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DOI <https://doi.org/10.32849/2663-5313/2022.10.06>**Nadiia Ilchyshyn,***PhD in Law, Judge, Eighth Administrative Court of Appeal, 13, Saksahanskyi street, Lviv, Ukraine, postal code 79000, ilchyshynnadiia@ukr.net***ORCID:** orcid.org/0000-0002-0435-6480*Ilchyshyn, Nadiia (2022). Phases of preparatory proceedings as a stage of administrative proceedings. Entrepreneurship, Economy and Law, 10, 37–43, doi: <https://doi.org/10.32849/2663-5313/2022.10.06>*

PHASES OF PREPARATORY PROCEEDINGS AS A STAGE OF ADMINISTRATIVE PROCEEDINGS

Abstract. Purpose. The purpose of the article is to define the essence and features of preparatory proceedings as a stage of administrative proceedings, as well as to distinguish judicial procedures at each of its phases. **Results.** The article analyses the provisions of the Code of Administrative Procedure of Ukraine which regulate preparatory court procedures by an administrative court at the stage of preparatory proceedings. The author reviews scholars' perspectives on the division of the preparatory proceedings into certain phases, and notes that such division should be specified depending on the form of action proceedings. The author analyses the particularities of preparatory proceedings as a stage of court proceedings which are considered under the rules of general action proceedings. It is noted that in this case the preparatory proceedings will consist of four phases, one of which is optional. The author highlights the issues of consideration of court proceedings under the rules of simplified action proceedings and concludes that on such grounds the preparatory proceedings consist of two phases. The author analyses the particularities of consideration and resolution of an administrative case or a separate procedural issue without summoning the parties to the case. The author emphasises the difficulty of making a court decision without holding a preparatory hearing if both parties have filed a motion to consider the case in their absence. It is substantiated that the preparatory proceedings are divided into certain phases which depend on the form of action proceedings. It is noted that the phases of preparatory proceedings, depending on the content of a particular case, consist of certain preparatory court procedures. It is determined that the preparatory court procedures at the phase of appeal and cassation proceedings closely overlap with the preparatory actions to be performed by a judge at all phases of the preparatory proceedings, but the specificity is that the appeal is against a court decision, and not against the body or official who issued the initial decision. **Conclusions.** The author concludes that the main purpose of preparatory court procedures is to ensure that all measures permitted by law aimed at timely, comprehensive, objective and cost-effective consideration of a case are implemented, and an additional purpose is to reconcile the parties before the trial on the merits.

Key words: preparatory proceedings, preparatory court procedures, phases, general action proceedings, simplified action proceedings, written proceedings, appellate proceedings, cassation proceedings.

1. Introduction

The ongoing reform processes in our country cannot exist without certain legislative changes. Such changes should, first and foremost, ensure better protection of the rights and interests of citizens that have been violated or disputed, as well as improve the quality and efficiency of administrative proceedings. Along with making a legitimate and well-reasoned decision, the court should also save resources, both material and procedural. Allowing for the above requirements related to the processes dictated by modern realities will help to strengthen the rule of law in the state.

The relatively new version of the Code of Administrative Procedure of Ukraine (here-

inafter – the CAPU) as of December 15, 2017 introduced significant changes regarding such a stage of administrative proceedings as preparatory proceedings.

Scholars of various branches of law have studied preparatory proceedings as a stage of the judicial process, in particular, a significant contribution in this field has been made by Kh.I. Kit, D.V. Rozhenko, O.A. Banchuk, R.O. Kuibida and M.I. Khavroniuk, Yu.Yu. Tsal-Tsalko. However, despite the wide interest of the scientific community, this issue in the context of administrative proceedings is not sufficiently studied.

The purpose of the article is to define the essence and features of preparatory proceed-

ings as a stage of administrative proceedings, as well as to distinguish judicial procedures at each of its phases.

2. Stages of administrative proceedings

Preparatory proceedings are a stage of administrative proceedings that is the basis for the correct, comprehensive and prompt resolution of a case on the merits, and if ignored, may have negative consequences for the entire subsequent judicial process, such as violation of the time limits for consideration of the case or reversal of court decisions. The effectiveness of the court's activity in considering and resolving administrative cases and the possibility of the best fulfilment of justice tasks are largely due to the quality of administrative actions taken at the stage of preparatory proceedings (Keleberda, 2018, p. 66). Thus, in administrative cases, preparatory proceedings are the basis on which further proceedings in the case develop and which largely determine the outcome of the trial.

The stage of preparatory proceedings as a preparatory procedure begins with the commencement of the proceedings and ends with the closure of the preparatory hearing. However, the latter applies to the consideration of cases under the rules of general action proceedings. After that, the judge who has opened the case (this is logical, since he or she has already familiarised himself or herself with the filed statement of claim and has an idea of the materials submitted to it) shall perform a number of procedural actions. The nature of such actions depends to a certain extent on the particularities of the disputed legal relations, namely on their subjective composition and factual circumstances to be established by the court.

The preparatory proceedings shall be conducted within sixty days from the date of commencement of the proceedings, but in exceptional cases this period may be extended for no more than thirty days at the request of one of the parties or on the initiative of the court (Code of Administrative Procedure of Ukraine, 2005). As for the time limit for preparatory proceedings during the consideration of a case under the rules of simplified action proceedings, the legislation in force does not clearly establish it but, relying on the analysis of the provisions specified in Articles 257-263 of the CAPU, it can be concluded that this period may last from 15 to 30 days.

As noted above, the preparatory proceedings have their own phases. In the legal literature, it is customary to divide this stage into three phases: the initial phase begins when the administrative court issues a decision to initiate proceedings in the case; the main phase begins when the decision to hold a preliminary court hearing is made;

the final phase is when the court adjudicates on the results of the preparatory proceedings (Kit, 2013, p. 137). We agree that the stage of preparatory proceedings consists of certain phases, however, it should be noted that they depend on the form of the action proceedings, which should be determined at the point of its opening.

According to the new CAPU, administrative proceedings are conducted in the manner of action proceedings in two forms: general (the CAPU, Article 12, part 3) or simplified (the CAPU, Article 12, part 2).

The rules of general action proceedings apply to cases concerning 1) appeals against legal regulations; 2) decisions, actions and inaction of a public authority, if such actions caused material damage exceeding five hundred times the subsistence minimum for able-bodied persons; 3) expropriation of land and other real estate located on it for reasons of public necessity; 4) appeals against a decision of a public authority, on the grounds thereof it may claim the recovery of funds in an amount exceeding five hundred times the subsistence minimum for able-bodied persons; 5) appeals against decisions of the National Commission for Rehabilitation in legal relations arising under the Law of Ukraine "On Rehabilitation of Victims of Repressions of the Communist Totalitarian Regime of 1917-1991"; 6) appeals against individual acts of the National Bank of Ukraine, the Deposit Guarantee Fund, the Ministry of Finance of Ukraine, the National Securities and Stock Market Commission, and decisions of the Cabinet of Ministers of Ukraine, as defined in part one of Article 266-1 of the CAPU (Code of Administrative Procedure of Ukraine 2005). As we can see, these categories of cases can be classified as complex, as they require more time and more procedural steps to be resolved.

With regard to the simplified action proceedings, their purpose is to consider cases of minor complexity and other cases. The list of cases falling into this category is defined in the CAPU, Article 12 part 6, analysing the provisions thereof we can conclude that the features of simplified action proceedings are: 1) completion of the procedural cycle within a certain court instance; 2) reduction of the number of procedural actions or systemic change in the way they are performed; 3) narrowing of the procedural capabilities of the court and participants in the process; 4) limited application to a certain range of cases (Zavalniuk, 2017, p. 15). Therefore, the priority in the consideration of cases of minor complexity is to reduce the time of consideration, which should be alongside compliance with all the principles on which the case consideration process is based. Obviously, this is the reason why certain phases of the prepara-

tory proceedings may be excluded due to their inappropriateness in a particular case.

In our opinion, the first phase of the preparatory proceedings as a preparatory procedure under the rules of general action proceedings is the formation of the case for the preparatory hearing. The main task of this phase is to create organisational and procedural prerequisites for the effective conduct of the preparatory hearing.

At this stage, the judge shall familiarise himself with the case file in detail in order to finally determine the subject matter of the dispute and the nature of the disputed legal relationship and sends copies of the decision to open the proceedings, copies of the statement of claim and the documents attached thereto. At this stage, the defendant has the right to file a response.

Next, it is necessary to establish the existence of controversial issues that may further adversely affect the course of the case and, if possible, ensure their resolution at the first phase of the second stage by establishing the circumstances to be proved. This goal can be achieved by obtaining or requesting evidence from the parties to the dispute.

The next judicial procedure at the phase of forming the case for the preparatory hearing is to determine the composition of the persons who shall participate in the preparatory hearing. Here it is important to determine the composition of the court, decide whether the parties to the case (or their legal representatives) shall be present in person, and ensure that the above-mentioned persons are duly notified of the time and date of the preparatory hearing, which is also decided at the phase of forming the case for the preparatory hearing.

In turn, if the case is considered under the rules of simplified action proceedings, the first phase of the preparatory proceedings stage will be the preparation of the case for trial, as no preparatory hearing is held in cases related to this form of administrative proceedings. Such a conclusion can be made based on the provisions of the CAPU, Article 171, part 9, clause 5, which states that when commencing proceedings in an administrative case, the court shall specify in its decision the date, time and place of the preparatory hearing if the case will be considered under the rules of general action proceedings (Code of Administrative Procedure of Ukraine, 2005). In this case, the main burden of preparatory procedures for the stage of consideration of the case on the merits will fall on the phase of preparation of the case for trial, during which all the tasks of the stage of preparatory proceedings specified in the CAPU, Article 173, part 2, shall be fulfilled. Therefore, we do not agree with the opinion of some schol-

ars who equate the concepts of "preparatory proceedings" and "preparation of the case for trial".

The second phase of the preparatory proceedings, if the case is considered under the rules of general action proceedings, can be a preparatory hearing. Having received all the necessary documents and evidence in the case, at this phase, all the details of the case are clarified, the procedure for clarifying the circumstances is established, and the date, time and place of the substantive hearing are determined. All applications and motions submitted to the court are considered. If necessary, relevant expert examinations are appointed, the term and procedure for settling the dispute with the participation of a judge is set, if it is consented to do so, and other actions are taken to ensure that the case is considered on the merits in a correct and timely manner.

With regard to the decision to involve third parties in the proceedings, the participation of bodies and persons authorised by law to go to court in the interests of other persons, and the involvement of other parties to the proceedings, such decisions may be made both at the first and second phases of the preparatory proceedings.

In general, the list of court procedures at the preparatory hearing phase is quite diverse. The further course of the case and the most important processes of its organisation depend on their quality. Given the wide range of issues that arise during the analysis of the second phase of the preparatory proceedings, that is, the preparatory hearing, we consider they require further research in our next studies.

The third phase of the preparatory proceedings, in our opinion, is the performance of procedural actions that shall be performed before the end of the preparatory proceedings and the commencement of the consideration on the merits. However, the review of a number of court rulings enables to conclude that this phase is optional and should be performed based on the content of a particular case.

3. Particularities of legal effects in preparatory proceedings

Each court procedure shall result in the relevant legal effects, so the issuance of a court decision based on the results of the preparatory proceedings is a mandatory phase of the preparatory proceedings. If the case is considered under the rules of general action proceedings, this phase will be the fourth. In turn, since the CAPU does not provide for a preparatory hearing in the course of resolving disputes under the simplified action proceedings, in this case, the court decision based on the results of the preparatory proceedings is the second

and final phase of the second stage of administrative proceedings.

At this phase, the court shall issue one of the rulings.

First, if there are grounds, the exhaustive list of which is set forth in the CAPU, Article 240, part 1, the court may decide to leave the claim without consideration (Code of Administrative Procedure of Ukraine, 2005). The decision to leave the claim without consideration will have its own procedural effects in the form of the concerned parties' right to re-apply to the court with a claim in the general procedure, provided that the reasons that have been the basis for its adoption are eliminated.

Second, if there are grounds specified in the CAPU, Article 238, part 1, the court may issue a decision to close the proceedings in the case (Code of Administrative Procedure of Ukraine, 2005). In essence, this means that the court is done with the case. The procedural effects of such a decision are significantly different from the effects of leaving a claim without consideration, since after the case is closed, it is impossible to re-apply to the court regarding a dispute about the same subject matter, on the same grounds and by the same parties.

It should be noted that both rulings may be appealed within the time limit established by law.

Third, after all preparatory procedures of the preparatory proceedings stage are completed, in particular, all claims and objections are specified; all issues related to the composition of the parties to the case are clarified; the facts to be established to resolve the dispute are determined; evidence to be used by the parties to substantiate their arguments or objections are determined and deadlines for their submission are set; other actions necessary to prepare the case for trial have been taken (Kivalov, Kharytonov, Kharytonova, 2009, p. 360), the court issues a ruling to close the preparatory proceedings and set the case for trial on the merits. In addition to the prescribed details, this ruling shall specify what preparatory actions have been taken and indicate the date, time and place of the trial.

This ruling is the ground for the immediate sending of summonses to the parties to the case, and notification summonses to the persons involved in the case regarding the performance of procedural actions in which their participation is not required (Articles 124-131 of the CAPU). In turn, the defendant is sent copies of the statement of claim and the documents attached thereto (provided that they were not served during the preparatory hearing).

A court decision in the preparatory hearing in case of withdrawal of a claim, recognition

of a claim, or reconciliation of the parties is made in accordance with the procedure established by Articles 189 and 190 of the CAPU (Code of Administrative Procedure of Ukraine, 2005). In general, this issue is quite voluminous and has many grounds for consideration, so we propose to study it in more detail in our further work.

Copies of court decisions based on the results of preparatory proceedings are sent to parties concerned.

It should be noted that at the stage of preparatory proceedings, there are certain particularities in the resolution of a public law dispute in written proceedings.

Written proceedings are consideration and resolution of an administrative case or a separate procedural issue in a court of first instance, court of appeal or cassation without notification and/or summoning of the parties to the case and holding a court hearing on the ground of case materials in cases established by the CAPU (Code of Administrative Procedure of Ukraine, 2005). In this form, an administrative case may be considered provided that the plaintiff, when filing a statement of claim with the court, simultaneously files a motion to consider the case without his/her presence. Such actions are based on the provisions specified in the CAPU, Article 161, Part 5, which states that "if necessary, the claim shall be accompanied by the plaintiff's petition and statements on consideration of the case under the rules of simplified claim proceedings,...etc." (Code of Administrative Procedure of Ukraine, 2005). By "etc." it should be understood that the list of motions that may be filed by the plaintiff in the statement of claim is not exhaustive, and therefore any motion may be filed, including a motion to consider the case in his/her absence. In turn, the defendant may also file a motion for the case to be heard in his or her absence. And then a situation may arise when a public law dispute can be resolved only if the materials available to the court are sufficient to make a lawful and reasonable decision (Keleberda, 2018, p. 67). Although the preparatory proceedings in the written proceedings are based on general provisions that constitute the content of the preparatory proceedings and shall be applied in all cases without exception. Therefore, in our opinion, in this case it is still advisable not to neglect the stage of the preparatory hearing.

Further, we propose to define the particularities of preparatory procedures during appeal and cassation proceedings.

Appellate proceedings are an optional stage of administrative proceedings regulated by the CAPU, which consists of a range of court

procedures, the content of which is related to the review by the administrative court of appeal of a court decision which has not entered into force (Keleberda, 2018, p. 118). After commencement of the appellate proceedings, a court of appeal proceeds to the next phase – the appellate hearing, which in turn consists of two parts: preparation of the case for the appellate hearing and the hearing of the case in opening.

When preparing a case for trial, the reporting judge shall perform a number of preparatory court procedures: 1) to establish the composition of the participants in the court proceedings. If it is established that the decision of the court of first instance may affect the rights and obligations of a person who did not participate in the case, he/she shall involve such person in the case as a third party who does not make independent claims regarding the subject matter of the dispute; 2) to establish the circumstances referred to by the parties to the case as the basis for their claims and objections; 3) to establish which circumstances are admitted and which are denied by the parties to the case; 4) to invite the parties to the case to submit new evidence to which they refer, or requests it at the request of the person who filed the appeal or on its own initiative; 5) to decide on the validity of the reasons for not submitting evidence to the court of first instance; 6) at the request of the parties to the case, to resolve the issue of calling witnesses, appointing an expert examination, court orders for the collection of evidence, involving a specialist, interpreter in the case; to resolve other written requests of the parties to the case; 7) to resolve the issue of the possibility of written proceedings on the materials available in the case in the court of appeal; 8) to resolve other issues necessary for the appeal consideration of the case (Code of Administrative Procedure of Ukraine, 2005). Therefore, the list of preparatory court procedures is not exhaustive and will depend on the specific case. The final result of preparing a case for appeal should be a decision by the panel of judges to assign the case for consideration, having previously carried out additional preparatory actions, if necessary, as well as notifying the parties to the case of the date, time and place of its consideration, if the case is not considered in written proceedings.

In turn, cassation proceedings are the activities of the cassation court regulated by the provisions of the CAPU to verify the legality of court decisions that have entered into force due to the incorrect application of substantive law by the courts of first and/or appellate instances or violation of procedural law (Halunko, Dikhtievskyi, Kuzmenko, Stetsenko, 2018, pp. 318-322).

Both after the commencement of appellate and cassation proceedings, proper preparation of the case for consideration shall be ensured. However, cassation proceedings, unlike appellate proceedings, consist of three phases: 1) preparation of the case for cassation; 2) preliminary consideration of the case; 3) cassation proceedings of the case in court. We propose to analyse the first two phases in detail.

For example, when preparing a case for cassation, the reporting judge shall perform the following judicial procedures: 1) to determine the composition of the parties to the case; 2) to resolve the written motions filed by the parties to the case; 3) to decide on the possibility of preliminary consideration of the case or written proceedings on the basis of the materials available in the case in the court of cassation; 4) to decide on the suspension of execution of the appealed court decisions; 5) to resolve other issues necessary for the cassation review of the case (Code of Administrative Procedure of Ukraine, 2005). Similar to preparatory court procedures in appellate proceedings, the list is not exhaustive.

After preparatory actions, the reporting judge assigns the case for cassation consideration in a court hearing or in written proceedings based on the materials available in the case. The parties to the case are notified of the date, time and place of the hearing if the case is considered with their notice in accordance with the CAPU (Code of Administrative Procedure of Ukraine, 2005).

The next phase is the preliminary consideration of the case, which shall be conducted within five days after the report is drawn up by the reporting judge without notifying the parties to the case. At this phase, the reporting judge reports to the panel of judges on the circumstances of the case that are necessary for the cassation court to make a judgment. As a result of the preparatory procedures, the cassation court shall make one of the following decisions: 1) on appropriate grounds, to dismiss the cassation appeal and leave the judgment unchanged; 2) if appropriate grounds are present, to cancel the court decision; 3) to set the case for consideration in court, if the cassation proceedings do not provide for consideration of the case in written proceedings (Code of Administrative Procedure of Ukraine, 2005). A case may be scheduled for consideration in court only if at least one judge of the court has reached such a conclusion. The ruling on the appointment of the case for consideration in court shall be signed by the entire court.

As we can see, the above closely overlaps with the preparatory actions to be performed by a judge at all phases of the preparatory

proceedings in the court of first instance, but the specificity of court procedures at the stage of preparing a case for appeal or cassation is that the appeal is against a court decision, and not against the body or official who issued the initial decision.

4. Conclusions

Therefore, the main purpose of the preparatory court procedures to be performed by a court of any instance prior to the stage

(stage in case of cassation or appellate proceedings) of consideration of the case on the merits is to ensure that all measures permitted by law aimed at timely, comprehensive, objective and cost-effective consideration of the case are taken. Moreover, an additional purpose can be identified, which is to reconcile the parties before the trial on the merits. In our opinion, this is the essence of the preparatory proceedings.

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ЕТАПИ ПІДГОТОВЧОГО ПРОВАДЖЕННЯ ЯК СТАДІЇ АДМІНІСТРАТИВНОГО СУДОЧИНСТВА

Анотація. Мета. Метою статті є визначення сутності та ознак підготовчого провадження як стадії адміністративного судочинства, а також виокремлення судових процедур на кожному з її етапів. **Результати.** У статті проаналізовано положення Кодексу адміністративного судочинства України, які регламентують виконання підготовчих судових процедур адміністративним судом на стадії підготовчого провадження. Розглянуто позицію науковців щодо розділення на певні етапи стадії підготовчого провадження, при цьому зазначено, що такий поділ необхідно конкретизувати залежно від форми позовного провадження. Проаналізовано особливості підготовчого провадження як стадії судового провадження, яке розглядається за правилами загального позовного провадження. Зазначено, що в такому випадку підготовче провадження складатиметься з чотирьох етапів, один з яких є факультативним. Висвітлено питання розгляду судового провадження за правилами спрощеного позовного провадження та зроблено висновок, що за таких підстав підготовче провадження складається з двох етапів. Проаналізовано особливості розгляду і вирішення адміністративної справи або окремого процесуального питання без виклику учасників справи. Наголошено на складності прийняття судового рішення без проведення підготовчого засідання у разі, якщо обидві сторони подали клопотання про розгляд справи за їхньої відсутності. Обґрунтовано, що підготовче провадження поділяється на певні етапи, які залежать від форми позовного провадження. Зазначено, що етапи підготовчого провадження залежно від змісту конкретної справи складаються з певних підготовчих судових процедур. Визначено, що підготовчі судові процедури на стадії апе-

ляційного та касаційного провадження тісно пересікаються з підготовчими діями, які мають бути виконані суддею на всіх етапах стадії підготовчого провадження, проте особливістю є оскарження рішення суду, а не органу чи посадової особи, яка видала первинне рішення. **Висновки.** Зроблено висновок, що основною метою підготовчих судових процедур є забезпечення виконання всіх дозволених законом заходів, спрямованих на своєчасний, всебічний, об'єктивний та економічний розгляд справи, а додатковою метою – примирення сторін до судового розгляду справи по суті.

Ключові слова: підготовче провадження, підготовчі судові процедури, етапи, загальне позовне провадження, спрощене позовне провадження, письмове провадження, апеляційне провадження, касаційне провадження.

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