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SIMPLIFIED LEGAL PROCEEDINGS IN THE ADMINISTRATIVE PROCEEDINGS OF UKRAINE

Oksana SHCHERBANYUK¹

Abstract

This article examines a simplified proceedings in administrative proceedings of Ukraine, its concept, regulatory, procedural features. The purpose of this article is to clarify the procedural aspects and problems of simplified action proceedings in administrative judicial procedure of Ukraine based on the experience of European countries. According to the objectives of the study the study used a set of methods and scientific knowledge as theoretical and scientific. The comparative legal method was used for the analysis of foreign models of simplified administrative matters and made the generalization of such experience. Systemic structural method applied to determine the procedural conditions of the grounds the use of simplified action proceedings in administrative proceedings.

It is concluded that the Code of administrative proceedings of Ukraine contains a single mismatch and problematic aspects in terms of regulation of administrative matters under the rules of simplified action proceedings, in particular the duplication of regulations and partial inconsistency of their content. Such legislative regulation of the powers of the court fully consistent with the positions of the ECHR. It is therefore proposed to amend the Code of administrative proceedings of Ukraine, agreed with the practice of the European court of human rights.

Keywords:

Summary procedure; procedural form; legal process; administrative justice.

I. Introduction

In the XXI century the changing nature of the relationship between the individual and the government led to a revision of the traditional procedural form. It is the new system of priorities, values and concepts that is the reason for this revision. The new legal reality requires a comprehensive analysis of the simplified procedure, which not only aims to speed up the consideration of

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public-legal disputes, but also to bring the proceedings closer to the individual and restore confidence in the court.

In accordance with paragraph 15 of Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe to Member States on measures facilitating access to justice, adopted by the Committee of Ministers of the Council of Europe at 68 meetings of the Ministers' Deputies on 14 May 1981, small amounts should be provided for a procedure that allows parties to the court to proceed without costs that are incompatible with the amount that is the subject of the dispute. To that end, simplified procedures could be foreseen, unnecessary court sessions avoided and the right of appeal restricted (Nedbaylo & Gorsheneva, 1976)".

There are various public law disputes within the jurisdiction of administrative courts. Therefore, in order to increase the efficiency of administrative proceedings, the specific nature of disputes should be taken into account when determining the procedural form of their consideration. At the same time, it requires the study of foreign models and procedural aspects of simplified litigation in order to develop an optimal model of simplified litigation in the context of legislative changes.

II. Research methodology

In accordance with the purpose of the study, the set of methods and methods of scientific knowledge of both general theoretical and special scientific methods were used. The use of the historical-legal method has allowed to reveal the history of formation and the degree of investigation of the simplified lawsuit. The epistemological method was used to determine the nature of the simplified procedure. The comparative legal method was used to analyze foreign models of simplified administrative cases and summarize such experience. The systematic structural method was applied to determine the procedural conditions, the grounds for the application of summary proceedings in administrative proceedings, the generalization of problematic issues of summary proceedings in administrative proceedings.

III. The concept of summary proceedings in the administrative proceedings of Ukraine

Abbreviated trial procedures used in civil, commercial, administrative, criminal proceedings and are not new.

In theory, all branches of the procedural law category procedure exists in order to reflect the appointment of the legal process as a means of realizing the substantive relations. In the theory of law under the procedural form to understand a set of uniform procedural requirements for actions of the participants in the process and aimed at achieving a particular substantive result.

Thus, the procedural form is a special legal construction that embodies the principles of the most expedient procedures for the implementation of certain powers (Nedbaylo & Gorsheneva, 1976). This definition, in fact, is universal for all types of legal process, not only to the activities of jurisdictional bodies.

Act No. 2147-VIII procedure codes, except the Criminal procedure code was revised and put in them a clear distinction claims proceedings to General and simplistic. Obviously, the legislator pursued the aim to unify the procedural forms of various types of court proceedings, and to provide a uniform terminology in the procedural codes, which significantly simplifies the overall understanding of the process. It should be noted that previously only the criminal procedural code of Ukraine (article 302) employ the concept of summary proceedings, the rules of which considered indictment against a person, which unconditionally admits his guilt, does not dispute the established pre-trial investigation of circumstances and agreement with the consideration of the indictment with its absence, if the victim and/or representative of the entity, relative to which the implementation does not object to such consideration. However, the procedure code does not stipulate the concept of a simplified action proceedings and only stated its purpose. Thus, in administrative proceedings such appointment is in cases of minor complexity, and other cases for which priority is more of business solutions (part 2 of article 12 of the Code of administrative procedure of Ukraine)(Verkhovna Rada of Ukraine, 2005).

It should be noticed that from the point of view of the task and the general principles of administrative justice, the speed of the case as a sign of summary judgment is an incorrect definitive indicator. Taking into account the task of administrative justice, defined in Part 1 of Art. 2 of the Code of Administrative Judiciary of Ukraine, the priority for any kind of administrative proceedings should be the effective protection of the rights, freedoms and interests of individuals, rights and interests of legal entities from violations by the authorities. The speed of the case in such a case should not be a determining criterion, but a characteristic of the proceedings given the categories of cases under consideration.

Therefore, returning to the definition of simplified lawsuit in administrative proceedings, it should be noted that during the implementation of the judicial reform and amending the procedural legislation, it has not received regulatory support. This point is a clear disadvantage of the current CAS of Ukraine and requires legislative corrections, with due regard for the scientific developments of this problem.

At the theoretical level, there is no consensus on the definition of simplified proceedings. Procedural scientists have mostly explored the question of the relation between the concepts of "summary proceedings", "accelerated proceedings", "summary judgment", etc.

The fact that the term "reduction" in its content is narrower than the term "simplification", which can be demonstrated by comparing the abbreviated and simplified proceedings in administrative proceedings, which are enshrined in different editions of the Code of Administrative Justice of Ukraine, cannot be ignored. Thus, the concept of "contraction" is understood as the reduction of the volume of something, the limitation of duration in time (Bilodida, 1977), and contractility, respectively, is characterized by a reduced, narrowed modification of a certain phenomenon. At the same time, simplification always implies a reduction - liberation from redundancy, reduction to a few forms, and moreover, it also gives the phenomenon of greater accessibility for understanding.

The Code of Administrative Procedure of Ukraine provides for the consideration of a separate category of cases in fact in the order of non-appeal proceedings. These are proceedings in cases of requests from the bodies of revenue and fees (Article 283 of the Code of Administrative Judiciary of Ukraine) and proceedings in the request of the Security Service of Ukraine for the seizure of assets related to terrorist financing and related to financial transactions stopped accordingly to the decision taken on the basis of resolutions of the UN Security Council, withdrawal of the assets and access to them (Article 284 of the Code of Administrative Procedure of Ukraine).

IV. Foreign models of simplified consideration of administrative cases

In European countries, as early as the 1980s, a general course was adopted to simplify procedural law. The Committee of Ministers of the Council of Europe, taking into account, inter alia, that judicial proceedings are often so complex, lengthy and costly that individuals have difficulty in exercising their rights, issued Recommendation R (81) 7 on ways to facilitate access to justice. Paragraphs 8-9 of Section C of the Recommendation provide that Member States are encouraged to take all possible measures to minimize the timing of their decision. To this end, outdated procedures that are not of practical importance should be abolished, sufficient staff should be provided to the courts, their efficient operation and mechanisms should be put in place to control the proceedings from the outset. In addition, the Committee of Ministers recommended that measures be taken to resolve uncontested or uncontested claims so that the final decision can be reached quickly, without unnecessary formalities, personal appearance before the court or unnecessary costs (Committee of Ministers of the Council of Europe, 1981).

The same study of the simplified lawsuit in the administrative judiciary of Ukraine and the formulation of proposals for its improvement requires a comparison of the existing legislation, which establishes such a procedural form of justice, with the relevant legislation of foreign countries, especially EU member states.

Federal Republic of Germany. Compared to the provisions of the CAS of Ukraine, this form of administrative proceedings is commensurate with the written procedure, which is not enshrined in German administrative procedural legislation. On the contrary, the Administrative Procedure Regulation (Verwaltungsverfahrensgesetz) provides for the parties to be heard at every stage of the process. Article 93a of the said Regulation governs the institute of standard cases: so, if the lawfulness of an administrative measure is the subject of more than twenty proceedings, the court may hold one or more of the appropriate proceedings in advance (preliminary ruling) and stay the other proceedings. If the proceedings are finally considered, the court may, after hearing the parties, reach a decision to stay the proceedings, if it is unanimous that the case has no material, factual or legal details regarding the final decision. The court may present evidence gathered in the test case; it may, at its discretion, order the re-hearing of the witness or the new opinion of the same or other experts. The court may refuse to adduce evidence that has already been the subject of the model if, in its free belief, their admission would not facilitate the justification of new facts relevant to the decision and delay the settlement of the dispute. The parties may challenge the first sentence of the decision, which would be acceptable if the General Court had rendered its decision. The parties should be informed of this request (Bundesministerium der Justiz und für Verbraucherschutz, n.d.).

France. The French administrative procedure is characterized by a simplified consideration by the courts of urgent issues which are similar in substance to the measures taken by the Ukrainian courts to secure a claim without considering the merits of the case. Thus, according to Art. L511-1-L555-2 Code of Justice Administrative Code (48 hours) consider applications for suspension of administrative decisions, with eviction from a fifty-step geometric zone (referring to a statutory coastal zone) and so on, the court necessarily hears the parties' views.

Where an administrative decision, even a rejection, is the subject of an application for revocation or amendment, the judge hearing the application for interim measures may order the suspension of the enforcement of the decision, or of some of its consequences, when the urgency justifies it and when it is stated that the investigative state is a means of raising serious doubts about the legality of the decision. After considering an application justified urgently, the judge hearing the application for a provisional measure may order any measures necessary to ensure the fundamental freedom to which a body governed by public law or a body governed by private law entrusted with the administration a public service allegedly engaged in the exercise of one of its powers of a serious and manifestly unlawful violation.

In the case of urgency and simple request, which will be admissible even in the absence of a preliminary administrative decision, the judge examining the

application for interim measures may order all other useful measures without hindering the execution of any administrative decision (Code de justice administrative, 2019).

In view of the analysis of foreign models of summary proceedings, it should be noted that the administrative procedural legislation of the European states establishes the peculiar features of the simplification of administrative justice inherent in the system of law of each state. The legislation of the above countries, as well as the current CAS of Ukraine, does not stipulate the legal definition of a simplified lawsuit, but it does not prevent the implementation in practice of its advantages in the form of prompt consideration of cases of procedural actions of the participants of the case and reduction of procedural costs.

V. Procedural conditions and grounds for the application of summary judgment in administrative proceedings

The realization by a person of unconditionally constitutionally enshrined right to judicial protection always occurs in compliance with a number of conditions and requirements stipulated by the procedural legislation. Being recognized internationally, this right is not absolute and, having a certain structure, provides a number of prerequisites for its realization, because, based on modern realities, appeal to the court can act not only as a tool for protection of the violated right, but also as a means of influence by abuse of such right.

The following components of the right to judicial protection are distinguished: the right to an independent and impartial court; the right to apply to an administrative court with an administrative claim; the right to participate in a trial; the right to satisfy the claim; the right to enforce a judgment (Kobylyansky, 2010).

It should be noted that only the first component is the inalienable right of a person, the imposition of conditions for the realization of which would mean the leveling of the right to protection as a whole and would deprive the existence of the judicial system as such. At the same time, the other components have their own particularities of implementation related to the grounds of appeal and the procedural form of judicial protection.

The due process doctrine is linked to the mechanisms for exercising the right to judicial protection. It is this constitutional doctrine that is used in the United States for the judicial protection of basic constitutional rights enshrined in the Bill of Rights and subsequent amendments to the US Constitution. Most of these safeguards were first and foremost found in substantive procedural law.

The right to apply to an administrative court, although de facto unlimited (no person is physically deprived of the opportunity to apply to an administrative court, even if the case does not fall before the courts of administrative

jurisdiction), de jure provides for a number of conditions for its effective implementation.

The Code of Administrative Procedure of Ukraine stipulates that under the rules of simplified lawsuit proceedings a case of minor complexity may be considered; any case referred to the jurisdiction of an administrative court, with the exception of cases solely governed by the rules of general proceedings.

The list of issues of minor complexity fixed part 6 article 12 of the Code of administrative procedure of Ukraine is not exhaustive, given the formation of section 10 of the said provisions. So, matters of minor complexity of the case relative to:

1) the acceptance of citizens on public service, its passage, dismissal from public service, except for cases in which the plaintiffs are officials who in the sense of the law of Ukraine "On prevention of corruption" is a responsible and very responsible position;

2) appeal against inaction of the authority or the Manager of information regarding the consideration of the appeal or request for information;

3) appeal by individuals of decisions, acts or inaction of subjects of authoritative powers regarding the calculation, appointment, recalculation, implementation, providing, and receiving pension payments, social payments to disabled citizens, payments on obligatory state social insurance, payments and privileges to children of war other social payments, additional payments, social services, assistance, protection, benefits;

4) termination at the request of the authority of legal entities or business activity of individual entrepreneurs in the cases provided by law, or cancellation of state registration of termination of legal entities or business activity of physical persons - entrepreneurs;

5) appeal to individuals of decisions, acts or inaction of subjects of authoritative powers on entry to (exit from) the temporarily occupied territory;

6) appeal against the decision of the authority under which they may be claimed a claim for the recovery of funds in an amount not exceeding one hundred living wage for able-bodied persons;

7) collection of monetary amounts based on the decisions of the authority subject to which the terms of appeal established by this Code have expired;

8) typical cases;

9) appeal of normative legal acts that reproduce the content or are adopted for the implementation of a legal act, recognized by the court as unlawful and inaccurate in whole or in a separate part thereof;

10) other cases in which the court finds their insignificant complexity, with the exception of cases that cannot be heard under the rules of summary proceedings;

11) stay of foreigners or stateless persons in the territory of Ukraine.

Generally clause 10 part 6 article 12 of the Code of administrative procedure of Ukraine gives grounds to assert that the General condition for use of simplified action proceedings is the discretion of the court, which determines whether this particular case is simple, regardless of whether it is provided by the Code of administrative procedure of Ukraine as a matter of minor complexity. In this case the legislator establishes a number of factors that are mandatory for accounting by the court in determining the procedural form of consideration of the case, which, according to part 3, article 257 of the Code of administrative procedure of Ukraine are:

- 1) the importance of the case to the parties;
- 2) plaintiff's chosen method of protection;
- 3) the category and complexity of the case;
- 4) the scope and nature of the evidence in the case, including whether to schedule an examination, call witnesses, etc.;
- 5) the number of parties and other participants in the case;
- 6) whether the trial significant public interest;
- 7) the opinion of the parties to the proceedings at the simplified rules of action proceedings.

Consideration of administrative cases of the Supreme Court as court of first instance is carried out in the order summary action proceedings. In particular, these rules apply to administrative proceedings with respect to:

- 1) of the act (except for constitutionality) resolutions of the Verkhovna Rada of Ukraine, decrees and orders of the President of Ukraine;
- 2) the legality of the actions or inaction of the Verkhovna Rada of Ukraine, President of Ukraine, the High Council of justice, High qualifications Commission of judges of Ukraine, Qualification and disciplinary Commission of prosecutors;
- 3) the legality of acts of the High Council of justice, High qualifications Commission of judges of Ukraine, Qualification and disciplinary Commission of prosecutors.

In addition, the court's discretion in deciding whether to consider a case in a particular proceeding is limited to a list of cases which, under the law, are dealt with solely by the rules of the general proceedings.

Belonging to a case in one of the above categories can be termed a negative condition for the use of the simplified procedural form, which excludes the possibility of hearing the case in the order of summary proceedings. The Code of Administrative Procedure of Ukraine also provides for other negative conditions, under which the case, whose proceedings have already been initiated under the rules of summary proceedings, is further considered under the rules of the general proceedings. Such conditions also include: the submission by the plaintiff of an application for an increase in the size of the claims or the change of the subject of the claim, as a result of which the case falls within the scope of

Part 4 of Art. filing a counterclaim in a case under the rules of summary judgment.

As for the latter condition, it should be emphasized that according to Part 1 of Article 177 of the Code of Administrative Judiciary of Ukraine, the right to file a counterclaim is vested only in the defendant, who is not the subject of power. At the same time the court is deprived of the right at its own discretion to decide the question of the need to proceed to the consideration of cases in the general lawsuit proceeding, based on the wording of part 4 of Article 177 of the Code of Administrative Judiciary of Ukraine, a counterclaim is the responsibility of the court. In this case, the case begins with the stage of opening the case and returning to the case under the rules of summary proceedings is not allowed (Part 6 of Article 260 of the Code of Administrative Justice of Ukraine).

The code of administrative procedure of Ukraine stipulates the procedural terms of consideration of separate categories of cases of minor complexity under the rules of simplified action proceedings in written proceedings:

1) appeal against inaction of the authority or the Manager of information regarding the consideration of the appeal or request for information;

2) appeals by individuals of decisions, acts or inaction of subjects of authoritative powers regarding the calculation, appointment, recalculation, implementation, providing, and receiving pension payments, social payments to disabled citizens, payments on obligatory state social insurance, payments and privileges to children of war other social payments, additional payments, social services, assistance, protection, benefits;

3) termination at the request of the authority of legal entities or business activity of individual entrepreneurs in the cases provided by law, or cancellation of state registration of termination of legal entities or business activity of physical persons - entrepreneurs;

4) penalty amounts that are based on the decisions of the authority on which ended the set by this Code, the term of appeal and the amount of which shall not exceed one hundred living wage for able-bodied persons;

5) appeal to individuals of decisions, acts or inaction of subjects of authoritative powers on entry to (exit from) the temporarily occupied territory.

Things on this list can be considered such, which are considered in the reduced simplified action proceeding, since the legislator has reduced the term of consideration by the court, and reduced the Commission of certain procedural actions by the participants in the case compared to the consideration of other cases by the rules of the simplified action proceedings (section 6 of article 12 of the Code of administrative procedure of Ukraine).

VI. The procedure for consideration of cases under the rules of summary action in administrative proceedings

Recommendation R (81) 7 of the Committee of Ministers of the Council of Europe to Member States on ways of facilitating access to justice, in particular, proposes to simplify, expedite and reduce litigation in civil, commercial, administrative, social and tax matters. Among the principles that Member States should follow when reforming the litigation of these categories of cases is the principle of applying a special procedure to small claims, which should provide for summary judgment, avoid unnecessary hearings and restrict the right of appeal (Committee of Ministers of the Council of Europe, 1981).

The Ukrainian legislator took into account these recommendations when drafting a new wording of the Code of Administrative Justice of Ukraine, which for the first time envisaged the application of summary judgment proceedings, and stated in the explanatory note to the draft Law No. 2147-VIII that ensuring compliance with reasonable terms of cases, procedural savings and courts should be carried out precisely by simplifying the procedure and speeding up the consideration of simple and less significant cases, and in cases determined by law the review is done without calling the parties (Ligazakon, 2017).

The concept of simplification of litigation provides for a number of peculiarities of litigation under the rules of summary proceedings: in accordance with Part 1 of Art. 262 of the Code of Administrative Procedure of Ukraine the trial of the case under the rules of summary proceedings is carried out by the court according to the rules established by this Code for the examination of the case under the rules of the general proceedings, with the features defined by Chapter 10 of the Code of Administrative Procedure of Ukraine "Examination of cases under the rules of summary action.

In the context of the study, consideration should be given to the peculiarities of the procedure for dealing with cases under the rules of summary litigation compared to general litigation.

The above peculiarities are already manifested at the stage of opening of the proceedings in the case: yes, the provisions of Articles 168, 259 of the Code of Administrative Procedure of Ukraine stipulate the right of the plaintiff to file a petition for the consideration of the case under the rules of summary proceedings; such a petition may be made in writing at the same time as the petition is filed, or may be contained in it and must relate to the consideration of the rules of summary judgment of the whole case and may not concern only a certain part of the claims, otherwise the court shall return it without consideration, as stated in order to open proceedings.

If the plaintiff's motion to hear the case under the rules of summary judgment proceedings is satisfied, the order for opening of the proceedings determines the term of the defendant for filing a statement of objections

regarding the chosen form of the case consideration, which may not be less than five days from the date of service of the decision. If the defendant files a statement of objections within the time-limit set by the court, the court, depending on the validity of the defendant's objections, issues a decision to hear the case in accordance with the rules of the general proceedings and to replace the hearing to consider the case. essentially preparatory meetings or leaving the defendant's statement without satisfaction. If the defendant does not file such objections within the time-limit set by the court, he shall have the right to initiate the transfer to the case under the rules of the general proceedings only if he proves that he has failed for valid reasons.

However, the above procedure does not apply in all cases - in 9 out of 11 categories of cases defined by the legislator, which are cases of minor complexity and belong to the most common, the defendant is deprived of the right to file a statement of objection against the case under the rules of summary proceedings.

According to part 9 of article 171 of the Code of administrative procedure of Ukraine in the resolution on opening of proceedings, which will be considered by the simplified rules of action proceedings, shall specify the deadline for submission of response to the opinion and objections, but of article 263 of the code of administrative procedure of Ukraine stipulates five categories of cases in which statements in fact is just a claim and opinion that, respectively, eliminates the need to determine in the resolution on opening the proceedings of the above terms (the appeal of inactivity of the authority or the Manager of information regarding the consideration of the appeal or request for information, appeals by individuals of decisions actions or omissions of subjects of authority concerning the calculation, appointment, recalculation, implementation, providing, and receiving pension payments, social payments to disabled citizens, payments on obligatory state social insurance, payments and privileges to children of war other social payments, additional payments, social services, assistance, protection, benefits; termination at the request of the authority of legal entities or business activity of individual entrepreneurs in the cases provided by law, or cancellation of state registration of termination of legal entities or business activity of physical persons - entrepreneurs; collection authority, with respect to which a completed set this Code term appeal and amount of which shall not exceed one hundred living wage for able-bodied persons; appeal to individuals of decisions, acts or inaction of subjects of authoritative powers on entry to (exit from) the temporarily occupied territory).

It should be noted that the exclusion of the response and the objection from the list of applications does not, in essence, fully comply with the European Court of Human Rights' understanding of the principle of competition. In particular, in the judgment in Ruiz-Mateos v. Spain of 23 June 1993 (application no. 12952/87, § 63), the Court emphasized that each party should be given an

opportunity to read all the evidence and observations submitted by the other party, and answer them (Case Ruiz-Mateos v. Spain, 1993).

The term of the defendant's response to the claim is defined in Part 1 of Article 263 of the Code of Administrative Judiciary of Ukraine and is fifteen days from the date of service to the defendant of the decision to open proceedings. Third parties have the right to submit an explanation of the claim within the time limit set by the court in the order to open the proceedings and within ten days from the day of its receipt. In this case, if the issue of involvement of third parties was resolved at the opening of the case, the plaintiff must, within two days from the date of service of a copy of the decision to open the case, send to such third parties a copy of the statement of claim with annexes, and to prove such a referral to the court before the beginning consideration of the case on the merits (Part 11 Article 171 of the Code of Administrative Judiciary of Ukraine).

A characteristic feature of summary judgment proceedings is the lack of a preparatory hearing stage and the commencement of the trial on the merits with the opening of the first court hearing. As a general rule, the court will hear the case without notifying the parties on the materials available in the case, however, at the request of one of the parties or on its own initiative, the court may hear the case in court with a notice (summons) of the parties. According to Part 7, Article 262 of the CAS of Ukraine, such a request must be filed by the defendant within the deadline for filing a response, and the plaintiff - together with the claim or not later than five days after receiving the response.

The scope of the court's discretion to decide whether to hold a litigation call is broad, since the legislator does not specify any category of cases that may be dealt with under the rules of summary litigation for which a court hearing is required. Thus, according to Part 6 of Art. 262 of the Code of Administrative Judiciary of Ukraine the court may refuse to grant the request for consideration of the case in court session by notification of the parties: in the cases determined by Article 263 of the Code of Administrative Judiciary of Ukraine; if the nature of the disputed legal relationship and the subject matter of the case in a case of insignificant complexity do not require a court hearing with notice of the parties for a complete and comprehensive determination of the circumstances of the case.

That is, in fact the court is empowered to hear any case of minor complexity without notice to the parties, assessing the extent of its complexity in internal conviction. On the one hand, simple litigation without the parties is entirely within the logic of simplifying administrative justice and allows for a much quicker consideration of such cases;

According to scientists, the right to participate in a court hearing is one of the factors of the legal construction of the right to judicial protection, which logically follows from the right to apply to an administrative court with an administrative claim. According to paragraph 30 of the decision, *Kraska v.*

Switzerland» (Kraska v. Switzerland, 1993). It is for the Court to decide whether the disputed cases are generally considered to be fair within the meaning of the Convention. Article 6 § 6 (1) (art. 6 (1)), in particular, obliges the “court” to carry out a thorough examination of the parties' submissions, arguments and registrations, without prejudice to their assessment of their conformity with its decision. In doing so, such arguments must be heard, that is, carefully considered by the court; in other words, it is the duty of the parties to carefully consider submissions, arguments and evidence. A similar provision is contained in paragraph 68 of the judgment in *Barberà, Messegue and Jabardo v. Spain*» (*Barberà, Messegue and Jabardo v. Spain*, 1988) As a general rule, it is for the national courts, in particular the court of first instance, to evaluate the evidence presented and the conformity of the evidence the accused seeks to present. However, the Court must determine - and whether it agrees with the Commission - whether the proceedings have been considered as a whole, including the manner in which the prosecution and defense are presented.

In view of the ECHR's position, the relevant provisions of the CAS of Ukraine, which give the court the broadest discretion in resolving the issue of litigation under the rules of summary proceedings without notice to the parties, require legislative refinement.

In practice, when considering the advisability of considering a case with the parties, the courts also take into account other ECtHR practices on public safeguards. For example, in the decision to open a summarized claim without notification of the participants of the case (in written proceedings) of 04.04.2016 in case No. 640/5617/19 the District Administrative Court of the city of Kyiv states the following: "... public hearing of the case may be justified not in every case (*Alex v. Germany Case*, Mr Alex complained that the Federal Court did not hold public hearings and argued that the Federal Court, dismissing his appeal as an extraordinary one, had misapplied the law. He relied on Article 6 § 1 1, 17 and 18 (v. 1, v. 6-1, The applicant complained that the Federal Court had rejected the appeal without first holding a hearing and had not publicly announced his decision of 8 March 1977. He alleged that there had been a violation of Article 6 § 6 (art. 6-1). 6-1) of the Convention, which reads: In defining their civil rights and responsibilities ... everyone has the right to a fair and public hearing ... by a court ... a court decision is given in public, but the press and the public can be excluded from full or partial litigation in the interests of morality, public order or national security in a democratic society where the interests of minors or the protection of the privacy of the parties so require, or to the extent required. According to the court, it is absolutely necessary in special circumstances where publicity would harm the interests of justice.

The applicant had not raised any complaints about the pre-litigation procedure, the Luneburg Regional Court and the Celle Court of Appeal had delivered a decision that had been publicly enforced after a public hearing (Case

Axen v. Germany, 1983); in the judgment of Valero Assalino v. Portugal, The complainant complains that he did not receive a public hearing in two disputes. The Court considers that this complaint should be considered in the light of Article 6 § 1 of the Convention, and the other provisions invoked by the applicant are clearly not relevant. This provision sounds, in part, as follows: Everyone has the right to a fair hearing [and] in public (...) by a court (...) that will resolve (...) disputes over his rights and civil obligations (...) The judgment should be made public, but access to the courtroom may be denied to the press and the public during all or part of proceedings in the interests of morality, public order, or national security in a democratic society where the interests of minors or the protection of the confidentiality of the parties so require, or to the extent, which the Court deems strictly necessary when, in special circumstances, advertising is likely to undermine the interests of justice) (Decision sur la recevabilité de la requête No. 64336/01, 2002).

Thus, in cases where only issues of law need to be resolved, the ECtHR considers that a written application is more appropriate than an oral hearing, and a written case is sufficient. The applicant (in one of these cases) did not adduce convincing evidence that oral hearings were also required to ensure a fair hearing after the exchange of written statements. Finally, in some cases, the authorities have the right to take into account efficiency and cost considerations. In particular, when the facts are not the subject of the dispute and the issues of law are not of particular complexity, and the fact that no open hearing has been conducted does not violate the requirement of Article 6 § 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms on public hearings.

As by the nature of the disputed legal relations and the subject of proof, the case is subject to the decision under the rules of summary action without notification of the participants of the case (in written proceedings), and also considering that in accordance with Articles 47, 162 of the Code of Administrative Procedure of Ukraine the plaintiff is empowered to submit evidence of the case in writing, as explained to the plaintiff in the order to open the proceedings in the case, and the desire of the party in the case to state during the hearing with the arguments do not make it necessary to appoint a case to challenge the case with its participants and bearing in mind that the disputed legal relations do not make it necessary to consider such, any other sufficient reasons for which it is necessary to hold a court hearing with the participation of the parties' representatives have not been presented and proved, the court concluded that there were no grounds for satisfying the plaintiff's statement and hearing the case in court with the participation of the parties" (District Administrative Court of Kyiv, 2019).

The examination of the case on the merits under the rules of summary judgment begins with the opening of the first court hearing. If the court hearing

is not conducted, the case essentially starts within thirty days, and within the stipulated by Art. 263 of the Code of Administrative Judiciary of Ukraine, which establishes the list of cases, which are considered in the written proceedings, - fifteen days from the date of opening of the case.

Pursuant to Part 8 of Article 262 of the Code of Administrative Judiciary of Ukraine, in the case of consideration of the case with notification (call) of the participants in the case, the court hears their oral explanations, and judicial debates are not held. It should be emphasized that in the ordinary course of the court debate plays an extremely important role, since they are essentially the summing up of the clarification of the circumstances of the case and are a crucial part of the consideration before going to court to the deliberative decision room. The withdrawal of summary judgment at this stage of the litigation seems quite logical in view of the purpose of simplifying administrative proceedings, however, given the above position of the ECtHR, it does not appear to be fully justified.

The trial ends with the court's decision or resolution in the name of Ukraine, which, in accordance with the requirements of Article 243 of the Code of Administrative Judiciary of Ukraine, is adopted, drafted and signed in the conference room by the court that heard the case. In exceptional cases, depending on the complexity of the case, the full ruling may be deferred for a maximum of five days from the day the case is closed.

In general, the term of the case under the rules of summary proceedings should not exceed sixty days from the date of the opening of the case, and in the above categories of cases enshrined in Article 263 of the Code of Administrative Judiciary of Ukraine, thirty days from the date of the opening of the case. The general criterion for determining the term of consideration of each particular case within the specified deadlines is the principle of reasonableness of terms (Article 258 of the Code of Administrative Procedure of Ukraine), which, proceeding from item 11 of Part 1 of Article 4 of the Code of Administrative Procedure of Ukraine, is to consider and decide administrative the case within the shortest period sufficient to provide timely (without undue delay) judicial protection of violated rights, freedoms and interests in public-law relations.

An analysis of the ECtHR's practice of interpreting the "reasonable time" clause shows that a reasonable time limit cannot be the same for all cases and it would be unnatural to set a single term in a specific digital expression for all cases. Thus, in each case, there is a problem of assessing the reasonableness of the time limit, which depends on certain criteria developed by the ECtHR's practice: the complexity of the case, the applicant's behavior, the conduct of the public authorities and the importance of the issue to the applicant (Laguta, 2013).

The State has a positive obligation to create a remedy in any case that will allow the speedy procedure to be expedited for the purposes of Article 6 (Kudla v. Poland, 2000).

Due to the shortcomings of enforcement over a long period of time, a large problem for the realization of the principle of the soundness of the terms of the proceedings and the principle of procedural economy was the mass appeal of persons with a certain social status to the court with the same claims on similar grounds. This issue was resolved with the adoption of the Law of Ukraine No. 2147-VIII and the introduction of administrative institute of model and exemplary cases in administrative proceedings, which is not characteristic of other types of justice.

According to item 21, part 1, Article 4 of the Code of Administrative Judiciary of Ukraine, administrative cases are typical, the defendant in which is the same subject of power (his separate structural subdivisions), a dispute which arose out of similar grounds in relations which are governed by the same rules of law and which claimants have similar claims.

An exemplary case in accordance with paragraph 22, part 1 of the same article of the Code of Administrative Justice of Ukraine is a typical administrative case, adopted before the Supreme Court as a court of first instance for issuing an exemplary decision. Thus, if one or more administrative courts have typical administrative cases, the number of which determines the expediency of adopting an exemplary decision, a court hearing one or more of these cases may apply to the Supreme Court to submit one of them to the Supreme Court as a court of first instance. Such submission should set out the administrative court's reasons for considering that the case should be considered by the Supreme Court as an exemplary one, including references to typical cases.

If the Supreme Court has opened proceedings in the relevant model case, the court hearing the typical case shall have the right to stay the proceedings at the request of a party to the case or on his own initiative. In such a case, proceedings in a typical case shall be resumed from the effective date of the Supreme Court's decision in the relevant model case.

The court refuses to open proceedings if the administrative case does not meet the indicative indications:

- 1) the defendants are different subjects of power;
- 2) unequal grounds for dispute;
- 3) excellent regulatory regulation;
- 4) various claims (Review of the practice of the Supreme Court, 2019).

The additional grounds for ruling on the refusal to open the case in the model case are mostly formal.

Based on the court decisions entered in the Unified State Register of Judgments, typical cases include, first of all, cases concerning pension and social benefits, the amount of judges' remuneration.

The first decision in an exemplary case regarding the recalculation of a pension to a former police officer with allowance for police money was made by the Supreme Court on 15.02.2019. It is impossible to overlook the structure of

the statement of the decision, which is built on the structure of the European Court of Human Rights, and includes the following sections: a summary of the claims; arguments of the participants in the case; the circumstances of the case; sources of law and acts of their application; the position of the Supreme Court.

The last section of this judgment contains a separate section which sets out the indications of the typical cases in which the Supreme Court's legal conclusions set out in the outcome of the case are to be taken into account, namely the specific characteristics of the plaintiff, defendant and the subject-matter of the dispute.

As of May 1, 2020, during the period of validity of the new version of CAS of Ukraine, the Supreme Court rendered its decision in fifteen model cases. Such a total number of exemplary court decisions testifies to the insufficient implementation by the Supreme Court of the procedural capacity to hear typical cases, that is, the institute of model and exemplary cases is being implemented slowly enough.

7. Conclusions

Despite the fact that the procedure codes were described in the editorial, which is much close to the European Union legislation and the recommendations of the Committee of Ministers of the Council of Europe, the Code of administrative procedure of Ukraine contains some inconsistencies and problematic aspects, in particular, in terms of regulation of administrative matters under the rules of simplified action proceedings.

The first is a problem of duplication of regulations and partial inconsistency of their content, investing the court with wide discretion regarding addressing issues that relate to the case according to the rules of the simplified action proceedings, primarily concerning the definition of the rules of the production will be the case.

Under the provisions of the Code of administrative legal proceedings of Ukraine the court in its discretion decides to consider the case of simplified rules of claim production (which includes narrowed the scope of the rights of participants and the lack of judicial debate) regardless of the claimant declares the petition. Similarly, the court decides the issues of the case without summoning the parties and the court session in written proceedings.

Such legislative regulation of the powers of the court fully consistent with the positions of the European court of human rights. Moreover, the court's refusal to consider cases on the General rules of action proceedings and trial with the notice of the parties is an additional grounds for appeal by the parties of the decision made from the grounds that unreasonably increases the burden on the appellate courts. Therefore needs to be amended in the procedural code, consistent with the practice of the European court of human rights.

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