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ADMINISTRATIVE JUSTICE IN FRANCE AND UKRAINE: A COMPARATIVE ANALYSIS

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Administrative justice remains a cornerstone of democratic governance, ensuring that state authorities act within legal boundaries and that individual rights are protected against administrative overreach. This paper takes a comparative look at how administrative justice operates in France and Ukraine, exploring their legal traditions and institutional structures, the procedural tools each system employs, and the challenges they currently face. France, with its influential Conseil d'État and long-standing codification of administrative law, offers a model of judicial specialization. Ukraine, by contrast, is navigating a relatively recent transformation; since adopting its Code of Administrative Proceedings in 2005, it has been building its own model amidst ongoing reforms. By examining legal norms, case law, and academic writing, this study aims to highlight how both systems function in practice, where they diverge, and what lessons Ukraine might draw from the French experience to enhance the effectiveness of its own administrative judiciary.

Keywords: administrative justice, judicial reform, State Council (Conseil d'État), administrative courts, public administration, prefect.

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Administrative justice plays a crucial role in legal systems by resolving disputes between individuals and public authorities. In France, it emerged as a distinct branch of law in response to the growing need for impartial mechanisms to adjudicate conflicts involving the state. Its system of specialized administrative courts has since served as a model for many civil law countries, including Ukraine. After gaining independence in 1991, Ukraine faced considerable obstacles in ensuring legal protection for individuals in disputes with the state, primarily because general courts initially handled such matters. The introduction of the Code of Administrative Proceedings in 2005 marked a pivotal step, laying the groundwork for a dedicated administrative judiciary tasked with overseeing government decisions and actions.

This paper traces administrative justice's evolution in France and Ukraine, starting with a historical overview that sets the context for their current legal frameworks. It then moves into a comparative analysis, focusing on jurisdictional boundaries, court structures, and the challenges faced in practice. Finally, the study draws on these insights to offer practical suggestions for strengthening Ukraine's system, particularly in areas such as judicial independence and citizen access to legal remedies. By approaching the subject

through a comparative lens, the paper aims to contribute to ongoing debates about how administrative justice can function effectively within transitioning democracies.

The research methodology used in this study is comparative legal research. Primary sources are statutory, such as the French Code of Administrative Justice, or official judgments of French courts, primarily the *Conseil d'État*. Secondary sources, including academic articles, public reports, and official statistics obtained through the French Ministry of Justice via the *Conseil d'État*, augment the context of structural and procedural elements. The foundations of the Ukrainian legal system are examined in light of the Code of Administrative Proceedings of Ukraine and its application through decisions from Ukrainian administrative courts. The article uses both general scientific methods and special methods of comparative jurisprudence.

In academic discourse, the French model of administrative justice has been thoroughly examined by renowned scholars such as Jean Rivero, René Chapus, Gaston Jèze, Jean and Marcel Waline, Prosper Weil, Dominique Rousseau, Didier Truchet, and Bruno Genevois. Their works provide deep insight into the structure, procedures, and normative foundations of administrative courts in France. These issues have also been explored by a number of Ukrainian legal scholars, particularly in the context of comparative public law. Among them are Ye. A. Hetman, K. O. Hetman, T. O. Kravchuk, O. V. Kuzmenko, R. O. Kuibida, Yu. S. Pedko, V. Ilkov, and S. Kutsenko, who have analyzed both the institutional development and the practical challenges of administrative justice in Ukraine.

France's administrative judiciary emerged from the foundational tensions between revolutionary ideals and the practical necessities of governance. Prior to the French Revolution, the Ancien Régime lacked a coherent system for handling legal disputes involving public administration. The Revolution, with its emphasis on separating powers, led to the Law of 16–24 August 1790, which barred ordinary courts from adjudicating administrative matters [1, c. 51]. This principle was institutionalized under Napoleon, who established the *Conseil d'État* (State Council) in 1799. Initially serving in an advisory role, the *Conseil* combined legal counsel with dispute resolution, though its decisions required ratification by the head of state. As Pierre Delvolvé highlights, the French Revolution sought to ensure the integrity of the separation of powers, a principle inherited from Montesquieu but reinterpreted in France to suit the needs of a nascent republic wary of judicial overreach [2]. The Law of 16–24 August 1790 and the Decree of 16 Fructidor Year III (1795) became central instruments in asserting this divide, explicitly barring ordinary judges from interfering in administrative matters. Delvolvé emphasizes that this legal dualism was not merely functional but ideological, constructed to protect executive authority from judicial encroachment. Yet, this very exclusion of judicial oversight required the creation of an alternative form of justice, administrative justice, capable of controlling public administration from within. This function was initially entrusted to the *Conseil d'État*, formed in 1799, which served as a consultative legal body and a mechanism for internal dispute resolution.

One of the defining moments in the history of French administrative justice was the Blanco decision of 1873, handed down by the Tribunal des Conflits, a unique body designed to resolve jurisdictional disputes between the civil and administrative courts. This Tribunal plays a crucial role in the French legal system by deciding which judicial or administrative branch has authority over a given case [3, c. 17].

In the *Blanco* case, the issue was whether the state could be held liable like a private individual for harm caused by a public service. The Tribunal ruled that such matters fell exclusively under the jurisdiction of the administrative courts, not the civil courts. The

reasoning was that public services operated under different legal principles than private entities, and thus required a distinct legal framework [4].

Reforms in the twentieth century further shaped the system's accessibility and efficiency. The 1953 creation of *tribunaux administratifs* (administrative courts) allowed administrative disputes to be heard at the regional level, and the establishment of *cours administratives d'appel* (administrative courts of appeal) in 1987 provided an appellate mechanism that eased pressure on the *Conseil d'État*. These reforms reflect France's evolving legal architecture, balancing centralized authority with the need for broader public access. As legal scholar René Chapus observed, the development of French administrative justice illustrates a "dialectic between tradition and modernity," where post-revolutionary legal ideals coexist with practical responses to modern governance challenges [5].

In France, the *Code de justice administrative* (Code of Administrative Justice) is the foundational legal instrument governing the functioning of the administrative judiciary. Officially enacted by Decree No. 2000-389 of May 4, 2000, and in force since January 1, 2001, the Code consolidated and codified a vast body of jurisprudence and procedural norms developed over more than a century by the *Conseil d'État* and lower administrative courts. It regulates all aspects of administrative litigation, including the structure and jurisdiction of administrative courts, procedural mechanisms, types of legal remedies, and the rights and obligations of the parties. The Code also outlines the stages of proceedings, from the filing of a claim (*requête*) to appeals and cassation, and provides for expedited procedures such as *référé-suspension* and *référé-liberté*, which enable urgent judicial intervention [6].

Ukraine's path toward developing an administrative justice system has been shaped by its Soviet legacy. Under the Soviet regime, administrative disputes were handled by general courts using procedures that offered little real opportunity to challenge the actions of the state. Given the overriding influence of the Communist Party, judicial independence was minimal, and decisions rarely went against administrative authorities. The Soviet ideology did not envisage the existence of a conflict between the state and the individual. After gaining independence in 1991, Ukraine's judicial system struggled to ensure the supremacy of the rule of law and provide real protection for individuals. In 2005, the Code of Administrative Proceedings of Ukraine was adopted, establishing a framework for administrative adjudication. This code introduced a three-tier specialized court system consisting of local administrative courts, appellate bodies, and the Higher Administrative Court.

In 2017, a new edition of the Code was adopted, providing the legal basis for the judicial reform introduced by the 2016 constitutional amendments. As a result, the new Supreme Court was established, and the Cassation Administrative Court, within its structure, replaced the former Higher Administrative Court as the highest instance for resolving administrative disputes.

The administrative judiciary in France is structured into three distinct tiers, known for their effectiveness and specialized expertise. The foundational level comprises 42 *tribunaux administratifs*, strategically located across metropolitan France and its overseas territories. These courts are responsible for the initial adjudication of cases, including challenges to various administrative acts, such as visa denials, zoning permits, and claims for damages against the state. In 2023, these tribunals processed approximately 257,329 new cases, underscoring their essential role within France's administrative governance framework [7].

At the highest level of the administrative judiciary, the *Conseil d'État* serves a dual function as both the supreme administrative court and the legal advisor to the executive branch. Its judicial section, composed of six specialized subsections, handles approximately 9,500 cases annually, including appeals on legal interpretation and high-stakes disputes involving ministerial regulations. Through its advisory role, the *Conseil*

d'État exercises significant influence on the legislative process, helping to identify legal inconsistencies before laws are enacted and reducing the likelihood of constitutional or administrative conflicts.

Administrative courts are competent to hear cases involving the Government and public administration *lato sensu* [8, p. 41]. The jurisdiction of administrative courts in France extends over a broad range of issues. They hear cases concerning administrative acts, whether they are explicit decisions (such as the refusal of a building permit or a disciplinary measure against a civil servant), unilateral measures of public authority (e.g., expulsions, police orders), or failures to act (such as the administration's unjustified silence or delay).

Two principal types of legal action define the scope of administrative litigation in France: the *recours pour excès de pouvoir* (judicial review for abuse of power), which allows for the annulment of unlawful administrative acts, and the *recours de pleine juridiction*, which may involve claims for compensation or other remedies resulting from administrative conduct [9, p. 6-7].

Among the various spheres of public life, the jurisdiction of France's administrative courts extends to disputes involving contracts with public entities, claims for damages resulting from state negligence (such as medical malpractice in public healthcare institutions), challenges to regulatory decrees, and municipal ordinances.

In France, judicial control of prefects plays a crucial role in ensuring the legality and accountability of administrative decisions at both regional and departmental levels. As central government representatives, prefects exercise significant authority in matters affecting local communities. Whether related to public safety or administrative regulation, their decisions are subject to judicial review by administrative courts, particularly the *Conseil d'État*. These courts assess whether a prefect's actions comply with legal standards, respect constitutional rights, and remain within the limits of delegated authority. This form of review serves as a safeguard against potential abuses of power, ensuring that administrative acts do not overstep legal boundaries or infringe upon fundamental rights. In doing so, judicial control reinforces the separation of powers by holding the executive, including prefects, accountable for their decisions.

The administrative judiciary of Ukraine, established in 2005, consists of 27 local district administrative courts, 8 appellate courts, and the Cassation Administrative Court, which operates within the Supreme Court. General courts, which solve civil and criminal cases, also resolve some administrative cases. While the Ukrainian system bears structural similarities to the French system, the operational context diverges significantly.

The jurisdiction of administrative courts in Ukraine encompasses a broad range of public law disputes. Primarily, these courts are responsible for resolving cases involving individuals or legal entities challenging public authorities' decisions, actions, or inaction. This includes both normative legal acts and individual (administrative) acts, except in instances where alternative procedures are expressly prescribed by law. Administrative courts also handle disputes related to the recruitment, service, and dismissal of public servants, as well as conflicts between state authorities over the exercise of their administrative powers, including delegated authority. In addition, administrative courts adjudicate matters involving the right of public authorities to initiate legal proceedings in public law disputes, as granted by specific legislation. They also address issues pertaining to electoral and referendum processes, disputes over access to public information, and conflicts concerning the expropriation of property for public needs or in the interest of national necessity [10].

In 2023, the administrative courts in France handled a record volume of cases, reflecting growing public reliance on these institutions to mediate conflicts with the State.

The tribunaux administratifs registered over 257,000 new cases, a 6% increase from the already high figures of 2022. A rise in référés significantly fuels this growth, urgent proceedings, now totaling 50,000 cases annually, up from 30,000 in 2018. These emergency decisions underline the responsiveness of the administrative system to pressing societal needs.

The *Cour nationale du droit d'asile* (National Court of Asylum Law) also recorded a significant caseload, with over 64,600 asylum appeals, underscoring its pivotal role in France's migration and refugee policy. Meanwhile, the *cours administratives d'appel* collectively registered 31,586 new cases, and the *Conseil d'État* handled 9,574, maintaining a favorable clearance rate by resolving more cases than it received [7].

In 2024, Ukraine's administrative court system experienced notable shifts in caseload dynamics across its three levels. Local administrative courts received a total of 508,060 cases and materials, marking a 16% decrease compared to 2023, when over 604,000 cases were registered. On average, each judge in these first-instance courts handled around 1,314 cases, a slight drop from 1,438 per judge in the previous year. Conversely, the workload of appellate administrative courts increased significantly. These courts registered 157,106 cases and materials in 2024, about 1.3 times more than in 2023. As a result, the average caseload per judge in the appellate courts rose from 796 to 1,069 cases, suggesting intensified demand for second-instance review [11]. The Cassation Administrative Court within the Supreme Court also experienced an increase in its workload. In 2024, a total of 52,092 cases and materials were submitted, which is a 15 percent rise compared to 45,344 submissions in 2023. Out of the total, 51,422 were cassation complaints, making up the vast majority of the cases. This translates into an average of 1,271 cases per judge, up from 1,080 in the previous year [12].

Considering that France's population is more than twice as large as that of Ukraine, one would expect French courts to be more heavily loaded with cases. However, judicial statistics show the opposite – Ukrainian courts are actually handling more than twice as many cases. This leads to the conclusion that it's necessary to take steps to reduce the number of cases that end up in court in Ukraine. One way to do this is by reforming legislation that generates a large number of disputes, such as tax and pension laws. Another important step is improving pre-trial procedures to resolve more disputes before reaching the administrative courts.

In France, certain legal disputes are subject to a *recours administratif préalable obligatoire* (RAPO), a mandatory preliminary administrative appeal, requiring individuals to seek a resolution directly from the authority that issued the decision before turning to the courts [13, p. 25-26]. This mechanism is designed to reduce unnecessary litigation by encouraging administrative bodies to resolve disputes internally. For instance, tax-related claims must first be reviewed by the Directorate-General for Public Finances (*Direction générale des Finances publiques*). This process has proven effective: in 2020, approximately 30% of tax disputes were settled at this administrative stage, avoiding the need for court proceedings [7].

In contrast, pre-trial dispute resolution in Ukraine does not yet carry the same weight as it does in some other jurisdictions. Although the Constitution of Ukraine was amended in 2016 to allow for the possibility of mandatory pre-trial settlement procedures, this provision remains largely declarative. In practice, most claimants bypass these mechanisms entirely, opting instead to take their cases directly to court. However, we believe that before introducing any mandatory pre-trial procedures, such mechanisms must first be significantly improved and made more effective to serve as viable alternatives to judicial recourse.

French administrative tribunals follow an inquisitorial model, in which judges play an active role in investigating the facts of a case. It is the administration that bears the burden of proving the legality of its actions, a principle that is particularly evident in procedures such as the *déféré précontractuel* concerning public procurement [14, p. 47-49]. This approach contrasts sharply with the adversarial model used in Ukraine, where the initial burden of proof lies with the claimant. Although Ukrainian judges are permitted to request additional evidence under Article 77 of the Code of Administrative Proceedings of Ukraine, the process remains primarily party-driven rather than judge-led.

Several key reforms should be considered to strengthen the effectiveness and credibility of administrative justice in Ukraine, drawing on France's well-established administrative court system as a model. We should bear in mind the words of Stephen Legomsky, who stated that "no one procedure is ideal for all disputes" [15, p. 32]. This is true and implies that not all procedures applied in France would yield similar results in Ukraine. Still, one of the most impactful reforms would be the introduction of a mandatory pre-trial administrative appeal mechanism, akin to France's *Recours Administratif Préalable Obligatoire (RAPO)*. This procedure would require public authorities to conduct a substantive internal review before a case can proceed to court. Such a system relieves the judiciary of avoidable caseloads and promotes greater responsibility and responsiveness within the administrative apparatus.

In addition, judicial specialization within the administrative courts could enhance both efficiency and expertise. Creating dedicated chambers for complex areas such as tax, environmental, or electoral disputes, as seen in France, would allow judges to develop subject-matter expertise, resulting in more consistent and technically sound decisions.

Another crucial reform concerns the protection of judicial independence. Reducing the potential for political or executive interference in judicial appointments is essential in Ukraine. This could be achieved by establishing an independent judicial council, modeled on the French *Conseil supérieur des tribunaux administratifs et des cours administratives d'appel* (Council of Administrative Courts), with full authority over appointments, promotions, and disciplinary matters within the administrative judiciary [16, p. 83].

Equally important is the enforcement of court decisions. At present, weak enforcement undermines public confidence in administrative justice. Ukraine would benefit from the establishment of a dedicated enforcement body with the mandate to monitor compliance with court rulings and the power to impose sanctions on public officials who ignore judicial decisions.

Finally, capacity building through judicial training is vital. Drawing inspiration from France's *École Nationale de la Magistrature* (National School for the Judiciary), Ukraine could expand its training programs to incorporate EU administrative law standards, comparative jurisprudence, and practical case management strategies. Such efforts would improve legal reasoning and procedural consistency and facilitate Ukraine's integration into European legal culture.

Conclusions. This comparative study demonstrates that France's administrative justice system, shaped over centuries and characterized by judicial specialization, procedural clarity, and pre-trial resolution mechanisms, offers valuable insights for Ukraine's ongoing reform process. While establishing a functioning administrative judiciary since 2005, Ukraine continues to face major structural and procedural challenges, most notably, judicial overload, legislative overproduction of disputes, and limited effectiveness of pre-trial settlement mechanisms.

One of the main findings of the analysis is that the way administrative justice systems are structured significantly impacts their effectiveness. France's use of specialized courts

and streamlined procedures, including *référé* proceedings and *RAPO*, directly contributes to case management efficiency. In contrast, Ukraine's adversarial model and underutilized pre-trial mechanisms often lead to court congestion and delay, highlighting the need for targeted procedural reform.

Ultimately, although Ukraine's legal development has followed a markedly different path from that of France, the French experience offers valuable lessons. In particular, practices aimed at easing judicial workloads, streamlining procedures, and promoting effective pre-judicial dispute resolution could be thoughtfully adapted to the Ukrainian context. Such reforms are vital for enhancing the efficiency of administrative courts and reinforcing the broader principles of the judiciary and European standards of administrative justice.

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АДМІНІСТРАТИВНА ЮСТИЦІЯ У ФРАНЦІЇ ТА УКРАЇНІ: ПОРІВНЯЛЬНИЙ АНАЛІЗ

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Присвячено порівняльному дослідженню адміністративної юстиції у Франції та Україні з огляду на їхні правові традиції, інституційні механізми та процедури вирішення публічно-правових спорів. Досліджено історичні передумови та головні етапи розвитку адміністративного судочинства у Франції та Україні. Визначено, що у Франції сформовано особливу модель адміністративної юстиції, яка характеризується компромісом між судовою та виконавчою гілками державної влади, адже ключову роль тут відіграє *Conseil d'État* (Державна Рада), орган, що поєднує консультативні та адміністративні функції з юрисдикційною діяльністю. Його практика є важливим джерелом тлумачення адміністративного законодавства та формування сталих правових позицій щодо меж і форм діяльності публічної адміністрації.

Українська система адміністративної юстиції, яка сформована за зразком німецької моделі, де адміністративні суди є спеціалізованими судами в межах національної судової системи. Адміністративні суди в Україні сформовано в результаті відносно недавніх інституційних змін, зокрема після запровадження Кодексу адміністративного судочинства у 2005 р. Простежено ключові етапи становлення та розвитку української адміністративної юстиції. Основний наголос зроблено на визначенні основних питань системи, юрисдикції та особливостей адміністративного процесуального законодавства. Автори порівнюють основні інститути адміністративного судочинства та Франції. Статистичний метод наукового дослідження дозволив визначити, що у Франції, в якій удвічі більше населення, порівняно з Україною, на розгляді адміністративних судів перебуває удвічі менше судових справ. Це дозволило зробити висновок про необхідність реформи законодавства, зокрема в тих галузях, де існує найбільша кількість публічно-правових спорів (податкова, пенсійна, соціального забезпечення тощо), а також формування ефективних позасудових механізмів вирішення спорів.

Особливу увагу приділено процедурним аспектам: механізмам подання адміністративного позову, презумпції правомірності дій адміністрації, навантаженню на суддів, доступу до правосуддя, а також механізмам перегляду рішень. Акцентовано, що хоча французька модель має більш централізовану структуру та високий рівень спеціалізації, українська система демонструє динамічний розвиток і прагнення до інституційної стабільності.

Загалом порівняльний аналіз дозволяє окреслити кілька можливих напрямів розвитку адміністративного правосуддя в Україні. Зокрема, ідеться про підвищення ролі усталеної судової практики, а також потребу у формуванні сталої судової культури у сфері публічно-правових спорів. Досвід Франції вказує на значення послідовності інституційного розвитку, гнучкості процедур та глибини юридичного обґрунтування рішень, що може стати орієнтиром для вдосконалення української адміністративної юстиції.

Ключові слова: адміністративна юстиція, судова реформа, Державна Рада (*Conseil d'État*), адміністративні суди, публічна адміністрація, префект.

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