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## TO THE DISCUSSION ON THE CONTENT OF THE CATEGORY ADMINISTRATIVE PROCESS (ADMINISTRATIVE JUDICIAL PROCEDURE)

**Problem statement and research tasks.** Peculiarities and permanent features of the administrative agreement leave their mark on the procedural and procedural features of dispute resolution, which arise both at the stage of concluding such agreements and during its validity and execution by the parties. Based on the fact that the administrative agreement defines the mutual rights and obligations of its participants in the public sphere in order to achieve socially significant results, and one of the parties is a subject of power, the judicial settlement of such disputes is carried out under the Code of Administrative Procedure of Ukraine. In other words, it is the administrative process that is a form of objectification of disputes arising from administrative agreements.

**The purpose of the article** – on the basis of a generalized analysis of various scientific approaches to formulate the author's idea of administrative proceedings as a procedural procedure for consideration and resolution of disputes arising from administrative agreements.

**Analysis of publications and presentation of the main provisions of the study.** Our approach to the use of appropriate terminology, namely the identification of categories of administrative process and administrative proceedings is not accidental and not in vain, because the author is not a supporter of the so-called «broad» understanding of the category «administrative process», which began to form in the middle of last century. works of Soviet scientists-administrators. In particular, one of the apologists for this concept is V. Sorokin, who outlined its general features, namely: a) the administrative process – a legal form of executive power (it has a pronounced legal management nature); b) the administrative process is dynamic, so it is implemented by the executive authorities at all levels, and in cases provided by law, and other entities (eg, judges); c) administrative process – an activity not only state power, but also legal; d) the administrative process objectively requires «own» regulation, which is ensured by administrative procedural norms; it ensures the implementation of a number of other branches of substantive law – civil, financial, labor, family, land, etc .; e) administrative process – is not only regulated by law the implementation of certain procedures of the executive branch for the legal solution of a wide range of individual cases in the field of public administration, but also such activities, during which there are numerous legal relations governed by administrative procedure and acquire in this connection the nature of administrative-procedural relations [1, p. 197-203].

This concept is quite emphatically embodied in the works of D. Bahrakh and Y. Tikhomirov. The latter, in particular, highlights the main features of the administrative process, namely: a) the participation of one or more executive bodies, governing bodies; b) consideration of cases related to the scope of powers of management bodies and officials; c) participation of citizens and legal entities as initiators of the process; d) the presence of stages of the process – filing a lawsuit, application, complaint, collection and evaluation of documentary information, hearing the parties, decision-making, appeals, execution of decisions; e) legal formalization of the process and its stages in special legal acts. Thus, according to the researcher, administrative process has the variants on procedure and character of consideration of administrative cases, on a circle of procedural actions, on subjects of decision-making. In view of this, Yu. Tikhomirov speaks: a) about the administrative-hierarchical process, when cases are considered in the order of subordination in a simplified manner within the institution or management system; b) on the administrative process carried out by specially authorized or formed bodies (administrative commissions, etc.); c) about the mixed administrative process, when its elements seem to be part of another process (budget, tax, etc.); d) the elements of the hierarchical judicial process, when there is a kind of two instances; e) on the administrative-jurisdictional process, when the established rules of administrative proceedings are applied by special bodies of administrative justice. It carefully regulates all stages and procedural actions taken by the parties and participants in the process, the sequence of their implementation and strict fixation [2, p. 1007-1008].

In turn, D. Bahrakh believes that the administrative process is on a par with such legal processes as criminal, civil, legislative, budget. As a legal process, it has all the inherent characteristics of the latter, but it is also a type of management (executive) activity, which has the following features: a) is a kind of power activity of the executive. Such are judges (when they hear cases of administrative misconduct) and prosecutors; b) aimed at solving

certain administrative cases, achieving legal results; c) regulated by the norms of administrative law.

D. Bahrah acknowledges that «... the state administration has to use its powers in resolving a variety of cases. Depending on their content, the administrative process is the largest of the legal processes and can be divided into three parts: the process of administrative lawmaking; law-making (operational-administrative) process; administrative and jurisdictional process. The scientist believes that specifying the content of cases decided by the executive branch, given the subjects of activity, each of the three types of administrative process can be divided into smaller parts – proceedings. Administrative proceedings, being an integral part of the administrative process, differ from other administrative proceedings mainly in the content of cases. The division of the administrative process into proceedings determines the formation of institutions of administrative procedural law – disciplinary, privatization proceedings, proceedings in cases of administrative offenses of citizens, etc. [3, p. 153-156; 2, p. 996-998]. It is noteworthy that among these proceedings there is no judicial procedure for resolving disputes that arise in the public sphere.

Nowadays, these ideas are actively developing in the works of domestic researchers in the field of administrative law and process, such as O. Kuzmenko [4; 5; 6], T. Kolomoyets [8; 9], V. Kolpakov [9], Yu. Bityak and V. Garashchuk [10], S. Stetsenko [11], S. Alferov [12], R. Kukurudz [13; 14], R. Sheveyko [15], M. Jafarova [16], O. Mikolenko [17; 18; 19], O. Bandurka and M. Tishchenko [20], as well as many others.

At the same time, the pages of the administrative and legal literature outline the existing views in the doctrine on this issue, and the relevant researchers are divided into groups depending on their beliefs, including administrative scientists, who: 1) and the need to distinguish in the legal system of Ukraine an independent branch of law – administrative procedure (A. Vasiliev, O. Zastrozhna, O. Kuzmenko, V. Sorokin, M. Tishchenko, etc.); 2) tried to distinguish between procedural phenomena in the judicial and executive branches of government, proposing to distinguish between «administrative judicial process» and «administrative non-judicial (administrative) process» (E. Demsky, V. Perepelyuk, V. Stefanyuk); 3) believe that it is impossible to compare as a general and partial concept of «administrative procedure» and «administrative process», because they have their own characteristics – the process is characterized by dynamics and duration, and the procedure is devoid of such properties (T. Gurzhiy, OV Kuzmenko); include in the structure of the administrative process proceedings for consideration of public disputes in administrative courts (T. Gurzhiy, E. Demsky, O. Kuzmenko); emphasize the revision of the conceptual framework of administrative responsibility and propose on this basis to systematize administrative and procedural rules (S. Petkov) [21, p. 139].

In particular, Yu. Bytyak, V. Garashchuk and O. Dyachenko consider the concept of "administrative process in a broad and narrow sense. In their view, in a broad sense, the administrative process is a statutory procedure for consideration and resolution of individual cases arising in the field of public administration, courts (general jurisdiction or specially created) or specially authorized bodies (officials). In a narrow sense, the administrative process is considered as proceedings in cases of administrative offenses and the application of administrative penalties to offenders [22, p. 204].

According to these scientists, the administrative process has common features, namely: the administrative process is carried out only by authorized entities; orderliness of the administrative process is due to the presence of a clear system of actions for operations with the requirements of the law; consideration of an administrative case (to a greater extent this applies to disputes) cannot be imagined without establishing certain facts and specific circumstances; administrative-procedural activity is always based on the law related to the implementation of substantive rules of administrative law, and in some cases – and the rules of other branches of law, for example, in the implementation of certain rules of such a relatively young branch of law as business law of business activities [22, p. 204-205].

In turn, V. Kolpakov emphasizes, «that the broadest understanding of the administrative process corresponds to modern norms of legal science and embodied in the Concept of administrative reform principles of transformation of public administration into an effective tool for citizens to exercise their rights and freedoms, a tool to protect people from wrongdoing and administrative acts by governing bodies and their employees» [9, p. 363].

One of the founders of modern administrative law argues that the definition of administrative process as a generalized name for the regulated activities of public administration to exercise power is justified, and the idea that the administrative process is only a procedural activity of administrative courts is wrong. V. Kolpakov argues that such an error is based on the formula «administrative process – legal relations that are formed during the administrative proceedings.» In turn, this formula, according to the scientist, enshrined in Art. 3 of the CAS of Ukraine with the proviso «In this Code, the following terms are used in the following meaning...», which gives grounds to believe that the terms formulated in this act are indisputable only for the sphere of administrative proceedings. Referring to other regulations that use the terms «process», «administrative process», the administrative scientist notes that the legislator

does not establish a monopoly of administrative proceedings on the use of the concept and term «administrative process». [23, p. 28-29; 24, p. 46-47].

It should be noted that V. Averyanov also acknowledged the existence of a number of procedural relations in the field of administrative law, but unlike other scholars, he did not single out administrative proceedings within the relevant set of procedural institutions. In his opinion, such procedural institutions are: the institution of «internal» administrative proceedings, which regulates various procedures and proceedings, either operational or administrative, or official; the institute of normative administrative proceedings, which regulates the preparation and issuance of normative legal acts by public administration bodies; the institute of «service» administrative proceedings, which regulates proceedings, which include procedures for reviewing applications of individuals (including the provision of various administrative services), as well as procedures for reviewing complaints of individuals («disputed» proceedings); institute of «jurisdictional» administrative proceedings, which regulates proceedings that cover procedures for the application of measures of administrative coercion, in particular the application of administrative penalties, as well as measures of disciplinary liability against civil servants [25, p. 9-10]. According to a prominent researcher, the relations that arise in the field of administrative justice, form a separate group of legal relations that are not part of administrative law. At the turn of the millennium, V. Averyanov predicted that «... in the near future an independent procedural and legal branch should be created, which will separately regulate the proceedings in administrative courts (administrative proceedings)» [26]. The position of the researcher was finally confirmed both in the adoption of the CAS of Ukraine, and in the formation of a set of procedural relations arising in connection with the resolution of public disputes, and in fact in the formalization of relevant rules in the procedural branch of law – administrative procedural law.

Nevertheless, he supports the ideas of V. Kolpakov and O. Kuzmenko, who echoes him and notes that the administrative process – is regulated by administrative procedural rules of public administration, aimed at implementing the rules of the relevant substantive areas of law in the consideration and resolution of individual cases. affairs. In the «Course of Administrative Procedure», the scholar emphasizes the complex structure of the relevant type of legal process and the possibility of its consideration both vertically and horizontally. In the system of administrative process, in her opinion, it is expedient to focus on administrative-procedural, administrative-tort and administrative-judicial types of proceedings. [27, p. 40]. However, from the scientist's proposed vision of the essence of the administrative process as an activity of public administration, it follows that the latter can include the court, which is the relevant subject within the administrative-judicial procedure selected by O. Kuzmenko. It is difficult to agree with this statement, because the court, according to well-known scientific and regulatory provisions, is called to administer justice, and service or management activities are not inherent in it.

Instead, T. Kolomoyets formulates his own opinions (formed on the basis of Soviet and modern theory of administrative law and process), noting that the features of the administrative process are: the administrative process is related to public administration, its legal forms; connection with the substantive rules of administrative law; it is an activity as a result of which social relations regulated by the norms of administrative-procedural law arise [7, p. 236]. However, in the view of the scientist, administrative proceedings are a separate type of administrative process [7, p. 237]. The same or a similar approach is used by other researchers.

In particular, S. Stetsenko's administrative process is complicated. He claims that the administrative process is the activity of public administration bodies and some other authorities regulated by the norms of administrative-procedural law, aimed at consideration and resolution of administrative cases. [11, p. 43]; components of such a process are: 1) administrative-judicial process, within which the consideration of public-law disputes in administrative courts; 2) administrative and managerial process, within which the executive and administrative activities of public administration bodies (set of administrative procedures) are carried out; 3) administrative-jurisdictional process, within which the consideration of cases of administrative offenses and the application of measures of administrative coercion [11, p. 44].

A similar point of view is expressed by M. Jafarova. She notes that the administrative process should be understood as the activity of state bodies, as well as other governmental entities regulated by the norms of administrative-procedural law, aimed at consideration and resolution of administrative cases. Thus the specified kind of legal process has three components: a) administrative process; b) judicial administrative proceedings; c) jurisdictional administrative process [16, p. 62].

R. Sheveyko formulates the definition of administrative process as a collective abstract concept, which covers independent procedural institutions – administrative proceedings, is administrative process, he notes – is a specific legal entity, which covers a combination of independent procedural institutions of administrative-procedural, administrative-judicial and administrative tort. At the same time, the administrative-procedural component of the administrative

process characterizes it as relations of individuals with public administration bodies regarding the consideration of individual cases, administrative-judicial – in the context of justice and administrative courts to consider and resolve public disputes, administrative-tort – concerning proceedings in cases of administrative offenses [28, p. 24-25; 29].

O. Mykolenko also argues that the administrative process should not be limited to the areas of administrative courts to consider public disputes in the manner prescribed by the CAP of Ukraine, and the activities of administrative jurisdiction to hear cases of administrative offenses under the Code of Administrative Offenses, as it is today. Administrative and procedural support, he points out, requires disciplinary proceedings in administrative cases, which are provided by disciplinary statutes and special provisions on discipline; executive proceedings and control activities of administrative bodies in relation to private persons [17, p. 18].

In turn, one of the first domestic researchers to talk about «independence from administrative law» of the administrative process was V. Stefanyuk, who, recognizing the division of the legal process into two types – administrative and judicial – focused on the characteristics of the judicial administrative process. In fact, for the first time for the administrative and legal doctrine of independent Ukraine, a detailed theoretical review of the problems of the concept and components of the judicial administrative process was presented, based on the normative and legal realities of Ukraine and a number of other foreign countries. [30, p. 10].

Somewhat later, in the joint work of A. Komzyuk, V. Bevzenko and R. Melnyk «Administrative process», it is emphasized that the administrative process is a legal category that takes place exclusively within the activities of a special body (administrative court). [31, p. 53]. That is, administrative scholars identify the administrative process with its component – administrative proceedings. The same concept of the legal process is proposed by S. Kivalov, I. Kartuzova and A. Osadchy, who emphasize that the administrative process (administrative proceedings) acts as a procedural component of administrative justice [32, p. 13].

N. Guberska admits that the use of the term «administrative process» in such a broad sense is incorrect primarily due to the inexpediency of combining jurisdictional and positive process in one concept, which does not correspond to the modern understanding of the content of administrative activity. The differences between administrative activity and administrative justice as a form of justice are due to the fact that it is the activity of different branches of government with different tasks [33, p. 231].

R. Melnyk is of the same opinion, claiming that the authors of the so-called "broad" concept of the administrative process put forward only conclusions (scientific concepts) formulated either in Soviet times or by representatives of the "neo-Soviet" school of administrative law. In this connection, a logical question arises: are the more than 150-year achievements of the European science of administrative law worth nothing to us? Does not knowing foreign languages make it possible to study the European experience? In this regard, I would like to emphasize that our predecessors, and in fact the founders of the domestic science of administrative law – A. Elistratov, V. Kobalevsky, O. Yevtikhiev, M. Karadzhe-Iskrov were guided by the scientific achievements of the European school of administrative (police) law" [34, p. 289]. R. Melnyk quite rightly notes that "The inclusion of one or another institution or sub-institution of administrative law in its General Part cannot be based on the simple desire of scholars or a superficial explanation of the expediency or inexpediency of such a step, because the system of administrative law, as established above, is a complex structure that is formed and developed under the influence of certain factors or system-forming factors. Based on this, the establishment of the possibility or impossibility of including an institution in the system of administrative law should be done by answering the question of whether the content and objectives of this institution are consistent with those factors that affect the construction of administrative law.

In fact, the first step towards building the rule of law is known to be the introduction of the principle of separation of powers, which provides for the delegation of basic state functions to independent bodies: parliament, administration and court, able to control each other through appropriate mechanisms [35]. One such mechanism is the institution of administrative justice, which is designed to exercise specialized judicial control over the actions and decisions of public administration. In order to ensure the special legal status of administrative justice bodies (administrative courts), it is clear that special legislation is needed, the rules of which would be «raised» by administrative courts over public administration. However, is it possible to talk about the special legal status of administrative courts in relation to public administration if the regulations governing the activities of these entities are placed within the general part of administrative law, designed to promote the priority of human rights and freedoms in all its spheres? interaction with the public administration, its bodies and officials [36, p. 148]. Are administrative courts really a kind of public administration!? It is clear that such an assumption is completely absurd, as well as the fact that the institution of administrative justice is an integral part of the General Administrative Law» [34, p. 291-292].

Another component of the «terminological» discussion is the emphasis on the relationship between

the concepts of «administrative justice» and «administrative justice». For example, V. Averyanov actually considers the concept of administrative proceedings within administrative justice, which, in turn, is a system of judicial bodies (courts) that monitor compliance with the law in public administration by resolving in a separate procedural order of public law disputes. arising in connection with appeals of individuals or legal entities to executive authorities, local governments or their officials [26, p. 234].

The authors of the textbook «Administrative proceedings» edited by Professor T. Kolomoyets define administrative proceedings as a normatively defined activity of administrative courts to consider and resolve administrative cases that are initiated in connection with legal disputes arising between public administration bodies and legal entities and individuals to recover the violation. subjective right of the person concerned [37, p. 12]. At the same time, administrative scholars point out that administrative justice, in turn, is a system of special judicial bodies that are created to consider and resolve legal disputes in the procedural form prescribed by law, arising from the activities of public administration between citizens or legal entities from one on the other hand, and public administration bodies, their officials – on the other hand, as a result of which a decision may be made to declare invalid and (or) cancel the illegal act or other way to restore the violated subjective right of the person concerned [37, p. 12]. Regarding the ratio of these concepts, on the basis of the analysis of administrative and legal literature, scientists distinguish two approaches to solving this scientific problem – broad and narrow. In a broad sense, the concepts of «administrative justice» and «administrative justice» are related as general and partial, because administrative justice is a «system of bodies to monitor compliance with the law in the field of public administration», is administrative justice is a state body that performs as its main activity, as well as activities to monitor compliance with the law in the field of public administration, in contrast to administrative proceedings, which are carried out only by administrative courts, which are specially created to carry out such activities. In turn, a narrow understanding implies that administrative justice and administrative justice are identical concepts, as «administrative justice is a procedural expression of administrative justice.» Based on these provisions, the authors of this textbook conclude that administrative proceedings are an integral part of administrative justice [37, p. 11-12; 24, p. 43-44].

A. Komzyuk, V. Bevzenko and R. Melnyk, already mentioned by us, consider administrative proceedings to be a procedural form of administrative justice, calling the relevant type of judicial activity a "formal aspect" of administrative justice [31]. According to scholars, the latter is a state-guaranteed and enshrined in current national legislation special way of protecting individuals' rights, freedoms and legitimate interests from illegal actions (inaction) and decisions of subjects of power (public authorities, local governments, their officials and officials), which is to consider and resolve public disputes by a system of administrative courts [31, p. 38].

Identify the administrative process and administrative justice and the team of authors of the textbook «Administrative Law of Ukraine. Full course», which follows from the analysis of the title of the relevant chapter of this textbook – Administrative process (administrative justice as a tool to protect individual rights). Administrative scholars note that administrative proceedings are the activities of administrative courts to consider and resolve public legal conflicts (disputes) arising from violations of public authorities rights, freedoms and legitimate interests of individuals and legal entities. The functioning of administrative justice in the state indicates a human-centric concept of public administration, compliance with its basic international legal standards of human and civil rights and freedoms, the establishment of the principle of legality in the exercise of public power [38, p. 263].

In his turn, E. Demsky sees no grounds in identifying administrative justice and administrative justice, noting that «these considerations are in the field of discussion rather than practical and are not essential for the characterization of administrative justice» [39, p. 246].

**Conclusions.** Based on the generalization of different opinions, understanding of scientific approaches and concepts, we have formed our own vision and idea of administrative proceedings as a procedural procedure for consideration and resolution of disputes arising from administrative agreements. In particular, we note that we reject the so-called broad concept of administrative process, and especially its managerial aspect, as the administrative process should not be associated with public administration (public administration), because the form of the latter is purely administrative procedure. In addition, the thesis that courts are subjects of public administration seems to be wrong, as follows from the principles of a broad interpretation of the administrative process and its structure.

We support the idea that at the present stage of state-building processes and the development of the doctrine of administrative law should abandon the idea of the administrative process as regulated by administrative-procedural norms of public administration aimed at implementing the relevant substantive branches of law in considering and resolving individual specific cases. It is seen that such a view of the administrative process not only does not meet the principles of adaptation of domestic administrative legislation to European standards, inhibits domestic

administrative doctrine by modernizing it and abandoning outdated state-centric dogmas that administrative law «serves» substantive branches of law. including those that are not public, but also significantly confuses the idea of the essence of the appointment of administrative law and administrative proceedings as mechanisms for the implementation and protection of individual rights in the public sphere.

It should be noted that we are in solidarity with those researchers in the field of administrative proceedings who, in a broad sense, equate administrative justice with administrative justice. At the same time, it can be seen that in fact administrative proceedings are a procedural form of justice, and not an integral part of it, as some legal scholars claim.

Based on the above, in our understanding, administrative proceedings (administrative process is regulated by the rules of the CAP of Ukraine law enforcement activities of administrative courts to consider and resolve administrative disputes.

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## Summary

***Boiko O. M.*** **To the discussion on the content of the category administrative process (administrative judicial procedure).** – Article.

The article, based on a generalized analysis of various scientific approaches, formulates the author's idea of the administrative process and its relationship with some related categories.

It is noted that the author denies the so-called broad concept of administrative process, and especially its managerial aspect of understanding, because the administrative process should not be associated with public administration (public administration), because the form of the latter is purely administrative procedure. In addition, the author finds erroneous the thesis that the courts are subjects of public administration as it follows from the principles of a broad interpretation of the administrative process and its structure.

Support is expressed for the idea that at the present stage of state-building processes and the development of the doctrine of administrative law it is necessary to abandon the idea of administrative process as regulated by administrative-procedural norms of public administration aimed at implementing the relevant substantive branches of law in considering and resolving individual specific cases. It is seen that such a view of the administrative process not only does not meet the principles of adaptation of domestic administrative legislation to European standards, inhibits domestic administrative doctrine on its way to modernize, but also significantly confuses the essence of administrative law and administrative proceedings as mechanisms for implementation and protection of individual rights in the public sphere.

It is indicated that administrative proceedings (administrative proceedings) are regulated by the norms of the CAP of Ukraine law enforcement activities of administrative courts to consider and resolve administrative disputes.

*Key words:* administrative agreement, administrative process, administrative proceedings, procedure, dispute.

## Анотація

***Бойко О. М.*** **До обговорення питання про зміст категорії адміністративного процесу (адміністративно-судовий процес).** – Стаття.

У статті, на підставі узагальненого аналізу різноманітних наукових підходів, сформульовано авторське уявлення про адміністративний процес та його співвідношення з деякими суміжними категоріями.

Зауважено, що автор заперечує так звану широку концепцію адміністративного процесу, а особливо її управлінський аспект розуміння, оскільки адміністративний процес не повинен асоціюватися із публічним адмініструванням (державним управлінням), адже формою функціонування останнього є виключно адміністративна процедура. Окрім того, автору видається хибною теза про те, що суди є суб'єктами публічного адміністрування як це витікає із засад широкого трактування адміністративного процесу та його структури.

Висловлено підтримку думки про те, що варто остаточно відмовитися на сучасному етапі державотворчих процесів та розвитку доктрини адміністративного права від уявлення про адміністративний процес як врегульованої адміністративно-процесуальними нормами діяльності публічної адміністрації, спрямованої на реалізацію норм відповідних матеріальних галузей права в ході розгляду і вирішення індивідуально-конкретних справ. Вбачається, що такий погляд на адміністративний процес не тільки не відповідає засадам адаптації вітчизняного адміністративного законодавства до європейських стандартів, гальмує вітчизняну адміністративно-правову доктрину на шляху її осучаснення, але й суттєво заплутує уявлення про суть на призначення адміністративного права та адміністративного судочинства як механізмів реалізації та захисту прав особи у публічній сфері.

Вказано, що адміністративне судочинство (адміністративний процес) є регламентованою нормами КАС України правозастосовчою діяльністю адміністративних судів щодо розгляду та вирішення адміністративних спорів.

*Ключові слова:* адміністративний договір, адміністративний процес, адміністративне судочинство, порядок, спір.