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# SĄDOWNICTWO ADMINISTRACYJNE NA UKRAINIE: GŁÓWNE TYPY, STRUKTURY I MODELE

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**Adnotacja.** Przedmiotem badań jest kompleks stosunków społecznych, które rozwijają się w procesie sądownictwa administracyjnego. Przedmiotem badań są teoretyczne i praktyczne aspekty funkcjonowania instytucji sądownictwa administracyjnego i postępowania administracyjnego we współczesnym okresie, ich treść i ramy normatywne, cel, istniejące problemy skutecznego wdrażania konstytucyjnego prawa do odwołania się do sądu, perspektywy dalszego rozwoju i kształtowania prawa administracyjnego i procesowego. Celem artykułu jest zbadanie materialnych i procesowych aspektów sprawiedliwości administracyjnej oraz opracowanie modelu administracyjno-sądowego prawa administracyjnego jako niezależnej tworzącej się gałęzi prawa ukraińskiego. Nowością jest sformułowanie wniosków, propozycji i zaleceń dotyczących poprawy ukraińskiego prawa administracyjnego i procesowego. Udowodniono, że postępowanie administracyjne winno być traktowane jako sposób sprawowania władzy sądowniczej przy rozstrzyganiu sporów publicznych między osobami fizycznymi i prawnymi z podmiotami administracji publicznej, to znaczy treść procesu administracyjnego powinna być zdefiniowana jako wymiar sprawiedliwości administracyjnej. Znaczenie artykułu polega na tym, że jego tezy pozwalają stworzyć optymalny model regulacji prawnej sądownictwa administracyjnego, który ma cechy odpowiadające systemowi prawnemu państwa demokratycznego.

**Słowa kluczowe:** prawo administracyjne, ustawodawstwo administracyjne, sądownictwo administracyjne, administracja publiczna, postępowanie administracyjne, mechanizm prawny, wymiar sprawiedliwości administracyjnej.

# ADMINISTRATIVE PROCEEDINGS IN UKRAINE: MAIN TYPES, STRUCTURES AND MODELS

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**Abstract.** The object of the study has become a complex of public relations that develop as in the process of administrative proceedings. The subject of the study are the theoretical and practical aspects of the functioning of the institutions of administrative legal proceedings and administrative process in the modern period. The purpose of the article is the study of the material and procedural aspects of administrative justice and the development of an administrative and judicial model of administrative procedural law as an emerging independent branch of Ukrainian law. Methods. The methodological basis of the research is general scientific and private scientific methods. Results. The article attempts to present administrative legal proceedings as the content of administrative procedural law. Practical value. The significance of the article allow unifying ideas about the administrative process and forming the most optimal model of legal regulation of administrative justice.

**Key words:** administrative law, administrative legislation, administrative proceedings, public administration, administrative process, legal mechanism, administrative justice.

# АДМІНІСТРАТИВНЕ СУДОЧИНСТВО В УКРАЇНІ: ОСНОВНІ ТИПИ, СТРУКТУРИ ТА МОДЕЛІ

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**Анотація.** Об’єктом дослідження став комплекс суспільних відносин, які розвиваються у процесі адміністративного судочинства. Предметом дослідження є теоретичні та практичні аспекти функціонування інститутів адміністративного судочинства й адміністративного процесу в сучасний період, їх зміст і нормативна база, призначення, проблеми ефективної реалізації конституційного права на звернення до суду, перспективи подальшого

розвитку і становлення адміністративно-процесуального права. Метою статті є вивчення матеріальних і процесуальних аспектів адміністративної юстиції та розробка адміністративно-судової моделі адміністративно-процесуального права як самостійної галузі українського права, що формується. Новизна полягає у формулюванні висновків, пропозицій і рекомендацій щодо вдосконалення українського адміністративно-процесуального законодавства. Доведено, що адміністративний процес слід розглядати як спосіб здійснення судової влади при вирішенні публічних спорів між фізичними та юридичними особами із суб'єктами державного управління, тобто зміст адміністративного процесу має визначатися як адміністративне правосуддя. Значимість статті полягає в тому, що її положення дозволяють сформувати найбільш оптимальну модель правового регулювання адміністративного судочинства, яка володіє характеристиками, відповідними правовій системі демократичної держави.

**Ключові слова:** адміністративне право, адміністративне законодавство, адміністративне судочинство, публічне адміністрування, адміністративний процес, правовий механізм, адміністративна юстиція.

**Introduction.** The problems of the administrative process both in legal practice and in legal science have been occupying one of the most difficult to define positions for a century. Various opinions are expressed on this topic, sometimes fundamentally contradictory concepts are proposed. This situation causes the slow development of administrative procedural law, the "hanging" of regulatory bills, and the multivariate interpretation of this block of administrative and legal issues in the course of legal activity, which leads to a large number of negative phenomena in the implementation of many administrative and procedural relations.

Judicial power is exercised through constitutional, civil, administrative and criminal proceedings. Control over the legality of actions of executive authorities and their officials (administrative proceedings) still needs to be improved in accordance with the world's leading models in terms of organizational support, procedural forms of Case Resolution, jurisdictional powers, optimal structure and appropriate legislative framework.

The relevance of theoretical and legal research of administrative proceedings is due to the need to modernize administrative and procedural legislation and determine in it the place of norms regulating relations between executive authorities and citizens related to the resolution of administrative and legal conflicts.

**Main part.**

***1. A look into the history of administrative proceedings***

The history of the development of issues of the theory of administrative process is largely predetermined by the history of the development of the science of administrative law itself, but largely-by the complex development of statehood. It can be argued that the understanding of the essence of the administrative process has changed over the past century with the same frequency as the political and social paradigm of the development of our state. This conclusion is confirmed by the analysis of numerous works of scientists and law enforcement practice.

For example, the appearance of the category "administrative process" in Russian jurisprudence was directly related to the need for democratic transformations in the XIX URL: early XX century, the main task of which was to prevent revolutionary ideas. In other words, it was proposed to limit democratic transformations to the reform of certain spheres and institutions. It was for these purposes, within the framework of the ongoing administrative reform, it was envisaged to create administrative courts with their own form of functioning-administrative legal proceedings (administrative process), since progressive figures of that period pointed out as an argument for the introduction of administrative courts that the conditions of administrative activity do not ensure the complete legality of management only with the help of criminal and civil courts. Thus, the administrative process was identified with the judicial process and did not receive a corresponding development in this capacity because practically the administrative courts did not begin to function (Bandurka, 2012: 116).

However, as a thorough analysis of the evolution of the institutions (including legal ones) of statehood shows, the administrative process, due to objective reasons and conditions, has been filled with a different, not only (and not so much) judicial content over time. The decisive moment in this regard can be considered the restoration of the administrative law course in universities, but the development of a socialist system that did not involve conflicts of the workers themselves the interaction of these same workers with the authorities has predetermined other approaches to the further formation of the administrative process.

Already in the 40s, there was a sufficiently developed concept, according to which executive and administrative activities are carried out because of certain procedural rules, the totality of which constitutes the administrative process.

A broader definition of the subject of the administrative process was proposed, suggesting, "The administrative process always takes place where the norms of substantive administrative law are applied, where the activities of executive and administrative bodies are carried out" (Golosnichenko, 2003: 105).

Nevertheless, it would be wrong to say that the maximally expanded concept of administrative process has become the main concept in the science of administrative law. The scientific search of the second half of the XX century determined that it is very difficult to give an unambiguous definition of administrative and procedural activity, since this activity is incredibly diverse in terms of implementation areas, subjects, purpose, its own fundamental principles, and so on. Some generalization of the formed set of administrative-procedural concepts is reduced to three groups:

1) judgments that the process is a set of certain procedural rules based on which executive and administrative activities are carried out;

2) judgments that the administrative process is the order of law enforcement activities of public administration bodies;

3) judgments that the administrative process is an activity regulated by law for the resolution of disputes arising between the parties to an administrative legal relationship that are not in relations of official subordination to each other, as well as for the application of administrative coercion measures (Ryabchenko, 2008: 50).

It should be said that an increasing number of supporters in the modern period are acquiring an approach according to which procedural law, legal process is judicial procedural law, judicial proceedings.

Scientists of the 70s noted that procedural law includes everything that is covered by the concept of criminal procedure, civil procedure, criminal and civil proceedings. Procedural law also includes legal proceedings in administrative cases – to the extent that cases of administrative offenses are referred to the competence of the court, and are not resolved by the administrative bodies themselves (Golosnichenko, 2003: 108).

Moreover, since the current Code of Ukraine on Administrative Offenses refers most of the cases of administrative offenses to the competence of the court, as well as the consideration of disputes arising from public law relations, the logic of this approach is beyond doubt for many modern scientists.

***2. A categorical view of administrative proceedings***

Speaking about the administrative process and administrative legal proceedings, scientists mention that in Ukraine, mainly administrative justice was carried out and is now being carried out according to the norms of civil procedure law. In these cases, administrative justice is carried out in a civil procedural form, it is a civil procedure. In addition, administrative legal proceedings are carried out in accordance with the procedure regulated by the norms of administrative law.

As for the designation of other procedural activities, the legal literature contains a detailed justification for the differentiation (including terminological) of the judicial process and the procedure for the activities of other state bodies, which is proposed to be defined as "legal procedures".

A somewhat broader approach is because the process is a jurisdictional procedure (not only judicial) aimed at resolving disputes about law and at implementing all types of state – legal coercion. This position represents a jurisdictional concept that defines the administrative process as an activity regulated by law to resolve disputes arising between the parties to an administrative legal relationship that are not in a relationship of official subordination to each other, as well as to apply administrative coercion measures (Oniskiv, 2010: 93).

It is obvious that the law enforcement activities of state bodies, local self-government bodies and their officials, according to the supporters of the jurisdictional concept, are also not included in the content of the legal, and, consequently, administrative process.

A sufficiently developed concept is also a set of scientific provisions on the identification of any regulated legal procedures and legal process. At the same time, it is proposed to allocate each group of certain, mutually related procedures into independent types of legal process, for example, law enforcement, law enforcement, constituent, control processes. Proponents of this point of view follow the path of naming the process (procedural forms) of any ongoing procedure.

That is, the approach under consideration includes in the content of the legal process absolutely all legal forms of activity of state bodies and officials, as well as other subjects of law to resolve certain legal cases.

Some researchers go even further along the path of expanding the boundaries of the legal process, sometimes identifying it with any activity for the development and implementation of legal norms and argue that the legal process in its broadest sense can be defined as the activity (a set of consistently performed actions) of the state, other subjects of legal relations to develop legal norms and bring them into effect in order to regulate the life of society, ensure law and order (Bandurka, 2012: 120).

The concept of a broad understanding of the administrative process was most consistently defended by drawing parallels between the administrative process and such types of legal process as legislative, budgetary, and constitutional. It seems that many of the conclusions of outstanding scientists are so verified that they will not lose their relevance for a very long time. However, the essence of the concept itself today, we can say, is outdated and contradicts not only the main direction of the development of Ukrainian statehood, but also the emerging regulatory framework. Each type of process should have its own regulatory regulation. In addition, if we talk about almost each of the identified types of legal process, then we can name the corresponding basic legal act regulating the main specific provisions of each specific type of legal activity (Ryabchenko, 2008: 58).

However, if we try to "fit" a "broad" administrative process into the presented scheme, we will get a differently meaningful and differently targeted set of procedural activities, absolutely devoid of the logic of unification. Moreover, regardless of which specific productions are distinguished (that is, the structure of the administrative process in a broad concept), their association into a single category of administrative process does not contain any generalized legal basis. The inconsistency of the broad concept is confirmed by the very practice of regulatory regulation. Thus, the procedure for the adoption of normative acts of public administration is regulated by a huge array of legal acts; the procedure for citizens' appeals has a pronounced two-level legal regulation; registration proceedings are complex and regulated by a voluminous set of acts of various legal force; the procedure for administrative offenses is basically regulated by the Code of Ukraine on Administrative Offenses (Oniskiv, 2010: 98).

The analysis of the legal regulation of not the entire structure of the "broad" administrative process, but only the above-mentioned proceedings, in our opinion, convincingly proves the inconsistency of the formation of a single administrative process, and especially administrative procedural law.

In this regard, the idea of supporters of a broad understanding of the administrative process to create a single administrative procedural document regulating the main provisions seems completely meaningless. It is obvious

that such an act cannot be developed, but also applied. The analysis of the proposed issues for regulation leads to the idea of the compellability and pointlessness of such regulation.

***3. Vision of the development of the administrative-procedural concept***

Nevertheless, while rejecting broad interpretations of the administrative process, we are not supporters of such a categorical approach as the concept of legal process (including administrative), which defends the understanding of the process only in connection with the implementation of judicial activities. All other activities for the implementation of the norms of substantive law, from the point of view of this concept, are an integral part of the substantive law, since there is a process only where a dispute about the right is resolved in court proceedings.

In our opinion, positive activity carried out based on legal regulations is also a procedural activity, which, however, should not be considered as a component of the administrative process. This is an independent type of procedural jurisprudence, for which, in our opinion, several quite successful names are proposed. This position has already been confirmed in the studies of some scientists dealing with the problems of the administrative process. Some of them conclude that the modern administrative process no longer requires its definition either as a narrow concept or as a broad one. The current period dictates the need to divide a single legal structure into components, for which there are appropriate prerequisites, such as: the impossibility and inexpediency of combining different subjects, forms of implementation, and methods of activity; the difference in the subject of administrative procedural activity, and others (Mykolenko, 2007: 162).

Therefore, the most acceptable is the further development of the complex of administrative and procedural activities in various areas based on their own content specifics. Thus, the activities of government bodies to resolve any individual cases arising in the field of public administration (that is, the so-called relations of a positive managerial nature that arise when applying regulatory norms of substantive law) should form a managerial (administrative and procedural) process.

Another type of procedural activity, where the law enforcement function comes first, is associated with the implementation of administrative (including disciplinary) coercion measures by the competent authorities and officials. This type of process can be considered as an administrative-jurisdictional, administrative-tort or administrative-compulsory process, depending on which name is approved in the science of administrative law. Finally, an independent type of legal process, directly related in its essential characteristics to both civil and criminal processes – is judicial administrative process, or administrative legal proceedings (the procedural side of administrative justice).

If positive procedural activities and activities of a punitive nature “leave” the construction of the administrative process, then the legal institution under consideration acquires the properties of motivation, validity and logic. In its structure, there is only one category of issues that require resolution exclusively through the procedural form – cases of public law disputes.

Without going into a more detailed study of the evolution of the administrative process, it should be said that this (the narrowest of all) position is becoming predominant today. We consider this development of the administrative-procedural concept to be logical and the only true one, confirmed by the promising directions of the formation of the domestic legal framework. Today, there are laws that allow quite clearly establishing the parameters of the administrative process, especially the Code of Administrative Procedure of Ukraine.

***4. Administrative process through the prism of administrative justice***

In modern conditions, judicial control over the legality of the actions of administrative bodies is one of the most important ways to protect the rights and freedoms of citizens. The theory of the legal process – its legal understanding, essence, legal significance, distinctive features-has been and remains one of the most urgent problems of Ukrainian law. In the light of the updating of the procedural legislation of Ukraine, the formation of new branches and sub-sectors in the system of Ukrainian law, it is necessary to look at the problem of the legal essence and legal significance of the administrative process from the perspective of the formation of administrative legal proceedings from a new angle. In turn, it should be said that this approach is due to the formation of a new theoretical concept of Ukrainian administrative justice and the institution of control over public administration, as well as general trends in the development of the Ukrainian legal system (Ryabchenko, 2008: 61).

Despite the almost century-old existence of discussions on the problems of administrative justice and administrative process, there is still no unified approach to their definition. The term “administrative justice” is used very freely, and its content has a different meaning. This situation is caused not only by the lack of fundamental universally recognized research in the modern Ukrainian science of administrative law, but also by the practical denial of the very right to the existence of this concept by some experts in the field of civil procedure, and recently administrative (Bandurka, 2012: 84).

On the one hand, the term “administrative justice” is understood as formal justice in administrative cases (cases of administrative offenses and disputes in the field of management); on the other hand, this phrase serves to denote an administrative judicial institution or a special administrative court; there is also a third variant of the narrowest interpretation of the term under study as a special procedural procedure for considering disputes in the field of management, i.e. the order of administrative proceedings (Mykolenko, 2007: 167).

Proceeding from this, in our opinion, administrative justice should be understood as the consideration by specialized judicial bodies under special procedural rules (rules of administrative proceedings) of administrative and legal disputes concerning violations of the public rights of citizens and legal entities arising between citizens and organizations, on the one hand, and public administration bodies, on the other, as well as between the subjects of public administration themselves.

This approach to the definition of administrative justice is because at present this legal institution is an indispensable attribute of a modern rule of law state and is characterized by the following features:

1) administrative justice performs the function (is a form) of "external" control over the legality of actions in the field of management; a way to protect the subjective rights of citizens in relation to the activities of executive bodies and their officials;

2) the existence of a dispute about law, and about administrative law, is the main substantive aspect of administrative and judicial relations;

3) the public-legal nature of disputes determines the possibility of their effective resolution only by specialized administrative justice bodies, since these disputes affect the sphere of socially significant interest;

4) a mandatory prerequisite for the emergence of administrative and judicial relations is poor – quality (illegal) public (state) management carried out in relation to the applicant (complainant);

5) the next necessary feature of administrative justice is the tripartite nature of the administrative-judicial legal relationship, where the parties are a citizen, an official whose actions (inaction) or decisions are being appealed, and a person authorized to resolve the issue in form and substance. A legal relationship where the parties are two entities, in our opinion, is a typical substantive legal relationship. Conversely, a typically procedural legal relationship is one that arises on the initiative of one of the three participants in the administrative process;

6) the main purpose of administrative justice is the legal protection of the subjective rights of citizens and legal entities from violations by public administration bodies and their officials; hence another equally important problem- the termination of the illegal state (for example, the termination of an illegal act of management);

7) to a certain extent, the independence of administrative justice bodies, both from other branches of government and from courts of general jurisdiction, which is aimed at strengthening the objectivity and freedom from the influence of "interested" authorities in the process of resolving an administrative dispute;

8) a distinctive feature of judicial relations is that when considering a dispute, a citizen is guaranteed the position of a party in the process, i.e. inequality in the material legal relationship should be transformed into equality in the procedural legal relationship;

9) administrative justice is characterized by a special procedural form of consideration of an administrative-legal dispute (as a rule, judicial).

10) the legal result of the consideration and resolution of a public legal dispute, i.e. the result of an administrative judicial relationship, is the decision of the future fate of a legal act or action (inaction) of a subject of public authority. It is obvious that this specific goal cannot be the goal of any other legal relations (including civil procedural ones).

Quite often in legal science, administrative justice is called a judicial process. From our point of view, this is quite justified, but, nevertheless, the question of the essence, objectivity, legal significance and location of the term "administrative proceedings" in the judicial system and modern administrative law still remains uncertain, contradictory and very complex.

**Conclusions.** Thus, summarizing the above, we summarize that, despite the many ideas available in science, the modern administrative process:

– should be modeled as a legal process that ensures the implementation of administrative legal proceedings;

– based on the variety of types of legal process, it should be considered only as a judicial process for resolving public law disputes;

– it should have its own structure, and not be a component part of the array of administrative procedural activities, which is currently unreasonably designated by the collective term "administrative process in the broad sense".

In order for Ukraine to acquire a full-fledged system of protecting the rights of citizens from negative manifestations of public power that meets the requirements of the rule of law, the administrative justice must obtain its high-quality registration both in its material manifestation and in the procedural one (the formation of the most effective order for the implementation of the administrative process).

That is, all of the above allows us to draw a fairly simple conclusion that has already been expressed in legal science: it is possible to overcome the imperfections of the current legislation and eliminate difficulties in the law enforcement activities of courts of general jurisdiction and administrative courts only after the development of a single fundamental concept of administrative justice and administrative process.

It is not by chance that the constitutional norms have singled out and isolated the administrative process:

– firstly, the civil procedure legislation is focused on the consideration of administrative cases within the framework of an adversarial procedure. Traditional for the administrative judicial process in the countries of the Romano-German legal family is the preservation of essential elements of inquisitorial proceedings, which is a feature of administrative-judicial relations;

– secondly, in the administrative process, there are fundamentally different rules for distributing the burden of proof, which is assigned not to the "plaintiff", as in civil proceedings, but to the "defendant", i.e. to the public administration body. A citizen or an organization should only cite the facts of violation, infringement of his rights and legitimate interests, and the public administration body should justify its "innocence". This nature of the process is predetermined by the nature of the claims "man against the state" or the initial inequality of the legal status of the disputing subjects, which again indicates the expression of a special content of administrative justice.

Thus, we can focus on the following main points that are important for the formation of a modern concept of the administrative process:

– administrative justice should be defined as a judicial procedure for resolving disputes about subjective public rights;

– the prerequisites for the expression (implementation) of administrative justice are in two planes: substantive – the organization of judicial bodies competent in considering this category of disputes (administrative courts), and procedural-legal-the creation of a procedure for the functioning of administrative justice bodies (procedures for the implementation of powers);

– the traditional name for the domestic legal science is the name of the type of judicial process in accordance with the branch affiliation of the material relations underlying the incident that has arisen – civil process, criminal process, constitutional process, budget process, etc. Therefore, the process of considering cases arising from administrative-legal relations should be referred to as an administrative process.

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