

# CONSTITUTIONAL AND ADMINISTRATIVE LAW

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Ivan Borodin,  
Oksana Myronets

## ADMINISTRATIVE LEGAL PROCEDURES IN THE SPHERE OF PUBLIC ADMINISTRATION OF UKRAINE

National Aviation University  
Kosmonavta Komarova Avenue, 1, 03680, Kyiv, Ukraine  
E-mails: tidp.kaf.nau@gmail.com, o.m.myronets@ukr.net

### Abstract.

**Purpose:** the task of scientific research is to determine a concept of administrative legal procedures, also, basic directions to solve problems of their legal support in Ukraine. The administrative procedures according to the nature of their legal influence on social relations have been classified and analyzed. **Methods:** general scientific, philosophical and specially-legal methods of the scientific research have been used. A system analysis method has been used to determine rulemaking, adoption of individual acts of public administration, control procedures. A dogmatic method was valuable to formulate conclusions and recommendations of practical character within the research issues concerning the determination of investigated administrative legal procedures at the legislative level of Ukraine. **Results:** particularities of three groups of administrative procedures *id est*: a) rulemaking; b) adoption of individual acts of public administration; c) control have been defined, the stages and problems of their implementations have been investigated. **Discussion:** national legislation concerning the administrative legal procedures. The lack of regulations that would determine a procedure for rights and duties implementation, provided by substantive norms in the field of public administration, leads to the fact that those substantive rules do not work. The development of administrative legal procedures and the investigation of problems of their implementation is an important topic for the future research.

**Keywords:** an administrative procedure, a rulemaking activity, individual acts of public administration, a control activity, public administration, administrative-legal norms, subjects of public administration, administrative legal support.

### 1. Introduction

In Ukraine, recently, the scholars' attention to legal phenomena of procedural-processual nature has intensified, and it has its objective character, namely, the growing need for a perfect mechanism for the legal norms implementation and the associated increase in the legislator's attention to legal regulation of organizational forms of substantive norms and legal relations implementation.

Administrative procedural rules regulating the implementation of the relevant substantive norms,

thus, contribute to the performance of their function of social relations regulating in the field of public administration and, thus, objectively serve to strengthen legal foundations of state life. On the contrary, the lack of regulations that would determine the procedure for rights and duties implementation, provided by a relevant substantive norm in the field of public administration, leads to the fact that those rights and duties remain unfulfilled, and the norms that establish them in spite of importance and significance, actually do not work.

Regarding protection of rights, it is necessary to emphasize that administrative procedures make fundamental rights work. Thus, the double perspective of fundamental rights is clear: they are both procedural and substantial. From that point of view, administrative procedures are a constitutional element, linked to constitutional rights [1, p. 577].

The level of scientific development of procedural problems in public administration is inadequate. First of all, there are no comprehensive studies of legal procedures in this area of legal regulation. The proposed article is an attempt to indicate the ways of scientific research of administrative procedures problems in the specified field.

## 2. Analysis of the research and publications

Various aspects of administrative procedures problems in the field of public administration have been and remain a subject of the leading scholars' of administrative law in Ukraine scientific interest: V. B. Averyanov, O. F. Andriyko, V. M. Bevzenko, I. L. Borodin, I. P. Holosnichenko, S. T. Honcharuk, A. T. Komziuk, V. K. Kolpakov, O. V. Kuzmenko, N. R. Nyzhnyk, O. I. Ostapenko, V. P. Petkov, V. F. Pohorilko, O. P. Riabchenko, M. M. Tishchenko.

## 3. Research tasks

Legal support of administrative procedures in the field of public administration in Ukraine is important both for the administrative law science development and for this analysis use to reform and improve the executive power's apparatus functioning, and administrative-procedural norms systematization. The mentioned above, also, concerns the administrative bodies' enforcement activities at all levels. The purpose of this article is an attempt of basic directions determination to solve problems of administrative procedures in Ukraine legal support.

## 4. Research results

A term "a procedure" is defined as "any lengthy, consistent case, an order, a ritual" [2, p. 526], "established, adopted sequence of actions for the implementation or execution of any case" [3, p. 543], "an official order of actions, execution, discussion of something" [4, p. 577]. The proposed definition of a procedure contains two main attrib-

utes: a) it is a systematic, sequential action; b) they are aimed at achieving a certain goal.

The purpose of an administrative procedure is to regulate the legal proceedings in decision-making processes on particular rights and duties of both natural and legal persons in specific administrative matters [5, p. 4].

Speaking about the legal procedure, it should be noted that any actions must be regulated by law and aimed at achieving a legal result. Having its own subject-matter of legal regulation and the corresponding system of organization, administrative-procedural norms acquire an actual opportunity to interact not only with the relevant branch of substantive law, but with the majority of sunstentive branches of Ukrainian law, in order to ensure the proper implementation of the relevant relations [6, p. 137].

Many legal procedures have their own target orientation. The subject of a procedure aimed at identification and implementation of rights and legitimate interests is a competent body of state power or an official. It should be noted that the procedures that serve the implementation of subjective rights and duties may be with participation of law enforcement agencies and officials or without their participation, especially this is typical for the sphere of administrative-legal regulation. Such procedural forms are proposed by scholars to consider as part of the generalization category "a law enforcement procedure" or "a law enforcement process" [7, p. 18].

However, it is believed that the result of a legal nature, the achievement of which is directed to all legal relations that are components of the legal procedure, may consist not only on the implementation of certain legal relationships. Thus, in the legal literature, depending on a target direction, several types of legal procedures are distinguished: law-making, founding, control and law enforcement [8, p. 65-71].

In accordance with the proposed classification, a procedure may have such a purpose as the formation of legal rules. An example of a legal procedure that has such a purpose can be a procedure of normative legal acts acceptance by various authorized subjects. Since normative acts

are adopted by bodies of different levels, it is clear that the procedure for their adoption depends on a type of a body, as well as on the nature of a regulatory act that is approved or developed by a ministry, a department. But in any case, in the process of law-making activity, there are certain social relations, the contents of which consists on the implementation of legally significant actions in the preparation and promulgation of a normative act. They are regulated by the relevant legal norms, and therefore they are legal relations. Those legal relations that consist on the certain sequence and are aimed at making of legal norms, form the corresponding procedure that is called law-making procedure.

As it is known, the concepts “law-making procedure,” “law-making process” have been established, they have long been used in science and in the practical activity of state and non-state institutions. Executive-regulatory legal relations that make up a procedure, may also be directed to the emergence or termination of subjects’ legal existence. From these positions, any set of legal relations that is comprised in the determined by law sequence and has such a goal will be legal.

Consequently, a legal procedure is a system of legal relations, which are formed in the appropriate sequence, aimed at achieving a legal result, which can be expressed in adopted normative acts. The presence and operation of those norms are one of the most important ways and means of guaranteeing the fulfilment of tasks that are faced by executive authorities.

Every country needs a system of making initial administrative decisions, a system of administrative adjudication, and a system of administrative rule-making. These systems give rise to a large number of bewilderingly diverse administrative procedures [9, p. 1].

Procedures in the administrative law, namely, in the field of public administration, are quite diverse, so it is worth considering each group of administrative procedures separately, which will enable them to find out their peculiarities. In the administrative law of Ukraine, by the nature of legal influence on social relations, administrative procedures can be divided into: *a) rulemaking;*

*b) adoption of individual acts of public administration; c) control.*

A *normative activity*, as a rule, is a rather lengthy process. For the adoption of a normative act, it is necessary to pass certain phases or *stages*: a) the collection of information and the emergence of problematic situations that require legal support; b) drafting a normative act of public administration; c) agreement, signing, discussion of a draft by the public and in public institutions; d) publication of an act of public administration and bring to the notice to all interested persons.

At the first stage, information is accumulated and evaluated, indicating the need for the adoption or updating of the normative framework in activities of administrative structures. In each case, the identification of problems requiring the normative influence and the prompt notification of senior officials should be a duty of employees of all structural units of the public administration.

At the second stage, at the level of lawmaking at the Verkhovna Rada of Ukraine, there are many permanent and temporary structures and advisors involved in drafting bills. At the same level of preparation of administrative normative acts, for example, in local state administrations, this function can be performed by any structural unit which competence is close to the contents of the drafting act.

At the third stage of the project approval and signing, as a rule, the detailed rules are regulated in the existing legal acts on these issues, with a clear indication of coordination subjects and signing, and the terms to pass the documents through those procedures. As for the discussion of draft regulatory normative acts by the public and in the decision-making body, it is not largely foreseen. However, one of the constitutional requirements for executive bodies, when they adopt normative acts, is to allow a certain level of participation for the interested persons [10, p. 9].

Obviously, the rulemaking process should be influenced by relevant specialists. They work not only in bodies of public administration, but also in public organizations of the corresponding type and in scientific institutions.

The fourth stage of the rule-making procedure can be divided into two groups. The first includes normative documents defining the rights and duties of citizens. According to the article 57 of the Constitution of Ukraine, such acts that are not brought to the notice of the public are not valid. This norm should be extended to all normative-legal acts of public administration of the external nature. It means they are related to interests of not only citizens, but also social, religious, trade union organizations and entrepreneurs. The second group mainly includes internal organization acts, for which there is no such a need for promulgation, but only to bring to the notice.

Thus, the legal determination of the procedure for the development, adoption and entry into force of regulatory acts of governance is necessary not only at the level of central executive authorities, but also local and need additional normative-legal regulation. Those issues in Ukraine should be regulated at the legislative level.

*Adoption of individual acts of public administration* of their external and internal organizational character. Among them there are three subgroups of procedures that legally provide the following directions of public administration: a) passage of service; b) issues related to structural and functional changes in public administration bodies; c) control of activities and acts of governing of bodies of state power, as well as local self-government bodies on the implementation of the powers delegated to them.

The first subgroup of procedures includes administrative rules that regulate staffing issues that are closely interrelated with norms of labor law. As we consider the administrative activity in an apparatus of public administration, we can point to the unconditional advantage of the rules of administrative law in this area. For example, this is the procedure for conducting a competition to take vacant positions of public officers, a procedure for an internship in state bodies, a procedure for conducting an official investigation, etc. Those three procedures are preceded by the adoption of individual acts of public administration that are orders for the replacement of public officers' positions or the imposition of disciplinary sanctions

on the results of an official investigation. And administrative legal regulation of those procedures can justify those orders and reduce the heads' of public administration bodies subjectivity to the resolution of staffing issues. At the same time, public officers' opportunities for their legal protection in the field of public governing from possible abuses by officials are increasing. In addition, for example, in accordance with applicable law, during the conduct of an official investigation, a person that is the subject of this procedure is provided with fairly extensive procedural rights.

The second subgroup of procedures aimed at structural and functional changes in a public administration body should include the creation of executive bodies, their separate and internal units, the reorganization of all the above structures, their liquidation, and the change of their competence. Among the listed procedures those actions are the shortest and they have the least impact of administrative procedural rules in case of changes in the competence of governing structures.

As for the third subgroup of procedures, it should be noted that fundamentals of control procedures are basically the same, both in internal and external directions of administrative activity. The very cancellation of subjects' of public administration acts is the last, though of course, not a mandatory stage of control activity. It is based on a certain stage of this activity and it does not require detailed procedural regulation. An exception of this is the adoption of those liquidation acts by collegial bodies.

Governing procedures that do not accept either normative or individual governing acts are conventionally called additional and they are quite numerous. The degree of administrative-legal influence here is much less, since the additional procedures are dominated by organizational forms of governing activity. However, it is not worthwhile to reject the normative regulation here. In favor of this statement, let us mention, in particular, the fairly widespread regulation of clerical work in executive bodies or the legal determination of a meetings-making order in those structures.

Regarding meetings that are a form of work of a public administration apparatus, which does not lose its significance with the united initials of the executive branch, Professor Yu.A. Tikhomirov noted the following desirable areas of legal influence: the determination of types or kinds of meetings to be held in a governing body (program, final, operational, productional, instructional); list of issues to be considered at a meeting. Moreover, those questions should be taken only when they require collective discussion and can not be resolved in a working order; who has to be mandatory present; the frequency of meetings, the time of convocation, the approximate duration of meetings of different types; an order for drawing up plans of meetings and familiarization with those plans; a procedure for preparation, adoption and implementation of decisions; liability of absent persons [11, p. 177].

The development of normative acts that would regulate the procedure for the holding of meetings and similar documents is not intended to standardize the social aspect of governing, the nature of officials' interrelationships, which of course, can not be a subject of standardization. The determination of the most appropriate order to execute basic, typical actions by identifying their types, mandatory operations, of which those actions are formed, the sequence of their implementation and the participants of the implementation is useful and corresponds to the task of governing improvement [12, p. 183].

The importance of administrative legal support is growing and it acquires the special contents on governing activities of an external direction. After all, a citizens' rights priority principle, which should be extended on created by them public organizations and subjects of entrepreneurship, regardless of ownership forms, should not be only a nude declaration. The application of this principle in the administrative-legal regulation of external governing procedures should limit shortcomings or, more precisely, the bureaucracy and arbitrariness of officials and other public officers of an apparatus.

The whole sphere of those procedures will be divided into two main groups relating to the subjects' of governing influence interaction: a) with

legal entities; b) with citizens. The conventionality of this distinction is that some of procedures exist in both groups.

The procedures relating to the interaction of executive authorities with legal entities (enterprises, institutions, public and religious organizations) include: a) the legalization of the status of legal entities in the form prescribed by law and its modification (for example, reorganization of a private enterprise into a limited liability company), a certain type of activities, for example, the issuance of a license for the internal carriage of passengers and goods, also, goods for the subsequent consumption, in particular, obligatory certification of products, b) control procedures that are preventive, current and future checks of compliance by legal entities with current public-law rules in their activity in various branches of legislation (administrative, financial, environmental, etc.).

Nowadays, in Ukraine there is a problem that all of procedures to legalize a legal entities' status and control procedures require simplification, shortening of their duration, improvement of normative determination or increase of administrative liability of public officers of bodies providing registration, as well as the extension of founders' of legal entities procedural rights.

*Control procedures* regulated by administrative-legal norms are aimed at establishing the optimal balance between the achievement of the goal in activities of public administration entities (compliance with requirements of various branches of the current legislation by controlled subjects) and the protection of those structures' rights. O.F. Andriyko argues that "control will be consistent with its purpose if the organization of its conduct and the implementation procedures will not interfere with the work of controlled subjects and carried out within clearly defined limits, and effectiveness will be achieved not by the number of inspections, but by the real ensurance to make accomplished tasks" [13, p. 20]. Legal regulation of control procedures should be one of the guarantees of impossibility to use control powers to settle personal scores, satisfying corporate interests with

the help of officials and employees of controlling bodies.

For this, the first stage of control activity, planning of inspections must meet the following requirements: a) inspections should not be carried out on a permanent basis, but be periodical, systematic; b) objects of control should be informed in writing about the planning of future inspections in terms established by regulatory acts.

In the process of control, the legislator should clearly define rights and duties of both sides that are a checking person and a person who is being checked, methods and timing of one or another control action. An official who conducts an inspection must have duly executed authority specifying the specific control object, its content and a period of its conduct. In addition, it is necessary to determine not only rights in the normative acts of public administration, but also duties of controlling bodies regarding the storage of requested documents, their timely return and liability for loss.

The stage of preparation and adoption of an act of an inspection with all relevant details, as well as the procedure for familiarization with it and the signing of an act by an entity in Ukraine, is usually regulated in detail by a majority of valid procedural acts. The appeal of those acts, as well as other decisions of executive authorities, is determined by the Code of Administrative Proceedings of Ukraine.

### 5. Conclusion

In the further administrative-legal regulation of administrative procedures in Ukraine the legislator should, in our opinion, consider that they are necessary only when the governing activity requires a series of consistent concrete actions, and the skip of any of them may adversely affect the result, and besides the contents, the order of such actions is also important.

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**АДМІНІСТРАТИВНО-ПРАВОВІ ПРОЦЕДУРИ  
У СФЕРІ ПУБЛІЧНОГО УПРАВЛІННЯ УКРАЇНИ**

Національний авіаційний університет, проспект Космонавта Комарова, 1, 03680, Київ, Україна  
E-mail: tidp.kaf.nau@gmail.com, o.m.myrones@ukr.net

**Мета:** завданням наукового дослідження є визначення поняття адміністративно-правових процедур, а також основних напрямів вирішення проблем їх правового забезпечення в Україні. Адміністративні процедури за характером їх правового впливу на суспільні відносини були класифіковані та проаналізовані. **Методи:** використовуються загальнонаукові, філософські та спеціально-правові методи наукового дослідження. Метод системного аналізу був використаний для визначення нормотворчих, прийняття індивідуальних актів публічного управління та контролюючих процедур. Догматичний метод був корисним для формулювання висновків та рекомендацій практичного характеру в рамках дослідження, пов'язаних з закріпленням досліджуваних адміністративно-правових процедур на законодавчому рівні України. **Результати:** були визначені та досліджені особливості трьох груп адміністративних процедур: нормотворчої; б) прийняття індивідуальних актів публічного управління; в) контролюючої, етапи та проблеми їх реалізації. **Обговорення:** національне законодавство, що стосується адміністративно-правових процедур. Відсутність нормативних положень, які б визначали порядок здійснення прав та обов'язків, передбачених матеріальними нормами у сфері публічного управління, призводить до того, що ці матеріальні норми не працюють. Розробка адміністративно-правових процедур та дослідження проблем їх реалізації є важливою темою для майбутніх наукових пошуків.

**Ключові слова:** адміністративна процедура, нормотворча діяльність, індивідуальні акти публічного управління, контролююча діяльність, публічне управління, адміністративно-правові норми, суб'єкти публічного управління, адміністративно-правове забезпечення.

**АДМИНИСТРАТИВНО-ПРАВОВЫЕ ПРОЦЕДУРЫ  
В СФЕРЕ ПУБЛИЧНОГО УПРАВЛЕНИЯ УКРАИНЫ**

Национальный авиационный университет,  
проспект Космонавта Комарова, 1, 03680, Киев, Украина  
E-mail: tidp.kaf.nau@gmail.com, o.m.myrones@ukr.net

**Цель:** задачей научного исследования является определение понятия административно-правовых процедур, а также основных направлений решения проблем их правового обеспечения в Украине. Административные процедуры по характеру их правового воздействия на общественные отношения были классифицированы и проанализированы. **Методы:** используются общенаучные, философские и специально-правовые методы научного исследования. Метод системного анализа был использован для определения нормативных, принятия индивидуальных актов публичного управления и контролируемых процедур. Догматический метод был полезным для формулирования выводов и рекомендаций практического характера в рамках исследования, связанных с закреплением исследуемых административно-правовых процедур на законодательном уровне Украины. **Результаты:** были определены и исследованы особенности трех групп административных процедур: нормотворческой; б) принятие индивидуальных актов публичного управления; в) контролирующей, этапы и проблемы их реализации. **Обсуждение:** национальное законодательство, касающееся административно-правовых процедур. Отсутствие нормативных положений, определяющих порядок осуществления прав и обязанностей, предусмотренных материальными нормами в сфере публичного управления, приводит к то-

*му, что эти материальные нормы не работают. Разработка административно-правовых процедур и исследование проблем их реализации является важной темой для будущих научных поисков.*

**Ключевые слова:** административная процедура, нормотворческая деятельность, индивидуальные акты публичного управления, контролирующая деятельность, публичное управление, административно-правовые нормы, субъекты публичного управления, административно-правовое обеспечение.