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PARTICULARITIES OF IMPLEMENTATION OF JUDICIAL PROCEDURES AT THE STAGE OF PROCEEDING COMMENCEMENT IN ADMINISTRATIVE PROCEDURE

Abstract. Purpose. The purpose of the article is to comprehensively study the stages of both administrative proceedings commencement and judicial procedures which are inherent to this particular stage of the administrative procedure, and to develop the author's classification of judicial procedures at this stage. **Results.** The article studies and distinguishes the first stage of administrative procedure. The author examines comprehensively the stage of commencing administrative proceedings and judicial procedures inherent in this particular stage of the administrative process. The author has developed original classification of the phases of this stage. The author studies the approaches and judicial procedures inherent in the main theoretical provisions on the commencement of administrative proceedings as a stage of administrative procedure and formulates proposals for improving the relevant regulatory mechanism. The author establishes the particularities of implementation of judicial procedures at the stage of commencing proceedings in an administrative case. The opinions of scholars are analysed to determine that the activity of an administrative court in commencing proceedings in a case is of paramount importance for ensuring the exercise of the right to seek protection in court. The author distinguishes judicial procedures at different stages and emphasises that a judge at each stage decides only those issues which are defined by law. **Conclusions.** It is proved that the commencement of administrative proceedings has its own principles, functions and participants, enabling to distinguish it as a separate stage of administrative procedure. The author identifies certain characteristic features of judicial procedures at the stage of proceedings commencement, namely: internal structure, clearly defined in the presence of relevant phases, its own purpose, which determines the nature of procedural actions and specifics of legal means that can be used at this stage – resolving the issue of the possibility (sufficiency of grounds, compliance with requirements, proper jurisdiction) of protection of rights, freedoms and interests of the actors of a certain jurisdiction, rights and interests of legal entities in the field of public law relations in the administrative proceedings, the presence of specific principles defined for this stage, presence of specific functions of administrative proceedings inherent in this stage, in addition to the general functions of administrative proceedings, the procedure for proceedings is defined by regulations, a certain time limit, the so-called terms.

Key words: administrative procedure, stages of proceedings commencement, administrative proceedings, judicial procedures.

1. Introduction

Currently, when administrative proceedings are in the process of active reform, due to the fact that it is a relatively young legal institution, the role of quality administration of justice in this sector is of great importance. Most of the legal phenomena in modern science should be considered both in terms of holistic concepts and in parts. This enables scholars to better understand the content of their constituent elements, the interconnection and conse-

quences reflected in the final result. Similarly, in the administrative process, the study of the particularities of the implementation of judicial procedures at the stage of commencing administrative proceedings is a topical issue.

Therefore, the stage of commencing proceedings in an administrative case is one of the issues that require priority research. This is primarily due to the fact that the commencement of proceedings in an administrative case is the first stage of administrative procedure, the quality

thereof affects ensuring the right of access to court, which is exercised at this stage and is the focus of many guidelines of the European Court of Human Rights, while the protection of this right is most often the subject matter of appeal to the judiciary.

The importance of determining the particularities of judicial procedures at this stage is also confirmed by the fact that without it, administrative procedural relations do not arise at all, that is, it acts as a filtering mechanism for determining existing violations of the rights and freedoms of the parties to the court proceedings.

Thus, it should be noted that it is the particularities of judicial procedures at this stage that are of primary importance for the further administrative procedure.

In addition, a comprehensive study of judicial procedures at this stage revealed a number of legal conflicts and shortcomings, the elimination of which will improve the quality of this stage of administrative procedure and the quality of administrative proceedings, reducing the number of erroneous and unlawful decisions and violations or restrictions of the right to access to administrative court, and, consequently, the right to effective defence in public law relations.

The topic of stages in administrative procedure in general and the stage of proceeding commencement in particular has been the focus of scientific research by O. Dzhafarova, P. Vovk, I. Kachura, D. Hnap, O. Yarmysh, O. Bandurka, O. Muzychuk, and other scholars. However, in the domestic legal science, theoretical and practical issues of particularities of implementing judicial procedures in administrative procedure are not sufficiently covered, and in the existing scientific works they have been studied fragmentarily or within the framework of broader legal issues, without a comprehensive approach, which, in turn, determines the importance of the chosen area of scientific research.

The purpose of the article is to comprehensively study the stages of both administrative proceeding commencement and judicial procedures which are inherent to this particular stage of the administrative procedure. To develop the author's classification of judicial procedures at this stage. To reveal the approaches and judicial procedures inherent in the main theoretical provisions on the commencement of administrative proceedings as a stage of administrative procedure and formulates proposals for improving the relevant regulatory mechanism.

The methodological basis of the study is modern general and special methods of scientific knowledge. Their application is based on a systematic approach, which enables to study issues in the unity of their social content

and legal form. The logical-semantic method enables to deepen the conceptual apparatus of meanings of "judicial procedures" and "stages of commencing proceedings".

The comparative legal method is used to reveal the approaches and judicial procedures inherent in the main theoretical provisions on the commencement of administrative proceedings as a stage of administrative procedure and formulates proposals for improving the relevant regulatory mechanism.

The statistical method and documentary analysis are used to identify the shortcomings in the specifics of the judicial procedures at the stage of commencing proceedings in a case and to formulate proposals for improving the relevant legal regulation.

The need for scientific research has led to the use of a number of general theoretical and special scientific methods of scientific knowledge, which, as a result of the awareness of the objective properties of the epistemological interaction between the object and the subject of knowledge, allowing to combine the subjective and objective aspects of knowledge. With the help of the epistemological method, the importance of judicial procedures at this stage is realised, as they are of paramount importance for the further administrative procedure.

The method of generalisation enables to establish the range of knowledge and skills that should be possessed by persons conducting judicial procedures at a high level.

The use of the selected arsenal of scientific research methods (the system of methodological support for this study) enables to ensure the validity, quality, scientific and practical significance of the scientific results obtained. In other words, it is the research methodology that is an effective and necessary tool for finding new knowledge in the process of such research.

2. Stages of commencing proceedings in administrative procedure

The arrangement of administrative procedure is doctrinally defined within the procedural stages. To begin with, the review of the current domestic literature and perspectives of scholars reveals the necessary to define the concept and essence of the stages of administrative procedure.

There is no unanimity of opinion in the scientific works of scholars of different legal schools on the issue of distinguishing stages in administrative procedure. The definition of the concept of stages in administrative procedure is largely derived from civil procedure, and most scholars of the old legal school adhered to their definitions and concepts.

One of the first contributions to the definition of dividing the court procedure into stages

was made by I. Benedyk, who notes that a stage is a certain element that describes a changing characteristic of the legal procedure (Benedyk, 1984).

For example, M. Stefan underlines the presence of separate parts or stages in civil proceedings. According to him, the presence of a single goal that unites procedural legal relations and actions are a mandatory feature of the stages.

According to I.A. Kachur, a stage is an element that reflects the characteristic of a legal process or a set of homogeneous procedural actions of participants to procedural legal relations carried out within a certain period to achieve a single specific procedural goal.

Therefore, the perspectives of various scholars enable to conclude that stages are an integral element that outlines the characteristics of the legal procedure or a set of homogeneous procedural actions of participants to procedural legal relations carried out within a time frame to achieve a single specific procedural goal.

In our research, it should be noted that an individual stage of administrative procedure has its own internal structure, which is designed in such a way as to ensure the achievement of the result, and therefore can and should be divided into certain phases.

It is determined that the phases successively replace each other, depending on the specific purposes they fulfil and are united by a single procedural form and compatible tasks. On the basis of the above, conclusions can be drawn regarding the concept of phases.

Phases are relatively independent internal parts of the consideration of a particular administrative case at the relevant stage of the court procedure, aimed at solving its individual tasks. They should be considered not as simple time periods that gradually replace each other (although this formal and logical feature also exists), but as a subsystem of procedural actions and procedural decisions united on the basis of the unity of tasks that are solved with their help, due to the stable recurrence of typical situations (Kachur, 2018, p. 141).

The comprehensive review of the Code of Administrative Procedure of Ukraine (2005) enables to distinguish the following phases of the stage of commencing proceedings in an administrative case:

- 1) filing of a statement of claim;
- 2) checking the statement of claim for compliance with the requirements established by law;
- 3) making a decision on further movement of the claim.

With regard to foreign experience in the use of judicial procedures in legal proceedings in

general and administrative one in particular, an important novelty is the use of mediation in resolving legal disputes, indicating that the practice of resolving legal disputes involving a judge as a mediator in foreign countries is actively implemented. The countries in which this institution operates today and has positive indicators are France, Poland, and the United States. In Germany and Italy, on the other hand, the use of mediation in resolving legal disputes, including administrative disputes, is not considered a judicial procedure, but is the prerogative of the private service sector. In Ukraine, important steps have already been taken to introduce the institution of administrative dispute resolution involving a judge. In particular, this is evidenced by the innovations in the administrative procedure legislation that took place at the end of 2017, according to which the rules on the basic principles of administrative dispute resolution involving a judge were introduced into the CAPU. It should be noted that today the institution of dispute resolution involving a judge in Ukraine in administrative procedure is ineffective and almost never used (Horobets, Lytvyn, Starynskyi, Karpushova, Kamenska, 2021).

Next, we will consider each of the judicial procedures separately.

Filing a statement of claim is the exercise of a person's right to go to court to protect violated rights in the field of public law relations and is an integral part of the right to a fair trial. The protection of human and civil rights and freedoms is one of the most important functions of the judiciary of Ukraine, enshrined in the constitution. This reflects the system implying the state judicial policy (state power in general and the judiciary), as well as the single object of protection (Hnap, 2016, pp. 21-23).

Moreover, this is stated in the Constitution of Ukraine as "the highest social value" and is provided for in Article 55 as follows: everyone is guaranteed the right to appeal against decisions, actions or inaction of state authorities, local self-government bodies, officials and employees in court (Code of Administrative Procedure of Ukraine, 2005).

This principle is clearly reflected in Article 5 of the Code of Administrative Procedure of Ukraine: every person has the right to apply to an administrative court in accordance with the procedure established by this Code if he or she believes that his or her rights, freedoms or legitimate interests have been violated by a decision, action or inaction of a public authority and to seek their protection (Code of Administrative Procedure of Ukraine, 2005).

Therefore, the commencement of proceedings can be regarded as the main and decisive

element of the exercise of such right. This is due to the fact that filing a claim in accordance with the procedure established by law does not guarantee the fact of proceeding commencement, although it is necessary for the judicial procedure and has due legal significance.

We argue that filing a lawsuit is an irrefutable fact of the occurrence of administrative and procedural relations between the applicant and the court, but it is not the fact of the beginning of the trial. A claim may or may not be the subject matter of a dispute. The actual exercise of the right to go to court begins with the official registration of the claim in court. In any other case, the filing of a claim should be considered only an intention to go to court, and not the exercise of the right to a fair trial. Therefore, it should be emphasised that *D. Hnap's* statement that the procedure for applying to court includes the preparation of a statement of claim is incorrect.

On the one hand, preparation is essential for the correct drafting of claims, and the plaintiff has the right to receive assistance from the court staff in writing the claim. However, it should be noted that preparation is not yet a filing, but only a prerequisite for the exercise of the right to a fair trial by a person and the person's intention to file a lawsuit.

Furthermore, it should be noted that a public legal dispute may be settled before the filing of a lawsuit. Therefore, a potential defendant, having the opportunity to learn about the intention of another person to take all the necessary preparatory actions to go to court to protect the rights that he or she has violated, may decide to settle the conflict out of court. Thus, the preparation of a lawsuit loses its meaning, and the appeal to the court remains unfulfilled.

It should be noted that the filing of a lawsuit cannot be considered an absolute exercise of a person's right to go to court, since such a right will be fully exercised only after the trial is completed and a decision on the merits is made, and the moment the proceedings are commenced is only the beginning of the exercise of such a right.

3. Particularities of implementation of judicial procedures at the stage of commencement of proceedings

It is important to bear in mind that the legislator has clearly established that the commencement of proceedings in a case begins with the filing of a claim with the court. The provisions on the prerequisites for such filing are set out in Article 160 of the CAPU "Statement of claim" (Code of Administrative Procedure of Ukraine, 2005), which highlights the essence of the claim and the requirements to be met in its preparation. This position of the legislator is fully jus-

tified and correct. Therefore, by commencing proceedings in a case, the court implements provisions of the constitutional right of a person to a fair trial, officially recognising the fact that his or her rights, freedoms or legitimate interests have been violated.

Only in this way can the judiciary question the legality of decisions, actions or omissions of state authorities, local self-government bodies, their officials and employees (Zozulia, Rozhenko, 2013, pp. 87-92).

Moreover, it is important to understand that proceedings may be commenced by an administrative court if the necessary prerequisites for the right to file an administrative claim are met, as well as the procedure for exercising this right is observed (Kivalov, Kharytonov, Kharytonova, 2009).

This concept indicates that the filing of a claim may be the initial phase of commencing proceedings only in presence of administrative ability to act of a person and proper powers of his/her representative.

A person who believes that his or her interests, rights and freedoms in the field of public law relations have been violated, or a public authority for reasons established by the current legislation, can apply to an administrative court. In addition, this right can be exercised if the aforementioned actors have administrative procedural ability to act. For example, the CAPU states that the capacity for rights and duties is administrative procedural legal personality, and the ability of a person to personally exercise his/her administrative procedural rights and duties, including entrusting the case to a representative, in public law relations is administrative procedural ability to act (Code of Administrative Procedure of Ukraine, 2005).

Moreover, it is not enough for a person to have rights and duties to exercise his/her right to a fair trial in an administrative court, as the person shall be of legal age and not be declared incapacitated by the court (Zhel-tobriukh, 2020, pp. 128-133). Furthermore, a necessary feature of the administrative procedure should be the fact of registration of public authorities in accordance with the manner established by law, since their legal personality arises simultaneously from the moment of their establishment and from the moment of adoption of a regulation on their activities.

We see the second phase of judicial procedures as a set of systematic actions of the authorised actor aimed at ensuring the effectiveness of further consideration of the case on the merits.

This scientific perspective is also confirmed by modern scholars. For example, Kolomoiets

(2009) understands the proceedings commencement as a set of procedural actions to clarify the legal issues of acceptance of an administrative claim by an administrative court for consideration.

D. Hnap, in turn, argues that at the stage of commencing proceedings, it is decided whether conditions necessary for the legislation to relate the very possibility of proceedings in court to consider and resolve a particular administrative case exist (Hnap, 2016).

In addition, V. Hordieiev underlines a set of procedural actions to clarify legal issues on acceptance of an administrative claim by an administrative court for consideration (Hordieiev, 2010).

Having analysed scholars' perspectives, we understand that the activity of an administrative court in commencing proceedings is of great importance for ensuring the exercise of the right to a fair trial.

The court, in its turn, is solely responsible for ensuring judicial procedures for the most detailed analysis of the claim, and therefore the importance of judicial procedures at this stage of the proceedings is significant. From the very moment the judge decides on the progress of the case, legal consequences may arise, which differ depending on the decision made by the judge. An example of such a legal consequence is the occurrence of administrative proceedings, i.e. administrative and procedural legal relations, which is possible in the event of the commencing of proceedings.

If the court decides to refuse to open the case, the proceedings cannot be commenced, and there can be no question of legal relations. However, in the case of an unjustified refusal to commence proceedings, as well as in the case of leaving the claim without motion or returning it, such a legal consequence as an appeal against a court decision may be triggered, since in this case we can speak of a violation of the person's right to access to justice (Pomazanov, 2018, pp. 132-136).

Therefore, in the process of reviewing the claim and other judicial procedures, the judge shall comply with the rules of administrative, substantive and procedural law, and shall ensure a competent, impartial analysis within the time limits established by applicable law.

After receiving a statement of claim for consideration, the judge shall:

1) find out whether the person who has applied to the court has ability to act;

2) check the statement of claim for compliance with the requirements established by the applicable law. The current procedural administrative law establishes a number

of requirements for a statement of claim, which are set out in the CAPU, Article 160, para. 5. Furthermore, the law establishes the required list of documents that shall be attached to the statement of claim and that directly relate to the public law dispute and ensure its validity (Code of Administrative Procedure of Ukraine, 2005);

3) check whether the jurisdiction of the dispute is correctly determined. Thus, an administrative court considers cases arising from public law relations;

4) check the time limits for filing a lawsuit. The time limit for filing a claim with an administrative court varies.

Relying on the results of a comprehensive review of the statement of claim, the judge decides on further judicial procedures, such as:

1) to commence proceedings in the case. Such a decision may be made if the judge finds no grounds to refuse to commence the proceedings;

2) to refuse to commence the proceedings if: the claim cannot be considered according to the rules of procedure of the court to which the statement of claim has been filed;

in the current dispute between the parties, there are final court decisions that have entered into force (a court decision or ruling, a decision to close proceedings in an administrative case);

an individual died or a legal entity that is not a n authorised actor terminated the activities and has filed a claim or is being sued, if in this case the legal relationship cannot imply legal succession;

there is already a dispute between the same parties, on the same subject matter and on the same grounds in the proceedings of this or another court;

3) to leave the claim without motion if the statement of claim is filed without complying with the requirements established by law;

4) to return the statement of claim if: the plaintiff has failed to remedy the deficiencies of the statement of claim left without motion within the time limit set by the court;

the plaintiff filed an application for its withdrawal prior to the commencement of administrative proceedings;

the claim was filed by a person who does not have administrative procedural ability to act, the claim was not signed or signed by a person who is not entitled to sign it, or by a person whose official position is not specified;

the plaintiff failed to provide evidence of contacting the defendant regarding the pre-trial settlement of the dispute in cases where the law requires pre-trial settlement, or the time limit for pre-trial settlement had not expired at the time the plaintiff filed the claim;

the plaintiff has filed another claim (claims) with the same court against the same defendant (defendants) with the same subject matter and on the same grounds and, at the time of the decision on the commencing of proceedings in the case under consideration, no decision has been made to open or refuse to open proceedings in the case, return the claim or leave the claim without consideration;

violation of the rules for joinder of claims and in other cases provided for by law.

4. Conclusions

The review of the stage of commencement of administrative proceedings enables to characterise it as a procedure established by the legislation of Ukraine for the court to carry out legally significant judicial procedures aimed at:

- 1) acceptance of the statement of claim;
- 2) verification of the statement of claim for compliance with the requirements established by law, deadlines for filing, identification of deficiencies, establishment of the fact of the plaintiff's administrative ability to act or the proper authority of the representative, the grounds for filing, and the correctness of the jurisdiction of the case;

- 3) making a decision on further consideration of the case on the merits.

This stage, together with the judicial procedures inherent in it, has a complex internal structure, which is formed by combining legal elements into a single part that is limited by

time. The importance of commencing proceedings as a stage of administrative procedure is undeniable, as it is the first phase of exercising the right to a fair trial of a violated or disputed right or legally protected interest of a citizen, as well as protection of rights and interests or exercise of the competence of a state body in cases provided for by law.

Some of characteristic features of judicial procedures at the stage of proceedings commencement are as follows:

- 1) internal structure, clearly defined in the presence of relevant phases;
- 2) its own purpose, which determines the nature of procedural actions and specifics of legal means that can be used at this stage – resolving the issue of the possibility (sufficiency of grounds, compliance with requirements, proper jurisdiction) of protection of rights, freedoms and interests of the actors of a certain jurisdiction, rights and interests of legal entities in the field of public law relations in the administrative proceedings;
- 3) the presence of specific principles defined for this stage;
- 4) the presence of specific functions of administrative proceedings inherent in this stage, in addition to the general functions of administrative proceedings;
- 5) the procedure for proceedings is defined by regulations;
- 6) a certain time limit, the so-called terms.

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ЩОДО ОСОБЛИВОСТЕЙ РЕАЛІЗАЦІЇ СУДОВИХ ПРОЦЕДУР НА СТАДІЇ ВІДКРИТТЯ ПРОВАДЖЕННЯ У СПРАВІ В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ

Анотація. Мета. Метою статті є детальне вивчення стадій відкриття адміністративного провадження та судових процедур, що притаманні саме цьому етапу адміністративного процесу, вироблення власної класифікації судових процедур на цій стадії. **Результати.** У статті досліджена та відокремлена перша стадія адміністративного судочинства. Більш детально вивчено стадію відкриття адміністративного провадження та судові процедури, що притаманні саме цьому етапу адміністративного процесу. Вироблено власну класифікацію етапів такої стадії. Розглянуто підходи та судові процедури, що притаманні розкриттю основних теоретичних положень про відкриття провадження в адміністративній справі як стадії адміністративного судочинства та формулюванню пропозицій щодо удосконалення відповідного правового регулювання. Встановлено особливості реалізації судових процедур на стадії відкриття провадження в адміністративній справі. Проаналізовано думку науковців та визначено, що діяльність адміністративного суду з відкриття провадження у справі має колосальне значення для забезпечення втілення права звернення до суду за захистом. Відокремлено судові процедури на різних стадіях та наголошено, що суддя на кожній окремій стадії вирішує лише ті питання, які окреслені законом. **Висновки.** Обґрунтовано, що відкриттю провадження в адміністративній справі притаманні власні принципи, функції та учасники, що дозволяє виокремити його в окрему стадію адміністративного судочинства. Визначено окремі характерні ознаки для судових процедур на стадії відкриття провадження, а саме: внутрішня структура, яка чітко визначена у наявності відповідних етапів, власна ціль, яка визначає характер процесуальних дій та специфіку правових засобів, що можуть бути використанні на такій стадії, – вирішення питання про можливість (достатність підстав, відповідність вимогам, належна підсудність) захисту прав, свобод та інтересів суб'єктів визначеної підсудності, прав та інтересів юридичних осіб у сфері публічно-правових відносин у порядку адміністративного судочинства, наявність визначених саме для цієї стадії своїх специфічних принципів, наявність, окрім загальних функцій адміністративного судочинства, що притаманні на цій стадії, ще і специфічних, визначеність порядку судочинства нормативно-правовими актами, певна часова обмеженість, так звані строки.

Ключові слова: адміністративний процес, стадії відкриття провадження, адміністративне судочинство, судові процедури.

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