SCIENTIFIC AND PRACTICAL ANALYSIS OF ADMINISTRATIVE JURISDICTION IN THE LIGHT OF ADOPTION OF THE NEW CODE OF ADMINISTRATIVE PROCEDURE OF UKRAINE

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ABSTRACT

The article illustrates the results of scientific and practical analysis of the institute of administrative jurisdiction under the new rules of administrative legal proceedings of Ukraine. The investigation and clarification of the essence and content of the subject-matter, instance, and territorial jurisdiction (original jurisdiction) of administrative courts of Ukraine in the light of the adoption of the new Code of Administrative Procedure of Ukraine were carried out. In particular, it analyzed individual cases which are subject to the jurisdiction of administrative courts. The scope of powers of a competent court of each court branch for the consideration and resolution of administrative cases in the first, in appellate and cassation instances is considered and determined. The new general rules of territorial jurisdiction were studied, in particular, the peculiarities of jurisdiction at the choice of a plaintiff, at the place of residence or the location of a defendant, exclusive jurisdiction were considered. The research was conducted taking into account changes that were introduced into administrative procedural legislation in the context of judicial legal reform in Ukraine.

Keywords: Administrative Jurisdiction, Administrative Procedure, Courts Rules, Subject.

INTRODUCTION

Now, Ukraine is in a difficult but necessary process of reforming all social spheres, in particular, system improvement and qualitative transformation in the judicial field. Ratified Association Agreement between the European Union and the European Atomic Energy Community and their Member States (hereinafter referred to as Agreement), Ukraine undertook a commitment towards the actual implementation of international obligations at the domestic level, as well as the inclusion of international legal norms in the national legal system (Kravtsova & Petrova, 2017). According to Art. 14 of the Agreement, Ukraine shall strengthen cooperation in the field of justice, freedom and security: strengthening the judiciary, improving its efficiency, guaranteeing its independence and impartiality, combating corruption on the basis of the principle of respect for human rights and fundamental freedoms in order to ensure the rule of law. Adoption of a number of legal acts, in particular, Justice Sector Reform Strategy 2015-2020,

the Law of Ukraine *"On the Judiciary and Status of Judges*" dated June 2, 2016, N° 1402-VIII (hereinafter the Law N° 1402-VIII), the Law of Ukraine *"On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other Legislative Acts"* N° 2147-VIII dated October 3, 2017 made significant amendments in administrative procedure too. In particular, the study of new subject-matter, instance and territorial jurisdiction of administrative courts deserves considerable attention, and the research of its essence is particularly topical in the context of judicial and legal reform. Judicial reform is one of the most urgent reforms that should be implemented as soon as possible. Its result lays in guaranteeing an effective administration of justice in Ukraine, free access to it, impartial and fair settlement of legal disputes on the basis of the rule of law.

The study of individual issues of administrative jurisdiction was carried out by well-known researchers such as Zui (2014), Kolpakov & Gordyeyev (2011), Vatamanyuk (2011) and others. Full jurisdiction is understood as an institution of administrative procedure law, the rules of which, depending on the set of features and properties of an administrative case, the jurisdiction of a court and other criteria determine in which administrative court and in which composition of this court it should be considered in the first, appeal or cassation instance (Vatamanyuk, 2011). Another researcher defines the essence of instance original jurisdiction as a correlation of cases and courts on the basis of such mark as a place of court in the competence hierarchy, that is, he delimits the competence of administrative courts of different levels (first, appeal and cassation instances) (Kolpakov & Gordyeyev, 2011).

The purpose of the instance original jurisdiction is to determine equal opportunities for appealing judicial decisions for each administrative case, in another words to prognosticate the same number of courts that a person's right to appeal and review of the court judgment is not unreasonably restricted, and the original jurisdiction of several interconnected requirements - to ensure the unification of several requirements, which should be considered within the framework of administrative procedure in one proceeding (Zui, 2014).

But along with this, taking into account the diversity and depth of conducted researches as well as the significant changes that were made in the administrative procedure legislation in the process of judicial system reform, the essence and content of subject-matter, instance, and territorial jurisdiction (original jurisdiction) of administrative courts of Ukraine need additional research and clarification (Kravtsova & Petrova, 2018).

Essence and Content of the Subject-Matter Jurisdiction of Administrative Courts in Ukraine

The jurisdiction of administrative cases is determined due to a set of legal features (properties) of a case on the basis of which the law determines a court that have the right and obligation to consider such case and resolve it. In addition, the jurisdiction of a case is determined by the following criteria which characterize the types of jurisdiction of cases as follows:

1. Subject of a trial-issue of law;
2. Subjective membership of the parties of a dispute;
3. Instance structure of the judicial system;
4. Territory which is covered by the court activities.

In accordance with these criteria for the division of competences of different courts, it is distinguished the following types of administrative jurisdiction:

1. Subject-matter;
2. Subjective;
3. Instance;
4. Territorial.

Considering the first criterion of administrative jurisdiction-issue of law (subject-matter administrative jurisdiction), it should be noted that this dispute is directly related to public-legal relations.

That is, subject-matter administrative jurisdiction is one of the main elements, which makes the distinction between administrative legal proceeding and other types of legal proceeding (civil, commercial, criminal and constitutional). The law indicates which categories of cases are subject to administration of this type of court.

Therefore, Art. 19 of the Code of Administrative Procedure of Ukraine (hereinafter referred to as CAPU) specifies the categories of administrative cases that fall into the competence of administrative courts in public-law disputes, the consideration of which, in turn, relates to the jurisdiction of administrative courts.

At the same time, in accordance with p. 2 Para. 1 of Art. 4 of CAPU, public legal dispute is a dispute in which:

1. Even if one of party carries out governmental administrative functions, including for the performance of delegated powers, and a dispute arose in connection with the execution or non-execution by such party of specified functions; or
2. Even if one of party provides administrative services on the basis of legislation that authorizes or obliges to provide such services exclusively to the subject of authoritative powers, and a dispute arose in connection with the provision or non-provision by such party of specified services; or
3. Even if one party is the subject of an election process or referendum process, and a dispute arose in connection with the violation of its rights in such process by the party of subject of authoritative powers or other person.

At the same time, Article 19 of CAPU specifies and provides a list of public legal disputes submitted to administrative court for resolution.

Thus, disputes between natural or legal persons with the subject of authoritative powers regarding the appeal of its decisions, actions or inactivity, except for cases when the law establishes a different procedure for court proceedings for the consideration of such disputes, are resolved within the ambit of administrative proceedings (Kravtsova & Petrova, 2018).

Therefore, it is logical to include issues regarding the legitimacy (except the constitutionality) of bye-laws of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the ARC to the jurisdiction of administrative courts, as well as the legality and compliance with the legal acts of higher legal force of legal acts of ministries, other central executive bodies, the Council of Ministers of the ARC, local state administrations, local self-government bodies, and other bodies of authoritative power.

In addition, the jurisdiction of administrative courts may be established by law, in particular Art. 23 of the Law of Ukraine dated January 13, 2011, N° 2939-VI "*On Access to Public Information"* (The Legislation of Ukraine, 2011), Art. 28 of the Law of Ukraine dated

March 22, 2012 N° 4572-VI *"On Public Associations"* (Boyarynceva, 2015), Article 74 of the Law of Ukraine dated June 2, 2016, N° 1404-VIII "*On Enforcement Proceedings",* etc.

For example, administrative courts also consider cases in the field of national assistance to economic entities, as it is indicated in of Art. 14, Art. 17 of the Law of Ukraine *"On State Aid to Undertakings"*, N 1555-VII dated July 1, 2014, which came into force on 02.08.2017 (The Legislation of Ukraine, 2017).

Despite the fact that significant changes have recently been made to the CAPU, in practice many questions arise as to the delimitation of the jurisdiction of certain categories of disputes between courts of different competence.

Thus, there are difficulties in determining the jurisdiction of disputes regarding the acceptance of citizens for the public service, its implementation, and dismissal from the public service. In our opinion, the content of such disputes is disclosed through the definition of public service (Para. 17 p. 1. Art. 4 of the CAPU), which is an activity in state political positions, in state collegial bodies, professional activity of judges, prosecutors, military service, alternative (non-military) service, other civil service, executive support service in state bodies, service in the ARC authorities, local self-government bodies. That is why such disputes are public-law, not related to labor ones and governed by the norms of administrative law.

Disputes arising due to with conclusion, execution, termination, cancellation or recognition of administrative agreements as invalid are also settled within the framework of administrative proceedings.

In accordance with Para. 16 p. 1 Art. 4 of CAPU, an administrative agreement is defined as a joint legal act of the subjects of authoritative powers or a legal act with the participation of a subject of authority and other person, which is based on their consent, has the form of a contract, agreement, protocol, memorandum, etc., defines mutual rights and duties of its participants in the field of public law and is concluded in accordance with of the law.

CAPU also gets into specifics fields and purpose of conclusion of an administrative contract, which serves:

1. To distinguish the competences or determine the procedure for interaction between the subjects of authoritative powers;
2. To delegate governmental functions;
3. To redistribute or combine budget funds in cases specified by law;
4. Instead of issuing an individual act;
5. To regulate issues of providing administrative services.

Currently, according to some research, there is a lack of a category of cases in administrative courts procedure over disputes arising in connection with the conclusion, execution, termination, cancellation or recognition of administrative agreements as invalid. Thus, at this stage of development of public relations, it makes sense to speak only about the presence of certain signs of administrative agreements in relations between governmental and non-governmental organizations regarding administrative and legal regulation in the field of transport and communication, in the field of construction and housing and municipal services, in the field of environmental protection, in the field of social policy, in the field of healthcare, education and science, culture, youth policy, physical culture and sports. So, we can speak about the presence of the principles of contractual relations of public administration in the social and humanitarian and cultural activities of the state, and consequently define an administrative contract as a form

of public administration. Normative and legal acts in legal relations related to the electoral process or referendum process are Laws of Ukraine *"On Elections of the President of Ukraine"* dated March 18, 2004 N° 1630-IV, "*On Elections of People's Deputies of Ukraine"* dated November 17, 2011 N° 4061-VI, "*On All-Ukrainian Referendum"* dated November 6, 2012 N°5475-VI and other normative-legal acts that determined the stages (the beginning, passing and end) of the electoral process and the referendum process (The Legislation of Ukraine, 2012). Art. 99 of the Law of Ukraine *"On Elections of the President of Ukraine"* establishes that decisions, actions or inactivity of election commissions, members of these commissions, executive authorities, the ARC authorities, local self-government bodies, mass media, enterprises, institutions, organizations, their officials, creative media workers, candidates for the post of President of Ukraine, their trustees, parties-subjects of the election process, their officials and authorized persons, official observers who violate election legislation can be challenged in pretrial manner in the procedure that is specified by CAPU.

Some disputes in the field of legal relations related to the electoral process or referendum process can be categorized as disputes with the subject of authoritative powers regarding the appeal of its decisions, actions or inaction. At the same time, disputes, in particular regarding the appeal of decisions, actions or inactivity of election commissions or referendum commissions that arose outside the stages of election process and referendum process or are not related to the electoral process or referendum process, do not belong to disputes related to the electoral process or referendum process, that is why the definition of the jurisdiction of such disputes and their consideration are carried out in the general order (Kravtsova & Petrova, 2018).

Disputes concerning legal relations related to the electoral process or referendum process can include disputes over:

1. Appeals of decisions, actions or inactivity of election commissions, referendum commissions, members of these commissions (Article 273 of CAPU);
2. Clarification of the list of voters (Article 274 of the CAPU);
3. Appeals of decisions, actions or inactivity of executive bodies, local self-government bodies, mass media, news agencies, enterprises, institutions, organizations, their officials and officers, creative media workers and news agencies that violate election and referendum law (Article 275 of the CAPU);
4. Appeals against actions or inaction of candidates, their trustees, a party (bloc), local party's organization, their officials and authorized persons, initiative referendum groups, other parties of initiation of a referendum, official observers from the subjects of the electoral process (Article 276 of CAPU);
5. The election of the President of Ukraine (Article 277 of CAPU).

P. 2. Art. 19 of CAPU determine cases in public-law disputes which are not subject to the jurisdiction of administrative courts (The Legislation of Ukraine, 2018).

According to Para. 5 of the Resolution of the Plenum of the Supreme Administrative Court of Ukraine N° 8 dated May 20, 2013 *"On Issues of the Jurisdiction of Administrative Courts"*, public-law disputes concerning the constitutionality of laws, international treaties, by-laws of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the ARC belong to the jurisdiction of the Constitutional Court of Ukraine.

In accordance with Para. 1 p. 2 of Art. 19, Para. 1 Art. 264 of CAPU, the jurisdiction of administrative courts involves the issue of the legitimacy (except constitutionality) of the resolutions and ordinances of the Cabinet of Ministers of Ukraine, resolutions of the Verkhovna Rada of the ARC, as well as the legitimacy and compliance with the legal acts of higher legal

force of the normative legal acts of ministries and other central executive authorities, Council of Ministers of the ARC, local state administrations, local self-government authorities, other subjects of power (The Legislation of Ukraine, 2005).

The jurisdiction of administrative courts does not cover cases that must be settled in the framework of criminal procedure (they must be decided according to the norms of the Criminal Procedure Code of Ukraine) and concerning imposition of administrative penalties (they should be decided according to the norms of the Code of Ukraine on Administrative Offenses). At the same time, in accordance with CAPU, a public-legal dispute is not any public-legal dispute, but only one that emerges from exercising by the subject of authoritative powers of its authoritative management functions. Agencies of inquiry, investigation and public prosecution service verifying crime report and its solution perform non-government management functions, but power procedural functions.

Therefore, taking into account the provisions of CAPU, such disputes do not arise from the exercise of authoritative management functions by the subjects of authoritative powers, and therefore they do not belong to the jurisdiction of administrative courts and do not fall within the definition of cases belonging to Para. 1 p. 1 Art. 19 of CAPU connected with disputes of natural or juridical persons with a subject of authority to appeal its decisions, actions or inactivity (The Legislation of Ukraine, 2005).

The competence of administrative courts does not apply to cases concerning relations, which according to the law, statute (regulation) of a public association, self- regulatory organization are attributed to its internal activity or exclusive competence, except cases in disputes specified in paragraphs 9, 10, part 1 of these articles (so, such exceptions are disputes concerning the appeal of decisions of attestation, competition, medical and social expert commissions and other similar bodies whose decisions are mandatory for state authorities, bodies of local self-government, others, and disputes concerning the formation of team of the state bodies, local authorities, election, appointment, dismissal of their officials) (The Legislation of Ukraine, 2018).

Taking into account the abovementioned, it may be concluded that the subject- matter jurisdiction is a fundamental in determining the jurisdiction of a dispute. Therefore, when answering a question which court (with general jurisdiction, administrative or economic) will consider a dispute, the content of the violated right should be taken into account.

Instance Jurisdiction of Administrative Courts in the Context of Judicial and Legal Reform in Ukraine

The courts of first instance perform the function of considering and deciding a case on the merits. Courts of appeal review cases in appellate order, court of cassation-in cassation order. Each following court is a court with more powers in relation to the court that previously ruled. For example, the court of appeal is superior to the trial court. The court of cassation is superior to the court of appeal.

As a result of the judicial system reform the legislation, in particular p. 3 Art. 17 of the Law N° 1402-VIII, established three-level judicial system of Ukraine consisting of local, appellate courts and the Supreme Court (The Legislation of Ukraine, 2016). For the consideration of certain categories of cases in the judicial system there are higher specialized courts as the Supreme Court on Intellectual Property, the Supreme Anticorruption Court, they

exercise their powers as trial courts and appellate courts for a consideration of certain categories of cases.

Local courts are trial courts dealing with and settling cases on the merits. According to Art. 21 of the Law No. 1402-VIII, local courts of general jurisdiction are district courts which are formed in one or several regions or districts in cities, or in a city, or in a district (districts) and city (cities) (The Legislation of Ukraine, 2016). Local administrative courts are district administrative courts, as well as other courts, defined by procedural law, that is, CAPU.

Art. 22 of CAPU established rules of the instance jurisdiction of administrative cases, which constitute an algorithm for determining the competent court for a consideration and resolution of a particular administrative case. Thus, according to p. 1 Art. 22 of CAPU, trial courts include local administrative courts (local general courts as administrative courts and district administrative courts) that decide administrative cases, except cases specified in parts 2-4 of this article (The Legislation of Ukraine, 2005).

In accordance with p. 3 Art. 23, in cases determined by CAPU (p. 4, Art. 22 of CA3U), the Grand Chamber of the Supreme Court reconsiders judgments, in appeal procedure as court of appeals, in cases considered by the Supreme Court as a court of first instance (Kravtsova & Petrova, 2018).

Consequently, rules of instance jurisdiction are an algorithm for determining a competent court for a consideration and resolution of a particular administrative case. Determination of instance jurisdiction gives the answer to the questions, which courts are dealing with cases in the first instance and which in appeal and cassation instances. CAPU establishes which of the procedural actions has the right to conduct this court, that is outlines its functions. Thus, the instance jurisdiction determines the scope of powers of each branch of the unified judicial system of Ukraine: local courts, courts of appeal and the Supreme Court.

CONCLUSION

Taking into account the abovementioned, it may be concluded that the changes in the CAPU, in particular, the institute of administrative jurisdiction, are aimed at adhering to the modern principles of the doctrine of administrative law and judicial doctrine. In fact, the doctrine of administrative law in Ukraine provides a new understanding of «publicity», which is characterized by service to mankind, a return to basic human values, the recognition and consolidation of natural human and civil rights.

CAPU significantly specified and extended the list of cases which are subjected to the jurisdiction of administrative courts, and the division of the subject-matter jurisdiction of administrative courts is carried out. There is a distinctive cross from the subjective principle of delimitation of administrative jurisdiction to subject-matter.

It should be noted that the list of terms was expanded in CAPU, and their definition were specified, which improves and facilitates administrative court procedure. A separate novel of updated CAPU is that a court can itself send to another court an administrative case which is not under jurisdiction territorially, which facilitates access to justice, promotes greater openness of the court and public's confidence in justice as a whole.

In such a manner, the ways of the implementation of administrative legal proceedings are established in law: well-timed and effective protection of the rights, freedoms and interests of individuals, rights and interests of legal entities from violations on the part of the subjects of

authoritative powers. Although, we note that in practice many questions arise regarding the interpretation and application of the updated rules of CAPU, and it requires the further individual detailed research.

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