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URGENT CASES IN THE CONTEXT OF SEPARATE CATEGORIES OF ADMINISTRATIVE CASES

The article is devoted to the coverage of the category of urgent cases, as well as their connection with other categories of separate cases of administrative justice. Having analyzed the scientific and theoretical approaches to the institute of urgent cases in the context of other separate categories of administrative cases, the special procedure for their realization has been clarified and it is proved that the main factors that cause the association of administrative cases by types of separate cases are legal expediency and reasonableness, aimed at achieving optimization and efficiency of administrative justice. According to the results of the comparative analysis of certain categories of cases in foreign law, it is found out that summary proceedings are expedient only when the case does not need to establish in court the additional factual data concerning the circumstances of the case and in the absence of legal or factual difficulties.

Keywords: administrative justice, summary judgment, separate categories of cases, classification of separate categories of cases, urgent administrative case.

Formulation of the problem. Changes in procedural legislation, caused not only by the need to improve the rules of law, but also by the next stage of judicial reform in Ukraine, touched upon the regulation of the institute of certain categories of court cases in administrative justice, to which the legislator referred to complex, urgent, typical and exemplary cases. The category of urgent administrative case is a dynamic phenomenon and has a peculiar meaningful content, a special order of realization, as well as interconnection with other categories and legal institutes of administrative justice. Therefore, based on the analysis of existing doctrinal and regulatory sources, it becomes necessary to investigate these connections, to outline topical issues of the category of urgent cases in administrative justice as a multidimensional phenomenon, a multifaceted object that is logically classified, to study foreign experience in regulating the term regulation proposals for improvement of domestic administrative procedural legislation.

Analysis of recent research and publications. Separate categories of urgent administrative cases were the subject of scientific search for such scientists as M.M. Arakelyan, O.V. Bachernikova, S.M. Braychenko, T.F. Veselskaya, O.A. Zhuravsky, I.A. Kachur, K.S. Pashchenko, V.B. Rusanova, M.I. Smokovich, A.A. Chernikov and others, however, there is no complex scientific works devoted to urgent cases as part of certain categories of court cases in administrative justice.

Presenting main material. Effective study of the object and phenomenon is impossible without the development of appropriate classification systems, especially those that reflect their fundamental specificity. The scientific and practical importance of classification is that it helps to identify problems in the existence of an object, its connections and development. The division of administrative cases into certain groups (types) is not only theoretical but also practical, since the type of administrative case influences the order of its consideration, application of general (ordinary) or differentiated procedural form. The role of classification is to strike the optimum balance between the content of the public dispute and the degree of formalization of the proceedings in which it is settled. Disclosure of features, characteristics of a particular type of disputes allows to unify the procedure for their consideration[1]. Separate special rules for dealing with certain categories of cases are introduced to eliminate (prevent) the ambiguity of procedural regulation. By means of classification of objects their division into kinds is carried out, which allows to study more deeply

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their features, to distinguish characteristic features, interconnection of the general and separate, to reveal commonality and differences, to understand the specifics of their functioning in the mechanism of legal regulation, to provide a clearer position of the legislator and persons applying the rules of law when making decisions, deepen the process of cognition, systematically approach the study of such objects, phenomena[1].

In the legal literature, urgent administrative cases define the following categories of disputes, the peculiarities of the proceedings in which are determined by urgent, immediate procedural actions and decisions.

It should be noted that urgent cases at the same time as complex cases in the Code of Administrative Judiciary of Ukraine (hereinafter – CAJ) are called separate categories of administrative cases, for which this Code specifies the peculiarities of lawsuit. In particular, the following features are specific: a) notification of the case participants on the date, time and place of the hearing; b) filing the merits of the case; c) calculation of procedural terms; d) proclamation and service of court decisions; e) the order of appeal and cassation appeal of court decisions (Art. 268–272 of the CAJ)[2].

The Administrative Category Classifier uses a different approach to the criteria for combining these case categories. By category, disputes are also joined in court reporting, although they are referred to as categories of cases (such as electoral and referendum disputes, public order and security disputes, etc.). At the same time, the rules for the consideration of individual urgent cases are constantly mentioned in court decisions of administrative courts, in particular with reference to the belonging of the case to the category of urgent cases[3].

So, from a theoretical point of view, given the substantive content of the notion of urgency, by which cases are grouped in the CAJ, it seems more correct to consider urgent cases not as a category of administrative cases, but as a kind of them.

The legislator defines 15 categories of urgent cases, while urgent cases can have the characteristics of typical cases and, accordingly, belong to cases of little complexity. Since the links between the types of administrative cases are quite extensive, their signs may indicate the complexity of the approach in this matter, the exclusive affiliation of the case to a specific type is only stated by legislative indication, in particular, its complexity or urgency. Some urgent cases are characterized by a large number of specific features, covering almost all defined criteria (eg. disputes provided by Art. 273, 275 of the CAJ etc.), and some – are characterized only by some of them, in particular, jurisdiction, term of consideration or the order of appeal (Art. 282 of the CAJ) or execution (Art. 285 of the CAJ)[4].

Urgent administrative cases include: proceedings in cases of: appealing decisions, actions or omissions of election commissions, referendum commissions, members of these commissions (Art. 273 of the CAJ of Ukraine); on clarification of the list of voters (Art. 274 of the CAJ of Ukraine); appeal against decisions, actions or omissions of executive authorities, local self-government bodies, mass media, news agencies, enterprises, institutions, organizations, their officials and officials, creative media workers and news agencies that violate election and referendum laws (Art. 275 of the CAJ of Ukraine); appeal of actions or omissions of candidates, their proxies, party, local party organization, their officials and authorized persons, referendum initiative groups, other referendum initiators, official observers from the constituent electoral bodies (Art. 276 of the CAJ of Ukraine); in cases related to the election of the President of Ukraine (Art. 277 of the CAJ of Ukraine); in cases of administrative claims by the executive authorities, local self-government bodies on establishing restrictions on the exercise of the right to freedom of peaceful assembly (Art. 280 of the CAJ of Ukraine); in cases of administrative actions for the removal of obstacles and prohibition of interference with the exercise of the right to freedom of peaceful assembly (Art. 281 of the CAJ of Ukraine); in cases of guaranteed defense needs (Art. 282); in cases on the request of the bodies of revenue and fees (Art. 283 of the CAJ of Ukraine); in cases concerning the request by the Security Service of Ukraine for the seizure of assets related to the financing of terrorism and related to financial transactions suspended in accordance with a decision taken on the basis of resolutions of the United Nations Security Council, the arrest

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[3] *Єдиний державний реєстр судових рішень*. <http://www.reyestr.court.gov.ua> (2020, March,19).

[4] *Кодекс адміністративного судочинства України 2005* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <http://zakon3.rada.gov.ua/laws/show/2747-15/ed20050706> (2020, March 19).

of and access to such assets (Art. 284 of the CAJ of Ukraine); in cases of early termination of the powers of the People's Deputy of Ukraine in case of non-compliance with the requirements for incompatibility with them (Art. 285 of the CAJ of Ukraine); in cases concerning the decisions, actions or omissions of the subjects of power to bring to administrative liability (Art. 286 of the CAJ of Ukraine); in cases concerning decisions, actions or omissions of a state executive service body, a private executor (Art. 287 of the CAJ of Ukraine); in cases of administrative claims concerning: forced return or forced expulsion of foreigners or stateless persons outside the territory of Ukraine (Art. 288 of the CAJ of Ukraine), detention of foreigners or stateless persons (Art. 289 of the CAJ of Ukraine)[1].

In general, a direct legislative statement regarding the mandatory affiliation of an administrative case to one or another variety is as follows: complex cases – 3 categories; urgent cases – 15 categories; cases of minor complexity – 11 species. As we can see, the legislator included complex and urgent cases in certain categories of administrative cases, and the list of cases of minor complexity was formed not only on certain categories of cases, but also varieties (typical cases) which do not have a clearly defined list of categories, which, in turn, points to their, so to speak, inexhaustible character. In addition, urgent cases can be indicative of typical cases, as well as belong to cases of minor complexity.

It is worth noting that the signs of complex and urgent administrative cases do not have legislative support. The complexity of this is that it has some effect on the form of the proceedings – general or simplified. The classification of an administrative case in the category of urgent cases is also conditioned by the existence of such disputed legal relations in which a delay in the decision will lead to their leveling, loss of expediency, inability to take certain actions or to take certain decisions, to perform tasks assigned by the state to certain bodies. Urgency involves the prompt resolution of a public-law conflict, without prejudice to the full establishment of the circumstances of the case. The legislator under the term "urgent" united the majority of administrative cases, on which the peculiarities of the proceedings in the CAJ of Ukraine were highlighted prior to its updating (Chapter 6)[2]. Such peculiarities are predetermined, first of all, by the procedural deadlines for the commencement of proceedings and the hearing of the case, the announcement and delivery of court decisions, their appeal. As A. O. Chernikova rightly notes: "Public-legal relations are sufficiently branched, multi-vectored, and the disputes that arise therein also have different nature, which does not allow them to "enter" their decisions into a single procedural form, one procedural order, under uniform procedural conditions. That is, the solution of the problems of administrative justice in such cases is possible only in special cases: procedural terms, procedure and subjects to go to court and open administrative proceedings, the procedure and conditions for consideration and resolution of disputes, appeal against them in court decisions, their execution, etc.»[3].

Considering the issues of differentiation of the procedural form of administrative justice, A.O. Chernikova also noted that the SAC of Ukraine has chosen other criteria for merging administrative cases. Thus, according to the Classifier of categories of administrative cases, approved by the decision of the Council of Judges of Administrative Courts of Ukraine, all cases are divided into 14 species. And if the affiliation of certain administrative cases to the relevant category is clear: cases of disputes over ensuring the exercise of voting rights by citizens by elections and referendums (cat. 1) (Art. 172–188 of the CAJ of Ukraine); cases concerning disputes regarding the administration of taxes, collection of payments, and control over compliance with the requirements of tax legislation (cat. 8) (Art. 183-3 of the CAJ of Ukraine), cases of disputes concerning the maintenance of public order and security, national security and defense of Ukraine (cat. 3) (Art. 182, 183, 183-7 of the CAJ of Ukraine); disputes concerning the implementation of state policy in the sphere of economy (cat. 5) (Art. 183-6 CAS of Ukraine); cases concerning disputes regarding the provision of justice (cat. 11) (Art. 181 of the CAJ of Ukraine); cases of disputes concerning appeals of acts, actions or omissions of the Verkhovna Rada, the President of Ukraine, the High Council of Justice, the Supreme Judicial Council (Art. 171-1 of the CAJ of Ukraine), as well as cases of early termination of powers of the People's Deputy of Ukraine (Art. 180, earlier these cases were referred to cat. 12 – disputes over public service relations) (cat. 13); some cases are not explicitly stipulated: regarding the appeal of

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normative legal acts (Art. 171 of the CAJ of Ukraine) (can be referred to cat. 2); on appealing against administrative liability (Art. 171-2 of the CAJ of Ukraine) and on the appeals of the Security Service of Ukraine, Art. 183-4 of the CAJ of Ukraine) (these cases should be attributed to cat. 3 disputes concerning the maintenance of public order and security, national security and defense of Ukraine). The author rightly noted that the Code uses the phrase " on appeal cases…." and in the Classifier – "cases in disputes ..."[1].

The experience of many European countries shows that administrative courts can be an accessible and effective tool for protecting human rights, freedoms and interests against violations by public authorities and local governments. Therefore, taking into account the achievements of European states in the field of administrative process, legal standards developed at the European level is a prerequisite for the development and improvement of the theoretical and regulatory basis for the functioning of administrative courts in Ukraine[2].

Many EU member states have long been applying a simplified procedure for dealing with "insignificant" claims. At the same time, the criteria for determining the insignificance of claims are not always related to the price of the claim, as in Ukraine. Quite often, under the "insignificance" of claims, procedural law provides for the relative complexity of a particular category of cases. Because of this, simplified proceeding is often used to refer to certain categories of cases. And in some court proceedings, the cost of a lawsuit, which allows the application of the simplified order, depends on the category of the case.

An analysis of foreign law and literature makes it possible to distinguish several features of simplified proceedings. The first is the derivative nature of the ordinary lawsuit. It is manifested in the fact that all simplified proceedings and procedures are derived from ordinary claim forms of civil rights' protection and are modifications thereof. The second feature is the approximation of the civil procedural form, which is to replace the ordinary complex procedural form with simpler and "truncated" analogues. Third, there is a greater availability of simplified proceedings than the ordinary form of defense. Taking into account the components of access to court in the context of the § 1 Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, it can be said that it may manifest itself in: – lower rates of court fees; – no requirement for mandatory professional representation, that is, allowing the person to act without a representative (lawyer). The fourth sign is the limited or specific effect of the principles of civil justice. Fifth is the expedited nature of summary proceedings resulting from the influence of other features[3].

Shortened procedures for public law disputes in administrative proceedings are present in the legislation of other countries, which is called "accelerated procedure", "simplified procedure", for example, in the Code of Administrative Procedure of Georgia dated July 23, 1999 (Art. 27-28-1), Code of Administrative Procedure of the Republic of Armenia of 28.11.2007 (Chapter 17), Administrative Procedure Code of Estonia dated 28.03.2015 (Art. 100). Thus, the Code of Administrative Procedure of Georgia of 23.07.1999 provides for three forms of litigation: ordinary, summary (Art. 27) and accelerated (Art. 28 and 28-1). The Spanish Law on Administrative Disputed Jurisdiction (1998) also provides for a shortened procedure for the consideration of public law disputes. The peculiarities of this procedure are that the case is heard in court orally and expedited (Art. 78). Such a principled approach of the legislator is based on the doctrinal position, according to which oral consideration differs from the written advantages, which include the simplicity and speed of actions taken, with the obligatory observance of the principle of immediacy. The law also sets out the types of public-law disputes when a case can be heard in summary proceedings. This procedure can be applied to disputes concerning the service in public administration bodies (in connection with the refusal of the decisions of the Sports Discipline Committee on the use of doping by athletes, the appeal of refusal to grant political asylum, as well as in claims not exceeding 30,000 euros.

In France, the Code of Administrative Justice (2001), which contains legislative and regulatory parts, is in force. Thus, for example, Book IV of the Legislative Code called "Infringement proceedings at first instance» (L'introduction de l'instance de premier ressort); Book V – «The procedure of court decisions in urgent cases» (Le référé); Book VI – «The litigation» (L'instruction); Book VII – «The trial» (Le jugement); Book VIII – «Ways of appeal» (Les voies de recours); Book IX – "The Enforcement of Decisions" (L'exécution des décisions). At the same time, Books IV and VI do not contain legislative provisions, remaining only titles. The Regulatory Part of the Code also contains nine Books of the same title, but their

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provisions specify the content of the legislative part, that is, set out the appropriate legal procedure for the administration of administrative justice.

Pursuant to the Law on Administrative Procedure of Latvia of 25.10.2001, administrative proceedings are carried out in the form of oral and written proceedings, whereby oral proceedings are considered to be a simplified and faster procedure for hearing the case.

The Code of Administrative Procedure of 28 March 2015 also contains provisions relating to summary proceedings. Thus, the Code provides two forms of summary proceedings (written and simplified).

Despite the general recognition of the French and German models of administrative justice as classic, there are some differences between them in the context of the consolidation of the institute of administrative proceeding[1],[2]. In particular, in the German appeal the administrative act suspends its action, in the French – no. The German legislature, unlike the French one, does not distinguish certain categories of cases (disputes) with a clear system of administrative claims. In the absence of a definite concept of administrative case and its variants in both countries, it is possible to state the presence of urgent cases in France and typical cases – in Germany, and also shortened (accelerated) proceedings – in both. In addition, the legislator focuses equally on administrative disputes rather than on categories of cases.

As regards the experience of other European countries, the procedural law of the Netherlands provides for summary proceedings, which are carried out in simple and urgent cases, as well as where a preliminary judgment is given. At the same time, decisions taken in the result of such proceedings are characterized by such features as: 1) the interim, temporary nature of the decision; 2) restorative character – a restoration measure; 3) lack of judicial review of evidence; 4) the possibility of appeal against a preliminary ruling.

In my view, domestic law seems to be a useful approach to consider cases of administrative jurisdiction in summary proceedings only when there is no legal or factual complexity, all the facts relevant to the circumstances of the case are established.

Conclusions. The Institute of Administrative Affairs, being a dynamic phenomenon, which is formed and developed in the domestic administrative justice, has a corresponding meaningful content, its own participants in the case, time limits, evidence base, includes: (1) the categories of administrative cases (disputes), the grounds for determining which are the subject of the dispute and the subject of the court, and (2) the types of administrative cases, the criteria for division of which are complexity; urgency and immediacy; the similarity of the legal relations of the parties and the legal norms they regulate (standard); higher level of typicality, an example for others (exemplary). The main factors behind the integration of administrative cases by type are the legal expediency and reasonableness aimed at achieving the optimization and efficiency of administrative justice.

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