CONCEPTUAL MODEL OF ADMINISTRATIVE PROCEDURE FOR UKRAINE

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Abstract: *The purpose of the study is to develop a conceptual model of the administrative procedure for Ukraine, which will help prevent the negative impact of administrative barriers and will be aimed at protecting human rights. When conducting a study on the conceptual model of the administrative procedure for Ukraine, a systematic approach was used, which allowed considering the subject as a set of interrelated elements. The dialectical method became the methodological basis of the research, since, using it, reasonable conclusions and recommendations were obtained in the field of the conceptual model of the administrative procedure for Ukraine. The Aristotelian method was used to define the main concepts in the field of administrative procedures. Based on the formal legal method, the legal terms, concepts, and processes that are enshrined in the legislation on administrative procedures were analysed. The article defines that for the Ukrainian model of administrative procedure, reception of European models is not suitable, since it does not consider all the features of fragmentary national legislation in the procedural sphere, which regulates certain types of administrative proceedings. Such models can be used as a guide for creating a model. The law of Ukraine "On administrative procedure" presents a model of administrative procedure, yet this law has not yet been adopted due to the discrepancy between the declared scope of relations of the procedure that is the subject of regulation and the actual relations to which the relevant provisions can be applied. The study suggests making changes to the definitions of the principles of administrative procedure; expanding the types of its proceedings: general – proceedings on the initiative of the subject of the appeal; proceedings on the initiative of the subject of power (administrative body); special – proceedings in the activities of collegial administrative bodies; competitive administrative proceedings – within the framework of competitive and alternative administrative procedure.*

Keywords: good administration, principles of administrative procedures, administrative proceedings, public administrative activities, mediation in the public legal sphere.

The existence of effective legal regulation of administrative procedures is of great importance for the protection of the rights and freedoms of individuals in relations with public administration bodies[1]. Similarly, I. Yuriychuk[2] notes that one of the public needs of every person is administrative

[1] J. Mikhailyuk, "Administrative appeal: Current state and prospects of development", in *Legal Bulletin*, 2020, vol. 4, p. 56-61; O.V. Skrypniuk, N.M. Onishchenko, N.M. Parkhomenko, "Awareness in law as strategical direction of legal policy", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 5, p. 1534-1540.

[2] I. Yuriychuk, "Legal regulation of administrative procedures in Ukraine", in *Enterprise, Economy and Law*, 2020, vol. 6, p. 162-167.

procedures, which are the common public good that ensures the exercise of the rights and freedoms of every person in relations with public administration. Administrative procedures are the basis of public administration activities in modern society. Public administration is the closest to an individual: it affects all processes in the state, creates conditions for the exercise of human rights and the fulfilment of duties, and makes decisions that are binding on other subjects[3]. Nevertheless, administrative procedures are important not only for its participants and their legal relations. Through an administrative procedure, administrative bodies protect the public interest and participate in the regulation of public relations. Currently, it is impossible to manage state affairs without an administrative procedure, which is irreplaceable in this aspect[4].

D. Dragons highlights the following advantages of administrative procedures: protecting the rights of the parties, collecting information, making informed decisions and, consequently, improving the legality of the final decision[5]. The disadvantages include the need for resources in terms of time, the need for personnel and funding for an effective decision-making procedure. Therewith, A. Luchterhandt[6], upon analysing the legislation of the European Union on administrative procedures, identified four main purposes of its adoption: 1) strengthening the position of the citizen as the bearer of fundamental rights in relations with public administration; 2) ensuring the legal statehood of management activities; 3) Improving the quality of management decisions in terms of their professional correctness and effectiveness; 4) ensuring the rule of law certainty in the state due to the fact that administrative decisions cannot be made or cancelled by institutions and officials, on their will, arbitrarily, only if there are appropriate prerequisites and within the framework of the procedure in accordance with the principles of the rule of law[7].

Notably, practice shows that the introduction of certain types of administrative procedures reduces their effectiveness and creates administrative barriers. Hence, the principles of administrative procedure become crucial, which, on the one hand, are designed to limit the discretion of public authorities, on the other – to provide maximum freedom to individuals in the

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[3] I.V. Boiko, O.T. Zyma, Yu.V. Mekh, O.M. Soloviova, V.A. Somina, "Administrative procedure: European standards and conclusions for Ukraine", in *Journal of Advanced Research in Law and Economics*, 2020, vol. 7, p. 1968-1975.

[4] K. Rozsnyai, L. Potěšil, J. Olszanowski, M. Horvat, "Simplification of administrative procedure on the example of the Czech Republic, Poland, Slovakia, and Hungary (V4 Countries)", in *Administrative Sciences,* 2021, vol. 9, p. 1-13.

[5] D. Dragos, *Administrative procedure*, Springer International Publishing, New York, 2016.

[6] O. Luchterhandt, "Modern administrative procedural law and bill of Administrative Procedural Code of Ukraine", in *Administrative Procedures and Administrative Judiciary in Ukraine,* 2006, vol. 1, p. 25-33.

[7] A.V. Kostruba, "The rule of law and its impact on socio-economic, environmental, gender and cultural issues", in *Space and Culture, India*, 2019, vol. 7, no. 2, p. 1-2.

exercise of their rights and interests[8]. Those principles are tools by which constitutional values are embodied in the provisions of law regulating certain types of administrative proceedings[9].

D.V. Khabriyeva and Marku[10] present the unified procedure for performing actions and making decisions by subjects of administrative procedures in resolving an administrative case. The principles are an important element in building a full-fledged and effective model of administrative procedure and its legal regulation[11]. They allow correctly applying legislation in practice and filling in its gaps. Principles are a constant of procedure, the main guideline in law enforcement. The purpose of the principles is to strike a balance between public and private interests, including to protect non-governmental individuals from possible abuse of power by subjects of power; and most importantly, to ensure the unity of different types of proceedings, which should be integrated into the overall administrative procedure model through the main elements. For that reason, the study will also cover the content of the principles of administrative procedure.

Having reviewed the models of systematisation of administrative procedure legislation, A. Shkolyk notes that given the existing disordered and unbalanced administrative and procedural legislation, its systematisation is urgently necessary to fully ensure the exercise of the rights, freedoms, and legitimate interests of citizens and business entities[12].

Materials and methods

When conducting a study on the conceptual model of the administrative procedure for Ukraine, a systematic approach was used, which allowed considering the subject as a set of interrelated elements. The study also follows the principles of integrity, a hierarchy of structure, structuring, multiplicity,

[8] A.I. Alabugina, "Media operation in a conflict zone: Sociopsychological and ethical issues (The case study around Donbas)", in *Information Age,* 2020, vol. 4, no. 2. Available at: https://doi.org/10.33941/age-info.com42(11)2; N.V. Trusova, I.A. Kohut, S.A. Osypenko, N.G. Radchenko, N.N. Rubtsova, "Implementation of the results of fiscal decentralization of Ukraine and the countries of the European Union", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 6, p. 1649-1663.

[9] O. Yara, O.V. Kravchuk, "The grounds and conditions of securing a claim in administrative proceedings", in *Law. Human. Environment*, 2021, vol. 12, no. 2, p. 94-100.

[10] T.Ya. Khabriyeva, Zh. Marku, *Administrative procedures and control in the light of European experience,* Statut, Moscow, 2011.

[11] M.I. Lakhyzha, T.M. Lozynska, O.I. Cherchatyi, O.V. Dorofyeyev, O.A. Galych, "The development of the legal principles of public administration in the context of providing the rule of law in Ukraine: The role of the free legal aid system", in *Public Policy and Administration*, 2021, vol. 20, no. 2, no. 327-341.

[12] A.M. Shkolyk, "Models of systematization of administrative-procedural legislation", in *Bulletin of Lviv University*, 2016, vol. 64, p. 111-118.

consistency, etc. To achieve this purpose and ensure the scientific objectivity of the research results obtained, a set of modern general and special methods used in legal science has been selected. All methods are applied in an interconnected way, which ultimately contributes to ensuring the comprehensiveness, completeness, and objectivity of research results, correctness and consistency of conclusions. The dialectical method became the methodological basis of the research, since, using it, reasonable conclusions and recommendations were obtained in the field of the conceptual model of the administrative procedure for Ukraine. The article also uses methods of induction and deduction.

Using the analysis, which was based on decomposing the conceptual model of administrative procedure in Ukraine into its component parts, the object under study was divided and the properties and features of its parts were discovered. The synthesis method combined the parts obtained during the analysis into one whole. As a result of applying synthesis, the data obtained as a result of using analysis were combined into a single system[13].

The factor analysis allowed describing the conceptual model of the administrative procedure for Ukraine comprehensively and in a structured manner. The classification method separated and grouped the principles of administrative procedures contained in the legislation of Ukraine.

The genesis of scientific research in the field of administrative procedures was studied using the historical and legal method. The Aristotelian method was used to define the main concepts in the field of administrative procedures. Using the comparative legal method, the legislative provisions of Ukraine and other states in the field of administrative procedures were compared, which allowed using positive experience in developing proposals for improving the provisions of the current legislation of Ukraine. Based on the formal legal method, the legal terms, concepts, and processes that are enshrined in the legislation on administrative procedures were analysed. The basis of the study is the Constitution of Ukraine, codes of Ukraine, acts of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, central executive bodies, local governments, international regulations approved by the Verkhovna Rada of Ukraine, etc.

The theoretical and legal analysis of the studied problems is based on the doctrinal studies of leading experts in the field of administrative law. For example, at the dissertation level in the comparative legal aspect, the issue of administrative procedures in Ukraine and European countries was studied by

[13] S. Serohin, N. Sorokina, I. Pysmennyi, "Restoring trust in government as a prerequisite for the formation of effective public administration in Ukraine", in *Public Policy and Administration*, 2021, vol. 19, no. 4, p. 195-208.

D. Sushchenko[14]. Therewith, A. Scherba studied administrative procedures in local self-government bodies in Ukraine[15]. G. Fomich analysed administrative procedures in the public service of Ukraine[16]. In turn, Yu. Kunev studied administrative procedure as a legal means of combating corruption[17]. Furthermore, N.I. Gutchenko investigated the essence of "administrative procedure" and its interpretation in the law "On administrative procedure"[18]. In particular, the researcher identified and analysed the main shortcomings of the above-mentioned law.

The issue of administrative procedures has also been studied by a number of foreign researchers. For example, J. Barnes by "administrative procedure" refers to a set or system of rules governing the administrative decision-making process (regardless of whether the result is an initial decision, administrative review, or regulation)[19]. In historical retrospect, the problems of administrative procedures were studied by E. Roni[20], J. Ponce[21], who, using a comparative approach, analyse EU and US legislation on administrative procedures to show that although there are differences between these legal systems, there is a certain convergence in terms of problems and solutions. Therewith, one of the important areas for improving the legislation on administrative procedures is to identify the optimal conceptual model of the administrative procedure for Ukraine.

Results

Under the influence of good administration, most regulations of European countries establish the principles of administrative procedures as procedural guarantees of rights for individuals on which the administrative procedure is based. The most common are: 1) an honest, impartial examination of the case within a reasonable time; 2) the right to be heard before the

[14] D.V. Sushchenko, *Administrative procedures in Ukraine and European countries: Comparative legal aspect*, Zaporizhia National University, Zaporizhia, 2018.
[15] A. Scherba, *Administrative procedures in local governments in Ukraine*, Kharkiv National University of Internal Affairs, Kharkiv, 2011.
[16] G.V. Fomich, *Administrative procedures in the public service of Ukraine*, Odesa Law Academy, Odesa, 2010.
[17] Yu. Kunev, "Administrative procedure as a legal means of combating corruption", in *Legal Position*, 2017, vol. 2, p. 7-15.
[18] K.A. Gutchenko, "Administrative procedure: The effectiveness of the main provisions of the new law", in *Legal Position*, 2019, vol. 2, p. 50-59.
[19] J. Barnes, *Comparative Administrative Law: Three generations of administrative procedures,* Edward Elgar Publishing, Yale, 2017.
[20] E. Roni, "The legislative history of the administrative procedure act", in *Fordham Environmental Law Review,* 2015, vol. 2, p. 207-224.
[21] J. Ponce, "Good administration and administrative procedures", in *Indiana Journal of Global Legal Studies*, 2000, vol. 12, p. 551-588.

adoption of an act that may cause negative consequences for the person; 3) the right of access to the case if the measure applied may affect the legal status of the person; 4) the duty to reason the decision; 5) the right to access documents; 6) the prohibition of discrimination; 7) the right to effective remedies; 8) the duty to notify persons of the decision taken; 9) the duty to document, record the procedure[22].

For the Ukrainian model of administrative procedure, convergence with European models occurs with principles that are an element of the procedure constant[23]. Having analysed the principles enshrined in the law of Ukraine "On administrative procedure", some changes to the content definition of the principles presented in the law can be proposed, in particular: validity and certainty, good faith and prudence, proportionality, timeliness, and reasonable time, effectiveness, the presumption of legality of actions and requirements of a person, the guarantee of person's right to participate in administrative proceedings Within the framework of this study, it is appropriate to disclose these principles as follows. The principle of validity and certainty. When conducting administrative proceedings and adopting an administrative act, the administrative body considers all the circumstances that are important for resolving the case. The administrative body is obliged to justify the administrative acts that it adopts. If based on the results of administrative proceedings, an administrative body decides to refuse to exercise or restrict the rights of other participants in the proceedings, the relevant administrative act must contain justification for the grounds and motives for making such a decision[24].

The principle of good faith and prudence. The administrative body is obliged to act in good faith, using all the opportunities provided to it to achieve the purpose defined by law. If an administrative body is granted discretionary powers within the framework of performing certain procedural actions, it must act in accordance with common sense, logic, and generally accepted provisions of morality. The principle of timeliness and reasonable time. The administrative body resolves administrative cases under its jurisdiction within the time limits established by law. If regulations do not define the time frame for performing procedural actions, the administrative body performs procedural actions within a reasonable time, that is, within the

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[22] K.V. Davydov, "Principles of administrative procedures: A comparative legal study", in *Topical Issues of Public Law*, 2015, vol. 4, p. 1-30; A.V. Kostruba, "The notion and attributes of right – terminating legal facts", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 1, p. 254-262.

[23] O. Markova, "Principle of administrative procedure: the experience of FRG, Poland", in *Legea și Viața*, 2019, vol. 11, p. 77-82.

[24] A.V. Kostruba, "The place and role of right depriving legal facts in the legal regulation mechanism of civil property relations", in *Utopia y Praxis Latinoamericana*, 2018, vol. 23, no. 82, p. 171-183.

shortest possible time sufficient for carrying out administrative proceedings. The principle of efficiency. The administrative body ensures that administrative cases within its competence are resolved with the least expenditure of time and money in the simplest and most efficient way. The administrative body ensures the resolution of cases with the implementation of procedural actions that are sufficient for the proper resolution of the case.

Presumption of legality of actions and claims of a person. The actions and claims of a person are considered legitimate until proved otherwise during the resolution of the case. Ensuring the right of a person to participate in administrative proceedings. If regulations provide for administrative proceedings involving individuals or legal entities, the exercise of whose rights or legitimate interests are the subjects of an administrative case, the administrative body must ensure that such persons have the right to be heard by the administrative body by providing explanations and/or objections in written, oral, or other forms before the adoption of the administrative act[25]. The administrative body is obliged to inform and advise other participants in administrative proceedings regarding the rules of its implementation, their rights and obligations in the framework of such proceedings.

The following principles can be added: the principle of tacit consent and the guarantee of alternative remedies. It can be proposed to provide for a mechanism for applying the principle of tacit consent in the draft law "On administrative procedure" and provide for cases in which tacit consent can be applied. The content of this principle is expressed in the fact that the person's application must be considered satisfied, provided they submit documents in full, within the statutory administrative act is not proved in the manner prescribed by this Law, and the person is not notified of the continuation and term of administrative proceedings. Cases of tacit consent should be established by law.

Guarantee of alternative remedies. A person has the right to appeal against decisions, actions, or omissions of an administrative body with administrative appeal in accordance with this law and/or to a court, and with other means established by law. In addition, a person has the right to use mediation to resolve a dispute that arose with the subject of power during administrative proceedings[26]. The administrative body is obliged to inform the terms and procedure for appealing an administrative act that may affect the rights and legitimate interests of a person. The introduction of alternative dispute resolution methods for the category of administrative disputes is a

[25] O. Lutsenko, "Bringing civil servants to liability for disciplinary misconduct in judicial practice of Ukraine, Poland, Bulgaria and Czech Republic", in *Journal of Advanced Research in Law and Economics*, 2017, vol. 8, no. 1, p. 103-112.

[26] D. Oleksandr, R. Oleh, M. Valeriy, "Mediation and court in ukraine: Perspectives on interaction and mutual understanding", in *Access to Justice in Eastern Europe*, 2021, vol. 4, no. 3, p. 181-190.

positive step since it will provide citizens with the opportunity to use an additional mechanism for protecting the violated right, ensure pluralism of dispute resolution methods, adding administrative and judicial appeals[27].

Therewith, it should be noted that the use of mediation in the public legal sphere is limited due to the specific features of administrative and legal relations as relations of power and subordination, but world practice proves that mediation can be effective in resolving disputes between the state and private individuals[28]. Moreover, the prerequisites for mediation are provided in Art. 124 of the Constitution of Ukraine[29] and in the Code of Administrative Judiciary of Ukraine[30], which emphasise that the law may establish a mandatory pre-trial procedure for resolving disputes. The introduction of mediation would be a progressive step since the specific features of the legal status of a subject of power, which is obliged to act only in the manner and in accordance with the procedure expressly established by law, provide for the need to refer to the possibility of mediation in the general law on administrative procedure in order for administrative authorities to be authorised to apply mediation. Consolidation of this provision can give a considerable impetus to the development of administrative mediation, considering the active processes of development and adoption of the Law of Ukraine "On mediation"[31].

The unity of the administrative procedure model depends on whether it includes general provisions for various types of administrative proceedings that arise in the activities of public administration bodies. Today, there is a large array of laws regulating various types of administrative procedures. The draft law does not consider the specific features of activities of local self-government bodies – representative, executive, collegial, and sole proprietors. Unlike most local state authorities, local self-government bodies are characterised by such an institution of democracy as the local council. It is the highest public authority in the local government system. On the one hand, it is a governmental body that issues decisions of individual action, on the other – a body of control over its executive bodies. The feature of its activity is also the

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[27] A.R. Kuttygalieva, Y.A. Buribayev, B.M. Koshpenbetov, G.N. Rakhimova, I. Kussainov, "Ensuring social guarantees and human rights for the implementation of the labour legislation of the republic of Kazakhstan", in *Rivista Di Studi Sulla Sostenibilita*, 2020, no. 1, p. 315-335; O.M. Yaroshenko, A.M. Sliusar, O.H. Sereda, V.O. Zakrynytska, "Legal relation: The issues of delineation (on the basis of the civil law of Ukraine)", in *Asia Life Sciences*, 2019, no. 2, p. 719-734.

[28] N.M. Onishchenko, T.I. Tarakhonych, O.L. Bohinich, "The state as a party to private law relations", in *Global Journal of Comparative Law*, 2021, vol. 10, no. 1-2, p. 47-60.

[29] Constitution of Ukraine, 1996. Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text

[30] Code of Administrative Judiciary of Ukraine, 2005. Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text

[31] Law No. 3504 "On Mediation", 2021. Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68877

sessional form of the work and specifics of issue consideration. Another local self-government body is the executive committee of the council. It is a collegial body that issues decisions of individual action and monitors other executive bodies. There are also special features, considering the division of powers of the executive bodies of the council into own and delegated, which requires coordination with the provisions of Law of Ukraine no. 280/97-VR "On Local Self-Government in Ukraine"[32].

The proceedings by local self-government bodies are characterised by a considerable variety since each local self-government body creates administrative procedures at its own discretion. This is dangerous since in some cases the rights of individuals and legal entities cannot be exercised due to the lack of proper procedure. On the other hand, the creation of administrative procedures "at one's own discretion" is fraught with the fact that such procedures are created in the interests of individual subjects, while limiting the rights of others, that is, there is a corruption risk. A striking example of this is the land legislation and procedures for granting free ownership of land plots. It is also problematic to apply the provisions provided for in the draft in the activities of such local self-government bodies as local councils. Many administrative proceedings (for example, on the allocation of land plots for ownership or lease) are carried out by several bodies at once. Such proceedings are initiated by the executive body of the council, which exercises its powers in the field of land relations, and the final decision is made by the relevant council by voting. The executive body acts within the framework of the law, and the council makes a decision (an administrative act within the draft) at its own discretion.

Discussion

In view of the above, it can be proposed to provide within the conceptual model of the administrative procedure the following types of administrative proceedings: 1) administrative proceedings at the request of individuals or legal entities; 2) administrative proceedings at the initiative of an administrative body; 3) administrative proceedings with a large number of persons; 4) administrative proceedings in the activities of collegial administrative bodies; 5) competitive administrative proceedings, which are characteristic of certain types of administrative procedures due to their scope. This administrative procedure includes competitive and alternative administrative procedures. The competitive administrative procedure is initiated by the administrative body and involves the selection of one of several entities that apply for certain rights from the administrative body, and is

[32] Law of Ukraine No. 280/97-VR "On Local Self-Government in Ukraine", 1997. Retrieved from https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text

implemented by creating a competitive commission in the administrative body. This procedure is provided for in Law of Ukraine No. 155-IX "On Concession"[33].

Alternative administrative procedure is opened on appeals of more than one subject of the appeal concerning the same subject of the administrative case (although only the appeal of one or limited number of subjects can be satisfied) and is implemented by the satisfaction of requirements in order of appearance, by priority, auction, or by drawing lots. Competitive and alternative administrative procedures differ in the order of implementation. In the alternative administrative procedure, it is possible to distinguish the administrative procedure in order of appearance, which involves the development of a sequence of satisfaction of appeals depending on the time of their submission. To implement administrative procedures, a register of persons who have applied to the administrative body shall be created in turn in the relevant administrative body. Entry in this register is carried out in the order of receipt of appeals to the administrative body (for example, the register of citizens who enjoy the right to social housing and are in line to receive it in accordance with Law of Ukraine No. 3334-IV "On social housing"[34], and the register of citizens in need of housing improvement in accordance with Resolutions of the Council of Ministers of the Ukrainian SSR No. 470-84-p "On Approval of the Rules for the Registration of Citizens in Need of Improved Housing Conditions and the Provision of Dwellings in the Ukrainian SSR"[35]).

The administrative procedure for satisfying priority requirements provides for the development of a sequence of satisfying appeals, depending on whether the subject of the appeal has a special legal status that determines its priority in relation to other subjects of the appeal. The opportunity to exercise the right of priority depends on whether persons have the appropriate status: a person with disabilities of groups I and II, a participant in military operations, a person who has special merits and special labour merits before the Motherland, etc.). This procedure is used in the housing sector.

The administrative procedure of the auction is implemented when resolving administrative cases related to the alienation of objects of state ownership or ownership of territorial communities (communal property) or the

[33] Law of Ukraine No. 155-IX "On Concession", 2019. Retrieved from https://zakon.rada.gov.ua/laws/show/155-20#Text

[34] Law of Ukraine No. 3334-IV "On social housing", 2006. Retrieved from https://zakon.rada.gov.ua/laws/show/3334-15#Text

[35] Resolutions of the Council of Ministers of the Ukrainian SSR No. 470-84-p "On Approval of the Rules for the Registration of Citizens in Need of Improved Housing Conditions and the Provision of Dwellings in the Ukrainian SSR", 1984. Retrieved from https://zakon.rada.gov.ua/laws/show/470-84-%D0%BF#Text

right to use such objects if there is more than one subject of the appeal[36]. For example, the Law of Ukraine No. 3334-IV "On social housing"[37] provides for such a procedure and the Land Code of Ukraine in Art. 135 for land auctions[38].

The administrative procedure of drawing lots is implemented by selecting persons who will have the right to satisfy their claims in the conditions of administrative proceedings that are initiated by appeals of more than one subject in relation to the same subject of an administrative case, while only the appeal of one or a limited number of subjects can be satisfied. The drawing procedure involves the selection of one or more persons among those who have applied to the administrative body, using means and methods that ensure transparency and randomness of selection and exclude influence on decision-making by officials of the administrative body (for example,[39]).

Thus, the model of administrative procedure should include various types of proceedings that accompany the general administrative procedure and its individual types. This is the only way to achieve uniformity in performing actions by participants in administrative proceedings and making procedural decisions aimed at resolving a specific administrative case. The next integral element of the administrative procedure model is its internal structure – stages and procedural actions that accompany the proceedings. The structure reflects the dynamic aspect of the administrative procedure[40]. There can be at least three stages of proceedings: opening of proceedings, consideration of an administrative case, and adoption of an administrative act on the case. The content of the stages of administrative procedures is determined by laws and regulations adopted for their implementation, which regulate the rules for their implementation.

It is necessary to pay attention to the fact that the stages, their procedure and features in each specific administrative case will depend on the type of administrative proceedings. For example, in administrative proceedings in the activities of collegial administrative bodies, consideration and procedure for making decisions through the participation of collegial bodies are special. Collegial administrative bodies are any administrative bodies whose decisions are made by joint expression of the will of the members of this body, in

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[36] A.V. Kostruba, P.F. Kulynych, "Improvement of public control over the use of land resources as an important aspect of modernisation of the Ukrainian state in the XXI Century", *International Journal of Criminology and Sociology,* 2020, vol. 9, p. 3095-3103.

[37] Law of Ukraine No. 3334-IV "On social housing", 2006. Retrieved from https://zakon.rada.gov.ua/laws/show/3334-15#Text

[38] CEC Resolutions on the Procedure for Drawing a Candidacy for the Precinct Election Commissions for the Election of People's Deputies, 2013. Retrieved from https://zakon.rada.gov.ua/laws/show/v0088359-13#Text

[39] *Ibidem.*

[40] O. Markova, "To the question of the evolution stages of the administrative procedure", in *South Ukrainian Law Journal*, 2020, vol. 2, p. 91-95.

particular councils, committees, collegiums, etc. Consideration of administrative cases by collegial bodies has its own characteristics, which are manifested in the fact that it is carried out at the meetings, provided that at least half of the members of such a body are present. In cases provided by law, a different number of members of the collegial administrative body may be established to resolve certain types of administrative cases, but this number must be at least half of the total composition of the administrative body.

The decision is made by voting. The forms and methods of voting are governed by regulations that define the rules of functioning of the relevant administrative bodies (regulations, provisions, charters, etc.). If the resolution of an administrative case by a collegial administrative body provides for the possibility of refusing to make a positive decision in the case, draft administrative acts must be submitted to the collegial administrative body for voting – both on a positive decision and on a refusal to resolve a positive case. If the draft administrative act on a positive decision of the case has been adopted, the draft administrative act on the refusal of a positive decision on the case shall not be put to the vote. If the draft administrative act on a positive decision of the case has not been adopted, the draft administrative act on the refusal of a positive decision of the case is put to the vote. If the draft administrative act on the refusal of a positive decision of the case has not been adopted, the administrative case is considered to have been resolved positively. In this case, the chairman of the meeting of the collegial administrative body is obliged to draw up and sign a decision on a positive decision of the administrative case.

Regarding administrative proceedings on the application of individuals and legal entities and on the initiative of an administrative body, it is necessary to pay attention to the following features: 1) the subject of the application: in the first case, the subject is an individual or legal entity; in the second – an administrative body; 2) the form of initiating the opening of proceedings: in administrative proceedings on the application (in written, oral, in the form of an electronic document), in administrative proceedings on the initiative of an administrative body – the adoption of an appropriate procedural decision. The form of the procedural decision is determined by the regulation, which governs administrative proceedings of a certain type; 3) various stages: administrative proceedings on appeals of individuals or legal entities include stages: submission of an appeal and its registration by an administrative body; the opening of administrative proceedings; resolution of an administrative case and adoption of an administrative act. Administrative proceedings on the initiative of an administrative body consist of the opening of administrative proceedings on the initiative of an administrative body; requesting additional documents and information; involvement of the addressee and the interested person in the administrative proceedings; consideration of petitions of participants in administrative proceedings; agreement and conclusion; adoption of an

administrative act; 4) the form of decision-making: the form of the decision depends on the essence of the case, which is considered by the body, and the type of proceedings. Notably, **in** administrative proceedings on an appeal, a decision on an administrative case, depending on its essence, can be made or implemented in the form of 1) a procedural action, the commission of which confirms the satisfaction of the requirements of the subject of the appeal (entering into the register, issuing a certificate, etc.); 2) making a decision to satisfy the requirements of the subject of the appeal or refusing to satisfy such requirements, which is drawn up in the form of an administrative act. If the decision of an administrative case provides for the issuance of a standard document of the established form to the subject of the appeal, within the framework of the administrative procedure, a procedural decision is made and drawn up in accordance with the requirements of office management to satisfy the requirements of the subject of the appeal. Based on this procedural decision, a document of the established form (act, permit, certificate, license, etc.) is drawn up. If the decision of an administrative case does not provide for the issuance of standard documents of the established form to the subject of the appeal, the decision on the case is drawn up in the form of an administrative act.

If administrative proceedings are initiated by an administrative body, the form of the decision is determined by a regulation that governs administrative proceedings of a certain type (for example, Art. 55: in administrative proceedings initiated by administrative bodies, which relate to the commission of illegal actions by individuals or legal entities and provide for the application of coercive measures, the adoption of an administrative act is mandatory). When carrying out administrative proceedings related to the implementation of control (supervision) procedures, the administrative act should reflect the conclusions of the administrative body regarding the subject of control (supervision).

The features of competitive administrative proceedings: 1) according to the form of appeal: are initiated on appeals of more than one subject (although only the appeal of one or a limited number of subjects can be satisfied) or on the initiative of an administrative body and provide for the choice of one of several subjects applying for certain rights from the administrative body; 2) according to the subjects of decision-making: the creation in the administrative body of a tender commission consisting of an odd number of persons – not less than five and not more than eleven. The competition commission may not include persons who have a personal interest in the results of the competition. Violation of this rule is the basis for declaring the results of the competition invalid; 3) the procedure for making a decision is voting. None of the members of the competition commission may be given the right of priority or decisive vote. Members of the competition commission do not have the right to abstain from voting when deciding a case. Each member of the competition

commission has the right to vote "for" or "against" the corresponding applicant. If the subject of the competition is of public importance, the competition commission should include members of the public.

Having covered the features of various types of administrative proceedings within the framework of the general model of administrative procedure, the study also considers their subjects. The study distinguishes, among the subjects of administrative proceedings, participants in administrative proceedings and persons who contribute to the resolution of an administrative case. The subject of administrative proceedings may not be an official of an administrative body in respect of whom a conflict of interests has arisen or may arise in administrative proceedings. Prevention of conflicts of interest or their elimination is carried out based on acts of the anti-corruption legislation of Ukraine. Participants in administrative proceedings are an administrative body and individuals or legal entities whose rights, obligations, or legitimate interests are targeted by administrative proceedings. In cases provided by law, the administrative body may participate in the administrative proceedings on its own initiative or at the request of other participants in the administrative proceedings, persons who assist in resolving the case: experts, specialists, etc. The legal personality of participants in administrative proceedings is determined in accordance with the current legislation of Ukraine.

It may be proposed to expand the list of individual rights in administrative proceedings, including to provide, among other rights enshrined in the draft law "On administrative procedure", "the right to initiate mediation to resolve a dispute with an administrative body", and the corresponding obligation on the part of an administrative body – if necessary, to agree to participate in mediation for the settlement of a dispute with a person or to initiate an appropriate procedure in accordance with the procedure and on the grounds provided for by law. Forms of objectification of the results of the administrative procedure should be considered separately. The feature of the legal form of implementation of the administrative procedure results is manifested in its duality: on the one hand, individual management acts (administrative acts) legally formalise the completion of the implementation of administrative procedures; on the other hand, public administration bodies initiate an administrative procedure with individual legal acts. The law provides for only one form – an administrative act, which is the main, but not the only form (tool) of public administration. In the proposed version, the approach of the authors of the draft law is narrowed, since they reduce regulated relations exclusively to an administrative act, leaving the administrative contract under consideration. On the one hand, this assists developers of the draft law, on the other hand, it limits the result of the administrative procedure to one form.

"Modern administrative activity, due to its versatility, cannot be limited only to administrative acts and abandon other forms"[41].

When referring to the legislation of European countries to enshrine the provisions of the administrative contract as a form in which the result of the administrative procedure is reflected, it should be noted that they are provided for in the procedural acts. The administrative contract in Germany is regulated by the federal law "On administrative procedure" of May 25, 1976[42]. Instead of issuing an administrative act, an administrative body may enter into a public law contract with a person in respect of whom it would otherwise issue an administrative act. A public-law contract within Art. 54, paragraph 2, based on which the existing uncertainty is eliminated by mutual concessions (settlement agreement), may be concluded if the administrative body considers it appropriate to conclude a settlement agreement to eliminate the uncertainty. In addition, the laws of the German lands enshrine the possibility of concluding an agreement based on the results of administrative proceedings, in particular: Art. 54, paragraph 2 of APT Land North Rhine-Westphalia of December 21, 1976, enshrined: if the management of the bodies there are legal relations that can be regulated by a contract, the state body may, instead of adopting a regulation of management, conclude a public law agreement, which is called administrative, with another entity. In some cases, without the conclusion of this type of contract, it would hardly be possible to ensure the normal functioning of public life and the administrative activities of bodies. Art. 62 of the Law of Germany on Administrative Procedure, establishes the possibility of using certain provisions of the Civil Code, which supplement and clarify the legal regulation of administrative-contractual relations[43]. In Poland, the Code of Administrative Procedure in Section 8 enshrines the provisions of the agreement, which regulates the general issues related to the grounds for its conclusion, the form and terms of the contract, the procedure for approval and legal consequences[44]. An administrative contract has long been recognised as an effective form of administrative and legal regulation of certain types of activities of external managerial influence. However, in order for this form of objectification of the results of public administration in relations with individuals, legal entities to have its consolidation and regulation in Ukraine, it is necessary to consider the administrative agreement not only in terms of substantive administrative law, establishing statutory provisions (participants, rights, duties, responsibilities, administrative and legal regime of execution), but

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[41] I. Richter, G. Schuppert, *Judicial practice in administrative law*, Yurist, Moscow, 2000.

[42] Verwaltungsverfahrensgeset (VwVfG), 1976. Retrieved from https://www.bgbl.de/xaver/bgbl/start.xav?start=//*%5B@attr_id=%27bgbl176s1253.pdf%27%5D

[43] *Ibidem.*

[44] Code of Administrative Procedure, 1960. Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19600300168/U/D19600168Lj.pdf

also from the standpoint of administrative and procedural law, developing its procedural principles[45].

Art. 4, paragraph 16[46] establishes the administrative contract and explicitly specifies the scope of its application: for example, an administrative contract is concluded instead of adopting an administrative act to resolve issues related to the provision of administrative services, yet this is not enough for law enforcement practice. The effective application of this form of activity by public administration bodies directly depends on the quality of regulation of the administrative procedure that contributes to the application of this form. Given this, an administrative contract requires more detailed legal regulation within the framework of the general model of administrative procedure.

Most researchers propose to adopt a separate law that would regulate the administrative contract, however, the authors of this study find it appropriate and justified to fix the main provisions concerning the development and conclusion of administrative contracts, the main terms of the contract (along with the provisions on regulating the procedure for preparing and issuing administrative acts) in the basic general Law "On administrative procedure". In the model of administrative procedure, it is important to provide for an alternative mechanism of remedies. The above refers to the possibility for participants in the procedure to apply for mediation to resolve the conflict with the administrative body. Along with an administrative appeal, it is necessary to provide for and fix a separate provision on mediation: the conditions and grounds for conducting mediation in administrative cases, the rights and obligations of the mediator, the procedure for conducting mediation (the protocol form of mediation, the report and, as a result, the adoption of the mediation agreement in case of reaching an agreement or resorting to other means of protection in another case)[47]. The cohesiveness of the conceptual model of administrative procedure is provided with a conceptual and categorical apparatus that contributes to legal certainty and unity in the understanding of such concepts by law enforcement officers. These definitions have direct regulatory importance for the entire model of administrative procedure and for its individual elements. Hereinafter a clarification of such concepts in the law "On administrative procedure" are proposed:

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[45] V.V. Komarov, T.A. Tsuvina, "International standard of access to justice and subject of civil procedural law", in *Journal of the National Academy of Legal Sciences of Ukraine*, 2021, vol. 28, no. 3, p. 197-208.

[46] Code of Administrative Judiciary of Ukraine, 2005. Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text

[47] V.I. Borysova, K.Y. Ivanova, I.V. Iurevych, O.M. Ovcharenko, "Judicial protection of civil rights in Ukraine: National experience through the prism of European standards", in *Journal of Advanced Research in Law and Economics*, 2019, vol.10, no. 1, p. 66-84.

1) administrative body – an executive authority, a local self-government body, their official, or other entities that, in accordance with the law, are vested with executive powers;

2) administrative case – a set of tasks related to the exercise of the rights, obligations, and legitimate interests of individuals or legal entities that need to be resolved within the competence of administrative bodies (hereinafter referred to as the case);

3) administrative act – a decision of an individual action taken within the competence of an administrative body, which is the basis for acquiring, changing, or terminating the rights or obligations of an individual or legal entity (s);

4) administrative proceedings – the procedure for resolving administrative cases of a certain type defined by regulations;

5) administrative procedure – the procedure defined by regulations for participants in administrative proceedings to perform actions and make procedural decisions aimed at resolving an administrative case and limiting administrative discretion when exercising discretionary powers by the body in relations with citizens, legal entities in the form established by law;

6) discretionary powers – the right of an administrative body to act and make decisions at its own discretion within the limits of its competence;

7) mediation – a voluntary, out-of-court, confidential, structured procedure in which the parties, with a mediator (s), attempt to resolve a conflict (dispute) through negotiations.

Thus, the conceptual model of administrative procedure should provide for the following: standard principles for all types of administrative proceedings; a meaningful description of general (standard) and individual (atypical) administrative procedures. This model should not conflict with existing and regulated administrative procedures at the legislative level.

Conclusions

The study covers an administrative procedure for which it is necessary to develop a model that will ensure the unity of all its elements and unified application in various spheres of activity of public administration bodies in relation to individuals and legal entities. To build such a model, it is necessary: 1) to use the achievements of various theoretical and methodological approaches developed by the national doctrine; 2) to comprehensively study and generalise international experience on modelling the administrative procedure. For the Ukrainian model of administrative procedure, reception of European models is not suitable, since it does not consider all the features of fragmentary national legislation in the procedural sphere, which regulates certain types of administrative proceedings. Such models can be used as a guide for creating a model. The law of Ukraine "On administrative procedure"

presents a model of administrative procedure, yet this law has not yet been adopted due to the discrepancy between the declared scope of relations of the procedure that is the subject of regulation and the actual relations to which the relevant provisions can be applied. Such a discrepancy has at least two negative consequences. First, a considerable number of disputes over whether the provisions of this law should be applied to specific administrative proceedings already regulated by laws and other regulations. Second, problems with the application of the provisions of this law to administrative proceedings that formally fall under its scope, but the regulatory structure of the proceedings specified in it does not correspond to the methods of activity that are determined by the peculiarities of the legal status of individual administrative bodies (in the understanding of the draft), in particular, the ways in which they resolve individual cases.

The study suggests 1) to amend the definitions of the principles of administrative procedure: validity and certainty, good faith and prudence, proportionality, timeliness, and reasonable time, effectiveness, the presumption of legality of actions and requirements of a person, the guarantee of person's right to participate in administrative proceedings; to add to the list of principles: the principle of tacit consent and guarantee of alternative remedies; 2) to expand the types of proceedings in administrative procedure: general – proceedings on the initiative of the subject of the appeal; proceedings on the initiative of the subject of power (administrative body); special – proceedings in the activities of collegial administrative bodies; competitive administrative proceedings – within the framework of competitive and alternative administrative procedure.