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EUROPEAN STANDARDS OF ADMINISTRATIVE JUSTICE

Volodymyr Reshota

Ivan Franko National University of Lviv,
1, Universytetska Str., Lviv, Ukraine, 79000,
e-mail: volodymyr.reshota@lnu.edu.ua
ORCID ID: 0000-0001-9235-2262

The article examines the European standards of administrative justice, which are the minimum requirements that members of the European Union and the Council of Europe must meet in order to ensure the protection of subjective public rights. These rights are the individual rights and interests that citizens have against the state and its administration.

The article begins by providing an overview of the concept of administrative justice and its importance in a legal state. Administrative justice is the system of courts and procedures that are used to review administrative decisions and actions. It is an essential part of the rule of law, as it ensures that the administration is accountable to the courts and that citizens can have their rights protected.

The article then discusses the specific standards of administrative justice that have been developed by the Council of Europe. These standards include: the right to a fair hearing. This right means that all parties to an administrative proceeding must have an equal opportunity to present their case and to be heard by an impartial tribunal; the right to an effective remedy. This right means that individuals must have access to a court or other body that can provide a remedy for their grievances against the administration; the principle of legality. This principle means that the administration must act in accordance with the law.

The article concludes by arguing that the European standards of administrative justice are essential for ensuring the rule of law and the protection of human rights in Europe. By guaranteeing that citizens have access to fair and effective remedies for their grievances against the administration, these standards help to protect individual rights and freedoms.

Keywords: administrative justice, European standards, judicial review, public administration, European Union, administrative proceedings.

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Integration of Ukraine into the European legal space requires a comprehensive reform of the legal system based on the principles and standards that have developed at the general European level. When carrying out reforms in public administration, it is necessary to take into account international and European standards, theoretical provisions, doctrines and positive practical experience of foreign countries. In particular, the administrative and judicial reform launched in Ukraine, the creation of a system of administrative courts in Ukraine, and the development of a regulatory framework for administrative justice are taking place taking into account international and European standards of administrative justice. Their compliance is a prerequisite for Ukraine's integration into the European legal space, as well as for the acquisition of the hallmarks of a legal state.

The research problem was initiated in the studies of V. Averianov, Y. Dimitrov, I. Koliushko, R. Kuibida, Y. Ped'ko, A. Khvorostyannkina, etc. [1–4]. These authors initiated the study of the institution of administrative justice, the analysis of foreign experience and the possibility of introducing such a model in Ukraine, but they did not pay enough attention to general European standards of administrative justice.

Foreign sources play a special role in the study of this topic, as they allow for a deeper analysis of European principles of administrative justice. One of the most comprehensive and authoritative books on administrative law is Administrative Law by Paul P. Craig [5]. This book provides a detailed overview of the system of administrative justice in the United Kingdom, including the role of tribunals and the principles of judicial review. Another important book is Principles of administrative law by Griffith, John A. G., and Harry Street [6]. This book provides a more theoretical and analytical approach to administrative law. It covers a wide range of topics, including the nature of administrative power, the principles of good administration, and the remedies available to individuals who have been wronged by administrative agencies. The administrative process by James M. Landis reveals the historical development of administrative process and law [7]. This book was first published in 1938, but it remains a valuable resource for understanding the origins of the modern administrative process. Landis's book is particularly insightful in its analysis of the relationship between administrative agencies and the courts. EU administrative law by Paul Craig provides a comprehensive overview of the principles and practice of administrative law in the European Union. Craig's book provides information the complex system of administrative governance that has emerged in the EU [8].

The relevance of the proposed topic is due to the need to conduct a scientific and theoretical study of the institution of administrative justice, including the study of its European standards and foreign experience, which will make it possible to determine the directions of reforming this human rights instrument during its institutionalization in Ukraine.

The purpose of the research is to clarify the essence of the institution of administrative justice as one of the most important hallmarks of a legal state, to analyze the compliance of Ukrainian legislation with European standards of administrative justice.

Legal standards are established in areas of legal regulation in which it is necessary to typify the behavior of the relevant legal subjects in order to eliminate legal conflicts or «prepare» a certain area of social relations for a higher level of unified regulation. In philology, the term «standard» is interpreted as a generally accepted pattern, typical form, norm, template of something; that which is devoid of individual characteristics. In modern conditions, legal standards are used to adapt national legal systems within the European legal space to European interstate legal systems. They contain principles and norms of law that are recognized by the states-parties within the interstate legal systems, are fixed in international legal acts and documents, and promote the legal integration of national legal systems into the international community [9, p. 113].

Administrative justice as one of the most important institutions of a legal state is an effective means of control over the activities of executive authorities. The introduction of administrative justice in Ukraine and the establishment of administrative courts are aimed at guaranteeing the right of everyone to appeal to court decisions, actions or inaction of state authorities, local self-government bodies, as well as their officials, which, in turn, should ensure the implementation of the constitutional principle of the responsibility of the state for its activities before the person [4].

The European standards of administrative justice are a set of principles developed by the Council of Europe, an international organization that promotes human rights and democracy in Europe. These standards are based on the following key principles:

– The right to a fair hearing: This means that citizens have the right to be heard before an independent and impartial tribunal, and to present their case in full.

– The right to an effective remedy: This means that citizens have the right to challenge decisions made by administrative bodies, and to obtain a remedy if their rights have been violated.

– The principle of legality: This means that administrative bodies must act in accordance with the law, and that their decisions must be justified.

– The principle of transparency: This means that administrative bodies must be open and accountable to the public, and that their decisions must be made in a transparent manner.

– The principle of proportionality: This means that administrative bodies must balance the interests of the individual with the interests of the public when making decisions [10; 11].

These standards are important because they help to ensure that citizens' rights are protected in their interactions with administrative bodies. They also help to ensure that administrative bodies act fairly and in accordance with the law.

Administrative justice is not a new legal phenomenon, but discussions about its concept and content have been going on for several centuries. The ambiguity in its understanding is due to the existence of many models of administrative justice and the difference in its application.

In our opinion, administrative justice should be understood as a system of specially created judicial or quasi-judicial bodies for the resolution and consideration of administrative disputes under a specially established procedure regarding the illegality of acts, actions or inaction of state executive bodies that violate the subjective rights of individuals or legal interests of legal entities in the field of public administration. The proposed definition is general in nature, since it aims to outline all administrative justice systems, which have many significant differences.

Ensuring guarantees of the subjective rights of citizens in relations with administrative bodies is the duty of a legal state, which necessitates the creation of administrative justice in Ukraine, which would, on the one hand, protect the subjective rights of citizens, and on the other hand, ensure the legality of the activities of state authorities and, thus, contribute to the strengthening of law and order in the state. The nature of these interests determines the existence of private subjective rights, when the personal interest is pursued, and public subjective rights, when it comes to public interest (general good).

Therefore, the introduction of administrative justice is due to the legal nature of public law disputes, where the citizen is opposed by a powerful administrative apparatus. Thanks to the creation of administrative justice, not only will the strengthening of law and order in the field of management activities be guaranteed, but also the opportunity for an individual citizen to exercise his rights in relation to state authorities by appealing their unlawful decisions, actions or inaction.

Special committees of the Council of Europe have developed the Principles of Administrative Law, which define the relationship between administrative bodies and private individuals [12]. These principles are aimed at ensuring effective means of control over administrative acts and actions of state authorities that violate the rights and interests of citizens. It is noted that these methods are:

– Judicial control, which is an indispensable attribute of a state for which the rule of law and the protection and respect of human rights are decisive. These means include control by both general and constitutional courts; administrative control, or as it is also called, departmental control, which consists in the control of the activities of the active administration by higher state bodies, as well as the control activities of the Ombudsman, authorized by the parliament to supervise the activities of executive and other state

authorities by considering complaints from citizens about the actions of these bodies or their officials that violate their rights.

– These principles are a kind of minimum guarantees, standards that guarantee the minimum level of protection of the subjective rights of citizens in public administration.

Judicial control over state authorities, carried out by special administrative courts (mainly in countries of continental law) or general courts (in countries of Anglo-Saxon law both for administrative authorities and for bodies of administrative justice) has the goal of ensuring the protection and protection of the rights of individuals and legal entities.

The main requirements for judicial control, as defined in the Principles of Administrative Law of the Council of Europe:

– The case must be heard by an independent and impartial court (tribunal) established in accordance with the law;

– A fair administrative procedure that was conducted in a reasonable time frame;

– A fair and open court hearing;

– Ensuring an effective remedy [12, p. 29].

Not only persons to whom it was addressed, but also all persons whose legitimate rights and interests have been violated, have the right to appeal an administrative act in court, regardless of whether this act is an individual measure or decision, or an act that affects the interests of a large number of people, it must be the subject of a judicial review for its legality.

EU administrative law is based on principles that derive from the Treaties under which the EU was created and continues to function. Paul Craig defines the rule of law as the basic principle under which the administration should be procedurally and substantively accountable before the courts [8, p. 270]. However, he notes that the rule of law is not the only principle of EU administrative law. He also mentions the principle of institutional balance, which means that each institution must exercise its power with due regard for the powers of other institutions. The European Court of Justice ensures that the interpretation and application of the Treaties is observed and that the balance of powers of different institutions is maintained [8, p. 275].

The constitutional traditions and legal systems of different countries are characterized by different models of administrative justice, which offer different forms of protection of the subjective rights of citizens in public administration. In countries of continental law (France, Germany, Poland, etc.), these functions are performed by administrative courts, whose jurisdiction includes the consideration of administrative cases where the plaintiff is a private individual.

In Ukraine, prior to the adoption of the Code of Administrative Proceedings, all administrative and legal disputes between citizens and state authorities were resolved by general courts under the rules of the Civil Proceedings Code.

The Code of Administrative Proceedings of Ukraine, which came into force on September 1, 2005 [13], legislatively defined all the basic principles of administrative proceedings, which fully meet European standards of administrative justice and regulated the establishment of administrative courts to resolve disputes that arise in the field of public administration.

The Code, although it does not regulate the relations of the public service, contains provisions that directly establish requirements for those who work in government bodies. Thus, in Art. 2 of this Code, criteria are established that will be applied by the administrative court to assess the decisions or inaction of subjects of public authority. Subjects of public authority include state bodies and local self-government bodies, their officials, as well as, in certain cases, other entities, if state bodies delegate their powers to them. These criteria are

based on the recommendations of the Council of Europe, and in their content, they correspond to the principles of administrative procedure. And although they are not addressed directly to civil servants, they must take them into account, because ignoring these requirements can lead to a loss of a case in an administrative court.

The Austrian experience of administrative justice has been cited as a model for other countries, including Ukraine. The Austrian system is characterized by a number of features that could be useful for Ukraine, including:

– An independent and impartial judiciary: The Austrian administrative courts are independent from the executive branch of government. This ensures that they are able to make impartial decisions without fear of interference.

– A specialized system of administrative courts: The Austrian administrative courts are specialized in hearing cases involving administrative law. This allows them to develop expertise in this area of law.

– A comprehensive system of legal remedies: The Austrian administrative courts have a wide range of legal remedies available to them, including the ability to annul administrative decisions, order compensation, and issue injunctions.

– A transparent and accessible system: The Austrian administrative courts are required to be transparent in their operations. This means that they must publish their decisions and make them available to the public. They must also be accessible to all citizens, regardless of their financial means [14; 15].

The Ukrainian government has taken some steps to reform its administrative justice system, including the adoption of the Code of Administrative Proceedings in 2005. However, there is still room for improvement. The Ukrainian government could learn from the Austrian experience by:

– Strengthening the independence of the administrative courts
– Establishing a specialized system of administrative courts
– Expanding the range of legal remedies available to the courts
– Making the system more transparent and accessible

The Austrian experience of administrative justice shows that it is possible to create a system that is fair, effective, and accessible to all citizens. Ukraine could learn from this experience and build a strong system of administrative justice that protects the rights of its citizens [16].

In the countries of common law (the United Kingdom, the United States, etc.), control over administrative acts is carried out by judges of general courts, whose jurisdiction includes issues of both private and public law, and recently also by specially created narrow-specialized administrative tribunals.

In England, one of the most famous political and legal ideas was the theory of «the rule of law» (Rule of Law), which is a fundamental constitutional principle, according to Professor A. V. Dicey of Oxford University. The researcher identified three main features of this principle. First, it means the absolute supremacy or superiority of common law over arbitrariness, and also excludes its possibility, prerogative or even broad discretionary power of the administration. The second meaning of the mentioned constitutional principle is equality before the law, i.e. the same subordination of all persons before common law, which is applied by ordinary courts. According to this principle, all citizens are equal before the law and are equally responsible before the court regardless of the position they hold. At the same time, the author sharply criticizes French administrative law and administrative courts because the «government and its servants» are not subordinate to ordinary civil courts, and their cases are heard by special administrative bodies, which the administration itself creates, which is absolutely incompatible with the traditions and

customs of England. The third feature of the principle of «the rule of law» is defined as the fact that the court plays a major role in defining the rights and freedoms of private individuals, and the constitution is only the result of common law, not its source [17, p. 374].

However, despite the traditional legal system, since the beginning of the 20th century, the creation of specialized tribunals created by law is allowed, which are not part of the general court system or the administrative court system. Their jurisdiction is limited to specific issues of social life, for example, resolving disputes in the field of social security, granting permits for obtaining certain types of licenses, appointing compensation payments by an administrative body in the event of illegal deprivation of property, etc. If the tribunal does not satisfy the requirements of the complainant, the person whose rights have been violated may appeal to the ordinary court with an appeal against the decision of the tribunal.

The system of legal remedies includes the right of a court to annul an administrative act or to prohibit or suspend illegal actions of administrative bodies.

Providing legal means of protection of the rights of citizens is one of the main principles of creating and maintaining a legal state, which is the goal of all democratic states.

The rule of law, the priority of the rights and freedoms of the citizen are not only characteristic features of the rule of law, but also its direct goal. After all, the nature of the relationship between the citizen and the state is a key issue in the doctrine of the rule of law. Many theoretical and practical problems of judicial control over the actions of state authorities are associated with it.

The institution of administrative justice, which is one of the main attributes of the rule of law, serves as an effective means of control over the activities of executive bodies. The very specificity of such activity, which is of subordinate nature, necessitates control from representative, higher in the order of subordination, as well as judicial bodies.

Ensuring guarantees for the subjective rights of citizens in relations with administrative bodies is the duty of a legal state, which necessitates the completion of the formation of administrative justice in Ukraine, which, on the one hand, would protect the subjective rights of citizens, and on the other hand, through judicial practice, would ensure the legality of the activities of state authorities and, thus, contribute to the strengthening of law and order in the state. Therefore, the introduction of administrative justice is due to the legal nature of public law disputes, where the citizen is opposed by a powerful administrative apparatus.

Summing up the analysis of European standards of administrative justice, the following conclusions can be drawn:

– Ukraine's integration into the European legal space requires the reform of the legal and economic system and its alignment with the standards of European institutions. European standards are those requirements that ensure the approximation of legal systems and are an important tool for harmonizing the legislation of Ukraine and the European Union. Adaptation of Ukrainian legislation is the first stage of a long process of approximation of the national legal system, including legal culture, doctrine and judicial and administrative practice, to the legal system of the European Union in accordance with the criteria set by the European Union for states that intend to join it.

– The adoption of the Code of Administrative Proceedings of Ukraine was an important step towards the legislative consolidation of European standards of administrative justice, developed by special committees of the Council of Europe.

– The existence of various bodies that protect the rights and freedoms of citizens creates a mechanism without which the functioning of a legal state is impossible. In different countries, there are their own specific ways to protect the public subjective rights of citizens, but one of the most important is the institution of administrative justice, which serves as an effective means of control over the activities of executive bodies. Administrative justice is an integral part of a legal state, and its creation is the task of every democratic state.

With the legislative consolidation of a special procedure for considering administrative and legal disputes, Ukraine has confirmed its commitment to European integration and bringing its legislation into line with European standards and norms. The important question remains how effectively it will be possible to form a system of administrative courts, which in their activities will fulfill all the guarantees provided for in the Code of Administrative Proceedings of Ukraine.

Administrative justice is a system of legal mechanisms that protects the rights and freedoms of citizens in their relations with administrative bodies. It is an essential part of a legal state, as it ensures that the powers of the state are exercised fairly and in accordance with the law.

The European standards of administrative justice are a set of principles that provide guidance on how to ensure that administrative justice systems are fair and effective. These standards are based on the following key principles:

– The right to a fair hearing: This means that citizens have the right to be heard before an independent and impartial tribunal, and to present their case in full.

– The right to an effective remedy: This means that citizens have the right to challenge decisions made by administrative bodies, and to obtain a remedy if their rights have been violated.

– The principle of legality: This means that administrative bodies must act in accordance with the law, and that their decisions must be justified.

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– The principle of proportionality: This means that administrative bodies must balance the interests of the individual with the interests of the public when making decisions.

These standards are important because they help to ensure that citizens' rights are protected in their interactions with administrative bodies. They also help to ensure that administrative bodies act fairly and in accordance with the law.

The development of administrative justice in Ukraine is a complex and ongoing process. The country has made significant progress in recent years, but there are still challenges to be addressed. One of the biggest challenges is to ensure that the administrative courts are independent and impartial. Another challenge is to ensure that the administrative courts have the resources they need to effectively fulfill their functions.

The establishment of administrative courts is a positive step towards European integration for Ukraine. However, it is important to ensure that the administrative courts are effectively implemented and that they have the resources they need to function properly.

The future of administrative justice in Ukraine depends on a number of factors, including the political will to reform, the availability of resources, and the cooperation of all stakeholders. However, if the state is able to overcome these challenges, it will be well-positioned to create a system of administrative justice that is fair, effective, and accessible to all citizens.

Prospects for further research are the analysis of the formation and development of administrative justice in Ukraine, the borrowing of positive foreign experience, in

particular from Anglo-Saxon countries, as well as the approximation to European standards in the context of Ukraine's European integration.

This paper is a result of my research on the topic of «Administrative justice reform in the context of European Integraton of Ukraine». I gathered valuable information on this theme at the Law Library of Vienna University through the OeAD program. I am grateful to professor Dr. Thomas Jaeger from Vienna University for scientific supervision and the OeAD program for making it possible for me to conduct my research at this prestigious institution.

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ЄВРОПЕЙСЬКІ СТАНДАРТИ АДМІНІСТРАТИВНОЇ ЮСТИЦІЇ

Володимир Решота

Львівський національний університет імені Івана Франка,
вул. Університетська, 1, Львів, Україна, 79000,
e-mail: volodymyr.reshota@lnu.edu.ua
ORCID ID: 0000-0001-9235-2262

Розглянуто європейські стандарти адміністративного судочинства, що є мінімальними вимогами, яким повинні відповідати країни-члени Європейського Союзу та Ради Європи для забезпечення захисту суб'єктивних публічних прав. До таких прав відносять особисті права та інтереси громадян, спрямовані проти держави та її адміністрації. Ці права – це індивідуальні права та інтереси, які громадяни мають у відносинах з державою та її публічною адміністрацією. Стаття розпочинається з розгляду поняття адміністративної юстиції та її значення у правовій державі. Адміністративна юстиція – це система судів і процедур, які використовуються для перегляду адміністративних рішень і дій. Вона є невід'ємною частиною верховенства права, оскільки забезпечує підзвітність публічної адміністрації судам і захист прав громадян. У подальшому у статті розглядаються конкретні стандарти адміністративної юстиції, розроблені Радою Європи. Такі стандарти охоплюють: право на справедливий судовий розгляд. Це право означає, що всі сторони адміністративного провадження повинні мати рівні можливості подавати докази і бути заслуханими неупередженим судом; право на ефективний засіб правового захисту. Це право означає, що особи повинні мати доступ до суду або іншого органу, який може забезпечити засіб правового захисту їхніх скарг на публічну адміністрацію; принцип

законності. Цей принцип означає, що публічна адміністрація повинна діяти відповідно до закону. Стаття завершується твердженням про те, що європейські стандарти адміністративної юстиції мають важливе значення для забезпечення верховенства права та захисту прав людини в Європі. Гарантуючи громадянам доступ до справедливих та ефективних засобів правового захисту їхніх скарг на дії публічної адміністрації, ці стандарти допомагають захистити права і свободи особи.

Ключові слова: адміністративне судочинство, європейські стандарти, судовий контроль, публічна адміністрація, Європейський Союз, адміністративне провадження.

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