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## CLASSIFICATION OF JUDICIAL PROCEDURES IN ADMINISTRATIVE PROCEEDINGS

**Abstract. Purpose.** The purpose of the article is to classify judicial procedures in administrative proceedings according to the selected criteria, allowing for their most essential features. **Results.** The scientific approaches to the definition of the essence of judicial procedures in administrative proceedings through the prism of identifying their essential features by means of scientific classification are analysed. The importance of scientific classification in the formation of the author's perspective on the essence of the category “classification of judicial procedures in administrative proceedings” is clarified. The criteria of classification of judicial procedures in administrative proceedings are determined. The author proposes to classify judicial procedures in administrative proceedings according to pre-established, scientifically based classification criteria which indicate the most essential features of both a particular judicial procedure in administrative proceedings and the specific group to which it belongs: the form of administrative proceedings; the type of administrative case within the scope of which judicial procedures are implemented; the participants in the administrative case; the composition of the court that carries out judicial procedures; the procedural stage during which judicial procedures are implemented; the mandatory stage of the administrative procedure; the stage of implementation of the relevant stage of the administrative procedure are chosen to be criteria for classification of judicial procedures in administrative proceedings. **Conclusions.** It is concluded that the criteria for classification of judicial procedures in administrative proceedings are as follows: 1) by the form of administrative proceedings, judicial procedures are implemented within them during general action proceedings and simplified action proceedings; 2) depending on the administrative case, judicial procedures can be classified into those that are implemented during consideration of general administrative cases, minor administrative cases, typical administrative cases, exemplary administrative cases, urgent administrative cases, complex administrative cases; 3) depending on the participants in an administrative case, judicial procedures in administrative proceedings are classified into those that are carried out exclusively with the participation of the parties (plaintiff and defendant), with the involvement of representatives of the parties, as a result of the entry into the case of legal successors, with the involvement of third parties and/or their representatives; 4) by the composition of the court, judicial procedures in administrative proceedings are classified into those carried out by a judge alone and a panel of judges; 5) depending on the procedural stage during which the judicial procedures in administrative proceedings are implemented, they can be classified into those that take place at the stage of initiation of an administrative case, preparation of an administrative case for trial, consideration of an administrative case on the merits, settlement of a dispute with the participation of a judge, appeal proceedings, cassation proceedings, review of court decisions on newly discovered or exceptional circumstances, enforcement of court decisions, restoration of lost court proceedings; 6) depending on the mandatory stage of the administrative procedure (the will of the person concerned), judicial procedures are divided into those that are implemented at mandatory stages of the administrative procedure and optional stages of the administrative procedure; 7) depending on the stage of implementation of the relevant stage of the administrative procedure, judicial procedures in administrative proceedings may take place during opening of the case on the merits, clarification of the circumstances of the case and examination of evidence, court debates, adoption of court decisions, etc.

**Key words:** judicial procedure, administrative proceedings, administrative procedure, administrative trial, administrative case, classification, criterion.

## 1. Introduction

The complex and multifaceted legal nature of judicial procedures in administrative proceedings is due to a number of factors. Among the latter are unclear legislative references to judicial procedures. For example, the legislator in part 2 of article 1 of the Law of Ukraine “On the Judiciary and the Status of Judges” of June 2, 2016 indicates that judicial power is exercised by judges and, in cases determined by law, by jurors through the administration of justice according to relevant judicial procedures (Verkhovna Rada of Ukraine, 2016). In turn, in the administrative procedure legislation, the judicial procedure can be defined as a separate phase of the procedural stage or a set of certain procedural actions that form it. For example, part 1 of article 185 of the Code of Administrative Procedure of Ukraine as of July 6, 2005 (hereinafter – the CAP of Ukraine) states that the court shall issue a ruling on the dispute settlement procedure with the participation of a judge. In para. 15 of part 1 of article 4 of the CAP of Ukraine the category “procedure” is used to denote the central stage of the administrative procedure: “the decision shall resolve issues related to the procedure of administrative case consideration and other procedural issues”. In addition, in a number of provisions of the CAP of Ukraine the category “procedure” is used in relation to certain procedural actions or the consequences that follow them: in part 2 of article 241 of the CAP of Ukraine the legislator uses the term “procedural issues related to the movement of the case in the court of first instance...”; in clause 2 of part 1 of article 266-1 of the CAP of Ukraine – “procedures for liquidation of a bank...”; in clause 2 of part 9 of article 266-1 of the CAP of Ukraine – “procedures for withdrawal of an insolvent bank...”; in part 1 of article 289 of the CAP of Ukraine – “procedures for expulsion or readmission...”; in part 2 of article 321 of the CAP of Ukraine – “procedural issues related to the movement of the case, petitions and statements of the participants in the case...” (Verkhovna Rada of Ukraine, 2005); etc.

Taken together, the above aspects are one of the main reasons for the lack of a unified perspective on the understanding of the essence of the category “judicial procedures” by legal scholars, regardless of their scientific interests. As it is noted above, the essence of judicial procedures can be revealed from both a broad and a narrow perspective. Moreover, the previously proposed approach to understanding the phenomenon under study does not claim to be absolute, but is aimed at deepening its understanding, which will be reflected further. For example, one of the most important factors con-

tributing to the improvement of understanding of the relevant phenomena, especially through the prism of their complex nature and multidimensionality, is their scientific classification. The scientific classification of judicial procedures in administrative proceedings is no exception.

A number of scholars, such as V.M. Bevzenko, M.T. Havrylytsiv, M.V. Dzhafarova, M.V. Kovaliv, D.V. Kuznetsov, R.S. Melnyk, V.B. Pchelin, M.I. Smokovych, I.B. Stakhura, Y.I. Tsvirkun, A.O. Chernikova, and others studied the formation of administrative justice, the legal and organisational framework for administrative proceedings, the legal nature of the judicial administrative procedure, the issue of proof in administrative justice, etc. However, the issue of judicial procedures in general and in administrative proceedings in particular remains insufficiently studied. Namely: no unanimous approach to the definition of the category “judicial procedure”, identification of their types and features inherent in administrative proceedings exist.

The purpose of the article is to classify judicial procedures in administrative proceedings according to the selected criteria, allowing for their most essential features.

## 2. Classification of judicial procedures in administrative proceedings depending on the type of proceeding

Any classification is not a simple aggregate of groups of objects and phenomena being studied, but something holistic, which has a number of general properties, specific functions that obey the same laws. That is why the scientific classification is of great importance for theoretical and practical human activity: it enables to group objects, phenomena depending on the most diverse needs of human cognitive activity and thereby provides solutions to various theoretical and practical tasks (Rusetskyi, 2019, pp. 222–223). Classification of a certain phenomenon, activity or process enables to understand their meaning most deeply. At the same time, such classification should be based on the criteria that will most significantly reflect the features of the relevant classification group. After all, the question of the criteria (grounds) of classification is the most important in the problem of constructing a classification of relevant phenomena, since the criterion is an indicator of the theoretical and practical significance of the classification in general, the goals and objectives that are set for it (Pchelina, 2014, p. 267). In this context, we propose to understand the classification of judicial procedures in administrative proceedings according to pre-established, scientifically based classification criteria which indicate the most essential

features of both a particular judicial procedure in administrative proceedings and the specific group to which it belongs.

Therefore, one of the most important criteria for classifying judicial procedures in administrative proceedings is the type of proceedings within which they are implemented. Scientists note that administrative proceedings are a set of procedural actions consistently performed by the competent authority and procedural decisions taken to consider and resolve an administrative case, which ends with the adoption and, where necessary, enforcement of the adopted act (Loiuk, 2018, p. 126). It should be considered that the difference between the types of the same proceedings is in the sequence (manner) of procedural activities. Thus, Y.I. Tsvyrkun argues that the procedural form in administrative proceedings enables to distinguish between different proceedings within the judicial administrative procedure, as well as different types of the same proceedings that differ in procedural manner (Tsvyrkun, 2019). Therefore, when determining the first criterion of classification of judicial procedures in administrative proceedings, it is more correct to designate it as a form of administrative proceedings.

The analysis of the procedural legislation enables M.I. Smokovych and V.M. Bevzenko to conclude that the forms of administrative proceedings should be grouped into: general action proceedings (articles 12, 257, 264, 265, 267 of the CAP of Ukraine); simplified action proceedings (articles 12, 257–263 of the CAP of Ukraine); court hearing (articles 192–256 of the CAP of Ukraine); written proceedings (paragraph 10 of Part 1 of Section 4, part 9 of article 205, articles 262, 263 of the CAP of Ukraine); participation in the court hearing by videoconference (article 195 of the CAP of Ukraine) (Smokovych, Bevzenko, 2021, p. 224). In general, we agree with the position of the above scientists, but it should be noted that this list of forms of administrative proceedings, in our opinion, requires some clarification. In particular, as follows from its analysis, along with the forms of administrative proceedings, it also contains certain stages of the administrative procedure, as well as possible forms of their implementation. In this case, the court hearing and the possibility of participation in it via videoconference are considered. According to article 192 of the CAP of Ukraine the case is considered in court. In this case, it is actually about the central stage of the administrative procedure – consideration of the case on the merits, subject to Chapter 6 of the CAP of Ukraine (Verkhovna Rada of Ukraine, 2005). At this stage, as follows from the analysis of article 195 of the CAP

of Ukraine, individual participants in the case may participate in the videoconference. Therefore, this rule states that the parties to the case have the right to participate in the court hearing via videoconference outside the court premises, provided that the court has the appropriate technical capabilities, which the court indicates in the decision to open the proceedings, unless the appearance of this participant in the court hearing is recognised by the court as mandatory (Verkhovna Rada of Ukraine, 2005).

Relying on the review of the above positions, we argue that the forms of administrative proceedings are general or simplified proceedings. Such conclusion corresponds to the requirements of the current procedural legislation. In particular, article 12 of the CAP of Ukraine stipulates that administrative proceedings are subject to the rules provided by the CAP of Ukraine, in the manner of action proceedings (general or simplified). Moreover, simplified action proceedings are intended for consideration of cases of insignificant complexity and other cases for which the priority is a quick resolution of the case. In turn, the general action proceedings are intended for consideration of cases that, due to complexity or other circumstances, are inappropriate to be considered in simplified action proceedings (Yakovets, 2006). Therefore, according to a criterion such as the form of administrative proceedings, judicial procedures within them should be divided into those that are implemented within the scope of general or simplified action proceedings.

Therefore, judicial procedures in administrative proceedings can be implemented in different ways, allowing for the specifics of the administrative case being considered. Firstly, so-called general administrative cases should be noted, during the consideration of which the administrative court judicial procedures are implemented according to the general rules within the relevant court proceedings. Secondly, judicial procedures take place during the consideration of certain categories of administrative cases. Such administrative cases can be named due to the analysis of the provisions of article 4, chapter 10 “Consideration of cases according to the rules of simplified action proceedings” and chapter 11 “Specificities of action proceedings in certain categories of administrative cases” of the CAP of Ukraine: a minor case (an administrative case of insignificant complexity); typical administrative cases; exemplary administrative case; urgent administrative cases; complex administrative cases, an exhaustive list of which is given in articles 264–267 of the CAP of Ukraine (Verkhovna Rada of Ukraine, 2005).

Accordingly, judicial procedures in administrative proceedings can be implemented depending on the type of administrative case considered by the relevant administrative court: general administrative cases, minor cases, typical administrative cases, exemplary administrative cases, urgent and complex administrative cases. In each of the above-mentioned types of administrative cases, judicial procedures within administrative proceedings will find certain specificities of their implementation, which can be identified in a number of factors: the procedure for applying to an administrative court; terms of such application; the participants in an administrative case; the mandatory nature of their participation; court decisions that may be made; etc.

### 3. Classification of judicial procedures in administrative proceedings depending on the participants

In addition, judicial procedures in administrative proceedings can be classified depending on a criterion of the participants in the judicial process. This criterion of classification of judicial procedures in administrative proceedings requires to emphasise the fundamental difference between participants in administrative procedure and actors of administrative procedural relations. In particular, studying the essence and features of the actors of administrative procedural relations, V.B. Pchelín notes that the concept of “actors of administrative procedural legal relations” is broader than the concept of “participants in administrative procedure”, since, in addition to such participants, it also includes the administrative court (Pchelín, 2015, p. 180). Moreover, the professional literature states that the names of the participants in the trial are reserved for them regardless of the stage of the trial. However, at the stage of enforcement of court decisions in administrative cases, there are such participants as the debt collector and the debtor. A person who submits an application to the court, for example, a plaintiff who requests the recusal of a judge, is called an applicant. Although it is not provided by the CAP of Ukraine, in practice there are cases when participants in the case – plaintiff or defendant – depending on the stage of the process are disclosed in court decisions as “appellant” (Ruling of the Kyiv Administrative Court of Appeal of April 2, 2018 in case № 826/15436/17) or “cassator” (Ruling of the Supreme Court composed of the panel of judges of the Administrative Court of Cassation of January 10, 2018 in case № 826/18378/16) (Yasynka, 2018, p. 77).

As for the actors of administrative procedural relations, in addition to the court, they may also include persons who are not directly related to

the procedural activity but provide its support in certain areas. For example, these may be: law enforcement bodies; the High Qualification Commission of Judges of Ukraine; the National School of Judges of Ukraine; judicial self-government bodies; the State Judicial Administration of Ukraine; the court apparatus and its separate structural units (Pchelín, 2017, p. 211). As a criterion for classification of judicial procedures in administrative proceedings, we have chosen the participants in the judicial process, and not the actors of administrative procedural relations, since the activities of the latter may not relate to such procedures at all, but be aimed solely at the organisational and legal aspects of such proceedings. In view of this, we consider it necessary to narrow this criterion even further and limit ourselves to mentioning only the participants in the case, who compose the participants in the trial. In this case, other participants in the trial, such as an assistant judge, a secretary of the court session, a court administrator, a witness, an expert, a legal expert, a translator, a specialist, are excluded (part 1 of article 61 of the CAP of Ukraine (Verkhovna Rada of Ukraine, 2005)). In this case, by the participants in the case, judicial procedures in administrative proceedings can be classified into those that are carried out: exclusively with the participation of the parties (plaintiff and defendant); with the involvement of representatives of the parties; as a result of the entry into the case of legal successors; with the involvement of third parties and/or their representatives.

With regard to an administrative court itself as the actor of administrative procedural legal relations, its composition should be a separate criterion for classification of judicial procedures in administrative proceedings. The analysis of para. 4 of part 1 of article 4 of the CAP of Ukraine reveals that according to the legislator, a court is a judge of an administrative court, who considers and decides an administrative case individually or a panel of judges (Verkhovna Rada of Ukraine, 2005). Consideration and resolution of an administrative case by a judge individually or by a panel of judges entails certain peculiarities of judicial procedures in administrative proceedings, which will have its impact on the implementation of certain stages of the administrative procedure, as well as on the implementation of certain stages and the performance of relevant procedural actions.

Another important criterion for classification of judicial procedures in administrative proceedings of Ukraine should be the stage of the administrative procedure within which they find their manifestation. From the

perspective of administrative procedure, a procedural stage is a set of homogeneous procedural actions of participants in administrative procedural legal relations, which are carried out within a relatively defined period of time in order to achieve a single specific procedural goal (Komziuk, Bevzenko, Melnyk, 2007, pp. 523–524). According to the professional literature, the entire set of procedural actions taken in connection with the consideration and resolution of a public law dispute (administrative case) can be represented by the following stages of the administrative procedure (procedural stages): initiation of an administrative case (opening of proceedings in an administrative case); preparatory proceedings (preparation of an administrative case for trial); settlement of a dispute with the participation of a judge; consideration of an administrative case on the merits; appeal proceedings; cassation proceedings; review of court decisions due to newly discovered or exceptional circumstances; enforcement proceedings (enforcement of court decisions); restoration of lost court proceedings (Smokovych, Bevzenko, 2021, p. 181).

Furthermore, the stages of administrative procedure can be considered allowing for their occurrence due to the will of the person concerned. In this case, these are mandatory and optional stages of administrative procedure and, accordingly, the criterion of classification of judicial procedures in administrative proceedings. For example, scientists understand mandatory stages of administrative procedure as stages that must necessarily precede the adoption of a court decision (resolution), which resolves the requirements of an administrative action (Pchelin, 2017, p. 194), and optional stages as those that arise solely by the will of the participants in such a process and in the absence of such will may not arise at all. These stages are carried out only when necessary due to the circumstances of a particular administrative case. The stages that are completely dependent on the will, initiative of the participants in the process and, as a result, may or may not become the subject matter of consideration by a higher instance cannot be considered mandatory (Komziuk, Bevzenko, Melnyk, 2007, p. 57). These stages of the administrative procedure are characterised by a significant number of features related to the implementation of the relevant judicial procedures within them.

#### 4. Conclusions

Therefore, one of the most important and paramount aspects of a comprehensive understanding of both theoretical and practical aspects of judicial procedures in administrative proceedings is their scientific classification.

They are classified according to pre-established, scientifically based classification criteria which indicate the most essential features of both a particular judicial procedure in administrative proceedings and the specific group to which it belongs. The criteria for classification of judicial procedures in administrative proceedings are as follows:

1) by the form of administrative proceedings, judicial procedures are implemented within it during general action proceedings and simplified action proceedings;

2) depending on the administrative case, judicial procedures can be classified into those that are implemented during consideration of general administrative cases, minor administrative cases, typical administrative cases, exemplary administrative cases, urgent administrative cases, complex administrative cases;

3) depending on the participants in an administrative case, judicial procedures in administrative proceedings are classified into those that are carried out exclusively with the participation of the parties (plaintiff and defendant), with the involvement of representatives of the parties, as a result of the entry into the case of legal successors, with the involvement of third parties and/or their representatives;

4) by the composition of the court, judicial procedures in administrative proceedings are classified into those carried out by a judge alone and a panel of judges;

5) depending on the procedural stage during which the judicial procedures in administrative proceedings are implemented, they can be classified into those that take place at the stage of initiation of an administrative case, preparation of an administrative case for trial, consideration of an administrative case on the merits, settlement of a dispute with the participation of a judge, appeal proceedings, cassation proceedings, review of court decisions on newly discovered or exceptional circumstances, enforcement of court decisions, restoration of lost court proceedings;

6) depending on the mandatory stage of the administrative procedure (the will of the person concerned), judicial procedures are divided into those that are implemented at mandatory stages of the administrative procedure and optional stages of the administrative procedure;

7) depending on the stage of implementation of the relevant stage of the administrative procedure, judicial procedures in administrative proceedings may take place during opening of the case on the merits, clarification of the circumstances of the case and examination of evidence, court debates, adoption of court decisions, etc.

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## КЛАСИФІКАЦІЯ СУДОВИХ ПРОЦЕДУР В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ

**Анотація. Мета.** Метою дослідження є здійснення класифікації судових процедур в адміністративному судочинстві за виокремленими критеріями з урахуванням їхніх найсуттєвіших ознак. **Результати.** Здійснено аналіз наукових підходів до визначення сутності судових процедур в адміністративному судочинстві крізь призму виокремлення їхніх суттєвих ознак шляхом здійснення наукової класифікації. З'ясовано значення наукової класифікації у процесі формування авторського бачення сутності категорії «класифікація судових процедур в адміністративному судочинстві». Визначено критерії класифікації судових процедур в адміністративному судочинстві. Запропоновано класифікувати судові процедури в адміністративному судочинстві за наперед встановленими науково обґрунтованими класифікаційними критеріями, які вказують на найбільш суттєві ознаки як окремо взятої судової процедури в адміністративному судочинстві, так і видової групи, до якої її віднесено. Як критерії класифікації судових процедур в адміністративному судочинстві вибрані форма адміністративного судочинства; вид адміністративної справи, у межах розгляду якої реалізуються судові процедури; коло учасників адміністративної справи; склад суду, який здійснює судові процедури; процесуальна стадія, у межах якої реалізуються судові процедури; обов'язковість стадії адміністративного процесу; етап реалізації відповідної стадії адміністративного процесу. **Висновки.** Зроблено висновок, що класифікація судових процедур в адміністративному судочинстві

здійснюється за такими критеріями: 1) за формою адміністративного судочинства судові процедури реалізуються в його межах під час загального позовного провадження та спрощеного позовного провадження; 2) залежно від адміністративної справи судові процедури можуть бути класифіковані на ті, що реалізуються в межах розгляду загальних адміністративних справ, малозначних адміністративних справ, типових адміністративних справ, зразкових адміністративних справ, термінових адміністративних справ, складних адміністративних справ; 3) залежно від кола учасників адміністративної справи судові процедури в адміністративному судочинстві поділяються на такі, що здійснюються виключно за участю сторін (позивача та відповідача), із залученням представників сторін, унаслідок вступу у справу правонаступників, із залученням третіх осіб та/або їх представників; 4) з огляду на склад суду судові процедури в адміністративному судочинстві поділяються на ті, що здійснюються суддею одноосібно та колегією суддів; 5) залежно від процесуальної стадії, у межах якої реалізуються судові процедури в адміністративному судочинстві, вони можуть бути класифіковані на ті, що мають місце на стадії порушення адміністративної справи, підготовки адміністративної справи до судового розгляду, розгляду адміністративної справи по суті, урегулювання спору за участю судді, апеляційного провадження, касаційного провадження, перегляду судових рішень за нововиявленими або виключними обставинами, виконання судових рішень, відновлення втраченого судового провадження; 6) залежно від обов'язковості стадії адміністративного процесу (волевиявлення зацікавленої особи) судові процедури поділяються на ті, що реалізуються на обов'язкових стадіях адміністративного процесу та факультативних стадіях адміністративного процесу; 7) залежно від етапу реалізації відповідної стадії адміністративного процесу судові процедури в адміністративному судочинстві можуть мати місце в межах здійснення відкриття розгляду справи по суті, з'ясування обставин справи й дослідження доказів, судових дебатів, ухвалення судових рішень тощо.

**Ключові слова:** судова процедура, адміністративне судочинство, адміністративний процес, адміністративне провадження, адміністративна справа, класифікація, критерій.

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