PROCEDURAL FEATURES OF COMMENCE ADMINISTRATIVE PROCEEDINGS IN THE FIELD OF COMMUNAL PROPERTY MANAGEMENT IN UKRAINE

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Abstract. *The article is devoted to the issue of determining the administrative-procedural characteristics of the stage of opening proceedings in an administrative case in the field of communal property management, which is considered in the procedure of administrative proceedings. In connection with the reforms of procedural legislation and local self-government in Ukraine, these issues have become especially relevant. The author explored the main positions of domestic scholars on the stages of consideration of public law disputes in administrative proceedings. He also determined the place of the stage of opening proceedings in the structure of the stages of the administrative trial. Attention is focused on the peculiarities of the adoption of an administrative lawsuit in public law disputes in the field of communal property management and problematic issues that arise in judicial practice. For example, the procedural requirements of the administrative-procedural law to the relevant claims are studied. The special public-law character of this category of disputes is noted, the author emphasized the importance of ensuring access to justice in this category of disputes. The author also believes that the right to appeal against acts or decisions of local governments in the field of communal property management should not be limited. In addition, the author investigated the procedural consequences of non-compliance by the plaintiff with the relevant requirements for both the statement of claim and the place and time of its submission. The author considers the stage of opening proceedings in the case to be the initial stage of resolving a public-law dispute in the field of communal property management in essence.*

Keywords: *management of communal property, stage of administrative process, public law dispute, administrative proceedings, commence of proceedings*

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Introduction. In line with European integration processes in connection with the adoption by the Verkhovna Rada of Ukraine in 2015 of the Law of Ukraine "On Voluntary Association of Territorial Communities" № 157-VIII, local self-government reform was launched, as a result of which united territorial communities had more opportunities to address local issues. At the same time, their responsibility for the decisions made, in particular, in the field of communal property management as one of the areas of their activity, is also increasing. Management of communal property is one of the activities of local governments as a representative body of the territorial community, which has a public character and whose purpose is to realize the interests of the inhabitants of a particular territorial community. Therefore, in the process of communal property management, disputes may arise that are of a public law nature and that are resolved through administrative proceedings.

At the same time, in 2016-2017 the domestic legislator also made significant changes in procedural legislation (Code of Administrative Procedure of Ukraine (hereinafter - CAS of Ukraine), Commercial Procedure Code of Ukraine, Civil Procedure Code of Ukraine, Criminal Procedure Code of Ukraine), which require additional analysis and in-depth study.

In this regard, there is a need to investigate the features of such disputes, to determine their characteristics, taking into account these legislative changes. The stage of initiating proceedings is an important step in resolving such disputes by an administrative court, as this stage determines the substantive jurisdiction of administrative courts and the specific court empowered to hear the dispute, the parties and the nature of the proceedings (general or simplified). Therefore, taking into account the public law features of communal property management, it is advisable to investigate this stage as an integral part of the consideration of public law disputes in this area in administrative proceedings.

Literature review. As you know, the main task of administrative proceedings is to resolve a public law dispute. Therefore, the process of resolving the dispute by the court must be regulated in some way and aimed at achieving this goal. At the same time, the court must have the procedural opportunity to quickly, fully and comprehensively clarify all the circumstances of the case, to ensure that the parties to the case can fully exercise their procedural rights to prove their rightness.

In accordance with paragraph 5 of Part 1 of Art. 4, h.h. 1 st. 12 CAS of Ukraine administrative proceedings - the activities of administrative courts to consider and resolve administrative cases, which is carried out by way of claim proceedings - general or simplified. According to p.p. 1, 3 h. 1 st. 4 CAS of Ukraine to the competence of the administrative court includes the consideration and resolution of administrative cases - transferred to the administrative court of public law disputes.

Administrative proceedings, as a certain legal process (activity), are characterized by the presence of appropriate stages, during which the intermediate issues necessary to resolve the main goal - resolving the dispute on the merits.

The stage of administrative proceedings is defined as the order and conditions of relatively independent and logically related procedural actions regulated by the norms of administrative procedural law, aimed at solving and solving the tasks of a certain part of a particular administrative proceeding. We also add that the stages are general, not individual, ie their sequence and number do not change in any order, and they depend only on the nature or type of proceedings.

In administrative-procedural legal science there are different approaches to the content, number, characteristics of stages of court decision-making, which are differentiated depending on the understanding of the essence of administrative proceedings - as proceedings in the court of first instance or in all instances. Here are the most common.

For example, O. V. Kuzmenko and T. O. Gurzhiy distinguish the following stages of consideration of the administrative case by the court of first instance: preparatory consideration of the claim; preliminary consideration of the case; final consideration of the case (Kuzmenko & Hurzhii, 2007, p. 325).

E.F. Demsky believes that the procedural stages of administrative proceedings and the administrative process include: resolving the issue of opening a case; clarification of the facts of the case; consideration of the case and decision-making in the case; review of the decision in the case; execution of the decision in the case (Demskyi, 2008, pp. 127-128).

S.V. Bakulina, investigating the proceedings in public law disputes related to the use and disposal of state and communal lands, identifies the following stages: initiation of proceedings; consideration of the case by the court of first instance; review of court decisions. It also distinguishes such stages of the stage of litigation as: the formation of claims and filing a lawsuit; opening proceedings; preparation of the case for trial; trial on the merits; 5) making a court decision in the case. At the same time, it should be noted that the stage of formation of claims is substantive rather than procedural in nature, as these actions are carried out by the plaintiff outside the court proceedings, and therefore the inclusion of these actions in the proceedings requires additional justification. Examining the proceedings in public law disputes related to the use and disposal of state and communal lands, identifies the following stages: initiation of proceedings; consideration of the case by the court of first instance; review of court decisions. It also distinguishes such stages of the stage of litigation as: the formation of claims and filing a lawsuit; opening proceedings; preparation of the case for trial; trial on the merits; 5) making a court decision in the case (Bakulina, 2018, pp. 99, 101). At the same time, it should be noted that the stage of formation of claims is substantive rather than procedural in nature, as these actions are carried out by the plaintiff outside the court proceedings, and therefore the inclusion of these actions in the proceedings requires additional justification.

In turn R.V. Mironyuk notes that the main stage of the administrative process is the consideration of cases in the court of first instance, which includes such stages as filing an administrative claim, its registration and the opening of proceedings in an administrative case; preparatory proceedings; court consideration of the case and adoption of a court decision (Myroniuk R.V., 2012, p. 131).

R.O.Kuybida, V.I.Shishkin consider that the proceedings in the court of first instance include the following stages: filing an administrative lawsuit and opening proceedings in an administrative case; preparatory proceedings; court proceedings; adjudication (Kuibida & Shyshkin, 2006, p. 311). A similar opinion is held by the authors of the textbook "Administrative Process of Ukraine", ed. A.T. Komzyuk (Komziuk, 2007, p. 425).

Analyzing these positions of domestic scholars on the stages of administrative proceedings, we can conclude that they do not contradict each other, but differ only in name, level of detail and approaches to understanding the boundaries of administrative proceedings. The object of research in this work is the stage of opening proceedings in an administrative case during the consideration of public law disputes in the field of communal property management.

Aims. The purpose is to study the peculiarities of the acceptance of administrative lawsuits in the field of communal property management and the solution of problematic issues related to the determination of substantive, instance, territorial jurisdiction of administrative courts in this category of disputes.

Methods. In this work, general, philosophical, general scientific, specific scientific and special methods were used.

1) general methods of analysis, synthesis, comparison, modeling.

Methods of analysis and synthesis were used to determine the characteristics of the concepts studied in this work. The method of comparison was used to compare different opinions of scientists regarding the understanding of certain legal phenomena. The modeling method was used to identify potential problems in the legal regulation of public law disputes in the field of communal property management.

2) philosophical methods (dialectical, hermeneutic).

The dialectical method was used in the study of administrative proceedings as a legal phenomenon formed by various factors. The hermeneutic method was used in the interpretation of regulations governing the consideration of public law disputes in the field of communal property management.

3) general scientific methods (structural, historical).

The structural method was used to characterize the phasing of the administrative process. The historical method was used to clarify the development of legal regulation of certain aspects of this category of disputes in previous versions of the Constitution and laws of Ukraine.

4) specific scientific methods (statistical).

The statistical method was used to determine the workload of administrative courts with disputes involving local government.

5) special methods (formal and legal).

The formal-legal method is used to clarify the essence of the legal regulation of the administration of justice in administrative courts in the consideration of public-law disputes in the field of communal property management.

Results. In accordance with Part 1 of Art. 168 CAS of Ukraine, the claim is filed by filing a statement of claim in the court of first instance, where it is registered and not later than the next day handed over to the judge. In fact, after filing a lawsuit in court, an administrative case begins - a public law dispute.

According to the general rule established by part 1 of Art. 22 CAS of Ukraine, local administrative courts (local general courts as administrative courts and district administrative courts) decide administrative cases as courts of first instance. At the same time, the Administrative Courts of Appeal as courts of first instance have jurisdiction, in particular, over claims for compulsory alienation of land, other real estate located on it (Part 3 of Article 22 of the Criminal Procedure Code of Ukraine).

It should be noted that since 2017, public law disputes in the field of communal property management are considered only by administrative district (or appellate) courts as courts of first instance. At the same time, the previous version of the CAS of Ukraine provided for a broader list of administrative cases subject to local general courts as administrative courts. In particular, local general courts could consider disputes in which one of the parties is a local government body, except those that are subject to district administrative courts (in particular, if the party to such a dispute is the regional council, Kyiv, Sevastopol city councils).

In 2016, in district administrative courts, the receipt of cases and materials decreased from 177,530 (2015) to 125,457 appeals (2016), and in local general courts as administrative courts increased from 77,215 (2015) to 89,882 appeals year)

(Analytical review of the state of administrative proceedings in 2016, 2016). In the first half of 2017 in the district administrative courts the receipt of cases and materials increased from 56,983 (first half of 2016) to 58,492 units (first half of 2017), and in local general courts as administrative courts - from 34,510 (first half of 2016) year) to 51,021 appeals (first half of 2017). Such dynamic changes took place mainly due to cases of recalculation and payment of old-age pensions to educators, recalculation of pensions for prosecutors, civil servants, and resumption of pensions to working pensioners (Analytical review of the state of administrative proceedings in the first half of 2017, 2017). That is, the number of lawsuits filed with local general courts as administrative courts in 2015-2017 increased due to cases not related to the activities of local governments.

It should be noted that district administrative courts are usually located in regional centers (Decree of the President of Ukraine, 2004), which can cause certain organizational and transport inconveniences for the parties to the process. Researcher O. Ovcharenko points out that the territorial proximity of courts to the participants in the process is a component of the principle of access to justice (Ovcharenko, 2008, p. 61). Given the judicial statistics, it can be argued that local general courts are an important element of the system of administrative courts due to their location, which helps some participants to avoid the mentioned organizational and transport inconveniences.

The judicial system must be diversified to provide every person with a real opportunity to reach a judicial institution (Ovcharenko, 2008, p. 76). Therefore, in cases of lawsuits against local governments in the field of communal property management, the delimitation of subject jurisdiction provided by the previous version of the CAS of Ukraine is quite justified. At the same time, we will note that this question taking into account changes in the administrative-territorial structure of Ukraine which occurred in 2020, and also provided by Art. 195 CAS of Ukraine the possibility of participating in the court hearing by videoconference is still in a state of dynamic development and requires a separate study.

After the judge has transferred the claim, he should decide on the opening of proceedings.

According to h.h. 1, 2, 9 st. 171 CAS of Ukraine, the judge after receiving the statement of claim finds out whether:

1) the statement of claim is filed by a person who has administrative procedural capacity;

2) the representative has the appropriate authority (if the statement of claim is filed by a representative);

3) the statement of claim meets the requirements established by Articles 160, 161, 172 of this Code;

4) the statement of claim shall be considered according to the rules of administrative proceedings and whether the statement of claim shall be filed in compliance with the rules of jurisdiction;

5) the claim is filed within the term established by law (if the claim is filed with the omission of the term of appeal to the court established by law, whether there are

sufficient grounds for recognizing the reasons for missing the term of appeal to the court valid);

6) there are no other grounds for leaving the statement of claim without motion, return of the statement of claim or refusal to initiate proceedings in an administrative case, established by this Code.

The judge opens proceedings in an administrative case on the basis of a statement of claim, if there are no grounds for leaving the statement of claim without motion, its return or refusal to open proceedings in the case. The court shall issue a relevant ruling on the acceptance of the statement of claim for consideration and the opening of proceedings in the case.

As you know, a claim (statement of claim) is a document that contains the substantive claims of one person (plaintiff) to another (defendant). Requirements for the content and execution of an administrative claim are set out in Art. 160-161 CAS of Ukraine, the consequence of their non-compliance is to leave the claim without action, and further - the return of the statement of claim (Article 169 CAS of Ukraine).

At the same time, we note that these rules contain as purely formal requirements for the claim, such as complete information about the parties (which is necessary for their summonses / notifications to the court, sending a copy of the court decision), the presence of a copy and copies attached thereto materials for all other participants in the case, payment of court fees, etc., and content - specificity and clarity of claims, justification of violation of the contested decisions, actions or inaction of the rights, freedoms, interests of the plaintiff, information on the application of the contested legal act to the plaintiff the plaintiff to the subjects of legal relations in which this act is applied or will be applied.

It is necessary to dwell separately on the substantiation of the violation of the contested individual decisions, actions or omissions of the rights, freedoms, interests of the plaintiff. As you know, the court protects and restores the violated rights of the plaintiff, and therefore during the case should establish the fact of violation of his rights and legitimate interests. According to the first part of Article 55 of the Constitution of Ukraine, paragraph 2 of the motivating part of the Decision of the Constitutional Court of Ukraine № 9-зп of December 25, 1997 (case on appeals of Zhovti Vody residents) any person has the right to go to court if his rights are violated, obstacles to their implementation have been created or are being created or other violations of rights and freedoms are taking place (Decision of the Constitutional Court of Ukraine, 1997).

Therefore, during the consideration of the case, the court must establish the fact or circumstances that would indicate a violation of the rights, freedoms or interests of the plaintiff by the defendant.

At the same time, the Supreme Court takes the position that the right to appeal an individual act of a subject of power is granted to the person in respect of whom the act is adopted or the rights, freedoms and interests of which it directly affects (for example, the Grand Chamber of the Supreme Court from 09.04.2019 year № 9901/611/18 (Resolution of the Grand Chamber of the Supreme Court, 2019), in the

case № 9901/283/19 (Resolution of the Grand Chamber of the Supreme Court, 2019). However, it is impossible to unambiguously agree with this position in view of the following.

A feature of public-law relations related to the management of communal property is the presence of public (municipal) interest. That is, the actions or inaction of the subject of power of individual character in relation to another specific person (not the plaintiff) in the sphere of communal property management challenged by the plaintiff may violate his rights as a resident of a certain territorial community, which in turn is the owner of such property. Providing an opportunity to appeal against an illegal individual act of a subject of power over the property belonging to the territorial community only to the person to whom such an act applies, deprives the residents of the territorial community of the opportunity to exercise their rights under Art. 21, 23, 55, 140, 142, 143 of the Constitution of Ukraine on equal and direct participation in the management of communal property.

Therefore, when considering public-law disputes in the field of communal property management concerning the appeal of individual acts, the plaintiff may be a relevant resident of the territorial community, whose rights as a member of the territorial community could be violated by such an act.

Thus, the Grand Chamber of the Supreme Court in the decision of 12.02.2020 in the case № 1340/5441/18 noted that addressing this claim to the court, the plaintiff pointed to the violation by the defendant Lviv Regional Council of a number of regulations in making the contested decision , as well as to violate the interests of the local community in general and the plaintiff in particular. Thus, the court pointed out that the decision of the regional council to terminate the municipal facilities "Lviv Regional Health Center" "Lviv Regional Medical Information and Analytical Center" of the Lviv Regional Council was adopted to perform on behalf of the local community management of health facilities, and such The decision affects not only the rights and interests of the plaintiff as a member of the territorial community, but also the interests of the territorial community as a whole, so the plaintiff exercised her right under Article 59 of the Law of Ukraine "On Local Self-Government in Ukraine" to appeal in administrative proceedings (Resolution of the Grand Chamber of the Supreme Court, 2020).

We also believe that in resolving the issue of opening proceedings in a case in the field of communal property management should also take into account the requirements of Art. 19, 20, 25-27, 122 CAS of Ukraine. For example, the inconsistency of the claim of Art. 19 CAS of Ukraine (subject jurisdiction) is the basis for refusal to initiate proceedings (paragraph 1, part 1 of Article 170 of the CAS of Ukraine). As we have already noted, the issue of substantive jurisdiction of this category of disputes remains open, and therefore requires additional attention of scholars in the field of administrative procedure law.

Also, the inconsistency of the claim of Art. 20 CAS of Ukraine (delimitation of substantive jurisdiction between administrative courts) is the basis for the transfer of materials of the claim for delimitation of substantive jurisdiction to another relevant administrative court (local general as administrative or administrative). However, we

note that Art. 29 CAS of Ukraine does not contain such grounds for transferring the case to another court. This gap is solved by applying the analogy of the law to the violation of territorial jurisdiction. Thus, the Zolochiv City District Court of the Kharkiv Region decided to apply the analogy of the law provided for in Part 6 of Art. 7 CAS of Ukraine, having established that in such a situation by analogy with the law should apply paragraph 2 of Part 1 of Art. 29 CAS of Ukraine, according to which, the court transfers the administrative case to another administrative court, if at the opening of the proceedings the court finds that the case belongs to the territorial jurisdiction (jurisdiction) of another court (Decision of the Zolochiv City District Court of the Kharkiv Region, 2018).

Territorial jurisdiction (jurisdiction) is the order of division of cases between courts of the same level depending on the territory to which their jurisdiction extends. CAS of Ukraine provides for such types of jurisdiction as general (Article 26 of the CAS of Ukraine), alternative (Article 25 of the CAS of Ukraine), special (Part 5 of Article 276, Part 1 of Article 281, Part 2 of Article 267 of the CAS of Ukraine) , exclusive (Article 27 of the CAS of Ukraine). Territorial jurisdiction of administrative courts over public law disputes in the field of communal property management is characterized by the following types:

1) general - claims against an individual are filed in court at the place of residence or stay registered in the manner prescribed by law. Claims against legal entities are filed in court at their location in accordance with the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (Article 26 of the Criminal Procedure Code of Ukraine);

2) alternative - at the choice of the plaintiff. Thus, administrative cases concerning appeals against individual acts, subjects of power, which are adopted (committed, admitted) in relation to a specific natural or legal person (their associations), are decided at the choice of the plaintiff by the administrative court at the place of residence registered by law. (stay, location) of this person-plaintiff or by the administrative court at the location of the defendant. If such a person does not have a place of residence (stay) in Ukraine, then the case is decided by the administrative court at the location of the defendant. If the case on related claims is territorially subject to different local administrative courts, it is considered by one of these courts at the choice of the plaintiff (Article 25 of the Criminal Procedure Code of Ukraine);

3) special - administrative cases on compulsory alienation of land, other immovable property located on it, for reasons of public necessity are considered at the location of immovable property subject to compulsory alienation (Part 2 of Article 267 of the Criminal Procedure Code of Ukraine).

It should be noted that the procedural document (decision) on the opening of proceedings in the case is the procedural basis for the participation of subjects of public law disputes in the field of communal property management in the case by the court. This document contains information about the parties to the case, the essence of the dispute, the procedure for its consideration (in general or simplified litigation), date, time, place of consideration of the dispute, etc.

At the same time, the CAS of Ukraine provides an opportunity for the court in case of non-compliance of the claim with the above requirements after the opening of the proceedings to leave it without motion, without consideration or close the proceedings (paragraph 3 of Part 1 of Article 29, Part 3, 4 Article 123, Part 13 Article 171, paragraph 1 Part 1 Article 238, Article 240 CAS of Ukraine).

In addition, in accordance with Part 1-3 of Art. 12 CAS of Ukraine administrative proceedings are carried out in the order of claim proceedings - general or simplified. Simplified claim proceedings are intended for consideration of cases of insignificant complexity and other cases for which the priority is to resolve the case quickly, and general claim proceedings - for consideration of cases that due to complexity or other circumstances should not be considered in a simplified manner. There are no preparatory proceedings in the summary proceedings.

According to Art. 257, 260 CAS of Ukraine the question of consideration of case according to rules of the simplified claim proceedings the court decides in the decision on opening of proceedings in case. Under the rules of summary proceedings, cases of insignificant complexity are considered. In resolving the issue of consideration of the case under the rules of simplified or general claim proceedings, the court shall take into account:

1) the significance of the case for the parties;

2) the method of protection chosen by the plaintiff;

3) category and complexity of the case;

4) the amount and nature of evidence in the case, including whether it is necessary to appoint an expert in the case, call witnesses, etc .;

5) the number of parties and other participants in the case;

6) whether the consideration of the case is of significant public interest;

7) the opinion of the parties on the need to consider the case under the rules of summary proceedings.

In addition, the rules of summary proceedings may not be considered in disputes:

1) on appeals against regulations;

2) to appeal against decisions, actions and omissions of the subject of power, if the plaintiff also filed a claim for damages caused by such decisions, actions or omissions in the amount exceeding five hundred times the subsistence level for able-bodied persons;

3) on compulsory alienation of a land plot, other real estate objects located on it, on the grounds of public necessity;

4) to appeal against the decision of the subject of power, on the basis of which he may file a claim for recovery of funds in the amount exceeding five hundred living wage for able-bodied persons.

The question of the form in which the court hears the case is important both for the proper clarification of all the circumstances of the case and for determining the possibility of further appeal against the court's decision. Thus, court decisions rendered in a case considered in the simplified claim procedure are not subject to cassation appeal. However, the rules of Art. 12, 257, 260 CAS of Ukraine do not

establish more or less specific qualitative criteria by which the court could determine the forms of administrative proceedings in which to consider a dispute. In our opinion, the legislator should establish qualitative characteristics (references to a certain category of cases, features of subjects, etc.), and not give the court of first instance a wide enough discretion to resolve this issue. The quantitative criterion available in the CAS of Ukraine is more typical for cases of civil and commercial jurisdiction, and therefore cannot be used as a basis for distinguishing between general and simplified claim proceedings in administrative proceedings.

Discussion. According to the results of this study, we can say that in resolving the issue of opening proceedings in the field of communal property management, the court must establish compliance with a number of criteria. Compliance with these criteria by the plaintiff, established by the court at the initial stage of the dispute, will facilitate the correct and effective resolution of the dispute in accordance with the requirements of procedural law. It should be noted that the importance of the stage of initiating proceedings in any case, the actions taken by the court during it are emphasized by the majority of scholars, who, accordingly, distinguish this stage of the administrative process.

Conclusion. Therefore, the stage of initiating proceedings is an important component of public law disputes in the field of communal property management, during which the issue of the possibility of consideration by the administrative court of a claim is resolved, taking into account the content of claims, lawsuit, correct subject, instance and territorial jurisdictions. administrative proceedings. At the same time, scientific doctrine and practice outline a number of issues related to the definition of the range of subjects of appeal against acts of local self-government in the field of communal property management, which is unreasonably limited. Also, attention should be paid to the practice of national courts, which deny plaintiffs the protection of their public (municipal) interest on the grounds that the plaintiffs are not directly parties to the disputed legal relationship and their rights have not yet been violated.

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