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ADMINISTRATIVE JUSTICE IN GERMANY AND UKRAINE: A COMPARATIVE ANALYSIS

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The article provides a comprehensive comparative analysis of the systems of administrative justice in Germany and Ukraine, focusing on their institutional structures, procedural models, and constitutional foundations. The study identifies that while Ukraine's administrative judiciary, established in 2005 following the adoption of the Code of Administrative Proceedings, was modelled on the German system, significant practical divergences persist. Using historical, structural, and functional analysis, as well as official statistical data for 2023–2024, the author reveals that Ukrainian administrative courts face a substantially higher caseload and weaker enforcement mechanisms compared to their German counterparts. The article highlights the pivotal role of Article 19(4) of the German Basic Law in securing effective judicial protection against administrative arbitrariness and contrasts it with Article 55 of the Constitution of Ukraine, which lacks equivalent institutional guarantees. The research establishes that Germany's success in administrative adjudication stems from judicial specialisation, procedural efficiency, and developed pre-trial mechanisms that filter disputes before litigation. In contrast, Ukraine's challenges lie in excessive caseloads, insufficient digitalisation, and limited pre-trial resolution mechanisms. The author proposes specific reforms for Ukraine, including the introduction of mandatory pre-trial review in selected categories of disputes, enhancement of judicial specialisation, strengthening of enforcement mechanisms, and further digitalisation of court procedures. The findings contribute to the broader discourse on harmonising Ukrainian administrative justice with European standards and demonstrate how Germany's experience can serve as a practical model for institutional development, while stressing the need for adaptation to Ukraine's legal and socio-political realities.

Keywords: administrative justice, Germany, Ukraine, judicial reform, administrative courts, comparative law, European integration, public administration.

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Introduction. The issue of administrative justice has become increasingly important today, as the effectiveness of judicial systems is closely connected to the strength of democracy and the state's ability to protect the rights of its citizens in their interactions with public authorities. Germany has developed one of the most effective systems of administrative justice in Europe, characterised by constitutional guarantees, a multi-tiered court structure, and robust judicial independence. Article 19(4) of the German Basic Law guarantees every individual the right to effective judicial protection against violations by public authorities [1; 5, S. 17–19]. This provision has provided genuine protection of citizens' rights and freedoms from unlawful actions and decisions of public bodies and their officials. As a constitutional safeguard, it forms the normative foundation for the

functioning of the administrative justice system, ensuring access to effective legal remedies for individuals.

In Ukraine, the institutionalisation of administrative justice began only in the early 2000 S. The adoption of the Code of Administrative Proceedings in 2005 marked a turning point, creating specialised administrative courts and establishing the basis for an independent mechanism of control over public administration [17]. Nevertheless, Ukraine's system continues to face excessive caseloads, limited resources, and the constraints imposed by wartime conditions. A comparative analysis with Germany is thus highly relevant, not only because the German model inspired Ukrainian reforms, but also because the harmonisation of judicial standards remains a key element of Ukraine's European integration process. As noted by T. Kolomoiets and O. Agapova "the imperative of ensuring Ukraine's successful recovery is not only important for Ukraine itself, but also for the European Union and all other international actors [4, P. 135].

This study applies a comparative jurisprudential *methodology* combining historical, structural, and functional analysis. Primary sources include the *Verwaltungsgerichtsordnung* (Code of Administrative Court Procedure), decisions of the *Bundesverwaltungsgericht* (Federal Administrative Court), the Code of Administrative Proceedings of Ukraine, and rulings of Ukraine's Supreme Court. Secondary materials include academic monographs, Council of Europe reports, and judicial statistics from 2023–2025. Statistical methods are used to compare caseloads and efficiency, while the structural-functional approach identifies institutional similarities and divergences.

Historical background. The emergence of administrative justice in Germany was the result of profound political and legal transformations that took place in the second half of the nineteenth century. It became possible only when the political order matured enough to move away from absolute monarchy toward a constitutional state founded on the principle of separation of powers. Inspired by the ideals of the French Revolution and the writings of Montesquieu, the liberal bourgeoisie demanded that state authority be subject to the law and that individual freedoms be protected from arbitrary interference. The establishment of administrative courts reflected the recognition that rights could only be meaningful if they were effectively enforceable through an independent judiciary. The idea of judicial protection against administrative actions was first formally expressed in § 182 of the Paulskirche Constitution of 1849, which proclaimed that all legal disputes should be decided by courts rather than administrative bodies. This marked the transition from internal administrative review by officials to genuine judicial oversight, ensuring both institutional and functional independence of judges [3, S. 8–9].

The establishment of administrative courts in Germany was preceded by an important debate on whether judicial control over administrative actions should be entrusted to the existing civil courts or assigned to a newly created, independent administrative judiciary. The latter approach ultimately prevailed, driven by concerns that civil judges, due to their legal training and professional background, might not adequately understand the particularities of administrative functions. It was believed that only those familiar with the realities of public administration could effectively guide it toward lawful conduct through judicial oversight. At the same time, a powerful executive sought to avoid subordination to an increasingly liberal judiciary, and the distinction between public and private law also influenced the creation of separate procedural rules. As a result, in the second half of the nineteenth century, a distinct system of administrative justice emerged on German territories [3, S. 10–11].

The establishment of administrative courts varied across the German states. The first administrative court was established in Baden in 1863, followed by Prussia and Hesse in

1875, Württemberg in 1876, Bavaria in 1878, and Saxony in 1900 [8]. The Law on the Establishment of Administrative Courts and on Administrative Litigation Procedure of 1875 formally created this specialised system.

The continuity of administrative justice was later interrupted during the Third Reich, when it was largely suspended, and it was absent for more than four decades in the German Democratic Republic. Initially, the composition of the Prussian Higher Administrative Court reflected the early belief that administrative experience was indispensable, with judges drawn equally from the judiciary and the civil service. Although this requirement no longer exists today, except in Bavaria, where at least two years of administrative experience remain mandatory, the historical rationale behind it highlights the importance of practical understanding in administrative adjudication.

Following the Second World War, the 1949 Basic Law (*Grundgesetz*) granted constitutional recognition to the principle of effective legal protection through Article 19(4), which remains a cornerstone of the German rule-of-law framework. The Federal Constitutional Court (*Bundesverfassungsgericht*) has interpreted this provision as imposing a positive obligation on the state to secure meaningful access to judicial review. Consequently, the German administrative judiciary exercises comprehensive oversight over public administration, ranging from local regulatory matters to disputes involving federal asylum and immigration policy [13, P. 121–126].

Administrative justice in Eastern Germany after the Second World War was investigated by M. Kobyletskyi and N. Paslavska in their article. Administrative courts were abolished in 1952, and it was only after the reunification of Western and Eastern Germany that the Code of Administrative Procedure was extended to the territory of the former German Democratic Republic [16]. German legal experts viewed the establishment of independent administrative courts not only as a legal reform but also as a symbolic step toward the rule of law and democratic governance [3, S. 12].

Ukraine's trajectory has been notably distinct. During its brief period of independence in the early 20th century, several constitutional and legislative drafts proposed the establishment of administrative courts, including a Higher Administrative Court. However, due to historical upheavals, these initiatives never progressed beyond the drafting stage. Under Soviet rule, independent administrative justice did not exist; disputes with authorities were handled by general courts, where judicial independence was minimal and cases against the state rarely succeeded. After regaining independence in 1991, the need for specialised institutions became evident. The adoption of the Code of Administrative Proceedings in 2005 marked the institutional birth of Ukraine's administrative justice in its modern shape.

System of administrative courts. The contemporary system of administrative justice in Germany operates as a three-tier structure comprising the Administrative Courts (*Verwaltungsgerichte*), the Higher Administrative Courts (*Oberverwaltungsgerichte or Verwaltungsgerichtshöfe*, and the Federal Administrative Court (*Bundesverwaltungsgericht*) as the supreme judicial authority in administrative matters.

At the first instance, 51 Administrative Courts across the federal states hear most cases within their respective districts. These courts are organised into chambers, each typically composed of three professional judges and two lay (honorary) judges. Less complex cases, as well as asylum matters, are adjudicated by a single professional judge, as required by § 6 VwGO [12].

The Higher Administrative Courts, forming the intermediate level, are established in each federal state, referred to as *Verwaltungsgerichtshöfe* in Baden-Württemberg, Bavaria, and Hesse, while Berlin and Brandenburg share a joint court. These courts review appeals on both facts and law against first-instance judgments and act as courts of first instance in

specific matters, such as the judicial review of land-use plans and sub-legislative regulations. Cases are usually decided by panels of three to five professional judges, occasionally with the participation of honorary judges.

At the apex of the system stands the Federal Administrative Court (*Bundesverwaltungsgericht*) in Leipzig, which primarily adjudicates appeals on points of law to ensure the uniform interpretation of administrative law across Germany. It also serves as a court of first and last instance in certain areas, including military and disciplinary cases. Panels of five professional judges decide cases following oral hearings, while decisions without hearings are made by three judges [11].

In addition to the general administrative courts, the German system of administrative justice comprises two branches of special jurisdiction: the fiscal (*Finanzgerichte*) and social (*Sozialgerichte*) courts. These, together with the general administrative courts, constitute the framework of administrative justice in Germany.

The Fiscal Courts Act (*Finanzgerichtsordnung*) establishes a two-tier structure comprising the fiscal courts of the *Länder* at first instance and the Federal Fiscal Court (*Bundesfinanzhof*), located in Munich, as the final appellate authority. Each Land fiscal court operates in panels (senates) composed of three professional judges and two lay judges, though cases may also be assigned to a single judge. Fiscal courts adjudicate disputes involving tax and customs matters as well as claims against financial authorities, while the Federal Fiscal Court functions as a court of revision, reviewing the decisions and rulings of the lower fiscal courts.

Another branch of special administrative jurisdiction in Germany consists of the social courts, whose functioning is regulated by the Social Courts Act (*Sozialgerichtsgesetz*). These courts resolve disputes related to social insurance, unemployment benefits, health care, and related welfare issues. The three-tiered system includes Social Courts (*Sozialgerichte*) at first instance, comprising a chamber of one professional and two lay judges, Higher Social Courts of the *Länder* (*Landessozialgerichte*), which may act both as appellate and, in certain cases, first-instance courts, and finally the Federal Social Court (*Bundessozialgericht*) seated in Kassel. The Federal Social Court ensures that decisions of lower social courts conform to federal and EU law and plays a decisive role in interpreting and unifying social jurisprudence across Germany [18, c. 191–192].

The system of administrative justice in Ukraine operates within a three-tier structure, consisting of district administrative courts, appellate administrative courts, and the Cassation Administrative Court within the Supreme Court. It was established by the Code of Administrative Proceedings of Ukraine (2005), which introduced a specialised judicial mechanism to ensure the protection of individuals' rights from unlawful actions or decisions of public authorities.

At the first instance, most administrative cases are heard by district administrative courts. However, in certain categories of disputes, particularly at the local level, administrative matters may also be considered by courts of general jurisdiction that handle civil and criminal cases. Appellate administrative courts review both factual and legal aspects of judgments delivered by first-instance courts, providing a mechanism for judicial oversight and consistency in administrative adjudication. At the cassation level, the Cassation Administrative Court functions as part of the Supreme Court, acting as the highest judicial authority in administrative matters and ensuring the uniform interpretation and application of administrative law.

Additionally, in specific circumstances, administrative cases may fall under the jurisdiction of the High Anti-Corruption Court, particularly when the application of Article 4 of the Law of Ukraine "On Sanctions" is required [17].

Jurisdiction and Procedure. The jurisdiction of administrative courts in Germany is broadly defined in § 40 of the *Verwaltungsgerichtsordnung* (*VwGO*), granting competence over all public law disputes not expressly assigned elsewhere. This includes challenges to administrative acts, obligations to act, planning and police law disputes, and asylum cases [12]. In Ukraine, the jurisdiction of administrative courts is determined by the Code of Administrative Proceedings of Ukraine, covering disputes concerning acts, actions, or inaction of public authorities, including electoral and public service matters as well as access to information. Both systems aim to protect individuals from administrative arbitrariness, though they differ procedurally. German administrative proceedings follow the inquisitorial model, in which judges play an active role in fact-finding and the administration bears the burden of proof [6, P. 58-59]. Ukrainian administrative proceedings, like the German model, are largely inquisitorial. Judges play an active role in establishing the facts, and courts may independently request evidence from public authorities. Nevertheless, certain adversarial elements remain, as the claimant bears the initial burden of substantiating the claim.

In Germany, administrative courts continue to manage a significant and growing workload. According to the Federal Statistical Office (*Destatis*), administrative courts at all levels registered 252,684 new cases in 2024, marking an increase of approximately 12% compared to 2023 [9]. Nearly half of these concerned asylum and migration matters, while the remainder covered disputes in planning, environmental regulation, taxation, and public service law. The total number of resolved cases reached 248,512, with an average case duration of about ten and a half months, indicating a steady though resource-intensive system of judicial oversight. These data highlight the central role of administrative justice in maintaining legality and accountability within the German public administration [10].

In Ukraine, despite serving a smaller population, administrative courts face a substantially higher caseload than their German counterparts. According to the official Analysis of the State of Justice in Administrative Courts for 2024, local administrative courts reviewed 462,731 cases and materials, representing 72% of the total cases under consideration and marking a decline from 549,126 cases in 2023. Of these, district administrative courts resolved 438,597 cases, with an average of 949 cases per judge, compared to 1,139 in 2023. The appellate administrative courts registered a significant increase, handling 157,062 cases – a 30% rise from the 123,400 cases recorded in 2023. At the cassation level, the Administrative Cassation Court within the Supreme Court received 52,092 cases, up 15% from 45,344 the previous year, amounting to an average of 1,271 cases per judge. These figures underscore the intense workload faced by Ukrainian administrative judges and the systemic strain placed on judicial resources [14].

When compared to Germany, where administrative courts registered 252,684 new cases in 2024, Ukraine's administrative judiciary processed almost twice as many matters, reflecting both broader access to administrative justice and persistent institutional overburdening.

A comparative perspective shows both convergence and divergence. Ukraine adopted the German model institutionally, yet the outcomes differ substantially. Germany's use of mandatory pre-trial procedures in areas such as tax and social law prevents many disputes from reaching the courts, with significant percentages resolved administratively [7, P. 949–950]. Ukraine's pre-trial dispute resolution mechanisms are underdeveloped, often leading to an excessive number of cases being brought directly before the courts. Germany, in contrast, benefits from a higher degree of judicial specialisation, with dedicated courts and chambers for specific areas like asylum or environmental law, allowing for deeper expertise than is typically found in Ukraine's more generalised courts. A critical distinction

also lies in the practical application of constitutional guarantees; while both constitutions ensure the right to judicial protection, Germany's framework is supported by a long-standing judicial tradition and a vast body of case law that reinforces its effectiveness. Ukraine's system, being much newer, is still developing the consistent institutional practices required to fully realise its constitutional promises.

These comparative insights yield several key recommendations for the reform of Ukraine's administrative justice system. First, implementing effective pre-trial review mechanisms is crucial, particularly for tax and pension disputes, which currently constitute a disproportionate share of the judicial caseload. Second, fostering greater specialisation among administrative judges would enhance judicial expertise and promote jurisprudential consistency. Third, the mechanisms for enforcing administrative judgments require significant strengthening, as unenforced decisions critically erode public trust in the judiciary. Finally, while continued investment in judicial training and digitalisation is essential, it is important to clarify the nature of the constitutional challenge. The goal is not to newly entrench the right to judicial protection, a right already guaranteed by Article 55 of the Constitution of Ukraine, but rather to strengthen the institutional and procedural frameworks that ensure this right is practically effective and consistently upheld, thereby mirroring the substantive power of Germany's constitutional guarantees.

This agenda for reform is made more complex by the differing contexts. While Germany continues to address challenges like case backlogs through digitalisation initiatives such as the *E-Akte* (electronic case file) [2], Ukraine has made significant progress, having established a system that now permits cases to be handled entirely in electronic mode [15]. However, unlike Germany's focus on refining an already stable system, Ukraine's judicial modernisation occurs alongside more fundamental obstacles. These include chronic difficulties with judgment enforcement, persistent legislative instability, and the profound impact of the ongoing war on the courts' ability to function, especially in occupied or frontline regions

While Ukraine has made notable progress since 2005 in building a specialised system of administrative justice, persistent structural weaknesses and systemic overload continue to undermine its effectiveness. In contrast, Germany, with its centuries-long tradition of administrative adjudication, represents a mature model characterised by judicial efficiency, procedural coherence, and strong constitutional guarantees. For Ukraine, further development requires not mechanical replication of foreign institutions but their careful adaptation to domestic legal, political, and social conditions. Reform priorities should focus on reducing judicial caseloads, strengthening the independence of the judiciary, and improving access to justice. The comparison highlights that Germany's experience provides valuable practical insights for advancing Ukraine's European integration and consolidating the rule of law.

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АДМІНІСТРАТИВНА ЮСТИЦІЯ У НІМЕЧЧИНІ ТА УКРАЇНІ: ПОРІВНЯЛЬНИЙ АНАЛІЗ

Володимир Решота

Львівська лабораторія прав людини і громадянина імені академіка Петра Рабіновича
Науково-дослідного інституту державного будівництва та місцевого самоврядування
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Здійснено ґрунтовне порівняльне дослідження систем адміністративного судочинства Німеччини та України з урахуванням їх історичних витоків, інституційної побудови, процесуальних засад і конституційних гарантій. Метою дослідження є виявлення чинників, що визначають ефективність німецької моделі адміністративної юстиції, а також з'ясування можливостей її адаптації в Україні в контексті європейської інтеграції та утвердження верховенства права.

Проведений аналіз засвідчує, що система адміністративної юстиції Німеччини є результатом тривалої еволюції, починаючи з другої половини XIX ст. Вона ґрунтується на принципі поділу влади, традиції судового контролю за адміністрацією та конституційному приписі ст. 19(4) Основного Закону, який гарантує кожній особі право на ефективний судовий захист від порушень з боку органів публічної влади. Ця норма сформувала міцне нормативне підґрунтя для побудови незалежної та ефективної системи адміністративних судів. Сучасна структура німецької адміністративної юстиції охоплює три рівні – адміністративні суди (*Verwaltungsgerichte*), вищі адміністративні суди (*Oberverwaltungsgerichte/Verwaltungsgerichtshöfe*) та Федеральний адміністративний суд (*Bundesverwaltungsgericht*), доповнені спеціалізованими судовими установами – фінансовими та соціальними судами. Процесуальна модель Німеччини та України є інквізиційною: суд відіграє активну роль у встановленні фактичних обставин, а обов'язок доведення законності рішення покладено на орган влади.

Україна ж розпочала інституціоналізацію адміністративного судочинства лише у 2000-х роках. Прийняття Кодексу адміністративного судочинства України у 2005 р. започаткувало створення спеціалізованих адміністративних судів і надало громадянам реальний механізм оскарження дій чи бездіяльності органів влади. Система адміністративних судів в Україні має три рівні: окружні адміністративні суди, апеляційні адміністративні суди та Касаційний адміністративний суд у складі Верховного Суду. В деяких випадках адміністративні справи можуть розглядатися судами загальної юрисдикції або Вищим антикорупційним судом (за наявності підстав, передбачених ст. 4 Закону України «Про санкції»).

Статистичний аналіз підтверджує суттєву різницю у навантаженні на суди двох країн. За даними Федерального статистичного управління Німеччини (Destatis), у 2024 р. адміністративні суди розглянули 252 684 нові справи, з яких майже половина стосувалася питань надання притулку та міграції. Середня тривалість розгляду справи становила близько 10,5 місяців, що свідчить про стабільну, але ресурсомістку роботу судової системи. Водночас в Україні, за офіційним аналізом Верховного Суду за 2024 рік, місцеві адміністративні суди розглянули 462 731 справу і матеріал, що майже вдвічі перевищує німецькі показники. Апеляційні адміністративні суди розглянули 157 062 справи, а Касаційний адміністративний суд у складі Верховного Суду отримав 52 092 справи – на 15% більше, ніж у попередньому році. В середньому один суддя окружного адміністративного

суду розглянув 949 справ, що свідчить про критичне навантаження та ризики зниження якості судочинства.

Автор з'ясував, що головні відмінності між німецькою та українською моделями полягають не лише в рівні інституційного розвитку, а й у підходах до процесуальної організації. У Німеччині ефективність забезпечується завдяки запровадженню обов'язкових досудових процедур у сфері податкових і соціальних спорів, високій спеціалізації суддів і розвиненій системі електронного судочинства (E-Akte). В Україні ж досудове врегулювання має факультативний характер, що призводить до надмірного навантаження на суди. Крім того, залишається проблемою слабке виконання судових рішень, часті зміни законодавства та обмеження функціонування судів у прифронтових регіонах у зв'язку з війною.

У результаті дослідження автором обґрунтовано, що подальший розвиток адміністративної юстиції в Україні має відбуватися шляхом адаптації, а не механічного копіювання німецьких інституцій. Запропоновано конкретні напрями реформ: запровадження обов'язкових досудових процедур у типових категоріях спорів (податкових, пенсійних, соціальних), поглиблення спеціалізації суддів, розширення електронного судочинства та посилення механізмів виконання рішень адміністративних судів. Такі кроки сприятимуть не лише зменшенню навантаження на суди, а й підвищенню довіри громадян до системи правосуддя.

Отож дослідження доводить, що, попри значні досягнення у формуванні спеціалізованої системи адміністративного судочинства, Україна продовжує стикатися з глибокими структурними проблемами, тоді як Німеччина демонструє зрілу, стабільну та ефективну модель судового контролю за публічною адміністрацією. Отримані результати мають і теоретичне, і практичне значення, адже окреслюють можливі напрями модернізації української адміністративної юстиції відповідно до європейських стандартів та принципів верховенства права.

Ключові слова: адміністративна юстиція, Німеччина, Україна, судова реформа, адміністративні суди, порівняльне право, європейська інтеграція, публічна адміністрація.

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