of Ukraine”, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/2747-15?lang=en#Text>.

the resolution of the Verkhovna Rada of Ukraine on 28 April 1992.² At the time of the adoption of this document, Ukraine showed relatively rapid development in the area of administrative justice. It took almost ten years to set up a system of administrative courts.

Today, Ukraine is closer than ever before to the next stage of its integration into the European community.³ This provides strong motivation for strengthening and continuing work on the development of its administrative justice.

The topic of administrative justice in Ukraine has been explored in scientific works of Ukrainian and foreign scientists, but there is a lack of scientific work on the current situation of the development of administrative justice in Ukraine while integrating into the European Community.

In the scientific works of such Ukrainian scientists as A. M. Bandurka⁴; N. M. Tyshchenko⁴; Yu. Bityak, V. Garashchuk, O. Dyachenko⁵; O. V. Kuzmenko⁶; A. T. Komzyuk, V.M. Bevzenko, R.S. Melnyk⁷ and others, attention was paid to the establishment and development of administrative justice in Ukraine.

This scientific work outlines the emergence of administrative justice in Ukraine and its current status, which are important for addressing theoretical and practical obstacles to the process of the development of administrative justice in Ukraine.

This scientific work aims to reveal the prerequisites for the emergence and conditions under which administrative justice developed in Ukraine throughout history.

2 "On the Concept of judicial reform in Ukraine", Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/2296-12?lang=en#Text>.

3 Marianna Fakhurdinova, "Funding and impetus for reform: what will give Ukraine EU candidate status", *The European Pravda*, May 11, 2022, <https://www.eurointegration.com.ua/articles/2022/05/11/7139235/>.

4 A.M. Bandurka, N.M. Tyshchenko, *Administrative process: Study guide* (K., 2001).

5 Yu. Bityak, V. Garashchuk, O. Dyachenko and others, *Textbook edited by Yu. Bityak* (Kyiv, Yurinkom Inter, 2007), 544.

6 O.V. Kuzmenko, *Administrative Justice in Ukraine: a Study Guide* (K.: Atika, 2007), 156.

7 A.T. Komzyuk, V.M. Bevzenko, R.S. Melnyk, *Administrative Process of Ukraine: A Study Guide* (Kyiv, Precedent, 2007), 531.

Taking into account the purpose of the research and the relevance of the topic, this scientific work will focus on the following objectives:

- to outline the emergence of administrative justice in Ukraine;
- to highlight the problems and difficulties that have arisen in the process of the development of administrative justice in Ukraine;
- to indicate the current state of administrative justice in Ukraine.

During the process of this research, the author used different theoretical methods, including: scientific literature analysis, historical methods, and others.

Scientific literature analysis was used to study existing scientific research in the field of administrative justice development. The historical method was used to study how administrative justice has developed in Ukraine from its inception to the present.

The author also used such methods as generalization, systematic analysis and the philosophical method.

1. The emergence of administrative justice in Ukraine

The existence of administrative justice is a fundamental requirement of a society based on the rule of law. It signifies a commitment to the principle that the government, and its administration, must act within the scope of legal authority.⁸

Administrative justice concerns how we interact as individuals when the government, or those working on its behalf, act in ways that appear wrong, unfair or unjust. It encompasses matters of everyday importance to all of us, such as housing, education, healthcare, immigration, planning, social security and taxation.⁹

8 Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights, *Handbook for Monitoring Administrative Justice* (Warsaw, 2013) Accessed 22 December 2022. <https://www.osce.org/files/f/documents/1/3/105271.pdf>.

9 „What is administrative justice?“, The UK Administrative Justice Institute (UKAJI), accessed 22 December 2022, <https://ukaji.org/what-is-administrative-justice/>.

Administrative justice, as a rule, is understood as a special type of justice, the purpose of which is to consider complaints of citizens, their associations, other individuals and legal entities against illegal actions or omissions of executive authorities and local self-government bodies (administrative bodies) and their officials and officers, which cause material or (and) moral damage to the plaintiffs.¹⁰

The development and formation of administrative justice were not simple: the rudiments of administrative justice in Ukraine date back to the 16th and 17th centuries, but the active development of the administrative justice of that time began in the 18th and 19th centuries. At that time, the concept of supervision began to function, which was carried out by the Senate and the Prosecutor's Office. In the early 1870s in the Russian Empire, which included Ukraine at that time, members of the State Duma initiated the creation of such institutions that would impartially resolve disputes arising in administrative matters. They successfully worked in each province. The functions of the highest body of administrative justice belonged to the Senate.¹¹

After the revolution of 1905, proposals for the formation of administrative justice were actively discussed. In 1907, as part of the administrative reform introduced by P. O. Stolypin, it was also envisaged to establish administrative courts. Before the February Revolution of 1917, it was decided to entrust the functions of the Supreme Administrative Court to the Government Senate, introduce administrative judges' posts in judicial districts, and oblige district courts to consider certain administrative cases. Thus, the revolutionary development of Ukrainian history at the beginning of the twentieth century accentuated the obvious need to create administrative courts as fully-fledged judicial bodies that had to resolve disputes in the field of administration (instead of existing quasi-judicial

10 S. Linetsky, „Administrative justice in Ukrainian: variations on a theme“, *Legal Journal* No. 2, (2003).

11 „History of development of administrative justice in Ukraine“, Official website of the Supreme Administrative Court of Ukraine, accessed 22 December 2022, <http://vasu.gov.ua/history/>.

bodies).¹²

In 1917, the idea of administrative justice acquired new features. That year, the Provisional Government issued a law on the establishment of the Administrative Court. Administrative judges considered disputes between state bodies and self-government bodies, as well as public organizations. The further creation of administrative courts was prevented by the October Revolution of 1917. However, even in those turbulent years, the expediency of creating administrative courts headed by the Supreme Administrative Court was actively discussed.¹³

The Constitution of the Ukrainian People's Republic (UPR) of 1918 provided that judicial power was exercised exclusively by courts within the framework of civil, criminal and administrative legislation. During the reign of Hetman I. Skoropadskiy, a provision was enshrined at the legislative level, according to which the General Court was empowered to consider administrative cases, and during the Directory, the draft of the Fundamental Law of the UPR paid considerable attention to administrative justice.¹⁴

In 1923, the Institute of Soviet Law in Ukraine developed a draft Regulation on the Supreme Administrative Court and the regional and provincial administrative courts of the Republic.

Paragraph 19 of this Regulation provided for the following conditions of appeal:

- contradiction of the content of the administrative act to the law;
- distortion of the essential essence and purposes of the law by the act;

12 O. Pasienuk, „Formation of administrative justice in Ukraine“, *Bulletin of the Central Election Commission* № 1 (2005): 50-53.

13 „Establishment and development of administrative justice“ Zaporizhzhia District Administrative Court, accessed 22 December 2022, https://adm.zp.court.gov.ua/sud0870/history1/adm_ust_history.

14 A. Kozachenko, *History of the development of constitutionalism in Ukraine: Study guide* (Poltava, Astraya, 2020), 217.

- non-compliance with the legal form and procedure of the act of management, etc.¹⁵

However, from the mid-1920s to the end of the 1930s, the interest of legislators and statesmen in the problems of administrative justice, given the prevailing totalitarian political regime, faded. The main reason for the failure to create administrative courts and the absence of an administrative process in the Soviet era was the dominant state ideology of those times, as well as the specifics of the system of law itself, which served the administrative-command system of law and did not imply the creation of judicial guarantees of state responsibility to its citizens. Only the Constitution of the USSR of 1977 and the Constitution of the Ukrainian SSR of 1978 enshrined the right of citizens to appeal to the court against the actions of officials and state and public bodies, which was to be implemented in the manner prescribed by law.¹⁶

On 5 June 1981 the Verkhovna Rada of the Ukrainian Soviet Socialist Republic adopted the Law of the Ukrainian Soviet Socialist Republic “On the Judicial System of the Ukrainian SSR,” according to which justice in the Ukrainian SSR was administered only by the courts. In the Ukrainian SSR, there were courts of the USSR and courts of the Ukrainian SSR. The Law enshrined the system, tasks, and basic principles of judicial proceedings in the Ukrainian SSR. The law stipulated that the local court considered civil, economic, administrative, criminal and other cases as a court of the first instance, as well as in connection with the revealed circumstances in cases provided by law.¹⁷

In November 1987, the Law of the Ukrainian SSR “On the procedure for appealing to the court against unlawful actions of officials who violate the rights of

15 Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights, *supra note*, 8.

16 Stefaniuk V.S., „Prospect of introduction of administrative justice in Ukraine“, *Scientific notes of NaUKMA*. - 2003. - Vol. 22, part 2: *Social sciences*. - P. 279-282, http://ekmair.ukma.edu.ua/bitstream/handle/123456789/10190/Stefanyuk_Perspektyvy_zaprovadzhennya_administratyvnoyi.pdf?sequence=1&isAllowed=y

17 „On the Judicial System of Ukraine“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/2022-10/ed19810605?lang=en#Text>.

citizens” was adopted. These novelties became the basis for the addition in April 1988 of the Civil Procedure Code of the Ukrainian SSR to Chapter 31-a, namely Article 248-1, which stipulated that a citizen had the right to file a complaint in court if they believed that the actions of an official had infringed their rights. Actions taken by officials on their behalf or on behalf of the body they represent could be appealed in court.¹⁸ This, along with other special laws, determined the recent embryonic state of administrative justice in Ukraine.¹⁹

2. The development of administrative justice in Ukraine after the declaration of independence in 1991

On 24 August 1991, the Verkhovna Rada of the Ukrainian Soviet Socialist Republic adopted the Act of Declaration of Independence of Ukraine, according to which Ukraine is an independent, sovereign state and only the Constitution and laws of Ukraine are in force on its territory.²⁰

The creation of a system of legislation was the main task of state-building. The first steps towards reforming the judicial system were the Concept of Judicial and Legal Reform in Ukraine, which was approved by the Resolution of the Verkhovna Rada of Ukraine of 28 August 1992 and the Law of Ukraine “On Status of Judges” of 15 December 1992 which was the initial stage in the implementation of the idea of creating a system of administrative courts in independent Ukraine. They defined the basic principles, ideas, tasks and orientation of this judicial system.²¹

On 28 June 1996, a significant event took place in Ukraine – the Constitution

18 „On introducing additions and amendments to the Civil Procedure Code of the Ukrainian SSR“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/en/5803-11?lang=en#Text>.

19 „What is administrative justice?“, The UK Administrative Justice Institute (UKAJI), accessed 22 December 2022, <https://ukaji.org/what-is-administrative-justice/>.

20 „On Declaration of Independence of Ukraine“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/1427-12?lang=en#Text>.

21 „On Status of Judges“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/2862-12?lang=en#Text>.

of Ukraine was adopted. According to Art. 55 of the Constitution of Ukraine, everyone is guaranteed the right to appeal in court against decisions, actions or omissions of state authorities, local self-government bodies, officials and officers, who are obliged to act only on the basis, within the powers, and in the manner prescribed by the Constitution and laws of Ukraine.²²

Ensuring guarantees of the subjective rights of citizens concerning administrative bodies is the duty of the rule of law. This necessitated the creation of administrative justice in Ukraine which, on the one hand, would protect the subjective rights of citizens; on the other, through judicial practice, it would ensure the legality of the activities of public authorities and thus contribute to strengthening the rule of law in the state. Therefore, the introduction of administrative proceedings was due to the legal nature of public law disputes, where a citizen is opposed by a powerful administrative apparatus. At the same time, it should be noted that the purpose of administrative justice should be to exercise only legal control, and not control over the expediency of management activities. Administrative legal protection should be judicial legal protection because it is the courts that most closely meet the requirements of independence and impartiality set by human rights bodies.

The creation of administrative justice not only guaranteed the strengthening of law and order in the sphere of administrative activity, but also provided an opportunity for an individual citizen to exercise their rights concerning public authorities by appealing against their unlawful decisions, actions or omissions. As a result, there was a significant approach to the implementation of the provisions of Article 55 of the Constitution of Ukraine.⁸

At this stage of development in Ukraine, the process of implementation and application in the practice of normative legal acts in the field of administrative justice is underway. The legislation of Ukraine provides many opportunities for

22 Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights, *supra note*, 8.

the creation of a truly democratic and independent judicial system, which, in turn, contributes to the creation of conditions for the effective protection of human and civil rights and freedoms from violations and unlawful encroachments, i.e., embodies the fundamental principles of any state based on the rule of law.

Administrative courts are one of the most accessible and effective institutions for protecting the rights, freedoms and interests of individuals and legal entities against violations by public authorities, local self-government bodies, their officials and officers, and other entities in the exercise of their administrative functions based on legislation, including the exercise of delegated powers. In addition, their activity, as a manifestation of democratic orientation, contributes to increasing the authority of not only the judiciary but also the head of state, public administration and self-government bodies in Ukraine.

O. M. Paseniuk argues that the creation of a system of administrative courts headed by the Supreme Administrative Court of Ukraine is one of the most important achievements of judicial reform in Ukraine. Starting from the first years of independence of our state, step by step, consistently, and reasonably from scientific and political points of view, this idea was implemented.²³

The extension of the jurisdiction of courts to all legal relations arising in the state and the creation of vertical administrative courts became obvious. However, it took almost ten years to create a system of administrative courts. Thus, in the process of development of administrative justice, even on the fact of its existence, different, often opposing points of view were always expressed: from “the institution of administrative justice is alien to Soviet law” (1925) and “there can be no administrative lawsuit in Soviet law” (1947), to such positions as “an administrative court is needed” (1998) and “the need to separate jurisdictional control over the legality of public administration from civil proceedings” (1997). Unfortunately, the negative attitude to administrative justice observed in the last

23 Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights, *supra note*, 8.

30–40 years of the previous century exists in our time, which hinders the process of its formation and development.²⁴

Until 1996, the solution to the problem of administrative courts was hampered by the rejection of this type of justice by the judicial system and other state structures. Only with the introduction of the principle of specialization of courts of general jurisdiction at the constitutional level did administrative justice cease to be only a theoretical problem, and its introduction gradually began to move from the plane of general theoretical discussions to the sphere of law-making.²⁵

The first legislative initiatives on this issue appeared in 1996, although in the conditions of the beginning of the reform of the judicial system (at that time the norms of the old Law “On the Judiciary” of 1992) their implementation was impossible. At the same time, the idea that without the introduction of administrative justice in Ukraine the reform of its state apparatus was hopeless, and the protection of the rights and freedoms of citizens was imperfect and far from democratic standards, was increasingly asserted. The Concept of Administrative Reform in Ukraine, approved by the Decree of the President of Ukraine “On measures to implement the Concept of administrative reform in Ukraine” of 22 July 1998 actually marked the beginning of the development of administrative justice.²⁶

The Law of Ukraine “On Judicial System of Ukraine” of 7 February 2002 was the completion of one of the stages of judicial reform.²⁷ It defined the legal basis for the organization of the judiciary and the administration of justice in Ukraine, the system of courts of general jurisdiction, the basic requirements for the

24 Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights, *supra note*, 8.

25 V. Bevzenko, “Prerequisites and factors of formation of the theory of state regulation”, *Legal Informatics* № 4 (12) (2006), <http://ippi.org.ua/sites/default/files/06bvtdr.pdf>.

26 „On measures to implement the Concept of administrative reform in Ukraine“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/810/98/ed19980722?lang=en#Text>.

27 „On Judicial System of Ukraine“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/3018-14/ed20020207?lang=en#Text>.

formation of a corps of professional judges, and the system and procedure for judicial self-government, as well as establishing the general procedure for ensuring the activities of the courts and regulating other issues of the judiciary. It is based on its provisions that legislation on the procedure of judicial proceedings will be developed at future stages of its formation.

Moreover, from 2003, for the first time, regional or minority languages could be used in courts along with the state language following the Law of Ukraine “On Ratification of European Charter for Regional or Minority Languages” in the manner prescribed by the procedural law.²⁸

One of the main innovations was the functioning of an automated court document management system in courts of general jurisdiction. This system provides for the determination of the personal composition of the court to consider a particular case on the principle of the probability of distribution of cases during the registration of claims, petitions and complaints in court. When determining the personal composition of the court to consider a particular case, the automated document management system takes into account the workload of each judge, their specialization, as well as the requirements of the procedural law.

The working group of the Cabinet of Ministers of Ukraine under the leadership of the First Deputy Chairman of the Supreme Court of Ukraine, V. S. Stefaniuk, developed a draft of the Administrative Procedure Code. An alternative draft of the Code was developed by the people’s deputies of Ukraine (I. B. Koliushko and others). However, they were later merged into one consolidated draft of the Administrative Procedure Code, which was adopted by the Verkhovna Rada of Ukraine in the second reading on 1 July 2004. It was also decided to change the name of the draft Administrative Procedural Code of Ukraine to the Code of

28 „On Ratification of European Charter for Regional or Minority Languages“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/802-15?lang=en#Text>.

Administrative Proceedings of Ukraine.²⁹

The final draft law was submitted by the people's deputies of Ukraine to the Verkhovna Rada of Ukraine and adopted in the third reading. Thus, 305 deputies out of 398 registered in the hall voted for the adoption of the Code. As a result, the Code of Administrative Proceedings of Ukraine (hereinafter – CAP of Ukraine) was adopted on 6 July 2005. The CAP of Ukraine entered into force on 1 September 2005.³⁰

The CAP of Ukraine defines the powers of administrative courts to consider cases of administrative jurisdiction, the procedure for applying to administrative courts and the procedure for conducting administrative proceedings. The CAP of Ukraine contains provisions defining the general tasks, principles of administrative proceedings, and the terms used in administrative proceedings.

To increase the openness and accountability of the judiciary by creating more convenient conditions for public access to court decisions, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Access to Judicial Decisions” on 22 December 2005.³¹ The Law defined the procedure for access to court decisions to ensure the openness of the courts of general jurisdiction, the predictability of court decisions, and promote the uniform application of legislation. It implements the principle of publicity and openness of the administrative process, providing every citizen with free access to court decisions.

The experience of other countries around the world shows that in the vast majority of them (for example, France, and Germany), specialized judicial bodies use systematized administrative legislation – administrative codes – to consider administrative cases. They regulate in detail the process of making administrative

29 Pasienuk O. M., „Administrative Procedural Code of Ukraine (draft)“, *Bulletin of the Supreme Court of Ukraine*-№ 5 (27) (2001): 160-165.

30 “The Code of Administrative Proceedings of Ukraine”, *supra note*, 1.

31 „On Access to Judicial Decisions“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/3262-15?lang=en#Text>.

decisions, their implementation, the procedure for appealing to higher instances, the rights of subjects of administrative proceedings, the status of state and municipal employees, their rights and functional duties, responsibility for improper performance of these duties and other important issues of management. In addition, unlike the general codified act – the administrative code – in some European countries, in particular in Poland, administrative courts are guided in their activities by procedural legislation, such as a code of administrative proceedings. Such experience is advisable for the further development of administrative legislation.³²

With the entry into force of the CAP of Ukraine, the practical functioning of the national system of administrative justice began. The adoption of the Law of Ukraine “On the Judiciary and the Status of Judges” of 7 July 2010 contributed to the renewal of views on the national judicial system. This Law defined the legal framework for the organization of the judiciary and the administration of justice in Ukraine to protect the rights, freedoms and legitimate interests of individuals, the rights and legitimate interests of legal entities, and the interests of the state based on the rule of law. It also defined: the system of courts of general jurisdiction; the status of a professional judge, people’s assessor, and juror; and the system and procedure for judicial self-government. Moreover, it established a system and general procedure for ensuring the activities of courts and regulates other issues of the judiciary and the status of judges.³³ The law is characterized by several novelties, and it stipulates that the participation of people’s assessors and jurors in the administration of justice is no longer considered their civic duty.

Article 59 of the Constitution of Ukraine declares the right of every person to legal aid, in cases provided for by law. This assistance is provided free of charge,

32 Kovaliv M.V., Havrylytsiv M.T., Stakhura I.B., *Administrative Proceedings: a textbook* (Lviv, Lviv State University of Internal Affairs, 2014), 596.

33 „On the Judiciary and the Status of Judges“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/1402-19?lang=en#Text>.

and it is also clearly defined that the bar operates in Ukraine to ensure the right to defense against prosecution and to provide legal assistance in resolving cases in courts and other state bodies.³⁴ This constitutional provision acquired new features in administrative proceedings with the adoption of the Law of Ukraine “On Free Civil Legal Aid” on 2 July 2011, which defines the content of the right to free legal aid, the procedure for exercising this right, the grounds and procedure for providing free legal aid, and state guarantees for the provision of free legal aid.³⁵

To regulate the costs associated with the consideration of administrative cases, to promote the increase of the level of financing of courts, to ensure proper conditions for the functioning of courts and judges, and to increase the efficiency of their work related to the protection of the rights, freedoms, and interests of citizens, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Court Fee” on 8 July 2011. The provisions of the Law define the concept of court fees, payers and objects of the collection of court fees, rates, benefits for the payment of court fees, the procedure for payment and refund of court fees, grounds for deferral and payment in instalments of court fees, the reduction of their amount or exemption from payment, and the direction of court fees.³⁶

To increase the access of the population of Ukraine to legal aid, for socially vulnerable groups of the population to receive it free of charge, to increase the prestige of the Bar and the responsibility of lawyers for their professional activities, and to restore the corporate structure of the Bar in Ukraine, the Law of Ukraine “On the Bar and Legal Practice” was adopted on 5 July 2012.³⁷

34 „The Constitution of Ukraine“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>.

35 „On Free Civil Legal Aid“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/3460-17?lang=en#Text>.

36 „On Court Fee“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/3674-17?lang=en#Text>.

37 “On the Bar and Legal Practice“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/5076-17?lang=en#Text>.

3. The current state of administrative justice in Ukraine

It should be noted that on 20 May 2015 the President of Ukraine approved the Strategy of reforming the judicial system, judicial proceedings and related legal institutions for 2015–2020 by Decree No. 276/2015. According to the Strategy, the purpose of the judicial reform is to establish a legal order based on a high level of legal culture in society, the activities of all subjects of social relations based on the rule of law, and the protection of human rights and freedoms along with their fair restoration within a reasonable time in case of their violation.³⁸

One of the greatest achievements of recent years in this direction was the introduction of amendments to Article 125 of the Constitution of Ukraine in June 2016. These amendments were declared: “To protect the rights, freedoms and interests of a person in the field of public law relations, administrative courts operate.”³⁹

Thus, a fundamental milestone of the judicial reform was the adoption by the Verkhovna Rada of Ukraine on 2 June 2016 of the Law of Ukraine No. 1401-VIII “On amendments to the Constitution of Ukraine (regarding justice)”⁴⁰ and the Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges.”⁴¹ The amendments to the Constitution of Ukraine provided for: the procedure for the establishment, reorganization and liquidation of the court as a public authority; raising the age (from 25 to 30 years) and professional (professional experience increased from 3 to 5 years) requirements for candidates for the position of judge; one-time indefinite appointments, etc.

In turn, the Law of Ukraine No. 1402-VIII “On the Judicial System and Status

38 „On the Strategy of reforming the judicial system, judicial proceedings and related legal institutions for 2015-2020“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/276/2015?lang=en#Text>.

39 „On measures to implement the Concept of administrative reform in Ukraine“, *supra note*, 26.

40 „On amendments to the Constitution of Ukraine (regarding justice)“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/1401-19?lang=en#Text>.

41 Bevzenko, *supra note*, 25.

of Judges” of 2 June 2016, *inter alia*, introduced a transition to a three-tiered system of courts. As a result, along with other higher specialized courts, the High Administrative Court of Ukraine was subject to liquidation. At the same time, the Supreme Court was established.⁴²

On 3 October 2017, the Verkhovna Rada of Ukraine adopted the Law of Ukraine No. 2147-VIII “On Amendments to the Commercial and Procedural Code of Ukraine, The Civil Procedural Code of Ukraine, the Code of Administrative Proceedings of Ukraine and other legislative acts.”⁴³

The newly established Supreme Court, which started its work on 15 December 2017, consists of the Grand Chamber of the Supreme Court, the Administrative Court of Cassation, the Commercial Court of Cassation, the Criminal Court of Cassation, and the Civil Court of Cassation.

The Grand Chamber of the Supreme Court is a permanent collegial body whose main task is to overcome the inconsistency of judicial practice. To this end, this body, in cases determined by law:

- reviews court decisions in cassation to ensure uniform application of the law by the courts;
- acts as a court of appeal in cases considered by the Supreme Court as a court of the first instance;
- analyzes court statistics and studies and generalizes court practice;
- exercises other powers defined by law.

Strengthening the positions of administrative justice is also facilitated by the new edition (2017) of the CAP of Ukraine, which contains many innovations, updates and improvements that are now being tested in practice (for example, dispute settlement with the participation of a judge, written proceedings on appeal

42 Bevzenko, *supra note*, 25.

43 „On Amendments to the Commercial and Procedural Code of Ukraine, The Civil Procedural Code of Ukraine, the Code of Administrative Proceedings of Ukraine and other legislative acts“, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/en/2147-19?lang=en#Text>.

and cassation, consideration of cases in the Administrative Court of Cassation of the Supreme Court, referral of cases to the Grand Chamber, etc.).⁴⁴

At present, the reform of the judicial system of Ukraine is actively continuing. This process is guided by the Decree of the President of Ukraine No. 231/2021 of 11 June 2021 “On the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023.” The purpose of the Strategy for the Improvement of the Justice System is: to determine the main directions and priorities for the further improvement of the legislation of Ukraine on the judiciary, the status of judges and judicial proceedings in conjunction and interaction with other justice institutions for the practical establishment of the rule of law, effective and fair judicial proceedings; and strengthening the functional foundations of the judiciary following the standards of human rights protection and values defined by the Constitution of Ukraine and the international legal obligations of Ukraine. The main goal of the Strategy for the Development of the Constitutional Judiciary is to define priorities for the improvement of constitutional and legal regulation, primarily in matters of the procedure for selecting judges of the Constitutional Court of Ukraine, ensuring their integrity, professional competence and political impartiality. It also aims to ensure transparent grounds and effective mechanisms for bringing judges to justice, guaranteeing that The Constitutional Court of Ukraine makes reasonable decisions and conclusions based on the principles of the rule of law, the priority of human rights and freedoms, and the values and principles defined by the Constitution of Ukraine.⁴⁵

Thus, the Verkhovna Rada generally supported the liquidation of the District Administrative Court, as reported by several members of parliament on 13 December 2022. By another draft law, the Verkhovna Rada of Ukraine established

44 “The Code of Administrative Proceedings of Ukraine”, *supra note*, 1.

45 „On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023”, Verkhovna Rada of Ukraine, accessed 22 December 2022, <https://zakon.rada.gov.ua/laws/show/en/231/2021#Text>.

the Kyiv City District Administrative Court.⁴⁶

Conclusion

Summarizing all of the above, it becomes apparent that administrative justice in Ukraine has come a long way. Signs of the emergence of administrative justice in Ukraine as an institution date back to the 16th–17th centuries, but only since the end of the 20th century has it become possible to talk about the existence of modern administrative justice. Only after the collapse of the USSR and the declaration of Ukraine's independence in 1991 did the “real” history of administrative justice in Ukraine begin. Drawing on its rich historical experience, Ukraine began to develop its own administrative justice.

During this process, many different problems and difficulties arose, ranging from disputes over the role of administrative justice in Ukraine to the outright rejection by the legislator of the importance of administrative justice for the judicial system. This can be explained by the fact that Ukraine, with its long and complicated history, has had to seriously change the vector of development of the state more than once. Because of this, there has been considerable disagreement, both among statesmen and academics. Finally, a decision was made to base the future development of administrative justice in Ukraine on the experience of the European Union Member States.

Today, the development and reform of administrative justice in Ukraine continue. Currently, the legislator is focused on amending the current legislation. There is also a general process of liquidation in several courts, including administrative ones. Such changes cannot but cause resistance from their opponents, which creates pressure on the legislator. In such circumstances, it is important to cope with this pressure, as well as possible criticism, to continue making changes

46 „The Rada liquidated the District Administrative Court and created a replacement“, Radio Svoboda, accessed 22 December 2022, <https://www.radiosvoboda.org/a/news-rada-likvidatsiia-oask/32174585.html>.

aimed at improving the current legislation of Ukraine following the standards of the European Union Member States.

More and more new challenges will likely appear in the future for the successful completion of these reforms, but this should in no way become an obstacle to changes and the further development of administrative justice, which Ukraine has chosen.

UKRAINOS ADMINISTRACINIO TEISINGUMO ISTORIJA: KILMĖ, PLĖTRA IR DABARTINĖ BŪKLĖ

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Santrauka. Straipsnis skirtas administracinio teisingumo Ukrainoje istorijos studijoms. Administracinio teisingumo istorija susijusi su gana ilgu raidos keliu. Dešimtmečius vyko ginčai dėl būtinybės jį įtraukti į Ukrainos teisinę sistemą. Straipsnyje aprašomos istorinės administracinės justicijos raidos sąlygos ir analizuojami pagrindiniai šiam procesui reikalingi teisės aktai. Atskleidžiamos problemos ir sunkumai, iškilę kuriant administracinę justiciją Ukrainoje ir dabartinę jos būklę.

Reikšminiai žodžiai: istorija, administracinė justicija, raida, teismų sistema, Ukrainos administracinių bylų teisenos kodeksas, teismų reforma, procedūra, strategija.

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