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EUROPEAN MODELS OF ADMINISTRATIVE JUSTICE PROVIDING PROTECTION FOR THE RIGHTS AND FREEDOMS OF INDIVIDUALS

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The article deals with European models of administrative justice, which aim to protect the rights and freedoms of individuals in their relationship with public administration. The author provides the notion of administrative justice as a system of authorized judicial and quasi-judicial bodies to resolve and consider administrative disputes by a specially established procedure regarding the legality of decisions, actions, or inactions of public authorities that violate the rights, freedoms, and interests of private individuals in the field of public law relations. The article provides information on different approaches to the classification of models of administrative justice. The study focuses on two main systems: the continental model, typical to the countries like France and Germany, as well as the Anglo-Saxon model, found in the UK and the USA.

Every European model of administrative justice has its own historical background, legal traditions, and legislative norms. The author outlines the pros and cons of each model in their purpose, protecting individuals' rights and freedoms against unlawful decisions, actions, or inactions by public administration.

Keywords: administrative justice, European models, rights and freedoms, public administration, tribunals, administrative courts.

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In relation to individuals, public administration has two main objectives: providing services to the individuals, ensuring all rights and freedoms are protected, and, on the other hand, creating a system for the protection of those rights and freedoms from illegal decisions, actions, or inactions of the public administration itself. Consequently, it is challenging for a state to establish an independent, fair, and transparent public body to resolve government and private disputes. That is why such a system may operate effectively only in democratic and legal states. These functions are delegated to the administrative justice system, which consists of administrative courts, tribunals, and other judicial or quasi-judicial bodies established by the state. The essence of administrative justice in Europe has experienced numerous transformations and changes influenced by legal traditions, reforms, and historical background.

The objective of the article is to investigate European models of administrative justice in their providing of protection of public rights and freedoms of individuals in disputes with public administration.

At the core of administrative justice, there is the recognition and, more importantly, the protection of subjective public rights from potential abuse by state authorities.

European standards of administrative justice establish minimum requirements that the EU and Council of Europe member states shall adhere to in order to protect these rights [17]. This system allows individuals to seek redress against decisions, actions, or inactions by public bodies. The disputed nature of administrative justice highlights its complexity [10]. Some states have created distinctive models representing their own approaches to dispute resolution with public administration, while others use the French administrative court model [14]. These models emphasize the different approaches to the administrative justice system [15].

The experience of different European nations demonstrates that administrative courts are a useful and approachable instrument for defending people's rights, freedoms, and interests against abuses by local and national authorities. It is generally known that the European human rights protection system was formed by the administrative justice system in Ukraine, which was based on the best judicial practice and the legal systems of Germany, France, and Poland [16, p. 211]. This also applies to administrative proceedings since they involve settling public law disputes, which, in part, guarantee a compromise between the public and private interests and uphold the rule of law, which in turn affects all aspects of public life [13, p. 128].

There is no common understanding of administrative justice, especially in common law countries, where administrative law and administrative procedure are relatively new branches of law. For example, certain scholars include an ombudsman, whose task is to investigate claims of "injustice" caused by maladministration in the provision of public services in the administrative justice system [11]. That reflects the broad approach to the term "justice" in its correlation with administration, in other words, protecting the rights and freedoms of individuals by all available means. However, this approach may also imply that the administration can be a judge in its own case, for instance, when a person appeals to the higher administrative body regarding maladministration. For this reason, administrative justice should be regarded as a distinct system of judicial or quasi-judicial bodies established for dispute resolution, separate from the public administration itself.

In our opinion, administrative justice is a system of authorized judicial and quasi-judicial bodies to resolve and consider administrative disputes in accordance with a specially established procedure regarding the legality of decisions, actions, or inactions of public authorities that violate the rights, freedoms, and interests of private individuals in the field of public law relations [9, p. 45-46].

European countries have developed mechanisms to protect rights and freedoms from abuses by public administration. Historical background, legal culture, and traditions have shaped unique administrative justice systems. The majority of contemporary scholars who study the institution of administrative justice distinguish between two primary models based on the type of legal system: the continental and Anglo-Saxon (Anglo-American) models [1, p. 11; 3, p. 9]. The primary criterion for classifying these models is generally considered to be a country's affiliation with a particular legal system. However, it is necessary to point out that it should not be limited only to the country's legal system affiliation but also other numerous factors that should be considered: the legal nature of bodies that resolve public disputes, the administrative and court system, national legislation, etc.

Most modern researchers of the administrative justice institution distinguish two main models of administrative justice by the type of legal system: continental and Anglo-Saxon (Anglo-American). The main criterion for classifying models of administrative justice is the country's belonging to the respective type of legal system. This criterion should not be

considered the main one because, as mentioned above, many different factors, in addition to the legal system itself, influenced the formation of a particular model of administrative justice.

The continental European version of the organization of judicial resolution of administrative disputes provides for the existence of a separate specialized branch of administrative courts within the judiciary (France, Germany, Italy, Poland, Turkey) or specialized administrative chambers within the structure of general courts (Spain, the Netherlands, Switzerland).

The provision that in the states of the Anglo-Saxon legal system, the authority to consider claims against the administration belongs exclusively to general courts (UK, Canada, USA) is debatable [1, p. 11]. That approach denies the quasi-judicial model of administrative justice, which, in our opinion, plays an important role in resolving administrative disputes.

Other researchers distinguish three models of administrative justice: French, German, and English (Anglo-American) [2, p. 260; 44, p. 263; 6, p. 51-54; 7, p. 11-24; 8, p. 295]. The main difference is that the French type is characterized by the establishment of administrative justice bodies within the public administration; according to the German model, separate administrative courts are established that are independent of executive authorities and general courts; the English model is characterized, in their opinion, by the control of general courts over the activities of the administration.

Scholars often distinguish the following four main world models of administrative justice:

– Administrative (French, managerial) model, according to which administrative justice bodies are part of active administration and are not subject to the control of general courts in their activities;

– Administrative-judicial (Germany, Austria, Poland, Ukraine) – characterized by the establishment of specialized courts for administrative disputes, which are part of the general judicial system but are independent of administrative bodies and general courts in their activities;

– Anglo-Saxon (quasi-judicial, Anglo-American) – is distinguished because the bulk of administrative cases are considered by special tribunals (agencies, commissions, etc.) that are not part of the system of general courts but are under their control, but these cases can also be considered by courts;

– The general judicial model involves considering and resolving public disputes by courts of general jurisdiction (in the separate proceedings) using civil procedure to address complaints against actions or decisions of public authorities that have violated rights and freedoms [5, p. 164-165]. Nevertheless, the justification for distinguishing such a model is questionable because it is difficult to argue for a separate model without separate bodies to resolve public law disputes or a distinct procedure for handling them. This situation persists in some post-Soviet republics where administrative justice has not yet been introduced.

The main features of administrative justice models can be revealed by generalizing their positive and negative features. In our view, it is impossible to categorically state the advantages of a particular model as each has developed historically through various social, economic, and legal factors, such as the type of legal system, legal awareness, and legal culture. Positive or negative aspects of one system may have an entirely different impact on another country under specific conditions. Therefore, only the strengths and weaknesses of each model can be highlighted, as no administrative justice system is perfect itself.

The positive features of the administrative (French) model include the independence of administrative courts from both the legislature and general jurisdiction courts; the specialization of administrative courts in addressing administrative disputes; the

professionalism of judges (supported by institutions like the National Administrative School, which provides specialized training for administrative court personnel); the ability to appeal regional court decisions to the courts of appeal as well as the State Council; and the stability of this model.

In our opinion, the negative features of the French administrative model include a unique interpretation of the theory of separation of powers, where administrative justice, as part of public administration, essentially acts as a judge in its own case. This setup often places the administration as an interested party, creating an imbalance between the citizens and the administration, of which the administrative court is a part. Additionally, administrative courts lack the authority to issue orders requiring administrative bodies to perform specific actions; they can only prohibit certain actions by the administrative apparatus. Nevertheless, some researchers regard the French model as the most effective and well-structured [3, p. 9].

The distinctive features and advantages of the administrative-judicial (German) model include the independence from both executive authorities and general courts, the specialization of administrative courts, and a tiered court structure that allows decisions to be appealed to administrative courts of appeal. This model also incorporates civil procedure principles, such as transparency, oral hearings, adversarial proceedings, as well as defined roles for each party, along with unique principles specific to administrative proceedings, like the official clarification of all case circumstances.

As for the disadvantages of this system, we believe they include the high cost of dispute resolution, a complex multi-instance structure that slows down the handling of administrative cases – which often require timely consideration – and an extensive network of various judicial bodies (general, constitutional, administrative, labour, financial, social, and military), which can lead to jurisdictional disputes among them.

The Anglo-Saxon model of administrative justice can, in our opinion, be divided into an English and an American model because the administrative justice system in the United States has a number of significant differences from the model in the United Kingdom of Great Britain and Northern Ireland. In the United States, for example, these functions are assigned to the specialised courts, such as the US Tax Court, specialised tribunals, and to certain structural units of the public administration, such as administrative law judges or appellate units of administrative agencies. Administrative justice in the United Kingdom, on the other hand, is represented by a whole system of highly specialized tribunals that resolve disputes in various fields (migration, taxation, social security, housing, etc.), which are independent of the administration and in some cases tend to be transformed into specialized courts. The Tribunals, Courts and Enforcement Act 2007 has significantly reformed the system of tribunals in the UK. It created a new two-tier system of tribunals, which deal with different types of cases based on their expertise [12].

Conclusions. In our opinion, it is advisable to classify models of administrative justice based on the bodies that perform its functions. Using this criterion, we can distinguish between the continental model of administrative justice, where functions are carried out by specialized administrative courts or general courts, and the Anglo-Saxon (quasi-judicial) model, represented by bodies specially created to handle administrative and legal disputes. These bodies resemble judicial entities in their procedures but are not part of the judicial system; they belong to the executive branch or hold an independent status. The continental model can be further divided into French, German, and mixed submodels. The Anglo-Saxon model includes the English and American variations.

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ЄВРОПЕЙСЬКІ МОДЕЛІ АДМІНІСТРАТИВНОЇ ЮСТИЦІЇ ІЗ ЗАХИСТУ ПРАВ І СВОБОД ОСОБИ

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Присвячено висвітленню питання характеристики європейських моделей адміністративної юстиції як інструменту захисту прав і свобод осіб приватного права у відносинах із публічною адміністрацією. Завдання, яке виконують органи адміністративної юстиції, це є перевірка протиправності рішень, дій чи бездіяльності органів державної влади, місцевого самоврядування, їхніх посадових та службових осіб.

Автор визначає адміністративну юстицію як систему уповноважених судових та квазі-судових органів, що розглядають та вирішують публічні спори за спеціально встановленою процедурою щодо законності рішень, дій або бездіяльності органів публічної влади, які порушують права, свободи та інтереси приватних осіб у сфері публічно-правових відносин.

Автор аналізує основні європейські моделі адміністративної юстиції, наводить різні підходи до їхньої класифікації. Зокрема, визначає, що доцільно виділяти континентальну модель, що включає французьку та німецьку підмоделі, а також англосаксонську модель, що об'єднує англійську та американську системи адміністративної юстиції.

Континентальна модель адміністративної юстиції, розповсюджена в більшості держав Європи, представлена французькими та німецькими системами (підмоделями). Так, французька модель адміністративної юстиції передбачає створення адміністративних судів у межах активної адміністрації, що зумовлено недовірою до судової системи після повалення монархії у результаті Великої французької революції. З огляду на це може виникати сумнів щодо незалежності адміністративних судів, яку очолює Державна рада, яка за своїм статусом не є судовою установою, від публічної адміністрації. Натомість німецька модель ґрунтується на функціонуванні окремих адміністративних судів, що забезпечує незалежність та вузьку спеціалізацію у вирішенні публічно-правових спорів.

Англосаксонська модель, поширена, зокрема, у Великобританії та США, представлена системою квазісудових органів – трибуналів, які забезпечують розгляд та вирішення спорів у різних сферах правовідносин, зокрема міграції, податкових, земельних, трудових та інших категоріях спорів. У той же час загальні суди зберігають судовий контроль за діяльністю трибуналів, а їхні рішення можуть бути предметом судового оскарження. Обґрунтовано, що англійська система адміністративної юстиції є унікальною та через відмінність від моделі США може розглядатися як окрема підмодель чи навіть система.

Ключові слова: адміністративна юстиція, європейська модель, права та свободи, публічна адміністрація, трибунали, адміністративні суди.

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