УДК 342.9

# ADMINISTRATIVE JUSTICE IN UKRAINE AND FOREIGN COUNTRIES: COMPARATIVE STUDY

**Ludmyla ZABOLOTNA,**
postgraduate of Taras Shevchenko Kyiv National University

**SUMMARY**

The article is dedicated to the topical issue in the conditions of global EuroIntegration process in Ukraine – the research of administrative justice of Ukraine and foreign states is aimed at revealing drawbacks in administrative legislature, stating common and distinctive features of administrative Law and borrowing foreign experience to improve national legislature and making it correspond to the European one. The author has analyzed and summarized administrative Law of several counties of Europe and Asia, has singled out major scientific and practical approaches for solving procedure issues, has introduced her own ways of handling collision problems in administrative creation of norms.

**Key words:** administrative justice, administrative court, administrative responsibility, administrative offence, legal system.

**АНОТАЦІЯ**

Статтю присвячено дослідження адміністративної юстиції України та зарубіжних країн в умовах глобального євроінтеграційного процесу України з метою виявлення прогалин, упущень в адміністративному законодавстві, виведенні спільних та відмінних рис адміністративного судочинства та запозиченні зарубіжного досвіду для удосконалення національного законодавства та приведення його у відповідність європейському. Автором проаналізовано та узагальнено адміністративне законодавство декількох країн Європи та Азії, встановлено основні наукові та практичні підходи вирішення процесуальних питань, запропоновано власні шляхи вирішення колізійних проблем адміністративної нормотворчості.

**Ключові слова:** адміністративна юстиція, адміністративний суд, адміністративна відповідальність, адміністративне правопорушення, судова система.

**Statement of the Problem.** The court system has an old history. However, no country has ever created its ideal model. First of all, it should be mentioned, there are various "national legislatures" with different norms and principles of administrative Law at the current moment. It is particularly concerned with those states, where formation, development and growth of legal systems took place due to typical historical and national conditions: Great Britain, France, Germany, Italy, China and others. Each country has a lot of specific features, reflecting peculiarities of their development, geographical location, impact of local international structures. In our view, rather interesting seems the issue of practical implementation of norms and principles of administrative law that have become a part of national legal systems. Therefore there is a necessity to carry out profound research and perform comparative analysis of the given problem on the level of both national and international Law science.

**State of research.** The research of the problem was carried out by theoretical and practical scientists: O. Pasenyuk, V. Opryshko, O. Kharytonova, E. Kharytonov, R. Popelnyukh, S. Kalchenko, N. Fenton Howard, M. Van David, D. Kireyev, R. Sharven, G. Breaban, R. Kuibida, I. Koliushko, Zh. Ziller and others.

**Research methods that have been used** are the method of synthesis, analysis, reasoning, comparative legal method and others, that are necessary tools to obtain scientific results.

**The aim of the paper.** The aim of our scientific research is mainly the analysis of administrative justice of Ukraine and foreign countries within the framework of Euro integration process and secondly, making it correspond to the European one. The study of foreign experience of administrative justice, the system of administrative courts, the process of courts is being carried out to borrow a positive output and amend the current Ukrainian legislature.

**The main material.** Nowadays there is no single approach to define the notion of administrative justice. In the literature there are three main tendencies to interpret administrative justice. Thus, administrative justice is understood as:

1) particular order of settling administrative and legal disputes by courts and other state bodies;

2) independent branch of justice, whose aim is to settle disputes between citizens and administration or between administration only;

3) not only a special type of legislature, but also a system of specialized courts or special court subdivisions that carry out administrative legislature.

One of the ways to improve national court system is its reforming with the consideration of foreign experience. The best results of using reception of legal norms are observed

in countries of one legal family. As Ukraine and Germany belong to one Roman and German legal family, it is proper to begin a comparative analysis with Germany, researching the issue of functioning administrative courts in the whole court system in Germany.

Beginnings of administrative justice appeared in Germany at the beginning of the XIX century, namely – in early New Age. The German administrative justice of that time functioned according to the enumerative principle, the competence of administrative courts was restricted by a certain list of disputes. Such course of matters lasted until the end of the World War II, when general warning was introduced in the legislature of Germany, according to which administrative act could be appealed in administrative way [1].

The modern system of administrative courts in Germany is similar to the Ukrainian one. It comprises three authorities: administrative courts, Supreme administrative courts of land resources, Federal administrative court.

The code of administrative legislature of Germany states that the appeal to the administrative court is possible in cases of all disputes of public and legal character excluding those of constitutional and legal nature, if the disputes are not designated by the Federal law as the competence of another court. Moreover, the abovementioned Code indicates that the public and legal dispute are different from private and legal dispute according to the nature of legal relations referred by the plaintiff. In its turn, public and legal dispute arise when the plaintiff is connected with the norms of public law. Public and legal norms appear when they are used by administrative bodies and other subjects of public law performing public tasks and which are spread among legal relations between the carrier of law or between the country (or other subjects of public law), on the one hand, and citizens or enterprises, on the other [2, p. 141].

However, jurisdiction of administrative courts in the sphere of public and legal disputes has certain resrictions.

Firstly, the appeal to administrative court is possible only in case of rejecting the claim by the body superior than administrative authority that violated the right of the individual (issued the act subjected to the appeal). That is the appeal to administrative court can be sued only after inspecting this act according to the preliminary administrative proceedings.

Secondly, for certain spheres of public administration there are independent branches of court system: financial courts and public affairs courts.

Thirdly, disputes on public and legal compensations are settled by common courts in the order of civil court system.

Administrative proceedings are divided into two types: preliminary (temporary) legal defence (preliminary defense) and major court jurisdiction [1].

In contrast to the Code of Administrative court in Ukraine, the Code of Administrative court in Germany does not contain any list of different plaintiffs, however the latter establishes the claim on approving the administrative act invalid and the claim on the judgment to approve. Besides, the competence of the court authorized to hear the case is to establish the character of disputable relations [2, p. 85–89; 3, p. 411–412].

Within the framework of cooperation of Supreme administrative court of Ukraine with the German Fund of International Law cooperation, it is common to commit reciprocal scientific and practical conferences, seminars, professional meetings, etc. Such events give the participants the opportunity to introduce foundations of administrative court of Germany and Ukraine, to explore the structure of the work of administrative courts, focusing on the following issues: the principles of administrative process; the competence of administrative courts, the competent division of other court branches, movement of cases in courts and appeal proceedings in the administrative process; inner control in authority bodies, «unloading» of courts and legal defence (preliminary proceedings for denial in the administrative office); the arrangement of court work and the system of cases division; education on Law in Germany and Ukraine; improving judges' qualification; courts judgments and settlement agreements; enforcement of judgments; court staff supervision, appointments of judges; mediation as a new form of disputes settlements in the administrative process; cooperation with mass media and others. In addition, the problem of even loading of courts was considered at such meetings with German colleagues. The German judges informed that the problem of overloading had existed in German courts 7–8 years before due to a great number of cases as a result of emigration. Such problem was solved by generalizing of Supreme administrative courts of districts and also by ways of disputes settlements. These judgments were sent to the state bodies to act accordingly. In view of Ukrainian delegates, this experience can be taken to prevent overloading of administrative courts in Ukraine that took place because of a great number of public disputes.

It is noteworthy to take into consideration the phenomenon of admission to appeal in the German court. Initiating such establishment would enable Ukraine to solve the problem of excessive overloading in administrative courts.

A peculiar matter of interest for the Ukrainian courts is the experience of German colleagues to use the principle of typical judgment (exemplary proceedings), i.e. in case of 20 plaintiffs on the same act, only one judgment is taken, whereas considering other plaintiffs, a typical judgment is applied. To unload courts, pretrial disputes settlement is used – appeal to superior bodies. Hearing the case in the administrative court is not limited in time – it is essential to find out all circumstances of the case.

Ukrainian-German meeting took place on the 28 of May in Odeskyi Administrative District Court in Odessa, in 2013. In the context of cooperation of Supreme administrative court of Ukraine with German Fund of International Law

cooperation there held the seminar on acute questions of performing administrative court proceedings.

During the seminar Ukrainian and German judges had the opportunity to exchange their experience on issues about: legal settlements and practical implementation in courts of Ukraine and Germany the official principle (official investigation of circumstances by the court); the problems and modern situation of legal settlement and court practice in the sphere of the so-called mass administrative proceedings in the courts of Ukraine and Germany; theoretical foundations of division of public and legal disputes as well as private and legal ones and their practical implementation in administrative courts in Ukraine and Germany.

To seminar's participants mind, holding such events will encourage more effective functioning of administrative justice in Ukraine, fruitful cooperation between Ukraine and Germany will enable to solve current important issues in administrative court in Ukraine.

Therefore, we agree with R. Popelnukh that the critical interpretation of German experience, a creative approach to define the ways of its application may be a strong factor to provide coordinated and effective functioning of administrative court proceedings in Ukraine [3, p. 412].

Administrative justice in France has its historical peculiarities that identify its modern legal situation. Administrative justice in France began since Napoleon's times, when he created the State Council in 1799 – prefectures councils, that had court powers.

The French system of administrative justice which is considered to be classical one, is characterized by special court bodies (administrative courts) dealing with disputes claimed by citizens to the appropriate bodies. The French administrative justice is an independent branch of court aimed at settling conflicts between citizens and state bodies or between bodies and establishments, also taking judgments based on norms of administrative court [4, p. 27].

Administrative justice of France has a set of the following peculiarities:

Firstly, administrative courts are absolutely independent and are not subjected to any bodies in the system of courts. They also perform the role of administration counselors.

Secondly, dualism of court system causes certain difficulties while defining jurisdiction of administrative courts. In 1848 it led to the formation of special body — Court on disputes settlements.

Thirdly, due to the principle of power division in administration activity, only administrative courts (tribunals) that created the law, were entitled to deal with cases, whith administration as a participant. On the other hand, administrative justice is integrated to the administration itself and is inseparably connected with it. Such course of action is a compromise between a political power and administration [5, p. 83].

A system of administrative courts consists of regional and specialized courts, Courts of Appeal and State Council.

The French administrative court process has proceeding rules that are typical of the Civil process as well. At the same time there are regulations that are typical only of administrative procedure.

Administrative court does not have the independent right to initiate proceedings without a statement of claim. The court is connected with the content of claim, however, the exclusion to this rule is – «motives of public nature», according to which the court may find the initiative and cancel the administrative act, approved by incompetent body or outlaw [8].

The typical of administrative process is the principle of competitiveness, the judge is entitled to play an active role, providing the citizen with legal defence. By the way, attorney's participation is not obligatory. This feature distinguishes the French administrative process from the German one, in which the attorney's involvement with administration proceedings is mandatory.

For our investigation it is interesting to take into consideration the British system of administrative justice, that is based on the doctrine of equality of all officials to the court and inadmissible removal of officials from the jurisdiction of the courts themselves. Therefore administrative disputes between citizens and bodies are considered by courts of common jurisdiction.

However along with common courts in Great Britain there is a number of bodies that perform court functions and have a secondary role. They are called tribunals, they are quasi-court bodies, because they perform special justice. Great Britain is thankful for tribunals and administrative justice to the Law on Tribunals and investigation, adopted in 1958, that laid the only legal foundation for functioning cuasi-court bodies dealing with administrative disputes. This law also initiated the acting Council on tribunals as supervisory and advisory body in the system of executive power [7].

Tribunals are purely British phenomena. They are specific «informal» courts. They occupy intermediate position between administration and common courts. The task of the tribunal is to establish the right of the individual for help or service, provided by Law.

Traditionally, administrative tribunals are divided into two groups: tribunals in the sphere of economics (tax, indusrty, land, transport, timber, etc.) and tribunals in the public sphere (medicine, retirement, social provision, etc.).

Tribunals deal with administrative disputes between state bodies, officials and citizens as the first establishment. The tribunal's judgment can be claimed in administrative way (to the Minister or Appeal Tribunal). The appeal to Tribunal's judgment can be provided to the court of common jurisdiction that performs the supervisory function.

The members of tribunal are not necessarily to be legal experts, but also individuals that possess special knowledge in the sphere competent with the Tribunal.

The independence of tribunals is provided, as a rule, by the fact that not only state officials may be its members, but also there are exclusions.

The case in the tribunal is considered by the board of the chairman and two members that represent different interests. Disputes proceedings are not too formal, adherent to such traditional foundations as competitiveness, openness, subject to appeal, etc. There is no single process, however all claims are considered by action proceedings, there are certain stages, participant's status and terms. Attorney's participation is not mandatory, protocols are not made.

Administrative tribunals have the advantages of immediate court proceedings, specialization according to certain kinds of proceedings, a lack of strict court proceedings, low cost, a free access for individuals that need defence from illegal actions of the administration.

Over the last years the British administrative law has experienced substantial changes, it is becoming closer to continental-European interpretations about administrative law [7].

In China, for example, the court system consists of common and special courts. The common are Supreme court and local courts of three degrees: the highest, middle and lowest. Special courts are military courts, however, special courts may be formed, they were spread in times of "cultural revolution". In practice, however, in accordance with traditions, the citizens do not frequently appeal to the court, preferring non-state, informal methods of disputes settlements. Court bodies perform the function of punishment, and also are to take part in rehabilitation of offenders.

The Supreme court is formed by supreme state bodies. It carries out the court supervision over the activity of common and special courts. Practically it does not deal with the cases of the first establishment. Like other courts, it does not enjoy independence as a special branch of state power: it is responsible to the Committee of Chinese meetings of People's representatives that can change its membership.

The lowest level of local people's courts is formed by citizens by election, other local courts are selected by local state bodies. The judges of local courts as well as the judges of the Supreme People's court are constant and independent: they are responsible to local representative bodies and their permanent committees.

There are no special administrative courts in China, however, common courts have chambers on administrative proceedings. They accept claims on violation of administrative rights and interests of citizens and entities. In rural areas, such claims are considered by committee of villagers (bodies of public self-government), whose decisions may be appealed. In 1993 there were founded arbitration committees and arbitration courts on labour disputes, their judgements are not final, they may be appealed to the People's (state) court.

In Spain administrative branch of justice began its development in 1888.

The Law on administrative legal system is the embodiment of Anglo-Saxon legal model and French administrative model. However, in 1956 this law took its authority: specialized courts were introduced, their powers were identified, standards to settle disputes were defined. Soon in the law were inscribed the models to improve specific aspects concerning the sentence and grounds for appeal.

According to the Constitution, the legal system of Spain acts due to certain principles of efficiency, decentralization and coordination, their activity has to serve public interests. The Spanish administrative justice unites two principles: legal activity of state bodies and protection of citizens' rights and interests. On the basis of these principles a system of law expertise and control has been established. Spanish state governing is defined as a bureaucratic organization with a status of entity, independent of the government, it is entitled to follow the law and serve common interests objectively. Each Spanish community, as a local body of a regional scale, has an independent government with independent state form of governing. Spanish administrative law recognizes the difference between common and individual acts, resolution acts resulting in termination of administrative procedure and preparation acts. The right to govern administrative acts is given to the representatives of court power, consisting of judges and magistrates, having the experience in the sphere of law. There are certain standards of justice: first of all, Constitution and Provisions, concerning the structure and organization of court, confirm the right to the effective legal defence; secondly, attorney's assistance is obligatory for all appeals to all jurisdictions except state officials; thirdly, the article 119 Constitution states that justice is free for those who prove their resources to be unavailable for court procedure; fourthly, in case the party is not sincere or sensible in her appeal, the court body may judge it according to the cost of the appeal (the amount is a set, a part or even a maximum number of expenses), however, in rare cases, the fine may be imposed; fifthly, jurisdiction is an element of court procedure, maintained by formation of one judge of the Supreme Court, National Court ("National Jurisdiction Court") and the Supreme Court, consisting of several judges, including the head. The number and competence of the court become public and is annually published by the government; secondly, strict requirements to the judges: the judge may belong to the first ("juez"), to the second ("magistrado") or to the third ("magistrado dell Tribunal Supremo") category of law profession. Conditions of appointing the judge and the legal status of judges are similar for all jurisdictions. There is an effective programme on further education (classes, seminars and others) of judges during their career. There is an objective criterion of choosing judges: education, vacancies, working experience; sevenly, the principles of equality and protection of rights are principles of Constitutional value, providing the right to the effective right to the legal defence, the principle of

admission to the court; eighthly, the principle of judges' independence [6, p. 83].

Besides, the appeal can be met before approving the judgment in the course of court procedure, in case of silent agreement by the administration, a lack of claim, in case of extrajuridicial recognition of defendant's requirements and reconciliation. Hearing is obligatory even for "simplified proceedings", hearing is open (general principle of open juridicial activity). The witness in administrative court is not mandatory in practice. The discussion is held once while accepting the appeal or after the written conclusion, or without hearing and conclusion as well.

The judgment is made in written form within 10 days after the appeal has been executed. The term can take more time if the judge gives enough motivation to adopt the judgment. The execution of judgments is provided by the Constitution. A specific course of executing judgments is focused on execution by the administration. In this matter, claims on acts or inactivity of the administration, are not for private individuals, there is the possibility for the judge to commit the administration to act accordingly. In this case, administrative or criminal liability can be used. The judge can prolong the terms of sentence execution, however, due to the excessive use rights, Spain faced the problem of work in the court – long-lasting delay of the judgment.

There is a tendency to fight the excessive delay of judgments, main political parties signed the Pact on Justice in 2001, stating special procedures to lower delays of judgments.

**Conclusions.** In the era of global European process, it is very important to make the Ukrainian legislature correspond to the European one, nowadays it is one of the key goals of the parliament, along with termination of war actions in the east of Ukraine, restoration of the infrastructure, fighting economic and political crises. Especially topical for Ukraine that is about to introduce administrative justice of the European example are theoretical and applied developments in this sphere, as well as comparative research, based on deep study of foreign experience.

The world has established two main kinds of organizations of court judgments on administrative disputes. One of them is observed in major developed countries of continental European system of Law and envisages a separate specialized branch of administrative courts (France, Germany, Italy, Poland, Turkey) or specialized administrative chambers in the structure of common courts (Spain, Netherlands, Switzerland). The absolute advantage of such model is professionalism and experience of judges. The peculiarity of this model is the existence of special procedure in courts of administrative affairs.

Nowadays there is a clear tendency to unite separate elements of court systems, their maintenance or even enforcement. Thus, to improve the activity of administrative courts, to foster court proceedings in administrative courts, it is necessary to borrow the most effective foreign practice and to implement its application in the Ukrainian administrative justice.

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