

## ADMINISTRATIVE AND LEGAL SUPPORT OF JUDICIAL AND ALTERNATIVE WAYS OF RESOLVING PUBLIC LAW DISPUTES

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**Abstract.** *The topic of protection of human and civil rights, freedoms and interests, legislative consolidation of the mechanism of their implementation, occupies a leading place in modern society and is the primary duty of every democratic state governed by the rule of law. An important element of this mechanism is, in particular, the creation of an effective legal system capable of ensuring standards of the rule of law in the field of protection of human and civil rights in public relations, including providing a real opportunity to challenge decisions, actions or omissions in court. According to part five of Art. 55 of the Constitution of Ukraine, everyone is guaranteed the protection of their rights, freedoms and interests from violations and unlawful encroachments by any means not prohibited by law. Thus, as can be seen from the construction of this constitutional norm, there is a possibility of applying methods of protection of the right not provided by procedural norms. The relevance of this article is due to the main task of any democratic state to create an effective system of protection of rights, freedoms and interests of man and citizen, built on the principles of legality and equality before the law.*

*The author analyzes the ways of resolving public law disputes and explores the basic administrative and legal principles of judicial and alternative ways of resolving public law disputes. The object of research is public relations that arise in the field of public administration. During the writing of the article the author used a systematic method of scientific research, as well as the method of analysis and synthesis.*

**Keywords:** *public law dispute; judicial method of resolving public law disputes; alternative ways of resolving public law disputes.*

**JEL Classification:** I14, I18, K36, Z18

**Formulas:** 0; **fig.:**0; **tabl.:**0; **bibl.:** 6

**Introduction.** Among legal disputes, a special place is occupied by disputes of individuals and legal entities with public authorities and local governments in the exercise of their powers. After all, a person, entering into legal relations with the authorities, is subordinated to these bodies, which can determine the rights and responsibilities of the person. Disputes of this type in the Code of Administrative Procedure of Ukraine are called public law.

**Literature review.** Issues of determining the essence and content, procedures and methods of resolving public law disputes have repeatedly been the subject of scientific analysis of many scientists - representatives of administrative law: V. Averyanov, Z. Krasilovskaya, O. Bryntseva, M. Zhernakova, I. Zavalnyuk, N. Bozhenko, E. Kataeva, S. Kivalova, I. Koliushko, V. Krivtsova, O. Kuzmenko, R. Kuybida, S. Korinny and other scientists.

**Aims.** The aim is to determine the basic administrative and legal principles of judicial and alternative ways of resolving public law disputes.

**Methods.** The author used system method of scientific research, as well as method of analysis and synthesis.

**Results.** The Constitution of Ukraine proclaims Ukraine a democratic state governed by the rule of law, in which the establishment and protection of human

rights and freedoms is the main duty of the state. Going to court is considered the main way to protect the violated rights, freedoms and interests of individuals in relations with public authorities. Judicial method of resolving public law disputes is based on Art. 55 of the Constitution of Ukraine, according to which everyone is guaranteed the right to appeal in court against decisions, actions or omissions of public authorities, local governments, officials and officials [1]. Administrative proceedings are also aimed at ensuring this right. According to Part 1 of Art. 2 CAS of Ukraine the task of administrative proceedings is a fair, impartial and timely resolution by the court of disputes in the field of public relations in order to effectively protect the rights, freedoms and interests of individuals, rights and interests of legal entities from violations by the authorities [2]. In accordance with paragraph 2 of Part 1 of Art. 4 CAS of Ukraine public law dispute is a dispute in which at least one party performs public authority management functions, including the performance of delegated powers, and the dispute arose in connection with the performance or non-performance by such party of these functions [2]. The subject of power is a public authority, local government, their official or official, another entity in the exercise of public authority management functions under the law, including the implementation of delegated powers, or the provision of administrative services (item 7 part 1 of article 4 CAS of Ukraine) [2].

According to item 1 of h. 1 Art. 19 CAS of Ukraine, the jurisdiction of administrative courts extends to cases in public law disputes, in particular disputes of individuals or legal entities with the subject of authority to appeal its decisions (regulations or individual acts), actions or omissions, except when consideration of such disputes, the law establishes a different procedure for court proceedings [2].

Thus, the jurisdiction of administrative courts includes disputes of natural or legal persons with a public authority, local government, their official or official, the subject of which is to verify the legality of decisions, actions or omissions of these bodies (persons) taken or committed by them in the exercise of power. managerial functions, except for disputes for which the law establishes a different procedure for judicial decision. According to Article 124 of the Constitution of Ukraine, justice in Ukraine is administered exclusively by courts, and Article 125 of the Constitution of Ukraine provides that in order to protect the rights, freedoms and interests of a person in the field of public relations, administrative courts operate [1].

Along with the administrative and legal support of the judicial method of resolving public law disputes, one of the promising areas for improving the procedure for consideration and resolution of public law disputes is the introduction of alternative (extrajudicial, pre-trial, quasi-judicial) ways of resolving and resolving conflicts between participants in public relations. An alternative settlement of legal disputes is a set of methods and techniques of out-of-court settlement of disputes, as a result of which the disputing parties enter into a mutually agreed agreement. There is a worldwide practice of using alternative forms of resolving legal conflicts, which serve as an alternative to formal justice. Creating an effective system of alternative dispute resolution, including public law, is an important area for improving justice in Ukraine. Thus, in particular, paragraph 5.4 of the Strategy for reforming the judiciary,

judiciary and related legal institutions for 2015–2020, approved by the Decree of the President of Ukraine of 20.05.2015 №276 [4, p. 38], provides for the expansion of methods of alternative (out-of-court) dispute resolution, in particular, through the practical implementation of the institution of mediation and mediation, expanding the list of categories of cases that can be decided by arbitrators. An important emphasis on the introduction of alternative dispute resolution in the justice system of the state is made in international legal instruments.

In particular, paragraph 3 of the Recommendation of the Committee of Ministers of the Council of Europe № R (81) 7, Recommendation CM / Rec (2010) 12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities of 17.11.2010 39 and Recommendation № R (86) 12 of the Committee of Ministers of the Council of Europe to member states on measures to prevent and reduce excessive workload in the courts of 16 September 1986 [4, p. 46; 217]. Today, mediation is one of the most popular alternative ways of resolving disputes (conflicts) in developed countries. It involves the involvement of a mediator (mediator), who helps the parties to the conflict to establish a communication process, to analyze the conflict situation so that the parties can choose the solution that will satisfy the interests and needs of both parties to the dispute.

Having conducted a thorough study of the introduction of mediation in the administrative process, Korinny S. O. concluded that “only an integrated model of mediation has been introduced in the administrative process of Ukraine, and given the world experience it has been proved that for the further development of this institution it would be effective to introduce an associated model of mediation in the administrative process. the initiator and implementer is a court-independent, third-party intermediary, which may be a professional private mediator with a license licensed by the state to conduct mediation activities in the manner prescribed by law (such as a private executor), and an authorized mediator from a public body, government or local government, depending on the category of dispute” [5, p.10].

At the same time, it should be noted that “public-law disputes that are resolved through administrative proceedings are often called non-mediatable, ie those that cannot be resolved through the use of mediation” [6, p.142]. The main obstacle to the introduction of mediation as an alternative way to resolve a public law dispute, scientists believe the subjective composition of the parties to the dispute [6, p. 46], namely that one party will always be a public authority that is obliged to act accordingly and within the law, which limits its ability to make decisions in the negotiation process of mediation. At the same time, based on positive foreign experience, scientists prove the possibility of introducing such procedures in our country.

Thus, Krasilovskaya Z.V. considers that “it is the public authorities that should be more interested in the dispute settlement procedure by an alternative method, and in the case of an initiative by individuals or legal entities, the proposal should be accepted. While the judicial review of the dispute should be the last resort to protect the violated rights” [6, p.149].

**Discussion.** Thus, at the present stage of development of the Ukrainian state and law, despite the problems that exist in the implementation and implementation of alternative ways of resolving public disputes, the establishment of such institutions will play an important role in developing the legal culture of society. public legal disputes.

**Conclusions.** It should be noted that at the state level the need to reform the judiciary, judiciary and related legal institutions for the practical implementation of the rule of law and ensuring the functioning of the judiciary, which meets public expectations for an independent and fair court, as well as European values and human rights standards. . Therefore, one of the key vectors of the development of justice in Ukraine is the improvement of the administrative and legal framework of the judiciary and alternative ways of resolving public law disputes.

### References:

1. Konstytutsiia Ukrainy. [Constitution of Ukraine]. (1996, June 28). URL: <http://zakon3.rada.gov.ua/laws/show/254k/96-vr> [in Ukrainian].
2. Kodeks administratyvnoho sudochynstva. [Code of Administrative Procedure]. (2005, July 06). *Vidomosti Verkhovnoi Rady Ukrainy (VVR)*, 35-37, 446. URL: <https://zakon.rada.gov.ua/laws/show/2747-15> [in Ukrainian].
3. Pro Stratehiu reformuvannia sudoustroiu, sudochynstva ta sumizhnykh pravovykh instytutiv na 2015–2020 roky. [On the Strategy for the Reform of the Judiciary, Judiciary and Related Legal Institutions for 2015–2020]. (2015, May 20). Ukaz Prezydenta Ukrainy №276/2015. *Ofitsiyni visnyk Ukrainy*, 41, 38. [in Ukrainian].
4. Ievropeiski ta mizhnarodni standarty u sferi sudochynstva. [European and international standards in the field of justice]. (2015). Kyiv [in Ukrainian].
5. Krasilovska, Z.V. (2017). Stanovlennia instytutu mediatsii v systemi publichnoho upravlinnia. [Formation of the institute of mediation in the system of public administration]. Candidate's thesis. Odesa [in Ukrainian].
6. Bozhenko, N.V. (2016). Vprovadzhennia mediatsii v administratyvnykh sudakh Ukrainy. [Introduction of mediation in administrative courts of Ukraine]. *Naukovyi visnyk publichnoho ta pryvatnoho prava*, 2, 45-48. [in Ukrainian].

*Received: April 15, 2021*

*Approved: May 04, 2021*