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## **International experience in the formation of administrative procedural legislation for Ukraine**

### **Abstract**

This article deals with the development, function, and importance of Ukrainian law governing administrative proceedings. It highlights the significance of statutory regulation in contemporary nations, especially in the relationship between public administrative agencies and private individuals or companies. The article discusses the rights and obligations involved in administrative acts, including the right to be heard, the right to assistance and representation, and to access case materials. It highlights the benefits of adopting single administrative procedure legislation, including improved decision-making efficiency and transparency, as well as the provision of a defined process for interactions between administrative authorities and natural or legal entities. It highlights the tendency of establishing generic laws or codes on administrative processes while also examining worldwide experiences with administrative procedural legislation in various nations. It analyses historical trends in Ukraine's administrative procedural law, including the impact of its neighbors and the decision to join the European Union. Legal regulation in such legislative acts and the effects of the Austrian, American, and German administrative procedural acts are covered in the article's conclusion.

The analysis yields an overview of the importance and benefits of legislation on administrative procedures in Ukraine and internationally, highlighting the need for clear rules, consistency, and protection of rights in administrative actions.

This insightful article delves deeply into the significance of legislative regulation in modern states, specifically focusing on the dynamic interaction between public administration bodies and private individuals or legal entities. It sheds light on the remarkable evolution of administrative procedural legislation that took place in prosperous countries during the latter part of the 20th century. The primary aim of this article is to provide a comprehensive insight into the formation and profound importance of administrative procedural legislation in Ukraine, while also drawing enlightening comparisons with other nations.

The article emphasizes that implementing a unified law on administrative procedures brings about numerous advantages and benefits for society. These include enhanced transparency in decision-making processes, improved efficiency in administrative proceedings, and effective safeguarding of the rights and interests of both individuals and organizations. To substantiate these claims, the article draws upon global experiences and prevailing trends in the adoption of administrative procedural legislation, emphasizing its widespread presence and impact across different countries and regions.

It has been established that Ukraine may benefit much from other nations' expertise in creating trustworthy administrative systems. The General Administrative Procedure Act of the Republic of Austria (1925), the Administrative Procedure Act of the United States (1946), and the Administrative Procedure Act of the Federal Republic of Germany (1976) are found to have had the greatest influence on the creation and development of administrative procedure legislation in the 20th century.

The essay focuses on the multiple advantages and benefits for society that result from the application of single legislation on administrative processes.

The article explores the historical context of administrative procedural legislation in Ukraine, explaining the influences of neighboring countries and the ongoing process of European integration. It provides a comprehensive overview of the various factors that have shaped the development of administrative procedural legislation in Ukraine, underscoring the country's efforts to align its legal framework with international standards and best practices.

In conclusion, the article examines the subject and content of legislative acts concerning administrative procedures, offering insightful examples from countries such as Austria, the United States, and Germany. These countries are recognized as pioneers in administrative procedural legislation and have significantly influenced the development and implementation of such laws. By showcasing these examples, the article highlights the global significance of administrative procedural legislation and its role in shaping modern governance systems.

**Keywords:** legislative regulation, public administration bodies, private entities, essential element, legal system

## Introduction

In a modern state, legislative regulation of the relationship between public administration bodies and private (individual and legal) entities is an essential element of the legal system. Throughout the second half of the 20<sup>th</sup> century, several mandatory rules were established in various well-developed countries, legislation on administrative procedure was systematized and certain legislative acts were adopted.<sup>1</sup>

When adopting administrative acts concerning the rights and obligations of specific individuals, it is required that the following rights be safeguarded: the right to be heard before the adoption of a negative (adverse) decision; the right to assistance and representation; the right to read case materials. Also, administrative bodies have an obligation to justify acts issued not in favour of the applicant and to indicate a procedure for their appeal, among other things. These and other rights of individuals and obligations of administrative bodies are enshrined in laws on administrative procedures.<sup>2</sup>

The following persons are leading specialists who have been engaged in the study of the issues of formation and development of legislation on administrative procedures in Ukraine V.B. Averyanov, O.F. Andriyko, D.S. Astakhova, I.V. Boyko, Sh.N. Gadjeva, D.A. Kozachuk, T.O. Kolomoets, V.K. Kolpakova, A.T. Komziuk, O.V. Kuzmenko, O.S. Lagoda, O.V. Muza, A.Yu. Osadchyi, V.G. Perelyuk, N.B. Pysarenko, D.V. Pryimachenko, V.P. Tymoshchuk, A.M. Shkolikata, and others.

The article aims to foster a general understanding of the formation, role and significance of legislation on administrative procedures in Ukraine. We will attempt to emphasize similar approaches taken by other countries, which will help us grasp the importance of adopting such law and implementing it in practice. While working on the article the historical-legal, formal-dogmatic and comparison methods were used.

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- 1 А. Школик, *Виклики становлення законодавства про адміністративну процедуру на сучасному етапі*, „Вісник Львівського університету. Серія «Юридична»” 2012, № 55, С. 134–138 [A. Shkolyk, *Viklyki stanovlennia zakonodavstva pro administrativnu protseduru na suchasnosti etapi*, „Visnik L-vivs-kogo universitetu. Seriiia «Iuridichna»” 2012, No. 55, s. 134–138].
  - 2 А. Школик, *Закон України «Про звернення громадян» та проект Адміністративно-процедурного кодексу: основні відмінності*, „Вісник Львівського університету. Серія «Юридична»” 2011, № 53, С. 171–176 [A. Shkolyk, *Zakon Ukraini “Pro zvernennia gromadian” ta proekt Administrativno-protsedurnogo kodeksu: osnovni vidminnosti*, „Visnik L-vivs-kogo universitetu. Seriiia «Iuridichna»” 2011, No. 53, s. 171–176].

## Advantages of adopting a law on administrative procedure

Implementing a unified law on administrative procedure will have a positive impact on the process of making administrative decisions by authorities, enhancing transparency and efficiency. The adoption of such a law yields in a clearly defined procedure for the interaction between administrative bodies and individuals or legal entities who seek to execute and protect their rights and interests.

Such provisions are reflected in certain resolutions and recommendations of the Committee of Ministers of the Council of Europe, in particular, Resolution No 77(31) of the Committee of Ministers of the Council of Europe on the protection of the individual in relation to the acts of administrative authorities (dated 28.09.1977), Recommendation No. R(80)2 concerning the exercise of discretionary powers by administrative authorities (dated 11.03.1980), and Recommendation No R(87)16 on administrative procedures affecting a large number of persons (dated 17.09.1987). These documents provide guidance and recommendations on protecting the rights of individuals and ensuring fair procedures in administrative actions.<sup>3</sup>

The beginning of the regulatory framework for an administrative procedure in Ukraine dates back to the late 20<sup>th</sup> century when the Concept of Administrative Reform in Ukraine was approved by the Decree of the President of Ukraine No. 810 on 22 July 1998. The first draft of the Administrative Procedure Code was opened for examination as early as 2004. Several attempts to develop and approve the Administrative Procedure Code concluded with a proposal from the Ministry of Justice of Ukraine to discuss the draft Law of Ukraine on administrative procedure.<sup>4</sup>

The Soviet period did not contribute to the proper development of both the legal doctrine of administrative procedure and the corresponding legislation, even after the lifting of the ban on the teaching and researching police law.<sup>5</sup>

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3 Including Resolution (77) 31 On the protection of the individual in relation to the acts of administrative authorities and Recommendation CM/Rec (2007)7 of the Committee of Ministers to member states on good administration.

4 А. Школик, *Адміністративно – процедурне законодавство та його систематизація: монографія*, Одеса 2020, С. 10–12 [A. Shkolyk, *Administrativno - protsedurne zakonodavstvo ta iogo sistematzatsiia: monografiia*, Odesa 2020, s. 10–12] <https://zakon.rada.gov.ua/laws/show/2073-20#Text>.

5 А. Школик, *Правове регулювання адміністративної процедури у державах – колишніх республіках Радянського Союзу. Проблеми державотворення і захисту прав людини в Україні: матеріали XXV регіональної науково-практичної конференції, Львів 7–8 лютого 2019, Ч. 2, С. 73–76.* [A. Shkolyk, *Pravove regulivannia administrativnoi protseduri u derzhavakh – kolishnikh respublikakh Radians-kogo Soiuzu. Problemi derzhavotvorennya i zakhistu prav liudini v Ukraini: materialy XXV regional-noi nauково-praktichnoi konferentsii*, L-viv 7–8 liutogo 2019, ch. 2, s. 73–76].

The period before the declaration of independence, specifically the late 1980s, saw publication of works that addressed administrative procedure. These include the collective monograph *Administrative Procedures*<sup>6</sup> edited by B.M. Lazarev, as well as the work *Administrative Procedural Law*<sup>7</sup> by V.D. Sorokin.

In addition, professor Shkolyk demonstrates on page 11 of his monograph that the Republic of Poland, to which a significant part of the western territories of modern Ukraine belonged during the interwar period, introduced its own administrative procedural legislation thus following the European legal development. Based on the first European codification of administrative procedural legislation, the Austrian codification, the Presidential Decree with the force of law, Administrative procedural legislation and its systematization (Polish: O postępowaniu administracyjnym), was adopted in 1928<sup>8</sup> and remained in effect for over three decades. Unfortunately, this is little known to contemporary Ukrainian lawyers and representatives of administrative law science.<sup>9</sup>

Because of these historical circumstances, administrative-legal research on the legal framework of administrative procedure in Ukraine essentially resumed only in the late 1990s. As a result, the draft Administrative Procedure Code (later renamed as “the draft Law on administrative procedure”) was developed.<sup>10</sup>

Considering Ukraine’s opting for European integration, it is worth noting the trend of the past decade toward enhancement of administrative procedural legislation. This trend can be observed both at the level of pan-European institutions,

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6 И.Л. Бачило, А.С. Васильев, Н.Ф. Воробьев, И.Л. Давитнидзе и др., *Управленческие процедуры*, отв. ред. Б.М. Лазарев, Наука 1988, С. 272. [I.L. Bachilo, A.S. Vasilev, N.F. Vorobev, I.L. Davitnidze i dr., *Upravlencheskie protsedury*, отв. red. B.M. Lazarev, Nauka 1988, s. 272].

7 В. Сорокин, *Административно-процессуальное право*, Юридическая литература 1972, С. 95–106 [V. Sorokin, *Administrativno-protseussual-noe parvo*, Iuridicheskaja literatura 1972, s. 95–106].

8 E. Ochendowski, *Postępowanie administracyjne i sądowo administracyjne. Wybór orzecznictwa*, 19, Toruń 2000, p. 367.

9 А. Школик, *Правове регулювання...*, С. 78–81 [A. Shkolyk, *Pravove reguliuvannia...*, s. 78–81].

10 А. Школик, *Виклики становлення...*, С. 134–138 [A. Shkolyk, *Vikliki stanovlennia...*, s. 134–138]; А.М. Школик, *Доцільність ухвалення загального закону (кодексу) про адміністративну процедуру. Проблеми державотворення і захисту прав людини в Україні: матеріали XXVI регіональної науково-практичної конференції*, Львів 7–8 лютого 2020, Ч. 2, С. 134–138 [A.M. Shkolyk, *Dotsil-nist- ukhvalennia zagal-nogo zakonu (kodeksu) pro administrativnu protseduru. Problemi derzhavotvorennia i zakhistu prav liudini v Ukraini: materialy XKhVI regional-noi naukovo-praktichnoi konferentsii*, L-viv 7–8 liutogo 2020, ch. 2, s. 134–138].

primarily the Council of Europe and the European Union, as well as in the development of legislative acts of individual European states.<sup>11</sup>

Later, a series of draft laws were submitted, which were also welcomed both within the Parliament and within the scientific-professional community. However, none of these draft laws has become law. Therefore, before the registration of draft law 3475, there were, so to speak, historical preconditions for its adoption.<sup>12</sup>

### International experience in adopting legislation in the field of administrative procedure

As for foreign experience, legislation in administrative procedure has long existed in many countries in the world and has become a prerequisite for the adoption of draft law 3475. In his dissertation titled *Administrative Procedures in Ukraine and European Countries: Comparative Legal Aspect*, researcher Dmytro Sushchenko notes: («Адміністративні процедури в Україні та країнах Європи: порівняльно-правовий аспект»), “The regulation of the category of ‘administrative procedure’ varies in different parts of the world.” Thus, starting from the 2020s and up to today, numerous countries have systematized legislation on administrative procedure and adopted separate legislative acts (Austria in 1925, Poland and Czechoslovakia in 1928, Yugoslavia in 1930, the USA in 1946, Hungary in 1957, Spain in 1958, Germany in 1976, Denmark in 1985, Italy and Austria in 1990, the Netherlands in 1992 (effective since 1994), Japan in 1994, etc.). The emergence of administrative procedural law had a direct impact on the process of codification. The institution of administrative procedure started to form in certain Western states as early as the 19th century. Austria passed its Law on administrative courts in 1875 and Italy adopted its Law on administrative proceedings in 1889. It regulated the judicial procedure, including the administrative process, relating to resolving certain cases in the courts.<sup>13</sup>

11 The Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407). Article 41, directly applies to institutions and officials of the EU. However, as clearly stated in the explanations to the Charter, the right to good administration is based on the case law of the European Court of Justice regarding good administration as a general principle of EU law. Such general principles are also binding on EU member states when they act within the scope of EU law.

12 The Law of Ukraine on administrative procedure of 17 February 2022, No. 2073-IX will enter into force on 15 December 2023.

13 Д. Сущенко, *Адміністративні процедури в Україні та країнах Європи: порівняльно-правовий аспект, кандидатська дисертація*, Запорізький національний університет 2018 [D. Sushchenko, *Administrativni protseduri v Ukraïni ta kraïnakh Evropi: porivnialno-pravovii*

Shkolyk, in his study («Адміністративно-процедурне законодавство в Україні: становлення та систематизація»), *Administrative-procedural legislation in Ukraine: formation and systematization*, notes:

“in many states neighbouring Ukraine, administrative-procedural legislation developed in accordance with general European trends. The systematization of administrative and procedural legislation, in particular the adoption of the first codification acts, began there in the 2020s. Since that time, in many countries of Eastern Europe (for example, in the Republic of Poland, Hungary and Yugoslavia), despite the objective processes of rapprochement with the Soviet legal system, general laws or codes on administrative procedure (or on administrative proceedings) have been adopted and remain in force”.<sup>14</sup>

For example, Georgia adopted its General Administrative Code in 1999,<sup>15</sup> Azerbaijan adopted its Law on administrative proceedings of the Republic of Azerbaijan in 2005,<sup>16</sup> Switzerland passed its Federal Act on administrative procedure in 1968,<sup>17</sup> Germany enacted the Administrative Procedure Act in 1976,<sup>18</sup> while Poland passed its Code of Administrative Procedure in 1960.<sup>19</sup>

However, the main trend in the development of administrative-procedural legislation in various countries of the world during the last almost one hundred years involves placement of defining administrative-procedural norms in the general law (or code). This trend continues. As of today, we do not have complete information about all the existing countries of the world, but we can unequivocally state that the number of states that have systematized national legislation on administrative

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*aspekt, kandidats-ka disertatsiia*, Zaporiz-kii natsional-nii universitet 2018] [http://phd.znu.edu.ua/page/dis/07\\_2018/Sushchenko.pdf](http://phd.znu.edu.ua/page/dis/07_2018/Sushchenko.pdf).

- 14 А. Школик, *Адміністративно-процесуальне законодавство України: становлення та систематизація. Докторська дисертація (анотація)*, Запорізький національний університет 2021, [А. Shkolyk, *Administrativno-protsesual-ne zakonodavstvo Ukraini: stanovleniia ta sistematzatsiia. Doktors-ka disertatsiia (anotatsiia)*, Zaporiz-kii natsional-nii universitet 2021 [http://phd.znu.edu.ua/page/aref/07\\_2021/shkolyk\\_avtoreferat.pdf](http://phd.znu.edu.ua/page/aref/07_2021/shkolyk_avtoreferat.pdf) (access: 15.05.2023).
- 15 Georgia. General Administrative Code of Georgia, Law No. 2372, 9 September 1999, <https://mat-sne.gov.ge/en/document/download/16270/18/en/pdf> (access: 15.05.2023).
- 16 Republic of Azerbaijan. On Administrative Proceedings, Law No. 1036-IIQ, 21 October 2005 <https://justice.gov.az/senedler/58?culture=en> (access: 15.05.2023).
- 17 Swiss Confederation. Federal act on administrative procedure (Administrative Procedure Act, APA), 20 December 1968, [https://legislationline.org/sites/default/files/documents/86/Swiss\\_Fed\\_Act\\_Administrative\\_Procedure\\_2013\\_en.pdf](https://legislationline.org/sites/default/files/documents/86/Swiss_Fed_Act_Administrative_Procedure_2013_en.pdf) (access: 15.05.2023).
- 18 Federal Republic of Germany. Administrative Procedure Act (Verwaltungsverfahrensgesetz), 25 May 1976, <https://germanlawarchive.iuscomp.org/?p=289> (access: 15.05.2023).
- 19 Republic of Poland. Code of Administrative Proceedings of 14 June 1960 (consolidated text, Dz.U. (Journal of Laws) No. 98 item 1071) (access: 15.05.2023).

procedure is constantly growing. This opinion is expressed by professor Shkolyk and other leading scholars in administrative law.<sup>20</sup>

It is difficult to find a European country in which a general law (or code) on administrative procedure has not been adopted, and some have their second or even third editions in force. Exceptions are not numerous, and they include, for example, Romania, whose law, by virtue of historical ties, objectively gravitates towards French legislation, in which the general administrative-procedural code has only recently been adopted. However, in recent years, considering the general trend of Europeanization, the expediency of adopting a general law on the administrative procedure is also substantiated in the Romanian legal doctrine, and its approval is only a matter of time.<sup>21</sup>

This trend is also clearly seen on other continents. For example, in South America, general laws (or codes) are in force in Brazil, Peru and Chile, in Asia - in Japan, South Korea, and Taiwan. The attractiveness of the analyzed model was presented by Oxford University professor D. Galligan, who highlighted several advantages of adopting a general law (or code) on administrative procedure. To start with, it brings order and consistency to the way administrative bodies use their powers. This order serves efficiency and economy of decision-making. Secondly, there is no need to develop procedures every time a new administrative case appears; instead, the code acts as a common denominator for various types of administrative actions, which can change as necessary. Also, an administrative-procedural code establishes minimum standards that must be observed in all areas of administration. The risk of having no single code is that procedures will vary depending on the context. While some of them may be fitting for more than a code would, others may be insufficient. Administrative and procedural codes contain general principles that must be applied in the practice of public administration.<sup>22</sup>

Galligan's opinions are more than appropriate and relevant, because they help to form a unified approach to the examination and vision of solving a certain similar case. With his examples and justifications, he shows and explains what harm it can

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20 А. Школи, *Адміністративно-процедурне...*, С. 166–231 [A. Shkolyk, *Administrativno – protsedurne...*, s. 166–231].

21 E. Balan, T. Troanta Rebeles, *General Principles of the Administrative Procedure: The Romanian Perspective*, “Transylvanian Review of Administrative Sciences” 2007, No. 20, pp. 13–29.

22 Д. Галлиган, В. Полянский, Ю.Н. Стариков, *Административное право: история развития и основные современные концепции*, *Юристъ* 2002, С. 342–365 [D. Galligan, V. Polianskii, Ju.N. Starilov, *Administrativnoe pravo: istoriia razvitiia i osnovnye sovremennye kontseptsii*, *Iuristie* 2002, s. 342–365].



do to society when there is no single procedural act. Therefore, I believe that Galigan's position is appropriate and I fully share it.<sup>23</sup>

One of the key questions, which also almost always arises when adopting general laws (or codes) on administrative procedure, concerns the subject of their legal regulation. Legislation drafters in all countries must determine issues that will be stipulated in such laws.<sup>24</sup>

As the comparative legal analysis of the adopted acts shows, the developers mainly focus on similar laws in states in which general acts operate sufficiently effectively. In the historical and legal context, we dare to assert that the formation and development of administrative-procedural legislation in the 20th century were most influenced by the following legislative acts: the General Administrative Procedure Act of the Republic of Austria of 1925, the United States Administrative Procedure Act of 1946 and the Administrative Procedure Act of the Federal Republic of Germany of 1976.<sup>25</sup>

We will dwell on the history of adoption and content of each of them in more detail. Many modern researchers note the Austrian primacy regarding the adoption of the general act on administrative procedure. However, before highlighting the Austrian systematization of administrative-procedural legislation, we will also mention two other such attempts which took place at the end of the 19th century in different parts of the European continent.<sup>26</sup>

One was the adoption in 1889 of the law of the Kingdom of Spain, the Law on the basics of administrative proceedings" (Spanish: *Ley de Bases de Procedimiento Administrativo*). As the name implies, this legislative act provided a framework which later became the basis for the model of systematization of the relevant

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23 А. Школик, *Виклики становлення...*, С. 134–138. [A. Shkolyk, *Viklyki stanovlennia...*, s. 134–138].

24 А. Школик, *Індивідуальні адміністративні акти як основна форма діяльності державного управління*, „Вісник Запорізького національного університету. Серія права” 2012, № 1(1), С. 329–334 [A. Shkolyk, *Individual-ni administrativni akti yak osnovna forma diial-nosti derzhavnogo upravlinnia*, „Visnik Zaporiz-kogo natsional-nogo universitetu. Seriiu prava” 2012, No. 1(1), s. 329–334].

25 The Law of Ukraine on administrative procedure: general transparent rules of interaction between the state and citizens and businesses – Manual for public servants, Kyiv 2022, p. 75.

26 <https://www.sigmaweb.org/publications/Implementation-laws-administrative-procedure-Ukrainian-SIGMA-Paper-62-2021.pdf>.

legislation. It defined the legal basis of the procedures applied by the public administration, while individual ministers could define special principles for individual departments.<sup>27</sup>

The subject of regulation of ministerial acts involved registration of submitted applications, sequence and deadlines for resolving cases, instructions, getting expert opinions, hearing the parties, the procedure for taking decisions and appeals. In other words, according to modern terminology, most administrative and procedural norms in Spain at that time were contained in special legal acts of relevant ministries, and the mentioned Law regulated only the most general aspects of administrative procedure.<sup>28</sup>

The Spanish law of 1889 was replaced more than half a century later, when in 1958 a new legislative act on administrative proceedings was adopted, which aimed to unify existing approaches to legal regulation, but did not prevent the deepening of differences between the various areas of application of administrative procedure.<sup>29</sup>

Along with this, let us hypothesize that because of linguistic and cultural ties, the contents of both above-acts of Spanish legislation were used in various historical periods in the states of Latin America, many of which later adopted their own general laws (or codes) on administrative the procedure.

In the 19th century, attempts were also made to adopt legislative acts containing administrative and procedural norms in individual German states. As early as 1884, the state of Baden adopted a legislative Act on the procedure for conducting dispute-administrative proceedings in self-governing administrative bodies. As we can see, even the name of this legislative act testifies to its limited and rather narrow subject of legal regulation.<sup>30</sup>

The Austrian systematization of administrative-procedural legislation resulted from scientific developments started in the days of the Austro-Hungarian Empire and was also based on the decisions of the Administrative Tribunal, which operated for several decades. As follows from the presented list of adopted legislative acts, it was the first time that they clearly identified the general administrative procedure. In this way, the existence of special administrative procedures regulating certain spheres of public administration was also recognized.

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27 A. Школик, *Адміністративно-процедурне...*, С. 166–231 [A. Shkolyk, *Administrativno – procedurne...*, s. 166–231].

28 A. Shkolyk, *Administrative and Procedural Law: Idea and Implementation*, “Lex Portus: Law Science Journal” 2017, No. 5, pp. 30–40.

29 I. Ortega, *A Comparison with the Spanish Regulation of Administrative Procedures*, “Italian Journal of Public Law” 2010, No. 10, pp. 296–297.

30 A. Shkolyk, *Administrative...*, pp. 197–234.

The Law on general administrative procedure of the Republic of Austria defined principles that ensured a higher level of legal certainty, unified and simplified administrative proceedings and specified procedural guarantees of the rights of private individuals in such proceedings.<sup>31</sup>

When it comes to natural persons, the law safeguarded in particular: the right of a party to be heard by the body deciding the case, the right to establish facts based on evidence gathered, while creating an opportunity for persons involved to take part in the collection of the evidence base; the duty of the body to remove from examination of the case an administrative employee regarding whom doubts have arisen regarding his impartiality (institution of revocation); the body's duty to justify its decision and the admissibility of the renewal of administrative proceedings in the event of occurrence of circumstances established by law.<sup>32</sup> Today, such norms are no longer surprising to specialists in administrative and procedural law, but almost a hundred years ago, they were significant innovations.

The high quality of the Austrian Law on general administrative procedure and the legislative acts adopted in parallel, as well as the overall authority of the Austrian legal system, led to the adoption of similar normative legal acts by the new states formed after the collapse of the Austro-Hungarian Empire. Poland and Czechoslovakia took the Austrian law as a basis when enacting their general administrative procedure laws in 1928 and so did Yugoslavia in 1931.<sup>33</sup>

After the Second World War, following political and economic changes, these Eastern European countries updated their normative legal acts on general administrative procedure (Czechoslovakia in 1955, Yugoslavia in 1956, and Poland in 1960).<sup>34</sup>

The content of these amended acts continued to be based on the Austrian law and on the previous domestic regulation, with clear consideration to the new socio-political circumstances.

In other European countries, the influence of the first Austrian systematization of administrative-procedural legislation existed but was objectively smaller. For example, elements of the Austrian approach can be found in the decree of the President of Estonia of 30 December 1935, Code of Administrative Procedure, which was in effect until the country lost its independence in 1940. In common law states,

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31 *Ibidem*, pp. 197–234.

32 *Ibidem*, pp. 157–194.

33 *Ibidem*.

34 *Ibidem*, pp. 166–226.

the role of legislative acts in the system of sources of law is traditionally smaller, which may explain why such regulation was only adopted there much later.<sup>35</sup>

However, in the 1930s in the United States of America, in connection with introducing a new economic policy, the number of administrative bodies (agencies) and their powers increased significantly. The role of the norms of public (primarily administrative) law in ensuring their activity began to objectively grow. These many administrative agencies were empowered to decide and take actions that significantly affected the rights of private individuals and the public welfare. As a result, each agency created its own idiosyncratic procedures.<sup>36</sup>

### Conclusions

Our research on the state of legal regulation of administrative procedure in modern Ukraine has shown a significant and sometimes predominant role of subordinate normative acts. As Shkolyk writes,

“The prolonged absence of a general law (or code) on an administrative procedure in the Soviet Union and later in Ukraine led to the objective consolidation of separate administrative procedural norms in special legislative acts dedicated to specific spheres of executive authority, as well as in framework legislative acts that regulate the extensive functions of public administration (such as the provision of administrative services or regulatory and supervisory activities). Consequently, citizens and economic entities encounter significantly different procedures in various spheres, which was not always justified.

Furthermore, the legal regulation of administrative procedure in special and framework legislative acts cannot be considered sufficient and in line with modern standards, which leads to its forced detailed regulation in sub-legal normative acts. This situation results in the orientation of public officials towards sub-legal regulation, despite the hierarchical structure of normative acts established by the Constitution of Ukraine<sup>37</sup>.

We can see that the fragmentation persisted until 2022. There was no willingness by the legislator to gather, formulate, and adopt a unified, codified law. The events that occurred before the declaration of independence on 24 August 1991 did not show positive progress or development, not only in administrative legislation but overall. Even today, we observe the unwillingness of the successor state of the

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<sup>35</sup> Ibidem, pp. 166–231.

<sup>36</sup> R. Pierce, S. Shapiro, P. Verkuil, *Administrative Law and Process*, New York 1999, p. 17.

<sup>37</sup> A. Shkolyk, *Administrative and Procedural Law...*

Soviet Union - Russia, to let Ukraine move forward and embrace new horizons. It has employed the same method in the Soviet Union, and today we see that nothing has changed. Therefore, the struggle for independence, the expression of one's will, and the aspiration for a better future bring involve considerable hardships. Thus, the experience that exists today in decision-making and setting new standards in all developed countries will be necessary for us in shaping the system of administrative procedure and adapting it to the the domestic order.<sup>38</sup>

The specific administrative procedures of American federal agencies pertained to performing similar functions but varied significantly depending on the agency and sometimes even within specific cases within an agency. Considering this, the development of a comprehensive legislative act on administrative procedure began in the United States as early as the 1930s and was a response to the issues referred to above regarding the legal framework governing the activities of administrative agencies.<sup>39</sup> The attempt to legislate administrative procedures in Ukraine is not a new endeavour, while many other countries have already done so long ago. The experience of other states is highly valuable for our country in the formation of a robust system of administrative procedure, based on existing legislative acts and auxiliary measures that are currently being implemented.

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<sup>38</sup> Ibidem, pp. 166–231.

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## Międzynarodowe doświadczenia w tworzeniu ukraińskiego prawa postępowania administracyjnego

### Streszczenie

W niniejszym artykule opisano rozwój, funkcję oraz ważkość ukraińskiego prawa regulującego postępowanie administracyjne. Podkreślono znaczenie ustawowej regulacji we współczesnych państwach, w szczególności w relacjach między służbami administracji publicznej a osobami fizycznymi lub przedsiębiorstwami. Dokonano analizy praw i obowiązków wynikających z czynności administracyjnych, w tym prawo do bycia wysłuchanym, do pomocy oraz reprezentacji, jak również prawo dostępu do akt sprawy. Podkreślono korzyści przyjęcia

jednolitego prawodawstwa w sferze postępowania administracyjnego, w tym udoskonalone wydawanie decyzji, skuteczność i przejrzystość, jak również zapewnienie zdefiniowanego procesu interakcji między władzami administracyjnymi a jednostkami lub osobami prawnymi. W opracowaniu zaakcentowano tendencję do tworzenia ogólnych przepisów lub kodeksów dotyczących postępowania administracyjnego, jednocześnie analizując światowe doświadczenia w zakresie ustawodawstwa dotyczącego tegoż w różnych krajach. Dokonano analizy trendów historycznych w administracyjnym prawie procesowym Ukrainy, w tym wpływu, jaki wywarły na nie sąsiadujące z nią kraje oraz decyzja o wstąpieniu do Unii Europejskiej. Regulacje prawne zawarte w takich aktach ustawodawczych oraz wpływy austriackich, amerykańskich i niemieckich aktów w postępowaniach administracyjnych są opisane we wnioskach.

Niniejsza analiza rzuca światło na znaczenie i korzyści płynące z ustawodawstwa dotyczącego postępowania administracyjnego w Ukrainie oraz poza jej granicami, podkreślając potrzebę jasnych zasad, konsekwencji oraz ochrony praw w czynnościach administracyjnych.

Artykuł zgłębia znaczenie regulacji ustawodawczej we współczesnych krajach, skupiając się w szczególności na dynamicznej interakcji między organami administracji publicznej a jednostkami lub podmiotami prawnymi. Niniejsze opracowanie daje wgląd w niezwykłą ewolucję ustawodawstwa dotyczącego postępowania administracyjnego, jaka miała miejsce w zamożnych krajach w drugiej połowie dwudziestego wieku. Głównym celem artykułu jest przedstawienie kompleksowego przeglądu formowania się oraz niezwyklej ważkości ustawodawstwa dotyczącego postępowania administracyjnego w Ukrainie, a jednocześnie jego porównanie z innymi państwami.

Podkreślono, że wprowadzenie jednolitego prawa postępowania administracyjnego przynosi niezliczone korzyści społeczeństwu. Należą do nich m.in.: zwiększona przejrzystość procesów wydawania decyzji, poprawa efektywności postępowań administracyjnych i skuteczna ochrona praw i interesów zarówno jednostek, jak i organizacji. Aby uzasadnić te twierdzenia, w artykule odwołano się do globalnych doświadczeń i dominujących trendów w ustanawianiu ustawodawstwa dotyczącego postępowania administracyjnego, podkreślając jego powszechną obecność i wpływ w różnych krajach i regionach na całym świecie.

W opracowaniu przeanalizowano kluczową rolę, jaką regulacje prawne odgrywają we współczesnych rządach, zwracając szczególną uwagę na dynamiczne powiązania między organami administracji publicznej a osobami prywatnymi lub przedsiębiorstwami. Niniejsze opracowanie rzuca światło na rozwój prawa administracyjnego, jaki miał miejsce w krajach rozwiniętych w ostatnich dekadach dwudziestego wieku. Głównym celem artykułu jest zapewnienie dogłębnego zrozumienia rozwoju i kluczowego znaczenia prawa administracyjnego proceduralnego w Ukrainie, jak również dokonanie wnikliwych porównań z innymi krajami.

W artykule ustalono, że Ukraina może czerpać wiele korzyści z wiedzy innych państw w tworzeniu godnych zaufania systemów administracyjnych. Sformułowano również wniosek, że ustawa o ogólnym postępowaniu administracyjnym Republiki Austrii (1925), ustawa o postępowaniu administracyjnym Stanów Zjednoczonych (1946) i ustawa o postępowaniu administracyjnym Republiki Federalnej Niemiec (1976) miały największy wpływ na

tworzenie i rozwój ustawodawstwa dotyczącego postępowania administracyjnego w dwudziestym wieku.

W pracy skoncentrowano się na licznych korzyściach dla społeczeństwa, które niesie ze sobą stosowanie jednolitego ustawodawstwa dotyczącego postępowania administracyjnego. Zbadano kontekst historyczny ustawodawstwa dotyczącego postępowania administracyjnego w Ukrainie oraz wyjaśniono wpływy sąsiednich krajów i trwający proces integracji europejskiej. Przedstawiono kompleksowy przegląd różnych czynników, które ukształtowały rozwój ustawodawstwa dotyczącego postępowania administracyjnego w Ukrainie, podkreślając wysiłki podejmowane przez ten kraj w celu dostosowania swoich ram prawnych do międzynarodowych standardów i najlepszych praktyk.

Podsumowując, niniejszy artykuł analizuje przedmiot i treść aktów ustawodawczych dotyczących postępowania administracyjnego, oferując inspirujące przykłady z takich krajów jak Austria, Stany Zjednoczone i Niemcy. Kraje te są uznawane za pionierów w dziedzinie prawodawstwa dotyczącego postępowania administracyjnego i wywarły znaczący wpływ na rozwój i wdrażanie takich przepisów. Przedstawiając te przykłady, podkreślono globalne znaczenie prawodawstwa dotyczącego postępowania administracyjnego i jego rolę w kształtowaniu nowoczesnych systemów rządów.

**Słowa kluczowe:** regulacja ustawodawcza, organy administracji publicznej, osoby prywatne, kluczowy element, system prawny

#### CYTOWANIE

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