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## On understanding the notion and types of administrative proceedings involving legal entities in Ukrainian administrative law

### Introduction

Today, in the light of democratic developments, social reforms and aspirations of Ukraine towards European integration, administrative law institutions are considered to be practical tools to achieve the improved economic and social conditions, enhancement of the rule of law as well as the establishment of supremacy of law, justice and humanism.

Some institutions assume specific legal features and become relatively independent elements of the legal system in need of theoretical development and regulatory formalisation.

One of such structures of the administrative legal sphere is the administrative process, underdevelopment of which in terms of theory and applications results in the containment of state building.

### 1. Results

The latter half of the twentieth century was marked by the trend towards expanding the notion of the “legal process” in the study of administrative law pursued by Ukrainian legal scientists.

Legal literature distinguishes a special kind of the legal process: the administrative process, which implies operating procedures of public authorities regarding the consideration of disputes which arose in the course of solving individual administrative cases, as well as the use of means of administrative enforcement<sup>1</sup>.

The administrative process is associated with substantive administrative law, which reflects the desire of the parties to achieve the statutory goal that serves as a means of learning the fact and represents the essence of the process<sup>2</sup>. A clear understanding of the content of administrative legal science

<sup>1</sup> N.G. Salyshheva, *Admynstratyvnyj process v SSSR*, Moskva 1964, p. 11–16.

<sup>2</sup> A.O. Selivanov, *Administratyvnyj proces v Ukraïni: real'nist' i perspektyvy rozvytku pravovyh doktryn*, Kyïv 2000, p. 14.

will provide an opportunity to determine the essence and structure of the administrative process without taking into account the broad or narrow approach to its understanding.

The science of administrative law is part of the science of public law and one of the youngest sciences. As an independent branch of scientific knowledge, it originates from the theory of separation of powers and the theory of the rule-of-law state. Administrative legal science at the same time is a result as well as a part of “rational research knowledge” developed in the West in the modern age. The State (hence the “administrative state”) appeared there as a “mechanical” and rational phenomenon that was represented in various types and forms, but had a few basic functions at first, in terms of social practice and needs all state life situations were predictable; they could be estimated and were managed in accordance with applicable law. On this basis, administrative science (as a prototype science of administrative law) in the 1600s was developed primarily as cameral and police sciences.

The cameral science<sup>3</sup> researched the regulatory aspects of palace and state administration in general. It developed its own tools for research of administration, its structural organisation and improvement process. Being a political science in essence, the cameral science had due regard to doctrines regarding the economics and state finances. The new science of administrative law was developed in the 19th century.

In the 1700s, the impressive development of administrative science was accompanied by the increasing number of scientific works regarding administrative issues as of practical and instrumental nature. The issues concerning improvements of administrative efficiency were analysed in order to strengthen and spread the state power, increase the tax burden and provide overall development. The process of further development of cameralistics included the separation of components of this discipline at the same time.

In the mid-nineteenth century, the cameral sciences were under conditions of relative decline being absorbed by political science<sup>4</sup>. In the Soviet period the science of administrative law was formed with due regard to the emergence of the so-called “Soviet” state administration and administrative law as the branch of law that regulated administrative relations.

It should be noted that this development was inconsistent, because at that time classes on administrative law at Soviet universities were held by scientists whose views had been formed long before the revolution. The significant contribution to the development of administrative law was made by the outstanding Russian scientist in early 20th-century administrative law A.I. Yelistratov, who completed the transition from “police law” science

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<sup>3</sup> L. Sommer, *Die Osterreichischen Kameralisten. In dogmengeschichtlicher Dargestaltung*, Wien 1925.

<sup>4</sup> Ju.N. Starilov, *Kurs obshhego administrativnogo prava, in: Istorija. Nauka. Predmet. Normy. Sub'ekty*, Moskva 2002, p. 10–19.

to “administrative law” science. He noted that the police law was the law of the sword and the law of a powerful entity that defied the provisions of law and rules of morality. Administrative law was the law that ensured justice and legitimacy in the system of administrative relations, a procedure that does not permit the rule of lawlessness, chaos, the “rule of force and sword law” in administration.

According to A.I. Yelistratov, the transformation of police law into administrative law is effected through a transition from a system of relations of power to legal relations. In the state of law, according to the scientist, not so much vertical as horizontal communication is established. Equal subordination to the law and court provides a common legal basis for officials and the general public<sup>5</sup>.

In the late 1920s, there were changes in the content of the subject of administrative law in scientific legal research pursuits, insomuch as the researchers paid much attention to the science of state administration, and particularly to the organisational factors of administration improvement, administration technologies, and the organisational restructuring of the state administration apparatus. The role and the value of the human factor in state administration were undervalued by the scientists<sup>6 7 8 9</sup>. In the early 1930s, research of issues regarding administrative law science almost ceased. Since the adoption of the Constitution of the USSR<sup>10</sup> in 1936, a new stage in the development of administrative law began, the essence of which involved the development of legal norms that regulated social relations arising in the process of state administration, i.e. executive and administrative activities of the socialist state<sup>11</sup>. The content of the subjectmatter of administrative law remained indisputable throughout the existence of the Soviet state.

Ukrainian administrative law, with some exceptions, operates following the schemes and standards which have been tried and tested for decades<sup>12</sup>. However, the fundamental changes that took place in Ukrainian society in the early 1990s caused a chain reaction of long-term transformational

<sup>5</sup> A.I. Elistratov, *Osnovnye nachala administrativnogo prava*, Moskva 1922, p. 80.

<sup>6</sup> I.M. Burdjanskij, *Tipizacija i normalizacija gosapparata*, „Voprosy sovetskogo hazhajstva i upravljenija” 1924 n° 2–3, p. 185–189.

<sup>7</sup> A.N. Vitke, *Nauchnaja organizacija upravljenija*, „Voprosy organizacii i upravljenija” 1922, n° 1–2, p. 1–6.

<sup>8</sup> Je. K. Drezden, *Organizacija i struktura uchrezhdenij*, „Vremja” 1924, n° 12, p. 26–31.

<sup>9</sup> E.O. Dunaevskij, *O proizvoditel'nosti truda sovetskih rabotnikov*, „Proizvodstvo, trud, upravlenie” 1925, n° 1–2, p. 62–64.

<sup>10</sup> Konstitucija SSSR 1936 goda: Ucherezhdjena Chrezvychajnym VII s'ezdom SSSR 5 dekabnja 1936 goda, <http://www.laws.ru>.

<sup>11</sup> G.I. Petrov, *Predmet sovetskogo administrativnogo prava*, „Sovetskoe gosudarstvo” 1940, n° 7, p. 37–40, p. 38.

<sup>12</sup> V.B. Aver'janov, *Predmet administrativnogo prava: nova doktrinal'na ocinka*, „Pravo Ukraini” 2004, n° 10, p. 25.

changes, an “analysed and catalysed” update of the entire legal system of administrative law and its object.

Therefore, there is no doubt today that the reform process of administrative law in Ukraine characterised by trends of objective scientific inquiry and devoid of features of a short-term and dynamic campaign, getting back to its basics, proceeds towards its formation as the leading branch of public legal regulation of relations between the state and the person being the standard accepted in democratic countries of the world<sup>13</sup>.

Having established updated approaches to the content of administrative law, the outstanding Ukrainian scientist V.B. Averianov<sup>14</sup> noted that administrative law represented the classic example of the fundamental (profiling) branch of “public law”. The public nature of administrative law means that it regulates relations which provide general, aggregate or, in other words, the public interests in society<sup>15</sup>.

By using administrative law, “externalisation and legal implementation of the public interest in administration is carried out, where the public interest is an interest of a social community, which is recognised and fulfilled by the state<sup>16</sup>. The determination of public interest s performed through legal (juridical) groundwork for it. The determination of public interests is the condition and guarantee of the existence and development of a corresponding community. The recognition of the administrative public interest makes their holders the subjects of public administration”<sup>17</sup>.

Therefore, the subject-matter of administrative law for today is the legal relationships that are formed in the sphere of public administration to meet the public interest. The development of the administrative process, which has always been considered an integral part of administrative law, took place simultaneously with the development of administrative law (as a branch of law and as a branch of legal science).

Thus, for example, in the 1970s O.M. Yakuba defined the administrative process as a statutory procedure for the consideration and solution of all individual cases in the sphere of state administration<sup>18</sup>, noting at the same

<sup>13</sup> V.M. Gorshnev, V.G. Kuprin, Ju.I. Mel'nikov et altera, *Teorija juridicheskogo processa*, V.M.Gorshneva (ed.), Har'kov 1985, p. 40.

<sup>14</sup> V.B. Aver'janov, *Doktrinal'ni zasadi suchasnogo rozvitku i reformuvannja ukrains'kogo administrativnogo prava*, in: *Vikonavcha vlada i administrativne pravo*, V.B. Aver'janova (ed.), Kyiv 2002, p. 60–72; V.B. Aver'janov, *Ukrains'ke administrativne pravo: chergovij etap reformuvannja* in: *Ukrains'ke administrativne pravo: aktual'ni problemi reformuvannja. Zbirnik naukovih prac*, Sumi:VVP Mrija-1 LTD, Iniciativa, 2000, p. 17.

<sup>15</sup> V.B. Aver'janov, *Administrativne pravo Ukraini: doktrinal'ni aspekti reformuvannja*, „Pravo Ukraini” 1998, n° 8, p. 8.

<sup>16</sup> V.M. Manohin, *Hozhajstvennoe obsluzhivanie organizacij i grazhdan*, Moskva 1975, p. 126.

<sup>17</sup> V.K. Kolpakov, *Administrativno-deliktnij pravovij fenomen*, Kyiv 2004, p. 32.

<sup>18</sup> O.M. Jakuba, *Sovetskoe administrativnoe pravo. Obshhaja chast': uchebnik*, Kyiv 1975, p. 181.

time that it was carried out according to different directions, but the main content was still being formed by legal proceedings on administrative violations<sup>19</sup>.

P.T. Vasylenkov held almost the same view already in the 1980s, although he noted that, unlike criminal proceedings, it did not always take the statutory form<sup>20</sup>. Hence the understanding of the content of the administrative process for research works of scientists in the sphere of administrative legal science of the 1980s was the same as in previous years. The scientists in the sphere of administrative legal science of the 1990s had the same approach to administrative process, as noted in the thorough scientific research of I.S. Grytsenko<sup>21</sup> as well as O.A. Kuzmenko<sup>22</sup> devoted to the issues of formation and development of scientific views on the major institutions of national administrative law.

Since the beginning of the 21st century, there has been a wide diversity of approaches to the understanding of the notion of the administrative process, its content, which is directly linked to the updated view on the subject of administrative law, the transition from a purely “administrative”, “punitive” purpose of administrative law to “service”, “public-servicing”, focused primarily on the exercise and defence of rights, freedoms and legitimate interests of individuals in relation with subjects of public administration.

As a result, there is a noticeable, gradual withdrawal from its understanding only in the narrow sense, which is dominant in the national administrative and legal doctrines, and in some cases its consideration in the broad sense and focusing on its view as a combination of a “three-tier” structure, which includes administrative branch (the process associated with the development, adoption and implementation of regulatory acts of bodies of public administration and administrative (individual) acts), tort-related (jurisdictional) branch linked to the consideration of contentious cases involving the use of administrative enforcement, and judicial proceedings or judicial, associated with the consideration of cases in accordance with administrative legal proceedings (in view of the adoption of the Ukrainian Code of Administrative Court Procedure).

This is the approach to the administrative process and its understanding in scientific works of O.V. Kuzmenko<sup>23</sup>, T.O. Kolomoiets, I.O. Kukurudz<sup>24</sup>,

<sup>19</sup> Ibidem, p. 182.

<sup>20</sup> *Sovetskoe administrativnoe pravo: uchebnik*, P.T. Vasylenkova (ed.), Moskva 1981, p. 195.

<sup>21</sup> I.S. Gricenko, *Stanovlennja i rozvitok naukovih pogljadiv na osnovni instituti vit-chiznjanogo administrativnogo prava*, Kyïv 2007, p. 21–34.

<sup>22</sup> O.V. Kuzmenko, T.O. Gurzhij *Administrativno-procesual'ne pravo Ukraïni: pid-ruchnik*, O.V. Kuzmenko (ed.), Kyïv 2007, p. 15–18.

<sup>23</sup> Ibidem, p. 6–14.

<sup>24</sup> T.O. Kolomoiec', R.O. Kukurudz, *Apeljacija v administrativno-jurisdikcijnomu procesi: pitannja teorii ta praktiki*, Zaporizhzhja, ZNU 2010, p. 14–15.

S.V. Kivalov<sup>25</sup> and others. However, with the advent of administrative proceedings and the adoption of the Ukrainian Code of Administrative Court Procedure, some legal scientists started to associate the administrative process only with administrative proceedings which unfortunately cannot be agreed with because in such a case some administrative procedure cases not related to administrative proceedings are left out of the consideration. This approach is typical for the works of A.T. Komziuk, R.S. Melnyk, V.M. Bevzenko and others.<sup>26</sup>

Recently, there has been a trend to further diversify approaches to the understanding of the administrative process, withdrawing already from its “three-tier” structure. As an example, we can consider the scientific works of V.P. Tymoshchuk, in which he offers an approach to the administrative process as a combination of several ideas, namely: a) tort-related or jurisdictional and tort-related (application of administrative means of enforcement), b) jurisdictional (consideration of cases on administrative violations and administrative legal proceedings), c) judicial proceedings (only administrative legal proceedings), d) administrative justice (dealing with complaints according to administrative procedure and administrative proceedings), e) administrative (all activities of public administration), f) positive administration (all activities of public administration except relations regarding the consideration of cases on administrative violations), g) general (all relations regarding the application of administrative legal norms, as well as the application of substantive rules of other branches of law)<sup>27</sup>.

According to the updated approach to the content of administrative law, the updated content of the administrative process as its integral component should be defined as well. Thus, the administrative process represents activities of executive authorities, their officials and other authorised entities regulated by administrative procedure rules, aimed at the implementation of substantive norms of the administrative branch as well as other branches of law in the course of proceedings regarding the consideration and solving of individual and specific cases. There is a variety of approaches to the determination of the content of the administrative process in legal science.

Thus, V.K. Kolpakov and O.V. Kuzmenko point out three types of administrative processes: the administrative law-making process – state administration activities regarding the adoption of normative administrative regulatory acts according to a procedure established by the administrative procedure form; the administrative enabling process - the activities of subjects of state authorities as regards the adoption and implementation of

<sup>25</sup> *Administrativne procesual'ne (sudove) pravo Ukraïni: pidruchnik*, S.V. Kivalova (ed.), Odesa 2007, p. 13–14.

<sup>26</sup> A.T. Kozmjuk, V.M. Bevzenko, R.S. Mel'nik, *Administrativnij proces Ukraïni: navch.posib*, Kyïv 2007, p. 45–48.

<sup>27</sup> V.P. Timoshhuk, *Administrativni akti: procedura prijnjattja ta pripinennja diï*, Kyïv 2010, p. 34.

operative-administrative, enabling and other law enforcement acts aimed at providing the enforcement of laws and other legal acts, carried out according to the administrative procedure form; administrative jurisdictional process - the activity of subjects of state executive authorities aimed at solving disputes between different subjects, as well as the application of means of administrative and disciplinary enforcement performed according to the administrative procedure form<sup>28</sup>.

According to Yu.M. Kozlov, all administrative procedure activity is divided into administrative procedural and administrative jurisdictional branches. The same view is held by L.L. Popov<sup>29</sup> and I.P. Golosnichenko<sup>30</sup>. P.I. Kononov distinguishes components of administrative process, including: administrative regulatory and administrative protection, which combines administrative enforcement and administrative defence subtypes<sup>31</sup>. M.M. Tyshchenko divides the administrative process into separate processes: administrative declaratory, administrative law-making, administrative law-enforcement, administrative control<sup>32</sup> (though the use of the term “process” in order to determine the components of the administrative process is inappropriate as the categories of different orders should be indicated to determine general and special terms, the whole and the part).

V.B. Averianov considered the process in the broad and narrow sense and offered to divide administrative proceedings in two groups - jurisdictional and non-jurisdictional<sup>33</sup>. According to I.V. Panova, the administrative process is divided into three types of processes: administrative rule-making, administrative law-enforcement, and administrative jurisdictional<sup>34</sup>. Despite the variety of approaches to the understanding of the administrative process, legal scientists agree that the process, including the administrative process, combines administrative proceedings which are part of the administrative process. Moreover, the administrative process and administrative proceedings correlate as the whole and the part. Thus, the administrative process combines administrative proceedings which are a part of the administrative process and correlate as a general term and a particular term, the whole and the part.

<sup>28</sup> V.K. Kolpakov, O.V. Kuz'menko, *Administrativne pravo Ukraïni*, Kyïv 2003, p. 284.

<sup>29</sup> *Administrativne pravo: Uchebnik*, L.L. Popova (ed.), Moskva 2002, p. 390.

<sup>30</sup> I.P. Golosnichenko, M.F. Stahurs'kij, *Administrativnij proces: Navchal'nij posibnik*, Kyïv 2003, p. 22.

<sup>31</sup> P.I. Kononov, *Administrativnyj proces: podhody k opredeleniju ponjatija i struktury*, „Gosudarstvo i pravo” 2001, n° 6, p. 23–24.

<sup>32</sup> N.M. Tishhenko, *O strukture i soderzhanii administrativnogo processa. Juridicheskij proces: reforma procedur upravlenija, zakonodatel'noj dejatel'nosti sudebnoj vlasti*, Voronezh 1996, p. 114–122.

<sup>33</sup> *Administrativne pravo Ukraïni. Akademichnij kurs: Pidruchnik: U dvoh tomah: Tom 1. Zagal'na chastina*, V.B. Aver'janov (ed. et altera), Kyïv 2004, p. 477–478.

<sup>34</sup> I.V. Panova, *Aktual'nye problemy administrativnogo processa v Rossijskoj Federacii*, Ekaterinburg 2000, p. 135–146.

Proceedings are a part of the process and the process is a complex of proceedings. In this regard, while the process is a broad notion that covers legally significant activities of public administration, proceedings are activities related to solving a specific, relatively narrow group of similar cases. It is commonly known that the Civil Procedure Code and the Criminal Procedure Code use the “proceedings” term in two senses: for setting out stages of the process and procedure for consideration of different categories of cases. The Code of Administrative Offences, along with legal proceedings on administrative violations (Section 4 of the Code) contains nine paragraphs regulating the procedure for the implementation of decrees regarding each type of sanctions in Chapter 5 “Implementation of decrees on the imposition of administrative sanctions”. Each of these paragraphs is called “proceedings in the implementation of decree regarding...”. However, they in fact refer to the stages of administrative proceedings.

In practice, when applying administrative procedure law methodologically it is necessary to distinguish the concepts of “process”, “proceedings”, “separate procedure”, and “stage” clearly and consistently. In this respect the use of these terms should be distinguished in regulations as well. The main doctrinal interpretation of concept of the administrative process in local legal literature has already been considered above. Most scientists, such as V.D. Sorokin, Yu.M. Kozlov, I.P. Golosnichenko, and V.K. Kolpakov single out administrative proceedings as a part of the administrative process<sup>35</sup>.

Yu.M. Kozlov determines the proceedings as a “regulatory procedure for legal proceedings, which provides a legal and compulsory consideration and solving of individual administrative cases, united by a common subject matter”<sup>36</sup>. Considering administrative proceedings as part of the administrative process, V.K. Kolpakov defines it as a special kind of administrative activity regarding solving of cases of a specific category pursuant to the general and a special legal procedure<sup>37</sup>.

Under administrative proceedings Z. Spilnyk understands the part of the administrative process that unites a group of similar legal procedural relations that differ in subject-matter characteristics, having a specific procedure for their consideration and solution, which is completed by a presentation of results in relevant documents<sup>38</sup>. Legal theorists state that proceedings are a qualitatively consistent group of procedural and processual actions regarding the execution of any separate substantive rules by authorities. These actions are united by the same ultimate purpose, the needs

<sup>35</sup> V.D. Sorokin, *Administrativnyj process i administrativno-procesual'noe pravo*, Sankt-Peterburg 2002, p. 117–125.

<sup>36</sup> *Administrativnoe pravo: Uchebnik*, Ju.M. Kozlova, L.L. Popova. (eds.), Moskva 2000, p. 73.

<sup>37</sup> V.K. Kolpakov, O.V. Kuz'menko, *Administrativne pravo Ukraïni*, Kyïv 2003, p. 277.

<sup>38</sup> Z. Spil'nik, *Spivvidnoshennja ponjat' «administrativnij proces» i «administrativne provadzhennja»*, „Visnik Lvivs'kogo universitetu. Serija juridichna” 2001, n° 36, p. 423–425.

for a professional specialisation of labour regarding law enforcement and considerations of legal regulation efficiency<sup>39</sup>.

Having examined the given definitions of administrative proceedings, the following conclusions can be reached: proceedings are a part of the administrative process. Proceedings on consideration of a specific individual case are the primary element of the structure of the administrative process. Every such proceeding is a part of the basis of the administrative process. It is worth noting that scientists in the sphere of administrative law in most cases carry out further classifications of proceedings. Thus, proceedings in consideration of a specific case are divided into certain stages, which in turn are divided into phases, actions and more. According to most scientists, the mentioned logical operations are an extension of the classification of the administrative process<sup>40</sup>. It is impossible to agree with such a position on the matter. In fact, the division “inside of” proceedings regarding the consideration of a specific case into certain stages, phases or elementary actions has nothing in common with the implementation of the classification of the administrative process, but in this case a detailed elaboration of proceedings content takes place.

The consistent logical division of the general concept into types and groups occurs in the process of administrative process classification. Thus, for example, the administrative process is divided into conflicting and conflict-free groups that unite relevant proceedings. It is therefore referred to a generic term and its variations at different levels of specification<sup>41</sup>.

At the same time the separation of such components as stages, phases, actions within each individual administrative proceeding is nothing but the structural separation of the integral concept into structural parts, without which the whole notion cannot be considered as an independent object of legal reality. Therefore, there is a logical correlation between the part and the whole. Thus, the system of administrative process in general can be displayed hierarchically as “administrative process” - “administrative proceedings” - “stages of administrative process.” Thus, administrative proceedings are the part of the administrative process which regulates the activity of public administration regarding the implementation of substantive rules which, in turn, occurs during the consideration of individual cases, by administrative procedural rules. It is completely relevant to administrative proceedings involving legal entities being subjects of administrative and procedural relations. They can be involved in jurisdictional as well as non-jurisdictional administrative proceedings. While earlier legal entities

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<sup>39</sup> *Obshhaja teorija gosudarstva i prava. Akademicheskij kurs v 3-h tomach. Tom 2*, M.N. Marchenko (ed.), Moskva 2002, p. 461.

<sup>40</sup> V.K. Kolpakov, *Administrativne pravo Ukraini: Pidruchnik Vipusk*, Kyiv 2000, p. 749.

<sup>41</sup> O.V. Kuz'menko, *Teoretichni zasadi administrativnogo processu*, Kyiv 2005, p. 210–212.

could not participate in jurisdictional proceedings, primarily in legal proceedings on administrative violations, today the issue is almost solved.

A legal entity is a subject of administrative legal relations (today it is formalised in separate legal regulations and a separate part of the draft Ukrainian Code of Administrative Offences is devoted to this issue), and is a subject of different-type procedural relations as well. A legal entity is a subject of other types of administrative proceedings (although there may be certain exceptions: for example, such an exception could include disciplinary proceedings). In order to determine the possible types of administrative proceedings involving legal entities, they should be classified accordingly.

The classification of administrative proceedings is possible using various criteria. According to the classification offered by V.D. Sorokin, the following types of administrative proceedings exist: proceedings regarding an adoption of regulations of public administration; proceedings regarding offers and applications of citizens and inquiries of organisations on enforcement of rights granted to them in the sphere of public administration; proceedings regarding organisational affairs in the public administration apparatus; proceedings in cases regarding the application of enforcement measures in the sphere of public administration<sup>42</sup>.

According to V.A. Yusupov, the criterion of classification of administrative proceedings should be a mode of administration functions<sup>43</sup>. M.Ya. Maslennikov identifies three types of proceedings in administrative jurisdiction: in the agencies of administrative jurisdiction of first instance; the fast-track procedure; in the agencies of administrative jurisdiction of second instance<sup>44</sup>.

D.M. Bakhrakh in his works points out that the division of the administrative process into proceedings causes the formation of institutions of administrative procedural law (for example, the institution of disciplinary, privatisation proceedings)<sup>45</sup>. It is known from the general theory of state and law that the formation of institutions implies the existence of related legal rules regulating a small group of specific generic relations. Legal institutions are a part and branch of the legal system, their division lies in the fact that the institution does not regulate all generic totality of social relations, but their individual aspects<sup>46</sup>. Therefore, it is possible to disagree

<sup>42</sup> V.D. Sorokin, *Problemy administrativnogo processa*, Moskva 1968, p. 76.

<sup>43</sup> V.A. Jusupov, *Aktual'nye problemy administrativnogo prava Rossii*, „Gosudarstvo i pravo” 1999, n° 5, p. 82–83.

<sup>44</sup> M.Ja. Maslennikov, *Administrativno-jurisdikcionnyj process: ponjatie j sootnoshenie s inymi vidami processual'no-pravovoj dejatel'nosti*, „Gosudarstvo j pravo” 2001, n° 2, p. 18.

<sup>45</sup> D.N. Bahrah, Je.N. Renov, *Proizvodstvo po delam ob administrativnyh pravonarushenijah: (Posobie dlja slushatelej narodnih universitetov)*, Moskva 1989, p. 15.

<sup>46</sup> *Obshhaja teorija gosudarstva j prava. Akademicheskij kurs v 3-h tomah. Tom 2*, M.N. Marchenko (ed.), Moskva 2002, p. 334.

with the point of view of D.M. Bakhrakh regarding the statement about the existence of certain institutions of administrative procedure law, which are narrowed down to proceedings relating to certain individual cases, as far as they cannot be represented as a type of the administrative process.

However, it is necessary to state with certainty that administrative procedural activities are detailed and objectified within specific administrative proceedings. For example, uniordinal proceedings, as already mentioned, form the following groups: conflict-free and conflicting (jurisdictional and non-jurisdictional). Thus, conflict-free (non-jurisdictional) proceedings which contain no law disputes include: rule-making proceedings, permitting proceedings; registration proceedings; monitoring procedures; certification proceedings.

Conflicting (jurisdictional) proceedings, which consider legal disputes, include the following: proceedings in cases of administrative violations; disciplinary proceedings; proceedings in cases of administrative torts. Any proceedings in administrative cases consist of a series of individual operations. The study of such operations in various types of administrative proceedings shows at least four characteristic features of them.

First of all, they are carried out in a consistent manner, i.e. one operation follows the other, forming a kind of chain operations. Secondly, the location of operations in this chain is not random, their order is logically determined. Thus, the issuance of a decree in a case cannot precede such an operation as the drawing-up of a protocol on some administrative violation. Thirdly, the different types of administrative proceedings are characterised by operations which are various in mode and purpose. They differ in the level of regulation by administrative procedural rules. Fourthly, the execution of certain operations in certain proceeding is determined by administrative procedural rules and acts as a point of realisation of substantive norms of administrative law.

The differentiation of administrative proceedings may be determined using different criteria: mode, content, duration, procedural implementation, complexity, statutory grounds, basis, economy, document circulation, number of subjects involved, object etc. There can be no exhaustive list of criteria for the classification of administrative proceedings in legal doctrine. It should be noted that when using more criteria for the classification of administrative proceedings one can learn more about the notion as well as the special characteristics of each administrative proceeding. Given the fact that the legal entity is actively involved in almost all administrative procedural relations, it is possible to identify the administrative proceedings which are characterised by the obligatory or possible involvement of legal entities as subjects, according to the basic legal doctrine for classification.

Thus for example, the following types of proceedings can be separated (one of the basic classifications): jurisdictional and non-jurisdictional. The former traditionally include: a) proceedings on administrative violations;

b) disciplinary; c) proceedings on complaints from citizens; d) enforcement (although this is disputable). Taking into account the specific features of each administrative jurisdictional proceeding and the characteristic property of the administrative procedural personality of a legal entity, it can be postulated that a legal person can be the subject of legal proceedings on administrative violations, enforcement proceedings, regarding the consideration of complaints, and the name of the proceedings shows that the main subjects are individuals, as in the case of disciplinary proceedings. In the case of non-jurisdictional proceedings the involvement of a legal entity is more common regarding rule-making, permitting, registration, certification (as there can be the certification of a legal entity), control proceedings, etc.

In the division of administrative proceedings into: administrative, jurisdictional and judicial proceedings, a legal entity can be involved in all of them, including under procedure of the consideration of a case in accordance with administrative proceedings. Recently, the classification of administrative proceedings has become widespread using the main criteria as follows: a) according to the dispute - indisputable and disputable (actually it is referred to the update of non-jurisdictional and jurisdictional administrative proceedings, or those conflicting and conflict-free; b) according to the aim and subjects of administrative proceedings – internal administrative (within the system of public administration) and external (with the involvement of citizens and legal entities); c) according to the initiator – application (initiated by an individual), interference (initiated by a public subject – subject of public administration)<sup>47</sup>.

The authors of the educational guidance “The Fundamentals of Administrative Procedure and Administrative Law” under the general editorship of R.O. Kuibida and V.I. Shyshkyn, offer to divide interference administrative proceedings even according to the consequences for individuals into positive or favourable and negative or unfavourable<sup>48</sup>. The active involvement of legal entities is typical for interference as well as application proceedings. However, it is possible on both the part of initiator and that of the other subject on behalf of which the official acts. Legal entities are subjects of internal and external administrative relations, the difference lying only in the implementation of this relationship (or just the activity of subjects of public administration, or with the involvement of individual (including legal) persons).

To date, the definition of the notion of “procedure” and the clarification of the correlation between the terms “proceedings” and “procedure” remain one of the debating points in the science of law. Several approaches to the definition of “procedure” have been formed in legal literature based on the

<sup>47</sup> A.M. Shkolik, *Porivnjal'ne administrativne pravo: navchal'nij posibnik dlja jurid. faku'tetiv*, L'viv 2007, p. 123–124.

<sup>48</sup> *Osnovi administrativnogo sudochinstva ta administrativnogo prava/navch.posib*, R.O. Kujbidi, V.I. Shishkina (eds.), Kyiv 2006, p. 177.

concept of the subject-matter of the administrative process (administrative, jurisdictional or judiciary). Some scientists consider the procedure as a kind of process, others consider them (the procedure and the process) as identical objects of legal reality and use both terms as synonyms. The followers of the jurisdictional concept of the administrative process mean the “procedure” to be the activities of competent government authorities of “positive” administrative type, while the “process” to be only jurisdictional proceedings. The supporters of the administrative notion of the process consider it as consisting of two types: jurisdictional process and administrative procedure.

Analyzing the existing provisions, it should be noted that regarding the determination of these notions and their correlation the most correct thesis is formulated by V.P. Tymoshchuk in “The Administrative Procedures Involving Citizens”, in which he notes that the terms “procedure” and “proceedings” may correlate as statics and dynamics. That is to say that procedure is an established order for the consideration and solving of the case (proceedings model), while proceedings are the actual consideration and solving of the case<sup>49</sup>.

Unfortunately, this thesis, convincing and correct as it is in general, did not find further support in the doctrine, however. V.P. Tymoshchuk provides a clarification that this idea is not shared by all the members of the authoring team and subsequently explains in fact the identity of the notions of “proceedings” and “procedure” noting that the order for the consideration and solving of individual administrative cases by public authorities established in accordance with legislation should be meant by administrative procedure; each proceeding corresponds to a certain procedure<sup>50</sup>. In terms of the correlation between the procedure and the process in general and not regarding a single proceeding, A.V. Kuzmenko notes that the procedure lacks the main determinant of the process, i.e. duration. While the notion of process, according to the explanations offered by A.V. Kuzmenko, is primarily dynamic, continuous motion, expressed in successive transitions from one state to another, procedure is nothing else but “discretisation” of such motion. Procedure is an idea not characterised by time dynamics<sup>51</sup>. Summarizing this research, the scientist in the synopsis of the thesis for the degree of Doctor of Juridical Science formulates a conclusion that process should be considered as an activity of subjects of law regarding the implementation of legal regulation of social relations and enforcement of a right while procedure should be considered as a formalised aspect of such activities. Procedure determines the order of the execution of legally significant acts by subjects of legal relations which, taken together, form

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<sup>49</sup> V.P. Timoshchuk, *Administrativni proceduri za uchastju gromadjan*, in: *Derzhavne upravlinnja: problemi administrativnoi teorii ta praktiki*, V.B. Aver'janova (ed.), Kyiv 2003, p. 198.

<sup>50</sup> *Ibidem*, p. 24.

<sup>51</sup> O.V. Kuz'menko, *Teoretichni zasadi administrativnogo procesu*, Kyiv 2005, p. 167.

the legal process. It determines the stages of the process, their purpose, sequence, methods of formalisation and settlement<sup>52</sup>.

In fact, the regulation of relations in any sphere of societal activity is based on specific rules, conditions, in accordance with procedures and the corresponding sequence. The sphere of administration sphere is no exception, in which the processes of administration occur according to a certain procedure (procedures). But in this case the issue refers to the role of procedure in the administrative process and not generally in administrative activities. All this is applicable to procedures involving legal entities.

However, “proceedings” and “procedure” have too many common features and cannot be separated from each other on the basis of the content. Therefore, it seems logical to assume that the procedure is the officially determined order and conditions of actions by participants of the process at a specific stage or phase of the administrative process, in a specific period of time regarding the solution of particular administrative cases, methods of the procedural execution of the consideration of cases and their settlement. For example, the procedure for the administrative detention of a person who has committed an offense provides grounds for the detention, the scope of persons who can perform administrative detention, the terms of administrative detention and its procedural execution. However, administrative detention itself is neither a reason nor obligation to start legal proceedings on administrative cases procedures and the implementation of the process, but a means of procedural enforcement. That is to say that procedure is not an obligatory part of the administrative process and, at the same time, that procedure means actions while process means a sequence of these actions.

Procedure is an integral independent legal entity, which is regulated by legal norms and in some cases by custom or tradition (e.g. the marriage registration procedure), determines the order of the execution of socially and legally significant actions by participants of legal relations and provides normative legal regulation.

Thus, the administrative procedure is the order established by rules of administrative procedural law for activities of subjects of legal relations regarding the implementation of normative legal regulation in the sphere of public administration and the consideration and solving of particular administrative cases.

The administrative procedure involving legal entities is an activity of a legal entity determined by the rules of administrative law regarding the implementation of normative legal regulation in the sphere of public administration, and is the “order” for solving individual administrative cases involving legal entities by administrative bodies.

The correlation between the administrative procedure involving a legal entity and administrative proceedings involving administrative official lies

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<sup>52</sup> O.V. Kuz'menko, *Administrativnij proces u peregljadi prava*, Kyiv 2006, p. 15.

in the fact that the relevant procedure is the established procedure for the consideration and solving of the case (proceedings model), while the proceeding is actually the consideration and solving of particular case involving a legal entity. Given a certain affinity of administrative proceedings and administrative procedures involving legal entities it can be assumed that legal entities are relatively actively involved in the latter.

## Conclusions

Taking all the aforesaid into consideration, it is possible to arrive at the conclusion that the administrative process is: regulated by administrative procedural rules; conducted by executive authorities and their officials and other authorised subjects; directed at the implementation of substantive rules of administrative and other branches of law and the consideration and solving of individual cases in the proceedings that it consists of.

There is no agreement of opinions regarding the typological diversity of administrative proceedings in local legal science. Using existing criteria for the differentiation of administrative proceedings and given the specific features of the administrative procedural personality of legal entities, it can be noted that the legal person is actively involved in administrative proceedings.

Administrative proceedings involving a legal entity represent the consideration and solving of a particular case involving a legal entity. They can participate in jurisdictional (primarily legal proceedings on administrative violations, enforcement proceeding), non-jurisdictional (control, monitoring, registration, permitting, certification, rule-making, etc.) proceedings, internal administrative and external (depending on the participants and the nature of the substantive content), interference and application of administrative proceedings.

Considering a certain affinity of administrative proceedings involving legal entities and administrative procedures (with a correlation of the dynamic and static type, process and model type), it is worth noting the active involvement of legal entities in administrative procedures and their types.

In order to resolve particular inconsistencies in doctrinal and regulatory frameworks as well as law enforcement outcomes, it would be worthwhile to definitively formalise the legal persons' tort liability as well as their ability to sue and procedural ability in administrative proceedings at the regulatory level in new codified acts of law (the Ukrainian Code of Administrative Procedure and the Ukrainian Code of Administrative Offences).

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## Pojęcie i rodzaje postępowań administracyjnych z udziałem osób prawnych w ukraińskim prawie administracyjnym

Streszczenie

Artykuł definiuje pojęcie procedury oraz wyjaśnia problem korelacji między terminami „postępowanie” i „procedura”. Analizuje on również różnorodne podejścia do definiowania pojęcia procedury w zależności od przyjętej koncepcji podmiotu procesu administracyjnego (z punktu widzenia zarządzania, prawa i sądownictwa). Można zauważyć, że terminy „procedura” i „postępowanie” odnoszą się do współzależności

statycznych i dynamicznych. Podstawą klasyfikacji postępowań administracyjnych jest wiele wyznaczników, a w naukach prawnych nie sformułowano ich wyczerpującej listy. W artykule wskazano, że wykorzystanie jak największej liczby kryteriów klasyfikacyjnych pozwala na lepsze zrozumienie każdego z rodzajów postępowania administracyjnego i jego aspektów. W opracowaniu wyszczególniono postępowanie administracyjne, które charakteryzuje obowiązkowy lub fakultatywny udział osób prawnych jako jego podmiotów. Wskazano, że osoba prawna może być podmiotem postępowań w sprawie naruszeń administracyjnych, egzekucyjnych oraz dotyczących skarg. W celu rozstrzygnięcia kwestii spornych pojawiających się w doktrynie i niewyjaśnionych w ustawodawstwie oraz rozbieżności ujawniających się w procesie stosowania prawa zasugerowano definitywne sformalizowanie zdolności deliktowej osób prawnych oraz ich zdolności proceduralnej i procesowej w postępowaniu administracyjnym na poziomie ustawowym w nowych kodeksach – Kodeksie postępowania administracyjnego Ukrainy oraz Kodeksie wykroczeń administracyjnych Ukrainy.

**Słowa kluczowe:** procedura administracyjna, postępowanie administracyjne, osoba prawna

### On understanding the notion and types of administrative proceedings involving legal entities in Ukrainian administrative law

#### Abstract

The article defines the concept of “procedure” and clarifies the question of correlation between such terms as “proceedings” and “procedure”. Several approaches to the definition of “procedure” have been analysed depending on the selected notion of the subject of the administrative process (from the viewpoint of management, law and the judiciary). It has been observed that the terms “procedure” and “proceedings” refer to static and dynamic interdependencies. The emphasis is put on the fact that the differentiation of administrative proceedings can be performed using a variety of criteria and there can be no exhaustive list of criteria for the classification of administrative proceedings in the legal science. It has been suggested that the more criteria are used to classify the administrative proceedings, the further understanding of each administrative proceeding and its special aspects is achieved. Special attention is given to administrative proceedings characterised by the obligatory or optional involvement of legal entities as legal subjects. It has been indicated that a legal entity can be a subject of legal proceedings on administrative violations, enforcement proceedings and those regarding administration of complaints. In order to resolve particular inconsistencies in doctrinal and regulatory frameworks as well as law enforcement outcomes, it has been suggested that the legal persons’ tort liability as well as their ability to sue and procedural ability in administrative proceedings should be definitively formalised at the regulatory level in new codified acts of law (the Ukrainian Code of Administrative Procedure and the Ukrainian Code of Administrative Offences).

**Keywords:** administrative process, administrative proceedings, legal entity