

Research Article

AN EXAMINATION OF THE ADMINISTRATIVE COURTS OF UKRAINE IN THE CONTEXT OF UNDERSTANDING THE CONCEPT OF 'A COURT ESTABLISHED BY LAW'

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Summary: 1. Introduction. – 2. 'Full Level of Jurisdiction' as a Defining Characteristic of the Body Administering Justice. – 3. 'Full Level of Jurisdiction' for Administrative Courts (features of providing means of national procedural law). – 4. The Concept of 'A Court Established by Law' in National Laws. – 5. The Concept of 'A Court Established by Law' in the Practice of National Courts. – 6. Conclusions.

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ABSTRACT

Background: Constituent parts of the right to a fair trial, which presuppose the need for the existence of institutions in a state that are authorised to review and resolve legal conflicts and united by the concept of 'a court established by law', are identified and studied in this article. The study is based on the decisions of the European Court of Human Rights, which outlines the criteria to which any institution authorised to administer justice must correspond. The aim of the study is to verify the Ukrainian laws that determine the principles of developing and functioning administrative courts in order to enshrine in their texts the requirements arising from the content of a legal formula for a 'court established by law'.

Methods: In this article, the authors use the following special legal methods: conceptual-legal, comparative-legal, formal-legal, and others. For example, with the help of the formal-legal method, it was possible to analyse the current trends in the practice of national administrative courts in compliance with the proposed requirements.

Results and Conclusions: The article states that the operation of Ukrainian laws creates the right conditions for administrative courts to be perceived as institutions with 'full jurisdiction' in resolving public disputes of any kind. At the same time, the authors conclude that there are cases in which the courts violate the provisions of Art. 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, despite the fact that such provisions have been implemented in the national administrative, procedural law.

1 INTRODUCTION

Each state that has become a party to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereafter, the Convention) has agreed to put forth all efforts to ensure the proper fulfilment of its obligations. Ukraine, which enacted the Ratification Act of this crucial international agreement on 17 July 1997, giving it the status of an authoritative source of national law,⁴ is among these states.

Elaborating on the statement above, let us explain that in the event of a conflict between an act of domestic law and an international treaty to which Ukraine acceded, the subject of enforcement should be given priority to the rules of the latter (part 2 of Art. 19 of the Law 'On International Treaties of Ukraine').⁵ This is fully in line with Art. 27 of the Vienna Convention on the Law of Treaties, which forbade a party to invoke the provisions of its domestic law as a justification for not fulfilling the treaty.⁶

In the first sentence of Art. 6 § 1 of the Convention, 'Right to a Fair Trial', it is stated:

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall decide the dispute

4 Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, ratified by the Verkhovna Rada of Ukraine. Ref. to: Law of Ukraine 'Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No 2, 4, 7 and 11 to the Convention' [1997] Official Bulletin of the Verkhovna Rada of Ukraine 40/263; Official translation of the text of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Ref. to: (2006) Official Journal of Ukraine 32/2371.

5 Law of Ukraine 'On the international treaties of Ukraine' [2004]: Official Bulletin of the Verkhovna Rada of Ukraine 50/540.

6 *Vienna Convention on the Law of Treaties* (1969) United Nations, Treaty Series 1155/331 <<https://www.refworld.org/docid/3ae6b3a10.html>> accessed 1 December 2021.

over his civil rights and obligations of a civil type or establish the validity of any criminal charge against him.

Obviously, the injunction contains information regarding the constituents that form the right to due process. Such constituents can safely be called guarantees of a fair trial since their fixing ensures the realisation of the said right. For the purposes of our study, we propose to distinguish those which presuppose the need for the existence of institutions authorised to review and resolve legal conflicts in the state and united by the notion of 'a court established by law'.

2 'FULL LEVEL OF JURISDICTION' AS A DEFINING CHARACTERISTIC OF THE BODY ADMINISTERING JUSTICE

The issue of determining the essence of the right to due process, the spectrum of guarantees that shape its content, and the implementation of their classification have repeatedly attracted the attention of scientists.⁷ Some of them, based on the jurisprudence of the European Court of Human Rights (hereafter the ECtHR, the Court), sought to delineate the scope of fair trial guarantees;⁸ others focused on examining the state of implementation of Art. 6 of the Convention into Ukrainian legislation, emphasising the specifics of the national context of creating the necessary conditions for the state to exercise the right to a fair trial⁹ for everyone under its jurisdiction. At the same time, an extremely important element of the latter – the right of every person to try and settle his or her case by an institution that has all the characteristics of the concept of 'a court established by law' – has not received due attention. These considerations lead us to the choice of the topic of this study, a significant part of which will be devoted to the analysis of the practice of Ukrainian courts in order to uncover the state of their compliance with the requirements arising from the content of the legal formula mentioned.

For the purpose of determining the content of Art. 6 of the Convention in the wording of the category of 'a court established by law', let us turn to the case law of the ECtHR, which has exclusive jurisdiction to interpret convention rules (Art. 46 of the Convention).

First, let us examine the characteristics of an institution that is capable of administering justice and can therefore be referred to as a 'court' within the meaning of the ECtHR. The latter, by applying Art. 6 § 1 of the Convention, made it clear that a court does not necessarily need to be a classical judicial body integrated into the national judicial system.¹⁰ It may be another organ formed outside this system but be able, acting in accordance with its competence, to resolve disputable issues within the limits of the due course of the

7 L Lukaides, 'Fair Trial. Commentary to Article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms' (2004) 2 Russian Justice; TA Tsvina, 'The right to a trial in civil proceedings' (Slovo 2015); TI Fulei, 'Application of the case law of the European Court of Human Rights in administrative justice' (2nd edn, 2015); OZ Khotunskaya-Nor, 'The influence of the legal opinions of the European Court of Human Rights on the development of justice in Ukraine: material aspect' (2014) 11 N 3 Bulletin of the Bar Academy of Ukraine.

8 TB Vavrynychuk, 'Review of the case law of the European Court of Human Rights under Article 6 of the European Convention on Human Rights (Civil Procedure) in Ukraine' (2014) 1 Law and Civil Society; NB Pysarenko, 'Applicability of guarantees of the right to a fair trial in administrative proceedings: the case law of the European Court of Human Rights and Ukrainian realities' (2016) 3 (86) Bulletin of the National Academy of Law of Ukraine.

9 O Tolochko, 'The right to a fair trial (Article 6 ECHR) in the light of Ukrainian law and case law' in OL Zhukovska (ed.), 'European Convention on Human Rights: Basics, Application Practice, Ukrainian Context' (VIPOL 2004)

10 *Gustafsson v Sweden* App no 1107043 (ECtHR, 30 July 1998) < <https://hudoc.echr.coe.int/eng?i=001-58213> > accessed 1 December 2021.

proceedings.¹¹ This body must also meet such requirements as: independence, especially from the executive power; impartiality; the duration of the judges' mandates; providing procedural guarantees for a fair trial.¹²

In Ukraine, at the constitutional level, the mandatory existence of administrative courts is identified as 'an inalienable part of the national judicial system' (Art. 125, para. 5 of the Constitution of Ukraine).¹³ While paying particular attention to the courts of administrative jurisdiction in the Basic Law, the legislator emphasised the importance of the task that they implement nationwide. In particular, it is a fair, unbiased, and timely resolution of disputes in the field of public-legal relations in order to protect the rights, freedoms, and interests of individuals and the rights and interests of legal entities from violations by the authorities. Thus, in our state, bodies that specialise in resolving public law disputes represent the judiciary and are 'jurisdictions of the classical type'.¹⁴ It is noteworthy that the rules according to which administrative courts hear cases that are within their competence are accumulated in a special procedural law – the Code of Administrative Proceedings of Ukraine (hereafter, the CAP, Code).¹⁵

At the same time, as a result of the analysis of the ECtHR judgments against Ukraine, it can be concluded that the Court sometimes extends the convention's meaning of the 'trial' to the subjects of the resolution of the public-law conflict that are not jurisdictions of the classical type. To illustrate this point, we refer to the ECtHR decision in the case of *Oleksandr Volkov v. Ukraine*, noting that the issue of dismissing Mr Volkov from the post of judge was considered by the High Council of Justice (hereafter, the HCJ), which resolved this conflict on the merits by holding a hearing and evaluating the evidence. The HCJ case ended with two motions for Mr Volkov's dismissal, forwarded to parliament and considered by the Parliamentary Justice Committee, which at the time was given some discretion in assessing the HCJ's findings, as it had the power to discuss and, if necessary, further review them and this could have resulted in a recommendation on whether to dismiss the judge. At the plenary session of parliament, on the basis of the submissions of the HCJ and the proposal of the Parliamentary Committee, a decision to release Mr Volkov was subsequently taken. Against this background, the ECtHR concluded that, by deciding the case and approving the HCJ decision, the Parliamentary Committee and the plenary session of the parliament jointly acted as a court. Their decision was binding and could only be reviewed by the Supreme Administrative Court of Ukraine.¹⁶

Describing such institutions, the ECtHR indicates that their activities may be related to the performance of various functions – administrative, disciplinary, advisory, etc. However, one of the areas should be the judicial function. The number of functions cannot by itself exclude such bodies from among the 'courts'.¹⁷ It is important, in the Court's view, that, first, these 'non-judicial' authorities have a 'full level of jurisdiction', that is, in the process of dealing

11 *Sramek v the Austria* App no 8790/79 (ECtHR, 22 October 1984) <<http://hudoc.echr.coe.int/eng?i=001-57581>> accessed 1 December 2021.

12 *Demicoli v Malta* App no 13057/87 (ECtHR, 27 August 1991) <<https://hudoc.echr.coe.int/eng?i=001-57682>> accessed 1 December 2021.

13 Constitution of Ukraine dated 28 June 1996 No 254 k/96-BP (1996) Official Bulletin of the Verkhovna Rada of Ukraine 30/141.

14 *Campbell and Fell v the United Kingdom* App nos 7819/77; 7878/77 (ECtHR, 28 June 1984) <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57456%22%5D%7D>> accessed 1 December 2021.

15 The Code of Administrative Proceedings of Ukraine (as amended of 3 October 2017) <<https://zakon.rada.gov.ua/laws/show/2747-15>> accessed 1 December 2021.

16 *Oleksandr Volkov v Ukraine* App no 21722/11 (ECtHR, 9 January 2013) <https://hudoc.echr.coe.int/eng?i=001-115871>> accessed 1 December 2021.

17 *H v Belgium* App no 8950/80 (ECtHR, 30 November 1987) <<https://hudoc.echr.coe.int/eng?i=001-57501>> accessed 1 December 2021.

with a case, resolve legal conflicts on merits.¹⁸ The settlement of a dispute by a body not vested with full jurisdiction is not a violation of the Convention, but in such case, national law should provide for the possibility of reviewing the relevant decision directly by a court.¹⁹ Second, their decisions must be binding and cannot be modified by non-judicial authorities in the future.²⁰

Regarding the 'full level of jurisdiction', it should be noted once again that, according to the ECtHR, 'a court' can be considered only a body authorised to resolve legal conflicts on the merits. This means that the latter must be provided with an opportunity to review all issues of fact and law relevant to the dispute in question.²¹ Thus, in determining the issues of fact, the court fully and thoroughly examines the circumstances that are relevant to the correct resolution of the case. While doing so, it shall verify that they are supported by appropriate, admissible, reliable, and sufficient evidence. In resolving the issue of law, the court provides a legal assessment of the circumstances established by it, with reference to which parties to the dispute substantiate the legitimacy of their positions and formulates a conclusion on the merits of the disputed issues.

3 'FULL LEVEL OF JURISDICTION' FOR ADMINISTRATIVE COURTS (FEATURES OF PROVIDING MEANS OF NATIONAL PROCEDURAL LAW)

Considering the topic of this study, we propose to analyse the Code of Administrative Proceedings of Ukraine and fix in it the prescriptions that allow us to answer the question of whether there are grounds to consider the administrative courts of Ukraine as institutions having 'full level of jurisdiction'.

We will begin the search for the necessary procedural rules by referring to the general provisions of administrative justice set out in the very first section of the Code. A considerable number of these provisions reflect information on principles, that is, guiding ideas of a particular type of justice – those that express its essence and specificity and are aimed at ensuring its effectiveness.

However, only one of these principles – *the formal clarification of all the circumstances of the case* – is specific to administrative proceedings only, which is stipulated by the specific nature of the relations that give rise to legal disputes falling within the jurisdiction of administrative courts. The effect of this principle is, first of all, on the court's 'behaviour'. Thus, unlike courts in other jurisdictions, the court, during an administrative trial, has an additional formal capacity to clarify the circumstances of the case and to outline the requirements for satisfaction of which it deliberates. By taking advantage of these opportunities, the administrative court finds itself more active, which can significantly affect the outcome of the case.

The official clarification of all the circumstances of the case affects the parties' *adversariality* and *dispositiveness*, giving them a specific meaning. First, let us examine how the *adversarial principle of parties* is transformed under this influence. According to part 1 of Art. 9 of the CAP, the parties are free to submit their evidence and to prove their conviction before a

18 *Bentham v the Netherlands* App no 8848/80 (ECtHR, 23 October 1985) <<https://hudoc.echr.coe.int/eng?i=001-57436> accessed 1 December 2021.

19 *Gautrin and others v France* App nos 38/1997/822/1025-1028 (ECtHR, 20 May 1998) <<https://hudoc.echr.coe.int/eng?i=001-58166>> accessed 1 December 2021.

20 *Van de Hurk v the Netherlands* App no 16034/90 (ECtHR, 19 April 1994) <<https://hudoc.echr.coe.int/eng?i=001-57878>> accessed 1 December 2021.

21 *Terra Woningen BV v the Netherlands* App no 20641/92 (ECtHR, 17 September 1996) <<https://hudoc.echr.coe.int/eng?i=001-58082>> accessed 1 December 2021.

court. At the same time, part 4 of the same article imposes on the court the obligation to take measures prescribed by law to clarify all the circumstances of the case, including the identification and requirement of evidence on its own initiative. The Administrative Court is also empowered to require evidence before a claim is filed – at the request of a person who may acquire claimant status if there are reasons to believe that the means of proof may be lost or the collection or presentation of relevant evidence will subsequently be impossible or impeded (Arts. 80 and 114 of the Code).

The content of the *principle of dispositiveness* is explained in parts 2 and 3 of Art. 9 of the CAP, according to which: (a) the court shall consider administrative cases not otherwise than by the claim filed in accordance with the Code within the limits of the claims under the lawsuit; (b) each person who seeks redress disposes claims on his or her own discretion. However, in administrative proceedings, due to the influence of the official clarification of all the circumstances of the case on the dispositive nature of the case, the court may go beyond the claims if it is necessary for the effective protection of the rights, freedoms, interests of an individual and a citizen, other subjects in the field of public-legal relations from violations on the part of the authorities.

In addition, in order to comply with the specific requirements of the principle of disposition, the court must exercise control over the enforcement of the following rights of the parties: (a) the plaintiff's right to refuse the claim in whole or in part; (b) the defendant's right to admit the claim in whole or in part; (c) the rights of the parties to reconciliation (Arts. 47, 189, 190, 191 CAP). If discontinuance, its recognition, or the terms of reconciliation agreed by the parties contravene the law or violate anyone's rights, freedoms, and interests, the court must refuse to uphold the claim submitted for the implementation of the relevant dispositive law and continue the administrative trial.

Based on the above, it can be said that administrative courts of Ukraine have a wide range of possibilities to review all issues of fact and law relating to their public law disputes. At the same time, the question of whether there should be an exception to this general conclusion is due to the referral to the jurisdiction of the designated courts of cases of appeal against administrative acts adopted as a result of the exercise of discretionary powers by authorities, remains unanswered.

Recall that the subjects of public administration with discretionary powers, in the decision of a particular administrative situation, have the right to act at their own discretion, that is, to choose, taking into account the actual circumstances of this situation, one of the alternatives provided by the law. In this case, the administrative court is able to check the adherence of a subject of power to legal requirements only and can not interfere with its discretion (sole discretion). Otherwise, there is a risk of violating the constitutional principle of separation of powers and the courts taking over powers to resolve issues that are within the competence of another state body.

It turns out that certain factual aspects of a decision 'at its discretion' cannot be controlled by a court, and therefore the latter, being part of a normal judicial mechanism, will not look like an institution having a 'full level of jurisdiction'.²² Considering this assumption, it should be noted that these formulations do not negate the ability of a court that controls the lawfulness of a discretionary administrative act to examine its essence as well.

22 As an aside, the ECtHR concluded in some of its decisions that institutions, integrated into national judicial systems, lacked a 'full level of jurisdiction' and were therefore not regarded by the courts within the meaning of Art. 6 § 1 of the Convention. Thus, in the judgment in *Obermeier v Austria* App no 11761/85 (ECtHR, 28 June 1990) <<https://hudoc.echr.coe.int/eng?i=001-57631>> the administrative court was found not to have 'full jurisdiction' since it was authorised only to determine the compliance of the administrative acts with the object and the purpose of the law.

So, the requirements for adherence to judicial review are in the ECtHR's decision in *Sigma Radio Television Ltd. v. Cyprus*. The claimant in the case complained of a violation of his right to a fair trial in the proceedings concerning the lawfulness of the application by the Committee of Radio and Television of Cyprus of penalties for failure to comply with the provisions of the Broadcasting Law and the Broadcasting Stations Regulation.

In this decision, the ECtHR identified three requirements that must be met simultaneously. The first is that a court assessing an administrative decision 'at its discretion' should investigate as deeply as possible the so-called 'simple' facts, that is, those ones that do not require special knowledge. The second is that the court should take into account the procedural safeguards that took place when the decision was made by the subject of the administration: if during the administrative procedure the applicant used guarantees that comply with the rules of Art. 6, then this may justify a 'facilitated' form of judicial review. Finally, the third one is that the court is required to (a) hear all of the applicant's arguments and (b) review all the facts that are central to his or her (the applicant's) case.²³

A worthwhile illustration of complying with such requirements is the court decision in the case of *Potocka and Others v. Poland*, which was issued 10 years earlier than the above-mentioned decision in the case against Cyprus. The applicants from Poland complained of non-compliance with the right to a fair trial in resolving a dispute about the legality of administrative acts adopted in respect of their inherited land plots. According to Polish proceeding law, the jurisdiction of the Supreme Administrative Court, which heard the conflict, was limited by the study of legal issues. However, this Court was authorised to cancel the decisions of the courts of lower instance in whole or in part if it was found that the procedural requirements of impartiality were not met during the proceeding, which resulted in the adoption of their decisions. The Supreme Administrative Court's argument stated that it had, in fact, examined the validity of the case. Even though the Court could have limited the investigation to the finding that the contested decisions should be upheld due to procedural and substantive deficiencies in the applicants' complaint, it considered the latter in essence, in detail, without refusing to establish the facts. The Court made the decision which was carefully reasoned, and the applicants' arguments were fully examined. Considering the above, the ECtHR stated that the scope of the review of the case by the Supreme Administrative Court was sufficient to comply with paragraph 1 of Art.6 of the Convention.²⁴

Thus, studying the ECtHR case law suggests that the right to a fair trial can be exercised if the court has examined all the issues – both fact and law. Alternatively, a situation when the actual circumstances that were decisive for the resolution of the conflict may not be properly reviewed can arise. This, according to the ECtHR, is in itself a violation of Art. 6 § 1 of the Convention.²⁵ In other words, even if the law does not empower the court to decide the facts of the case, the latter must be considered in order to provide a sufficient amount of judicial review of the act adopted by the authority 'at its discretion'.

The Committee of Ministers of the Council of Europe, while referring to the practice of the ECtHR, also sought to outline the optimal ways and means of ensuring effective control of administrative acts. In its recommendations, it also addressed the problem of determining the limits of such control. For example, in the Recommendation on Judicial Review of Administrative Acts, the Committee of Ministers emphasised that all administrative acts are

23 *Sigma Radio Television Ltd v Cyprus* App nos 32181/04 and 35122/05 (ECtHR, 21 July 2011) <<https://hudoc.echr.coe.int/eng?i=001-105766b>> accessed 1 December 2021.

24 *Potocka and others v Poland* App no 33776/96 (ECtHR, 04 October 2001) <<http://hudoc.echr.coe.int/eng?i=001-59703>> accessed 1 December 2021.

25 *Terra Woningen BV v the Netherlands* App no 20641/92 (ECtHR, 17 September 1996) <<https://hudoc.echr.coe.int/eng?i=001-58082>> accessed 1 December 2021.

subject to judicial review and that the court should be able to consider all questions of law and factual circumstances relevant to the parties' case.²⁶

The text of that Recommendation does not refer to the particularities of discretionary acts review. However, the explanatory comment to this Recommendation states that, with respect to administrative acts resulting from the exercise of discretion, although such powers are, in principle, not subject to judicial review, the court may ascertain whether the relevant administrative authority has exceeded the permitted limits when exercising such discretion and has made any obvious mistakes. In the view of the Committee of Ministers, a discretionary act may be abrogated by a court if, in adopting it, the administrative authority has exceeded its powers. In doing so, the court must verify the correct application of the law to the facts of the case.²⁷

Paragraph 9 of the Recommendation on the exercise of discretion by the administrative authorities is as follows:

9. An act adopted/implemented during the exercise of discretionary powers may be reviewed for legality by a court or other independent body.

Such control does not exclude the possibility of prior control by an administrative body empowered to decide both on the legality and the merits of such an act.²⁸

However, in the explanatory comment, traditionally annexed to this Recommendation, it is noted that the above wording does not negate the possibility that a court controlling the lawfulness of a discretionary administrative act may also control the subject matter of such an act. Sub-para. 9 of para. 2 of the Recommendation expressly provides that 'the control of both the lawfulness of an act and its subject matter by a competent administrative authority shall not be construed as excluding additional, double control by a court or other independent body'.²⁹

In the development of the cited provisions, we recall the extraordinarily interesting, thorough work of Eberhard Schmidt-Assmann, *Common Administrative Law as an Idea of Regulation: the Basic Principles and Tasks of Administrative Law*,³⁰ in which the author noted the following: 'Discretion does not mean freedom of choice. Public administration bodies make no choice; as a rule-of-law authority, they must be guided by the criteria laid down in the law and the task entrusted to them, and weigh these scales independently within their authority'.³⁰ This understanding of the nature of the reasoning allowed Professor Schmidt-Assmann to conclude that the authority of the administrative authorities to make final decisions did not exclude judicial review but narrowed its intensity.³¹ We see that this conclusion only confirms the position reflected in the decisions of the ECtHR regarding the need for the court to carry out a full review of any administrative act, including its discretion.

26 REC Recommendation (2004) 20 on judicial review of administrative acts: adopted by Com. Of Ministers of the Council of Europe 15 December 2004, in RO Kuibida & VI Shishkin (eds), *Fundamentals of administrative proceedings and administrative law* (Staryi Svit 2006) 552-555.

27 Explanatory comment on Recommendation REEC (2004) 20 on judicial review of administrative acts (adopted by the Committee of Ministers of the Council of Europe on 15 December 2004), *ibid*, 556-575.

28 Recommendation No R (80) 2 on the exercise of discretion by administrative authorities: adopted by Com. Of Ministers of the Council of Europe 11 March 1980, *ibid*, 438-441.

29 Explanatory comment to Recommendation No R (80) 2 on the exercise of discretionary powers by the administrative authorities (adopted by the Committee of Ministers of the Council of Europe on 11 March 1980), *ibid*, 441-451.

30 E Schmidt-Assmann, *General Administrative Law as an Idea of Regulation: Basic Principles and Tasks of Administrative Law Systematics* (H Ryzhkov, I Soiko & A Bakanov transl. from German, O Syroid ed., IS 2009) 239.

31 *Ibid*. 253.

When considering cases of the lawfulness of administrative acts that may be classified as discretionary, the Ukrainian courts should take into account the provisions of Art. 2 part 2 of the Code of Administrative Proceedings of Ukraine, which oblige them to evaluate a management act against certain criteria. In particular, the decisions, actions, or omissions of the subject of authority shall be verified as to whether they have adopted/are made: (a) on the basis, within the powers and in the manner provided by the Constitution and laws of Ukraine; (b) using the power for the purpose for which that power was conferred; (c) substantiated, that is, taking into account all circumstances relevant to the decision or action; (d) impartially (without bias); (e) in good faith; (f) reasonably; (g) respecting the principle of equality before the law, preventing all forms of discrimination; (h) in proportion, in particular, maintaining the necessary balance between any adverse effects on the rights, freedoms and interests of the person and the purposes to which this decision (action) is directed; (i) taking into account the individual's right to participate in the decision-making process; (j) in a timely manner, i.e., within a reasonable time.

The Administrative Courts demonstrate a position that takes into account these procedural requirements and is in line with ECtHR practices and recommendations of the Committee of Ministers of the Council of Europe analysed above. An example is the decision of the Poltava District Administrative Court in a case on a lawsuit filed by the village council against the regional state administration to declare it illegal and to cancel the order of the head of the administration.³²

The object of the dispute in this case was the decision of the Chairman of the administration to rename two streets in the urban village. The adoption of such an act was necessitated by the implementation of the provisions of the Law of Ukraine 'On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propagation of Their Symbolism', by which the authorities were authorised to rename the geographical objects, the names of which contain the symbolism of the communist totalitarian regime.³³

The power to rename geographic objects is clearly discretionary. After all, the representative of the government has the right to determine the need for such renaming independently, as well as under the conditions of public discussion, to assign new names to these objects.

The Poltava District Administrative Court upheld the claim in part: it found the order illegal to rename one of the streets and revoked it in the relevant part. The judgment is set out on 10 pages. An examination of the text makes it clear that the court did not limit itself to determining whether the subject of power is authorised by law to adopt a discretionary act – the decision concerned not only the statement of the administration chairman's compliance with the order of passing the ruling. The Court, on the basis of the evaluation of the parties' arguments and the evaluation of the evidence requested by it on its own initiative, skilfully examined the validity of the plaintiff's position, indicating that both the facts and the issues of law were within its field of view. At the same time, the court did not interfere in any way with the implementation by the other authorised representative of the power given exclusively to it to act in cases determined by law at its own discretion. After all, it only found the unlawfulness of the discretionary act and revoked it, which, no doubt, does not exclude the possibility of the head of the state administration to take another decision on this issue, which, under civilised conditions, should take into account the court's findings.

³² Case No 816/2196/16 [2017] Poltava District Administrative Court <<https://www.reyestr.court.gov.ua/Review/65769378>> accessed 1 December 2021.

³³ Law of Ukraine 'On the Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the Prohibition of Propagating Their Symbolism' [2015] Official Bulletin of the Verkhovna Rada of Ukraine 26/219

Therefore, it can be stated that national law has created necessary conditions for an administrative court to be regarded as an institution with a 'full level of jurisdiction' within the meaning of Art. 6 § 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950.

4 THE CONCEPT OF 'COURT ESTABLISHED BY LAW' IN NATIONAL LAWS

According to the convention, the right to a fair trial is considered to be respected if the legal conflict is resolved by an institution that not only has full jurisdiction but is also *established by law*. Explaining this phrase, the ECtHR noted that its introduction into the text of Art. 6 of the Convention was due to the need to avoid regulating matters of the administration of justice by the public administration and to ensure that they were standardised by parliamentary acts.³⁴ Otherwise, a judicial body formed out of the will of the people, reflected in the law, would not have legitimacy and therefore would not be able to hear cases with the participation of individuals in a democratic society.³⁵

A significant step in the development of the concept of 'a court established by law' was made by the European Commission of Human Rights in 1978 following the outcome of the *Leo Zand v. Austria* case. The Commission then explained that the law issued by parliament should, at a minimum, establish the organisational structure of the judiciary and not regulate every detail in this area. Subject to this condition, delegated legislation should not be regarded as wholly inadmissible in the light of Art. 6 § 1 of the Convention.³⁶

The state of regulation of the system of bodies authorised to administer justice in Ukraine fully meets the above requirements. The regulations have even been enshrined in the text of the Basic Law, clause 14, part 1 of Art. 92, which states that only the laws of Ukraine determine the judiciary, the judicial proceedings, and the status of judges. In other constitutional provisions, this information develops as follows: (1) justice in Ukraine is exclusively administered by the courts (Art. 124, part 1); (2) the delegation and assignment of the functions of the courts to other bodies or officials are not allowed (Art. 124, part 2); (3) the judicial system in Ukraine is built on the principles of territoriality and specialisation and is determined by law (Art. 125, part 1); (4) a court shall be formed, reorganised, and liquidated by law, the draft of which shall be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultation with the High Council of Justice (Art. 125, part 2).

In order to fulfil the abovementioned provisions of the Constitution of Ukraine, the Parliament approved the law 'On the Judiciary and the Status of Judges' (Law on Judiciary), which provides for a three-tier judicial system, represented by local courts, courts of appeal, and the Supreme Court as the highest in this system.³⁷

As for the system of specialised administrative courts, today, it is formed by circuit administrative and appellate administrative courts. At the same time, it is not only these courts that are involved in the resolution of public law disputes. Thus, the Law on Judiciary

34 *Coeme and others v Belgium* App nos 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96 (ECtHR, 22 June 2000) <<https://hudoc.echr.coe.int/eng?i=001-59194>> accessed 1 December 2021.

35 *Lavents v Latvia* App no 58442/00 (ECtHR, 28 November 2002) <<https://hudoc.echr.coe.int/eng?i=001-65362>> accessed 1 December 2021.

36 *Leo Zand v Austria* App no 7360/76 (European Commission of Human Rights, 12 October 1978) <https://www.legislationline.org/download/id/4074/file/ZAND%20v%20AUSTRIA_1978.pdf> accessed 1 December 2021.

37 Law of Ukraine 'On the Judiciary and Status of Judges' (2016) <<https://zakon.rada.gov.ua/laws/show/1402-19>> accessed 1 December 2021.

operates with the general concept of 'local administrative courts', which covers both circuit administrative and other courts defined by the Code of Administrative Proceedings of Ukraine. Art. 20 of the CAP lists the categories of administrative cases that are heard at first instance by the local general courts. The circuit administrative courts decide all other administrative cases. Thus, administrative litigation covers more than just the specialised administrative courts since certain types of public-law conflicts at first instance, as noted above, are resolved by local trial courts under the rules of the Code.

Courts of appeal trying administrative cases are administrative courts of appeal, which are formed in appellate districts. It should be noted that outside the system of administrative courts is the Supreme Court, which, in accordance with the requirements of the CAP, can also appeal cases decided by the courts of appeal as courts of the first instance (Art. 23, part 2 of the Law on the Judiciary).³⁸

It is worth noting that in order to exercise the powers vested in the Supreme Court, important integral parts, such as the Grand Chamber and the Administrative Cassation Court, have been distinguished in their structure. The Grand Chamber of the Supreme Court conducts an appellate review of the cases decided by the Administrative Cassation Court within the Supreme Court as a court of first instance (Art. 23 part 3).³⁹ However, the main task of the Supreme Court in the area of administrative justice is an appellate review of the administrative courts' judgements.

An equally significant aspect of the requirement for the establishment of judicial institutions under the law is that under Art. 6 § 1 of the Convention, every trial must be carried out by a court formed in accordance with legal rules.⁴⁰

In its decision, *Oleksandr Volkov v. Ukraine*, the ECtHR also insisted that the phrase 'established by law' extends, first, to the legal basis of the very existence of the 'court' and, second, to the composition of the panel in each case. However, in this decision, the ECtHR focused on clarifying whether the Chamber of the Supreme Administrative Court of Ukraine (SACU) had been established and its personnel had been defined in a lawful manner that would meet the requirement of 'a court established by law'.

It should be recalled that Mr Volkov's case was to be heard by a special SACU chamber, which had to be created in accordance with the decision of the President of this court. The panel of this chamber was determined by the Chairman and approved by the Presidium of the Supreme Administrative Court. However, by the time these actions were taken, the five-year term of office of the Chief Justice of the Supreme Administrative Court had expired, and the procedure for appointing presidents of courts was not governed by national law. It turned out that the SACU chairman continued to perform his functions beyond the statutory term of his authority, relying on the fact that the procedures for appointment and/or reappointment were not provided for by the legislation in force at the time, and the legislative grounds for extending

38 Pursuant to Art. 22, part 2, of the CAP, the Administrative Court of Appeal in the district of appeal, which includes the city of Kyiv, as the court of first instance, is responsible for challenging certain decisions, actions, and omissions of the Central Election Commission, actions of candidates for the post of President of Ukraine, and their election agents. Part 3 of the same article provides that the administrative courts of appeal at first instance shall consider claims for compulsory acquisition on grounds of the public necessity of the land and other objects of immovable property placed therein.

39 Pursuant to Art. 22, part 4, of the CAP, the Supreme Court, as a court of first instance, is responsible for determining the results of elections or the all-Ukrainian referendum by the Central Election Commission, the cases of a suit for early termination of powers of the People's Deputy of Ukraine, and cases concerning appeals of acts, actions, or omissions of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice, and the High Qualifications Commission of Judges of Ukraine.

40 *Posokhov v the Russia* App no 63486/00 (ECtHR, 4 March 2003) <<https://hudoc.echr.coe.int/eng?i=001-60967>> accessed 1 December 2021.

his authority were not sufficient to the extent defined. In these circumstances, the ECtHR concluded that there had been a violation of Art. 6 § 1 of the Convention in this respect.⁴¹ The ECtHR further reinforced its position by referring to earlier decisions. For example, it cited the decision in the case of *Gurov v. Moldova*, dated 11 July 2006, which noted that the practice of extending the powers of judges automatically indefinitely after the expiration of their statutory term until they were re-appointed violates the principle of 'a court established by law'.⁴²

Based on the analysis of the current version of the CAP, we conclude that the composition of the court should include a judge or a panel of judges appointed to consider a particular administrative case by the Unified Judicial Information and Telecommunication System (UJITS). According to Part 1 of Art. 31 of the CAP, the automated distribution of cases is carried out taking into account the specialisation and uniform workload for each judge on a random basis and in chronological order of registration of cases. If the case is subject to mandatory collegial review, the UJITS designates a judge-rapporteur when registering the statement of claim, complaint (appeal or cassation), and other documents that may be subject to judicial review. He or she is responsible for verifying these procedural documents for compliance with the requirements of the Code and preparing the case for consideration. At the same time, the case is considered by the permanent panel of judges of the relevant court, which includes this judge-rapporteur. The composition of the permanent panels of judges shall be determined by the conference of judges of the relevant court.

According to Art.35 of the CAP, the composition of the court must be unchanged throughout the proceedings in the court of the relevant instance, except in cases that make it impossible for a judge to participate in the proceedings.

As a general rule, in case of a change in the composition of the court at the stage of preparatory proceedings, the consideration of the case starts again. If the composition of the court changes at the stage of consideration of the case on the merits, the court starts the consideration of the case on the merits again. The exception is the situation when it is necessary to repeat the preparatory proceedings.

According to Art. 32 of the CAP, all the administrative cases in the court of the first instance are considered and resolved by a judge individually, except as provided by the Code.

At the same time, the collegial consideration of the administrative case is carried out in view of the following. Thus, in accordance with Part 2 of Art. 33 of the CAP, any case, which falls under the jurisdiction of a court of the first instance, depending on the type and complexity of the case, may be considered by the panel of three judges, except for cases that are considered in simplified action proceedings. The relevant issue is resolved before the end of the preparatory hearing in a case (or before the start of case consideration on the merits, if the preparatory hearing is not held) by a judge considering a case by his or her own initiative or by the request of a trial participant upon the adoption of an appropriate order. In addition, the law establishes a list of administrative cases to be considered collectively in the court of first instance: (1) cases subject to appeal against decisions, actions, or inactivity of the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, or the district electoral commission (the district electoral commission for the referendum); (2) cases falling within the jurisdiction of the Administrative Court of Appeal as a court of first instance; (3) cases falling within the jurisdiction of the Supreme Court as a court of first instance.

It is also important to note that the appellate review of court decisions in administrative cases is carried out by a panel of three judges, and the cassation review by a panel of three or a

41 *Oleksandr Volkov v Ukraine* App no 21722/11 (ECtHR, 9 January 2013) paras 151, 154, 156 <<https://hudoc.echr.coe.int/eng?i=001-115871>> accessed 1 December 2021.

42 *Ibid*, para 151.

greater odd number of judges. It should be added that in the cases specified in Art. 346 of the CAP, cassation review of court decisions is carried out by a chamber or joint chamber of the Administrative Cassation Court or the Grand Chamber of the Supreme Court. Moreover, the session of the chamber is considered valid if more than half of its members are present, and in the case of the joint chamber and the Grand Chamber, not less than two-thirds of its members.

Arts. 36 and 37 of the CAP define the circumstances in which the judge's impartiality may be questioned. Such circumstances are, for example, the direct or indirect interest of the judge in the outcome of the case or his or her prior participation in the proceedings in any procedural status. Since these articles of the CAP do not contain comprehensive information on the circumstances under consideration, in fact, they can include any that can cast doubt on the impartiality of the judge. The presence of at least one of these circumstances is the ground for the recusal of the judge. The parties to the case also have the right to initiate the recusal of a judge by submitting a reasoned application. It should be taken into account that the disagreement of the party with the procedural decisions of the judge, the decision or dissenting opinion of the judge in other cases, or the public opinion of the judge on a legal issue can not be grounds for recusal.

5 THE CONCEPT OF 'COURT ESTABLISHED BY LAW' IN THE PRACTICE OF NATIONAL COURTS

In resolving the case of *Sokurenko and Strygun v. Ukraine*, the ECtHR was also forced to resort to interpreting the extremely important convention phrase 'established by law'. Regarding the background of this case, the Supreme Court of Ukraine (SCU) upheld the decision of the Court of Appeal, ruling against the applicants and revoking the decision of the court of cassation on the ground that the latter's findings were not factual and were unjustified and erroneous. In this regard, Sokurenko and Strygun complained that the SCU had ruled in their case, exceeding the powers conferred on it, and therefore could not be considered 'a court established by law' within the meaning of Art. 6 § 1 of the Convention.

It should be clarified that the conflicts involving Sokurenko and Strygun were public law but were resolved according to the rules of the Commercial and Procedural Code of Ukraine (CPU) since, at the time of their resolution, the CAP had not been adopted. According to Art. 111¹⁸ of the Commercial and Procedural Code, in the version in force at the date of the decision of the case of Sokurenko and Stryhun, the SCU was not entitled to annul the 'cassation' decision and to maintain the decision of the court of appeals.

The ECtHR accepted the applicants' position and found that an SCU that had gone beyond its powers could not be regarded as 'a court established by law'. Therefore, the Court found a violation of Art. 6 § 1 of the Convention. Referring to its case law, the ECtHR noted that the phrase 'established by law' extends not only to the legal basis of the existence of a 'court' but also to the court's observance of certain rules governing its activities. The Court stated that in the present case, the SCU had taken acts which were not provided for by the procedural Code; there was no other rule of law that would grant the SCU the right to overturn the decision of the cassation court and to uphold the decisions of the courts of first and appeal instances. However, the ECtHR noted that the highest judicial authority empowered to interpret the law could make decisions not established by law. Such application of the law must, however, be of an exceptional nature, and the aforesaid court must give clear and probable grounds for such an exceptional departure from the exercise of its defined powers. However, in the case of Sokurenko and Stryhun, according to the ECtHR, the SCU did not provide any arguments for adopting such a decision, went beyond its powers, deliberately

violated the procedural law, and therefore cannot be considered 'a court established by law' within the meaning of the convention provision in question.⁴³

In terms of defining the essence of the concept of 'a court established by law', the ruling of the Grand Chamber of the Supreme Court (Grand Chamber) of 4 September 2019 in a case against a claim of an individual to the State of Ukraine as represented by the Cabinet of Ministers of Ukraine, the State Treasury Service of Ukraine damages (Decree)⁴⁴ is also worth noting. This resolution was not adopted according to the rules of administrative proceedings, but the results of its analysis do not become less significant for the purposes of our research. It appears that the appeal to the said court decision makes it possible to look at the problem resolved by the ECtHR in the case of *Sokurenko and Strygun v. Ukraine* from a different perspective.

The Grand Chamber revoked the decision of the courts of first instance and the appellate court by the Resolution adopted on the consequences of consideration of the cassation appeal and referred the case to a new trial. The problem was that in avoiding the resolution of the dispute on the merits and choosing precisely such a wording of the Resolution, the Grand Chamber failed to give a proper justification for its 'conduct'. In particular, it did not specify the violations of procedural law committed by the courts of the previous instances, the establishment of which is a prerequisite for the cassation instance to reach a decision on such content. The Grand Chamber embraced a position opposite to that demonstrated by the Supreme Court of Ukraine in the case of *Sokurenko and Stryhun*: when the latter exceeded its powers, seeking at last to 'mark a decisive end' to a lengthy trial, then the Grand Chamber did not use all of its procedural options for a quicker and final resolution of the conflict. The two aforementioned judgments are also similar in that their texts did not properly state the grounds on which they were based, and this can be seen as a violation of another requirement of a fair trial – the motivation of judicial acts.

Let us return to the analysis of the case before the Grand Chamber and briefly summarise its factual allegations. In 2016, the plaintiff filed a lawsuit claiming compensation owed to her at the expense of the State Budget of Ukraine for the damage caused by a terrorist act for damaged commercial premises. The statement of claim was motivated by the fact that on 24 January 2015, during an anti-terrorist operation consisting of artillery shelling of a housing estate in the Mariupol East neighbourhood, the commercial property of the plaintiff was damaged (destroyed).

The fact that the plaintiff had previously appealed for a redress of damages to the Mariupol City Council and the Donetsk Regional State Administration, which exercised their powers in full, was another reason for bringing the case to the court. However, she received a refusal justified by the uncertainty of the law of the public authority responsible for a redress of the damage and the lack of state programs to compensate for the expenses incurred by the population because of terrorist acts.

In addition, the Main SBU (The Security Service of Ukraine) Office in Donetsk and Luhansk Region conducted a pre-trial investigation in criminal proceedings on the grounds of the crime provided for in part 3 of Art. 258 of the Criminal Code of Ukraine – a terrorist act that led to the death of a person. According to the said pre-trial investigation, on 24 January 2015, an artillery attack took place, resulting in 30 deaths. At least 119 people received injuries of varying severity, and houses and non-residential premises and the Kyivsky and Denys markets were damaged. In this criminal proceeding, the claimant was a victim.

43 *Sokurenko and Strygun v Ukraine* App nos 29458/04 and 29465/04 (ECTHR, 20 July 2006) <<https://hudoc.echr.coe.int/eng?i=001-76467>> accessed 1 December 2021.

44 Case No 265/6582/16-ц [2019] Grand Chamber of the Supreme Court <<https://www.reyestr.court.gov.ua/Review/86310215>> accessed 1 December 2021.

On 20 April 2017, the trial court ruled that the claim was upheld on the ground that the compensation for damage caused to citizens by a terrorist act was carried out at the expense of the State Budget of Ukraine under Art. 19 of the Law 'On Combating Terrorism' along with the subsequent recovery of the amount of compensation from the injured party. It is the state's responsibility to recover the damage done, regardless of its fault. Moreover, the existence of an indictment of a court against persons engaged in terrorist activities is not a condition for compensation for damage by the state under Art. 19 of the Law. By compensating for damage to an individual, the state gains the right to claim a person guilty of a terrorist act.⁴⁵

On 16 August 2017, the Court of Appeal upheld the findings of the trial court, leaving the original decision unchanged. In the reasoning of its decision, the Court of Appeal emphasised that Ukraine had not waived the obligations set out in Art. 1 of Protocol No. 1 in certain areas of the Donetsk and Luhansk regions. Also referring to the ECtHR ruling of 8 January 2004 in *Ayder et al. v. Turkey*, the Court of Appeal emphasised that the responsibility of the state was absolute and objective in nature, based on social risk theory. The state may be held liable to compensate those who have suffered from the acts of unidentified persons or terrorists when the state recognises its inability to maintain public order and security or to protect people's lives and property. According to the ECtHR, the absence of an objective and independent investigation into the case of damage is an independent basis for the responsibility of the state for the actions of its bodies and their officials.⁴⁶

In August 2017, the Cabinet of Ministers of Ukraine filed a cassation requesting the decision of the courts of first instance and appellate courts to overturn and approve a new one – on refusal to satisfy the claim. The appeals court panel decided to refer the case to the Grand Chamber of the Supreme Court. The ruling was substantiated by the fact that in this case, there was an exceptional legal problem, the solution to which needed to ensure the development of law and the formation of a uniform law enforcement practice in disputes about compensation for damage caused by a terrorist act. One of the central issues raised before the Grand Chamber was the determination of the legal basis for compensation for the damage caused by a terrorist act – in particular, should Art. 19 of the Law of Ukraine 'On Combating Terrorism' be considered as such, and should the possibility of exercising the right to receive the said compensation be made conditional on the existence of a compensation mechanism provided for by a separate law, given the content of its formulations?

The Grand Chamber demonstrated that the plaintiff in this case was not entitled to legitimate expectations of receiving compensation from the state for damage caused during the course of an anti-terrorist operation as a result of damage to a commercial property she owned in a terrorist act since such expectations do not have a legal basis in the legislation of Ukraine, which allows the specific property interest of the plaintiff to be determined.

Two judges of the Grand Chamber, T. Antsupova and O. Yanovska, did not support this ruling and expressed a dissenting opinion. They rightly pointed out that the evasion of the state from the introduction of an effective compensation mechanism for damaged/destroyed property in the context of armed conflict in the territories controlled by the Government of Ukraine for five years should not prevent the protection of property rights guaranteed by the Constitution of Ukraine. Moreover, it is for the national courts to develop approaches to the application of the relevant principles and rules of law

45 Law of Ukraine 'On Combating Terrorism' [2003] Official Bulletin of the Verkhovna Rada of Ukraine 25/180.

46 *Ayder and Others v Turkey* App no 23656/94 (ECtHR, 8 January 2004) <<https://hudoc.echr.coe.int/eng?i=001-61560>> accessed 1 December 2021.

in these disputes, and the task of the Supreme Court, in particular, is to ensure the consistency of case law.⁴⁷

In addition, the judges criticised the wording used in the operative part of the Resolution, according to which the Grand Chamber granted the cassation partially. The decisions of the courts of first instance and the appellate instance were annulled, and the case was referred for re-examination to the court of first instance. Moreover, Ms Antsupova and Ms Yanovska did not support both the content of such formulations – in their view, there was every ground to settle the dispute in essence by satisfying the claims, and there was a lack of proper justification of the Grand Chamber's conclusion based on the outcome of the cassation. The fact was that the Grand Chamber, contrary to the requirements of Art. 411 of the Code of Civil Procedure of Ukraine, as indicated above, did not specify which procedural rules were violated by the courts of the previous instances; that is, it did not justify the overruling of the appealed decisions with the referral of the case for reconsideration.

Therefore, there were doubts as to the sufficiency of the measures taken by the Grand Chamber of the Supreme Court to resolve the aforementioned legal conflict effectively. In our view, the Grand Chamber did not give legal certainty to the person who went to court to resolve a matter of extreme importance to her, even though it was within its competence. The highest court in the state failed to reach a final decision in the case, delaying the resolution of the case and leaving aside the problems faced by citizens who were in difficult living conditions because of the events in eastern Ukraine. Such 'court behaviour', in our view, cannot be judged as being in conformity with the requirements of Art. 6 § 1 of the Convention.

6 CONCLUSIONS

The right to a fair trial, enshrined in Art. 6 § 1 of the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms, has a complex structure, one of the important elements of which is 'a court established by law' requirement. The content of this requirement can be determined by referring to the case law of the ECtHR.

In a number of ECtHR decisions, particular attention has been paid to establishing the characteristics of an institution that may be referred to as a 'court' in light of the provisions of Art. 6 of the Convention. According to the ECtHR, a 'court' can be any national body not necessarily integrated into the judicial system – the main thing is that it has 'full jurisdiction', i.e., in the process of dealing with legal conflicts on the merits, it must be able to verify all questions of fact and law. Such authority shall also be considered to be established by law if it resolves a case within its jurisdiction and its constituent body is authorised.

In Ukraine, judicial review of public-law disputes is carried out by administrative courts and bodies representing the judiciary that can be considered 'classic type jurisdictions'. The Code of Administrative Proceedings of Ukraine creates the proper conditions for these courts to be regarded as institutions with a 'full level of jurisdiction' in resolving public-law disputes of any kind. However, the case law of national courts has shown that there has been a breach of the requirements arising from the content of the convention's requirement of 'a court established by law'. These cases are, as a rule, stipulated by the Ukrainian courts' neglect of the rules of the national administrative, procedural law, in which the specified requirements were properly reflected.

47 Dissenting opinion of judges of the Grand Chamber of the Supreme Court TO Antsupova and OH Yanovska about Resolution of the Grand Chamber of the Supreme Court, 4 September 2019, Case No 265/6582/16-ц <<https://www.reyestr.court.gov.ua/Review/86435735>> accessed 1 December 2021.

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