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CONCEPTS AND FEATURES OF ADMINISTRATIVE CONTRACTS THROUGH THE PRISM OF REGULATORY PROVISIONS AND JUDICIAL PRACTICE IN UKRAINE

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Summary: 1. Introduction. – 2. Theoretical approaches to the definition and classification of administrative contracts. – 3. The definition of administrative contracts and their types in Ukrainian legislation. – 4. The definition

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and characteristics of administrative contracts in the laws and judicial practice of other countries. – 5. Characteristics of administrative contracts in the decisions of national courts. – 6. Conclusions.

Keywords: *Forms of Public Administration, Administrative Contract, Features of Administrative Contract, Types of Administrative Contracts, Jurisdiction of an Administrative Court.*

ABSTRACT

Background*: The article provides information on how the definition of an administrative contract was developed in Ukraine. Initially this concept was enshrined in the Code of Administrative Proceedings of Ukraine (hereinafter - the Code). Before the adoption of the Code, that is, until 2005, this phenomenon had been studied fragmentarily in the legal literature. We can name only a few authors who made attempts to investigate the issues of defining an administrative contract in order to identify its features and types comprehensively. Theoretical approaches to the definition and classification of administrative contracts are presented, and their main characteristics are outlined. It is noted that the subject structure of these contracts determines that in connection with the fulfilment of their conditions, each of the parties achieves the desired goal: the representative of the government strives for socially significant results, and the individual - for the satisfaction of private interests. The definition of an administrative contract fixed in the Code of Administrative Proceedings of Ukraine was analysed and it was concluded that it is suitable for the purposes of applying the procedural law. The article also examines the issue of whether compromise agreements belong to the category of administrative agreements.*

Methods*: At the beginning of the study, theoretical approaches to defining administrative contracts and the identification of their features and classification are presented and differences in the positions of Ukrainian researchers studying the relevant issues are outlined. Subsequently, the legislative definition of the administrative contract is analysed and it is determined whether it is based on the theoretical developments presented above. The court decisions interpreting the normative provisions establishing the features and types of administrative contracts are summarised and we discovered whether Ukrainian judges turn to research sources in order to make such an interpretation and substantiate their positions. Consistent study of the theoretical developments, normative documents, and practical cases of applying the rules concerning administrative contracts allowed us to reach certain conclusions, which will be useful both to research scholars in the field and representatives of authorities who apply the specified rules.*

Results and Conclusions*: Examples of court decisions are given, which consider the features of administrative contracts in the context of determining the judicial jurisdiction of disputes arising as a result of their conclusion, execution or termination. The position stated in these decisions is supported, according to which the contract cannot be considered administrative if it is concluded in accordance with the rules of civil or economic legislation. Disagreement was expressed with the statement that in the case of concluding an administrative contract, one of its parties, namely a subject of power, must necessarily perform management functions in relation to the other party, and arguments are given to support such disagreement. The need to define an administrative contract, establish the grounds and general procedure for its conclusion, execution and termination are substantiated in the Law of Ukraine "On Administrative Procedure".*

1 INTRODUCTION

The forms of activity that are at the disposal of the public administration are so diverse that in-depth scientific studies could be devoted to distinguishing their types, clarifying the nature and functional purpose of each of them. The most difficult thing as a result of such studies is to create an absolute list of universal forms necessary in practical terms, which is determined by the specificity of the choice of means that public administration subjects use to implement the powers granted to them.

However, there are at least three forms that have attracted the attention of researchers and which, according to our observations, are used by government officials in most cases. These are the adoption of (1) regulatory and (2) individual acts, as well as (3) conclusion of an administrative contract. Comparative studies of the essence of the mentioned forms can be especially interesting, cause it is possible to both compare their features and establish differences in order to reach conclusions about the feasibility and effectiveness of using one or another means to achieve a defined goal.

According to their characteristics, the two first forms of public administration appear to be similar – the adoption of normative and individual acts. Since their use is associated with the unilateral manifestation of the will of a subject of power, aimed at the performance of tasks, and which consist of the "ordering" of social relations with (a) an undefined range of participants (the adoption of normative acts) or (b) a clearly established range of participants (adoption of individual acts).

The conclusion of an administrative contract is significantly different from the adoption of a regulation or an individual act. The application of this form assumes that the subject of power, which, as a rule, is a binding party to the contract, exercises its powers through the implementation of the agreements prescribed by it. It is also important that potential participants of an administrative contract cannot be forced to enter into it; voluntary participation in relevant relations, as well as mutual interest in their (relationship) formation, are important attributes of this means of public administration. Even the subject of power, for whom the law establishes the possibility of entering into contractual relations for the performing of the prescribed functions, in the vast majority of cases has the right to act at its discretion, choosing between concluding a contract or adopting an act.

The specificity of the form of public administration under consideration explains the emergence of scientific publications by foreign researchers. They raise the issue of features and types of administrative contracts and discuss the prospects of concluding them instead of using the traditional "tools" of administration – the adoption of regulations and individual acts.[1]

In Ukraine, for a long time, administrative activities were associated with unilateral actions by representatives of the authorities, without taking into account positions of those persons at whom these actions were directed. Therefore, the first scientific works devoted to the study of the characteristics of administrative contracts and the identification of criteria for their classification appeared only in the early 2000s.[2] At the time of their implementation, the normative legal acts contained almost no rules that would authorise the holders of power

1 G Langrod, 'Administrative Contracts: A Comparative Study' (1955) 4 (3) AJCL 325; KM Hayne, 'Government Contracts and Public Law' (2017) 41 (1) MelbULawRw 155; JA Mattar, 'Naturaleza y justicia de los contratos administrativos' (2019) 30 ReDAE 27; JCF Rivas, '¿Es la licitación pública la regla de general aplicación en contratación administrativa?' (2020) 31 ReDAE 93.

2 KK Afanasiev, 'Administrative Contract as a form of State Administration (Theoretical and Legal Aspect' (PhD (Law) thesis, National University of Internal Affairs 2002); SS Skvortsov, 'Administrative Contract as a Means of Management Activity' (PhD (Law) thesis, National University of Internal Affairs 2005).

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to implement their functions through the conclusion of contracts. The last circumstance led to the fact that the theoretical achievements represented in these works could not be implemented into practical activity.

In 2005, the Code of Administrative Proceedings of Ukraine was adopted, in which the definition of an administrative contract was established for the first time. It prompted scientists to further develop the problem of the use of this form of public administration by subjects of power; lawyers tried to provide recommendations regarding the improvement of the already existing legal definition and worked on the development of criteria for their (contracts) classification.[3]

Note that the legislative definition of an administrative contract was put into circulation for the purpose of applying the rules of the Code of Administrative Proceedings of Ukraine, primarily those that outline the jurisdiction of administrative courts. The latter is confirmed by the fact that in the new edition of the Code 2017, in addition to the characteristics of the specified contracts, the legislator fixed information on their types, and this, without any doubt, contributed to solving the problem of choosing a court of appropriate jurisdiction for disputes arising from contractual relations with the participation of subjects of power.

The regulatory and legal documents of Ukraine, which establish the powers of public authorities, currently do not have a similar definition, nor do they establish rules on the procedure for concluding, executing, or terminating administrative contracts. This approach does not correlate with what the parliamentarians of other countries demonstrate. For example, in the Federal Republic of Germany, provisions regarding the features of administrative contracts, as well as rules regarding their content, procedure for execution or invalidation, are presented in the Law "On Administrative Procedures".[4] In Ukraine, a similar law has already been adopted by the Verkhovna Rada but it has not yet entered into force, and the administrative contract is not mentioned at all.[5] We hope that the practical application of the national law on administrative procedures will make it possible to form a staunch stand regarding the expediency of placing in its text provisions the characteristics of administrative contracts, their types, grounds, and general procedure for conclusion, as well as the procedure for execution and termination.

In this study, an attempt was made to harmonise theoretical approaches to determine the essence of administrative contracts with the position of the legislator, which can be traced in the relevant normative definition, and the conclusions of judges, which were reflected in the decisions in cases about the conclusion, execution, termination or cancellation of administrative contracts. In our opinion, this will contribute to the emergence of such universally binding rules on administrative contracts, which will encourage subjects of government to more frequently resort to the appropriate form of administration.

3 OM Iliushyk, 'The Use of Administrative Contracts in the Activities of Law Enforcement Agencies' (PhD (Law) thesis, National Lviv Polytechnic University 2013); AM Hud, 'The Administrative Contract as a form of Contractual Regulation of Administrative-Legal Relations' (PhD (Law) thesis, National University of Bioresources and Environmental Management of Ukraine 2019); ZhV Zavalna, *Conceptual Principles of Contractual Regulation of Administrative and Legal Relations* (Mriia 2010).

4 Administrative Procedure Act of Germany 'Verwaltungsverfahrensgesetz (VwVfG)' of 25 May 1976 <https://www.gesetze-im-internet.de/vwvfg/BJNR012530976.html#BJNR012530976BJNG001002301> accessed 01 September 2022.

5 Draft Law of Ukraine No 3475 'On Administrative Procedure' of 14 May 2020 <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68834> accessed 01 September 2022.

2 THEORETICAL APPROACHES TO THE DEFINITION AND CLASSIFICATION OF ADMINISTRATIVE CONTRACTS

The study of a legal phenomenon should begin with the formation of its definition. It is difficult to disagree with the fact that a balanced definition in law is the result of active and sometimes long scientific debate.

The definition of an administrative contract in Ukraine has a slightly different history. Initially this concept was enshrined in the Code of Administrative Proceedings of Ukraine (hereinafter - the Code). Before the adoption of the Code, that is, until 2005, this phenomenon had been studied fragmentarily in the legal literature. We can name only a few authors who made attempts to investigate the problems of defining an administrative contract to reveal its features and types comprehensively.

Thus, in 2002, the thesis research "Administrative contract as a form of state administration (theoretical and legal aspect)" was defended.[6] In this work, an attempt was made to form a definition of an administrative contract, to determine its features and prospects for use in the activities of public authorities. The dissertation seems to have become an important step in the development of this problem. At the same time, at the date of its implementation, the normative legal acts contained almost no rules that would authorise the power bearers to implement their functions through the conclusion of contracts. This led to the fact that the theoretical developments presented in the work could not be used in practice.

After the adoption of the Code, scientific works devoted to the study of administrative contracts appeared, in which the authors tried to provide recommendations for improving the already existing legal definition and developing criteria for their (contracts) classification.

Let us recall the monograph and thesis for obtaining the scientific degree of Doctor of Legal Sciences by Zhanna Zavalna (2009–2010) .[7] It is noteworthy that the scientist was previously engaged in research in the field of civil law: her PhD thesis was devoted to the problems of regulating relations arising in connection with the conclusion and execution of a civil law agreement – a publishing contract.[8] Then a series of scientific articles, two monographs and, finally, a thesis appeared, in which Zh. Zavalna considered the issue of an administrative contract.

The significance of this problem, in our opinion, lies in the fact that the knowledge of a scientist in the civil law sphere became the foundation for investigations in the administrative law sphere. However, such knowledge led to the fact that Zh. Zavalna determined, as an inevitable result of her research, the clear boundary between public and private agreements. And here the shortest way was chosen: the researcher differentiated the specified agreements based on their subject composition.

Thus, in her works, Zh. Zavalna claims that administrative contracts are concluded only between public authorities and their "... subject is actions determined by the administrative and legal status of the parties and aimed at streamlining, establishing, changing or terminating managerial relations..." .[9] They include agreements between (a) local self-government bodies on the redistribution of powers, (b) local self-government bodies on the redistribution of

6 Afanasiev (n 6) 19.

7 Zavalna (n 7) 360; ZhV Zavalna, 'Administrative Contract: Theoretical Foundations and Applications' (DrSc (Law) thesis, National University of Internal Affairs 2010).

8 ZhV, Zavalna, 'Publishing Contract as a Type of Author's Contract' (PhD (Law) thesis, Koretsky Institute of State and Law of National Academy of Science of Ukraine 2002).

9 Zavalna (n 11) 7, 14.

Access to Justice in Eastern Europe
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budget funds, (c) territorial communities or local self-government bodies on the use of local budget funds, and (d) local executive authorities and local self-government bodies on the implementation of joint programs, formation of joint bodies and organisations. As examples, the scientist also cites (a) agreements with the participation of state authorities concluded as a result of the application of the Law "On Stimulating the Development of Regions" and (b) agreements on cooperation and interaction of law enforcement agencies during operational and other joint activities.[10]

While this publication does not intend to support the discussion about the essence of administrative contracts, we consider the above position to be devoid of sufficient arguments. It leads to an artificial reduction of significance and calls into question the effectiveness of concluding administrative contracts as a form of public administration. Moreover, this position forces us to perceive administrative law as a set of norms that exclusively provide for the needs of subjects of power: such subjects are not given the opportunity to interact with an individual to build mutually beneficial relations with him or her; they (public authorities) are empowered and, accordingly, the forms of their activity are based on a unilateral expression of will, which, for the most part, deprives an individual of the "right to vote".

The point of view of Zh. Zavalna became a subject for scientific discussions. In more recent publications, one can observe critical and well-argued comments on the definitions and features of the administrative contract formulated by the scientist.

Thus, Victoria Bila in her thesis 'Administrative contract in the activities of the State Tax Service of Ukraine' (2011) and 'Legal forms of public administration in Ukraine' (2020) does not include the participation of subjects of power in them as inherent characteristics of administrative contracts. The scientist claims that the features of these agreements are their purpose, which is to achieve socially significant results and the branch affiliation of the legal relations that arise in connection with their conclusion. Next, V. Bila offers two main criteria for the classification of administrative contracts – (1) their legal properties and (2) their functions in the mechanism of administrative and legal regulation. In the first case, the scientist distinguishes normative and individual contracts, in the second – law-making, aimed at the realisation of rights, and tort.[11]

The point of view presented above, in our opinion, is balanced and at the same time progressive. However, we see that the distinction between the so-called tort administrative contracts remains debatable. We refer to agreements, the conclusion of which, according to national laws, is possible in a situation where an individual who has committed an illegal act admits his or her guilt, guarantees to refrain from violations in the future, and therefore the state, represented by the relevant authorities, is ready to conclude a compromise agreement with him or her. As a result of the latter, there are negative consequences for the wrongdoer in the form of unquestioning execution of the decision on recovery, but the amount of penalty may be minimal or the violator, for example, will not be considered a person who has already been prosecuted.

Similar agreements were included in the Tax Code of Ukraine.[12] Currently, the relevant norms are kept in the Customs Code of Ukraine.[13]

10 ibid 20.

11 VR Bila, 'Administrative Contract in the Activities of the State Tax Service of Ukraine' (PhD (Law) thesis, National State University Tax Services of Ukraine 2011); VR Bila, 'The Legal Forms of Public Administration in Ukraine' (DrSc (Law) thesis, National Aviation Univirsity 2020).

12 Tax Code of Ukraine No 2755-VI of 2 December 2010 <https://zakon.rada.gov.ua/laws/show/2755-17> accessed 01 September 2022.

13 Custom Code of Ukraine No 4495-VI of 13 March 2012 <https://zakon.rada.gov.ua/laws/show/4495-17> accessed 01 September 2022.

Why are there doubts about such agreements belonging to the category of administrative contracts? A compromise agreement actually ends the proceedings in the case of prosecution, it can be classified as a type of individual act because it decides the "fate" of a specific individual. In addition, it will not be correct to claim that by entering into such an agreement, the public authority exercises its functions in the field of combating illegal acts. If it is assumed that the authority is authorised to monitor the observance of universally binding rules and, in the event of their violation, to stop illegal acts with subsequent prosecution of the guilty party, then the means that ensures the implementation of these functions is the adoption of an individual act, which imposes additional obligations on a private person and does not grant him or her any rights in any way, while an administrative contract provides for the corresponding rights and obligations for its participants.

In view of this, the following intermediate conclusion can be proposed: Ukrainian legal scholars currently demonstrate somewhat different positions regarding the concept, features and, accordingly, types of administrative contracts. Although unanimous in the fact that the party to such contracts must be a subject endowed with power, who through their (contracts) conclusion directly exercises this power, some lawyers question the possibility of private individuals participating in such contracts. They explain their hesitation by the fact that a contract with the participation of a private individual provides primarily for the satisfaction of the interests of this person, and not for the achievement of a socially significant result.

In our opinion, an administrative contract with the participation of an individual is quite likely. Moreover, it is an extremely effective means of solving issues arising in the process of public administration. However, the subject composition of this contract determines that, in connection with the fulfilment of its terms, each of the parties achieves the desired goal: a representative of the government strives for socially significant results, and an individual for the satisfaction of private interests.

3 DEFINITION OF ADMINISTRATIVE CONTRACTS, THEIR TYPES IN UKRAINIAN LEGISLATION

In the original version of the Code of Administrative Proceedings of Ukraine 2005, an administrative contract was defined as a bilateral or multilateral agreement, the content of which consists of the rights and obligations of the parties arising from the authoritative managerial functions of the subject of authority, which is one of the parties to the contract.[14]

It should be admitted that the cited normative definition is not comprehensive, and even somewhat confusing. However, even in this form, it fulfilled its main purpose: from its content, it was possible to draw conclusions about the characteristics of the considered contracts. Among them there are the following: 1) administrative contracts are agreements with the participation of subjects who are granted the right to perform management functions by law (in particular as a result of their delegation); 2) the conclusion of contracts is aimed at the implementation of the specified functions by the subjects of power; and 3) the right to conclude administrative contracts, as well as their essential conditions, must be clearly set out in the law.

From the given definition (as well as from the text of the Code in the 2005 edition) information about the types of administrative contracts did not follow despite the laws in force at the time describing agreements with the above characteristics. In legal sources,

14 Code of Administrative Proceedings of Ukraine No 2747-IV of 6 July 2005 <https://zakon.rada.gov.ua/laws/show/2747-15> accessed 1 September 2022.

Access to Justice in Eastern Europe
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some of these agreements were called functional and managerial. They were concluded on the basis of the laws 'On local state administrations'[15] and 'On local self-government in Ukraine'[16] between bodies of executive power and self-government bodies, and they were related to the implementation of joint programs or redistribution (delegation) of powers. Agreements between government entities and private individuals, the rules of which, for example, were defined in the Law 'On Public-Private Partnership', could also be considered administrative contracts.[17]

In the new edition of the Code of 2017, the definition of an administrative contract is established, which is significantly different from the one proposed by the Code of 2005. Now the legislator focuses on the fact that the administrative contract: 1) is concluded exclusively on the basis of the law; 2) may take the form of an agreement, protocol, memorandum, etc.; 3) is a joint legal act; 4) can be concluded both between subjects of authority and with their participation (the latter provides for the possibility of entering into an agreement by a private individual); 5) is based on the mutual will of the parties; and 6) defines their (the parties') rights and obligations in the public legal sphere.[18]

Also, in the updated Code, the types of administrative contracts are indicated, the criterion for distinguishing which, as it seems, is the purpose of their conclusion. Among them there are contracts: a) on the delimitation of competence or on the procedure for interaction between subjects of power; b) on the delegation of public-authority management functions; c) on redistribution or pooling of budget funds; d) those concluded instead of individual acts; and e) those concluded to resolve issues of administrative services provision.

In summary, we note that the legislative definition of administrative contracts is clearly progressing. Its current version gives a clear idea of the characteristics of such contracts and even offers information on their types. It can be argued that the separation of the latter is the result of the use of the considered form of administration by the public authority.

We allowed ourselves to express the assumption that the list of types of administrative contracts given in the Code is not exhaustive. However, in our opinion, this cannot in any way complicate the application of the rules of this procedural law, since the normative establishment of the characteristics of the investigated agreements still plays a decisive role.

Note that the legislative definition of an administrative contract was put into circulation for the purpose of applying the rules of the Code of Administrative Proceedings of Ukraine, primarily those that outline the jurisdiction of administrative courts. Other legal documents, including those establishing the powers of public administration subjects, still do not contain similar definitions, as well as lack rules on the procedure for concluding, executing or terminating administrative contracts. However, in our opinion, it would be correct to enshrine the relevant concept precisely in the acts, the prescriptions of which are addressed to the specified subjects.

15 Law of Ukraine No 586-XIV 'On Local State Administrations' of 9 April 1999 <https://zakon.rada.gov.ua/laws/show/586-14> accessed 1 September 2022.

16 Law of Ukraine No 280/97-BP 'On Local Self-Government in Ukraine' of 21 May 1997 <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80> accessed 1 September 2022.

17 Law of Ukraine No 2404-VI 'On Public-Private Partnership' of 1 July 2010 <https://zakon.rada.gov.ua/laws/show/2404-17> accessed 1 September 2022.

18 Code of Administrative Proceedings of Ukraine (as amended of 3 October 2017) (n 18).

4 DEFINITIONS AND CHARACTERISTICS OF ADMINISTRATIVE CONTRACTS: FOREIGN EXPERIENCE

In this regard, the experience of other European countries, in particular Germany, seems interesting. Provisions regarding the characteristics of administrative public-law contracts (as drafted by the German legislator), as well as the rules regarding their (contracts) content and the procedure for execution or invalidation, are presented in the German Federal Law 'On administrative procedures' (German Law).[19] Incidentally, in the Law of Ukraine 'On Administrative Procedure', which is currently being actively discussed by scientists,[20] there are no rules regarding an administrative contract.

The following stems from the content of the provisions of the German Law:

1. All its general provisions are suitable for the regulation of relations related to the conclusion, execution or termination of public-law contracts, with the exception of cases when special rules are in effect, listed in Part IV of the German Law entitled 'Public-law contract'. If the German law leaves any issue regarding the specified contracts unsettled, then the rules of the Civil Code shall be applied in addition.

This approach seems reasonable: all subjects of public administration are oriented to the same rules regarding the use of the researched tool; these rules are concentrated in one act, which is convenient both for the representative of the government and for a private individual who, according to German law, can be a party to a public-law contract.

2. The German Law states the following: 'A legal relationship in the field of public law may be based on, changed or terminated by a contract (a public law contract), if this does not conflict with legal norms' (sentence 1 § 54). Therefore, if the law does not clearly define the means to be used by the subject of power in certain situations, then recourse to a public law contract is permissible.

3. Further, the following rule is specified in the German Law: 'In particular, an administrative body may, instead of issuing an administrative act, enter into a public law contract with a person in respect of whom an administrative act would otherwise be issued' (sentence 2 § 54). Thus, another case of using a public law contract is its conclusion instead of issuing an administrative act.

It should be noted that the last of the cited rules only looks like it provides extremely broad powers for the public authorities to choose to enter into a contract instead of issuing an act. After all, the following paragraphs of the German Law establish only two cases when such a replacement is permissible. Thus, the contract can be concluded instead of the act, if there is a gap in the law or its norm is insufficiently defined. At the same time, the elimination of uncertainty through the conclusion of a public law contract (called a settlement agreement in the German law) is possible if the subject of power is convinced that it is expedient, and at the same time acts in compliance with the rules established for the exercise of discretionary powers (§ 55). Otherwise, a public law contract is used instead of an administrative act if the party negotiating with the administrative body undertakes a counter-obligation, the fulfilment of which '...will serve for the administrative body to fulfil its public tasks' **(§ 56).** This latter is called a mutual performance contract in German law.

Returning to the national regulatory provisions, we remind you that in the current version of the Code of Administrative Proceedings of Ukraine, one of the types of administrative

19 VwVfG (n 8).

20 IV Boiko and others, 'Administrative procedure: European standards and conclusions for Ukraine' (2019) 10 (7) JARLE 1968–75.

Access to Justice in Eastern Europe
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Journal homepage http://ajee-journal.com

contracts is defined as one that is concluded instead of issuing an individual act. For the purposes of applying the procedural law, it is sufficient to indicate the existence of a similar type of contract. The rules intended for entities that exercise their authority through the conclusion of administrative contracts, should be more specific. In other words, similar to the prescriptions of the German Law, in order to prevent abuses by representatives of the authorities, the national rules on the powers of the latter should contain a clear list of situations in which it is permissible to carry out the corresponding substitution.

Acquaintance with the legislation of France and achievements of the French administrative-contractual theory leads to several conclusions. The scope of the considered contracts (according to French terminology, administration contracts or public contracts) is quite diverse. They are concluded for the purpose of managing public services (agreements on concession, lease, management), regulation of various types of property relations (agreements on supply of goods, use of public property, provision of assistance), provision of services and conducting research (agreements on services and research), and also for the provision of public loans (agreements on state and municipal loans).

The French legislator defines these contracts in several acts. For example, one is enshrined in the Public Procurement Code (Code de la Commande Publique).[21] According to Article L2 of the Code, contracts concluded at the discretion of the buyer (authorised body) to meet his or her needs for works, supplies or services with one or more economic operators are considered public. Article L6 of the same Code, which is a fundamental part of the determination of competent jurisdiction in the event of litigation, establishes the criteria that should be taken into account when deciding whether a certain contract is public. The first – organic – consists of the fact that the party to such a contract must be a legal entity under public law. The other – material – involves the assessment of the object of the contract in each specific case.

French courts, through their practice, have developed criteria that harmoniously complement those laid down in the Code. According to their position, in order to qualify a public contract, attention should be paid to: a) its subject composition - one of the contract participants must be a legal entity under public law or another person empowered to enter into a contract; b) its purpose, which is to satisfy the public interest; c) its subject, which must be related to activities of public interest; and d) the presence in the contract of conditions that go beyond common law. Regarding the last criterion, French courts specify that a legal entity under public law, being a party to a contract, has exclusive powers, for example, to terminate it unilaterally, to provide instructions during the execution of the contract, and to apply sanctions against the other party. The other party to the contract, according to the judges, can only be guaranteed 'financial balance'.[22]

The experience of legal regulation of an administrative contract in the Republic of Latvia seems interesting. As in Ukraine, this experience (unlike the experience of Germany and France does not have an extensive history. However, we believe that the approaches developed by our Latvian colleagues regarding the regulation of relevant relations can be successfully implemented in Ukrainian legal reality.

An administrative contract, according to Article 12 of the Latvian Law on the State Administrative System, is only one of four types of public law contracts, which also include a delegation contract, a participation contract, and a cooperation contract.[23] According to the

21 Public Procurement Code of France 'Code de la commande publique' of 01 April 2019 <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000037701019> accessed 1 September 2022.

22 P Tifine, 'Droit administratif français Pt 4 Chap 2 Les contrats administratifs' (2013) 4645 Revue générale du droit <www.revuegeneraledudroit.eu/?p=4645> accessed 01 September 2022.

23 State Administration Structure Law of the Republic of Latvia 'Valsts pārvaldes iekārtas likums' of 06 June 2002 <https://likumi.lv/ta/en/en/id/63545> accessed 1 September 2022.

general conditions, all contracts of public law must be concluded in writing in accordance with the requirements of civil legislation and in compliance with the restrictions established by laws or other regulatory acts. The above-mentioned Law also provides that other Latvian laws can define the types of public law contracts and contain rules regarding their conclusion, performance and termination.

Along with these general provisions, the Law on the State Administrative System contains a separate Chapter X dedicated specifically to administrative contracts. Thus, Article 79 of the Law defines an administrative contract as an agreement between state institutions and private individuals regarding the specification, change, termination or definition of administrative legal relations. The administrative act remains an independent legal document even if it was included in the contract.

An administrative contract is concluded on behalf of a state body by an institution or an authorised official who has the authority to do so. Issues that belong to the competence of the relevant state body constitute its subject; the contract must be aimed at the implementation of competence within the limits of legal norms that regulate such implementation.

Administrative contracts in accordance with Article 80 of the Latvian Law on the State Administrative System are concluded: a) for the purpose of terminating a legal dispute, especially in the case when a legal process has already started; and b) if applicable legal norms grant the state institution freedom of action regarding the issuance of administrative acts, their content, or actual actions. The conclusion of an administrative contract is not allowed if the form of the contract does not meet the principles of regulation of specific legal relations, especially if the contract contradicts the principles of state administration or disproportionately restricts the rights of private individuals or creates unjustified obstacles in their implementation.

Article 81 of said Law establishes requirements for the content of administrative contracts. The obligations assumed by the contractual parties must be comparable: the obligations of state institutions must comply with the law, and the obligations of private individuals must be clearly formulated, while their implementation must lead to the fulfilment of the tasks assigned to the other party to the agreement – a state institution.

In the case of non-fulfilment (improper fulfilment) of the terms of the administrative contract by one of the parties, the other party has the right to demand its fulfilment (proper fulfilment) in court, which is regulated by the norms of the Administrative Procedure Law of the Republic of Latvia.

The administrative procedural law of the Republic of Latvia was adopted on October 25, 2001; its text combines the rules of administrative procedure and administrative proceedings.[24] Section C of this law is devoted to administrative proceedings, the task of which, among other things, is the consideration and resolution of disputes caused by the conclusion, execution and/or termination of public law contracts, with the aim of protecting the rights of private individuals – alleged participants in such contracts – from violations by state institutions and their representatives.

In conclusion, we express a not unreasonable hope that the introduction of the Ukrainian law on administrative procedure, the provisions of which are similar in content to the provisions of the above-mentioned German, French and Latvian laws, will contribute to the formation of a staunch position on the expediency of placing in its text information about the characteristics of administrative contracts and their types, the grounds and general procedure for conclusion, as well as the procedure for their execution and termination.

24 Administrative Procedure Law of the Republic of Latvia 'Administratīvā procesa likums' of 25 October 2001 <https://likumi.lv/ta/en/en/id/55567> accessed 1 September 2022.

Access to Justice in Eastern Europe
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5 CHARACTERISTICS OF THE ADMINISTRATIVE CONTRACT IN DECISIONS OF NATIONAL COURTS

As noted above, the legislative definition of an administrative contract was put into circulation for the purpose of applying the rules of the Code of Administrative Proceedings of Ukraine, primarily those that outline the jurisdiction of administrative courts. Therefore, when resolving the question of whether disputes arising from contractual relations involving subjects of authority belong to a certain jurisdiction, Ukrainian judges establish and study the characteristics of the relevant contracts. If the judges ascertain the presence of signs of an administrative contract, the dispute shall be considered according to the rules of administrative proceedings; the absence of such signs requires the application of civil procedural or commercial procedural rules.

The Grand Chamber of the Supreme Court is authorised to provide the final answer to the question of which court of jurisdiction has the right to resolve a conflict of a certain type.

As an example, let us consider one of the decisions in which the Grand Chamber, in order to clarify the court's jurisdiction, analysed the characteristics of the contract, the conclusion of which led to the emergence of a dispute.[25]

According to the details of the case, an individual appealed to the administrative court with a statement of claim for the recognition of the actions of the executive committee of the city council (executive committee), the inaction of the passenger carrier for servicing city bus routes (the carrier) as illegal, and compensation for the moral damage caused. The claims are based on the fact that for two years, the plaintiff, a disabled person, and his grandchildren, whose caregiver he is, faced obstacles when trying to use the right of preferential travel in city transport. In this regard, the plaintiff appealed to the defendants: the executive committee, with a statement about the illegality of the refusal to transport a preferential category of citizens on public city routes; and the carrier, with a request to provide information about the reasons for its transportation of citizens.

The first-instance court established the circumstances by which the plaintiff substantiated part of his claims, namely: the executive committee provided an answer, prepared without complying with the requirements of the law, and the carrier did not provide any response to the request. Taking into account the stated facts, the court recognised the actions of the executive committee as illegal and dismissed the other claims. In particular, the court argued for the refusal to satisfy the request to declare the carrier's inactivity illegal because the latter is not the administrator of the information requested by the plaintiff.

The appellate court reviewed the decision of the court of first-instance, as a result of which it annulled the part of the refusal to satisfy the claim for recognition of the carrier's inaction as illegal. Based on the analysis of the provisions of the Law of Ukraine 'On Access to Public Information', the court of appeal came to the conclusion that the information requested by the plaintiff is public and that the carrier has an obligation to provide an answer to the submitted information request.[26] In addition, the appellate court partially satisfied the demand for recovery of funds from the defendants to compensate for the damage caused to the plaintiff by their illegal actions (inaction).

25 Case No 180/1560/16-a (180/3464/16-a) (Supreme Court of Ukraine, 8 April 2020) <https://zakon.cc/court/document/read/88952209_9222c713> accessed 1 September 2022.

26 Law of Ukraine No 2939-VI 'On Access to Public Information' of 13 January 2011 <https://zakon.rada.gov.ua/laws/show/2939-17> accessed 1 September 2022.

Disagreeing with the decision of the appellate court, the carrier filed an appeal, in which it was noted that this court violated the rules of subject jurisdiction. According to the complainant, the dispute between the carrier and the plaintiff does not belong to the jurisdiction of the administrative courts and should be resolved in civil proceedings. This is justified by the fact that the contract for the transportation of passengers on a public city bus route has a civil-law or economic-law nature, depending on its subject composition. Therefore, on the conviction of the carrier, satisfying the claims against the carrier, the appellate court mistakenly assumed that the contract, on the basis of which the latter provided transportation services, is administrative, and therefore the contested decision should be cancelled in this part and the proceedings closed.

Having checked the case materials and the arguments presented in the cassation appeal, the Grand Chamber of the Supreme Court came to the conclusion that the appeal cannot be upheld. Thus, in accordance with Clause 5 of Part 1 of Article 4 of the Code of Administrative Proceedings of Ukraine, administrative procedure should be understood as the activity of administrative courts regarding consideration and resolution of administrative cases in the manner established by this Code. At the same time, an administrative case is considered to be a public-law dispute submitted for resolution by an administrative court, i.e., a dispute in which at least one party a) performs public-authority management functions, including the performance of delegated powers; b) provides administrative services on the basis of legislation; and c) is the subject of an election process or a referendum process. In other words, public legal disputes are characterised by the fact that at least one of their participants is the state, its representative, or another subject of power which acts to satisfy the public interest.

At first glance, in the analysed case, the body of local self-government – the executive committee of the city council, whose actions are contested by the plaintiff - is seen as the subject of authority. However, the participation of a subject of authority in a dispute does not always give it a public character. An indispensable condition for the qualification of a dispute as a public-law one is to establish that the specified entity exercised public-authority management functions in disputed legal relations.

Taking into account that the legal ties between the participants in the disputed legal relationship in this case arose as a result of the conclusion by two of them of a contract on the organisation of the transportation of passengers on a public city bus route (a contract on the organisation of the transportation of passengers), their nature can be clarified by referring to the Law of Ukraine 'On Road Transport' (Law) .[27]

According to Article 7 of the Law, the duty to ensure the organisation of passenger transportation on public city bus routes is entrusted to the executive body of the council, which represents the interests of the relevant territorial community. It is also established that local self-government bodies form a network of city bus routes for public use and, within the limits of their powers, control compliance with legislation in the field of road transport in the relevant territory (Article 6 of the Law).

The analysis of the cited legislative provisions gives grounds for asserting that local self-government bodies, in particular in the form of executive bodies of local councils, perform public-power management functions in legal relations regulated by the specified Law. At the same time, it is important to note that the obligation to ensure the organisation of regular passenger transportation on public bus routes is performed by executive authorities and local self-government bodies by concluding contracts with motor carriers. It is also noteworthy that the conditions to be reflected in such contracts are defined in Article 31

27 Law of Ukraine No 2344-III 'On Road Transport' of 5 April 2001 <https://zakon.rada.gov.ua/laws/show/2344-14> accessed 1 September 2022.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

of the Law. Incidentally, one of these conditions is the establishment in the contract of the amount and procedure for compensating the expenses of the automobile carrier as a result of the transportation of preferential passengers. This is convincing evidence of the fact that the passenger transportation contract is administrative.

The legislator paid special attention to the issue of preferential travel on public routes, since the right to such travel is guaranteed by the state to the most vulnerable categories of citizens. This can be cited as another argument that refutes the arguments of the cassation appeal about the private-law nature of the disputed legal relationship in the analysed case. Thus, according to Article 37 of the Law, preferential transportation of passengers is provided by motor carriers that transport passengers on public bus routes. It is forbidden to refuse preferential transportation of passengers, except in the cases provided for by law - unreasonable refusal entails responsibility.

In view of the above, we can conclude that the contract on the organisation of passenger transportation is characterised by features identified in the Code as those inherent in administrative contracts, and therefore, the legal relations that arose in connection with its conclusion and execution are of a public nature.

Concluding the analysis of the judgement of the Supreme Court adopted in this case, we focus on one more interesting aspect. The public nature of disputed legal relations and the specifics of the functions performed by the carrier both cause additional duties to be imposed on it, which are usually not fixed by the legislator for business entities, and it regards the obligation to provide information upon information requests. As a general rule, the law refers to the administrators of public information, which is provided upon information requests, the subjects of power. However, according to Article 13 of the Law of Ukraine 'On Access to Public Information', business entities possessing information of public interest are equated to such administrators. Obviously, information on the reasons for the economic entity's regular passenger transportation on public routes may be of interest to a wide range of people. Thus, as a result of the conclusion of the contract by the business entity on the implementation of the specified transportation, it acquires new obligations in the public legal sphere, which are not established in the contract itself.

Sometimes courts face the problem of determining whether a dispute arising from contractual relations belongs to administrative jurisdiction, even when the parties to the contract are exclusively subjects of power. This can be confirmed by the analysis of the decision of the Supreme Court dated November 13, 2019, in which the latter, acting as a court of cassation, stated that the courts of the first and appellate instances erroneously considered the case in accordance with commercial procedure rules.[28]

Based on the facts of this case, the Novgorod-Siversk District Council of Chernihiv Region (district council) appealed to the commercial court with a claim in which it requested the recovery of a debt from the Novgorod-Siversk City Council of Chernihiv Region (city council). The claims are based on the defendant's improper fulfilment of the obligations under the contract on the provision of another subvention in terms of the transfer to the district budget of the subvention for the provision of social services to persons living in the city of Novgorod-Siverskyi and being served by the regional social service centre of the district council.

The lawsuit was partially satisfied by the decision of the court of first instance, which was left unchanged by the judgement of the appellate commercial court. Disagreeing with the position of the courts, the defendant filed a cassation appeal demanding the annulment

28 Case No 927/152/19 (Supreme Court of Ukraine, 13 November 2019) <https://reyestr.court.gov.ua/Review/86241652> accessed 1 September 2022.

of their judgements. The arguments of the appeal state the following: a) the dispute arose due to the improper execution of the administrative contract on the provision of another subvention, the subject of which is the transfer of relevant funds from the general fund of the city budget; b) disputed legal relations are regulated by the norms of public law; and c) the case must be resolved in accordance with administrative proceedings.

In the course of reviewing the arguments of the appeal and providing an assessment of the correctness of the application of the norms of law by the courts of previous instances, the Supreme Court proceeded from the following considerations. The criteria for delimitation court jurisdiction are the subject structure of legal relations, the subject of the dispute, and the nature of disputed substantive legal relations. In addition, these criteria can be a direct indication in the law of the type of court proceedings, according to the rules of which a certain category of cases is considered.

One of the essential features of public-law disputes is the sphere of their occurrence – public-law relations, i.e., social relations regulated by the norms of public law, the content of which is the mutual rights and obligations of their participants in various areas of society, in particular in relation to the implementation of public authorities.

Article 1 of the Budget Code of Ukraine (BC of Ukraine) outlines the scope of regulation of this normative legal act, which covers relations that arise in the process of drawing up, considering, approving, and implementing budgets, reporting on their implementation, and monitoring compliance with budget legislation.[29] In addition to the above, this area includes the issue of responsibility for violations of budget legislation, and formation and repayment of state and local debt. Based on the prescriptions of Article 93 of the BC of Ukraine, a local council can transfer funds for the implementation of individual expenditures of local budgets to another local council in the form of an inter-budgetary transfer to the corresponding local budget. The transfer of funds from one local budget to another is carried out on the basis of the decisions of the relevant local councils, adopted by each of the parties, and after concluding an agreement between them.

We also note that according to Article 1 of the Civil Code of Ukraine, civil law regulates personal non-property and property relations (civil relations), based on legal equality, free expression of will, and property independence of their participants. Civil legislation does not apply to property relations based on administrative or other authority subordination of one party to another, nor to tax and budget relations, unless otherwise established by law.[30]

Based on the legal provisions cited above, the Supreme Court concluded that the contract on the provision of another subvention is a public law contract, since its conclusion is regulated by the norms of budget legislation and provides for the duties of the city council to provide a subvention from the city budget to the district budget.

Then the Supreme Court specified its conclusion and strengthened it with additional arguments, stating the following: the claimant, that is a local self-government authority, acted in disputed legal relations with the participation of another local self-government authority not as a subject of economic activity but as a subject of governmental powers, and a dispute arose between these bodies regarding their implementation of their management functions in the budgetary sphere on the basis of the concluded administrative agreement for the redistribution of budget funds. Therefore, the courts of the first and appellate instances erroneously resolved this dispute according to economic proceedings. It must be

29 Budget Code of Ukraine No 2456-VI of 8 July 2010 <https://zakon.rada.gov.ua/laws/show/2456-17> accessed 1 September 2022.

30 Civil Code of Ukraine No 435-IV of 16 січня 2003 <https://zakon.rada.gov.ua/laws/show/435-15> accessed 1 September 2022.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

resolved according to administrative proceedings as arising from the performance of an administrative contract.

In one of the above-mentioned parts of our research, attention is drawn to establishing the features of an administrative contract, which is concluded by public authority instead of issuing an individual act, including regard towards foreign experience. Based on this, it is considered appropriate to analyse the courts' practice of resolving disputes that arise in connection with the conclusion of administrative contracts of the specified type, and ascertain whether there are problems with the delimitation of court jurisdictions regarding the resolution of these disputes.

We suggest to refer to the Supreme Court`s decision of December 23, 2019, which was adopted as a result of the review of the administrative case on the claim of an individual to the Department of Urban Planning and Land Relations of the City Council involving the association of co-owners of an apartment building as the third party, on recognition as illegal and invalid the protection contract for the monument of cultural heritage as well as its annulment. The claims in this case are motivated by the defendant's lack of competence to enter into the contested contract.[31]

Disagreeing with the decisions of the first and appellate courts, which satisfied the claim, the third party filed an appeal to the Supreme Court. The demands of the cassation appeal to cancel the contested court decisions and terminate the proceedings in the case are based on the violation of the rules of subject jurisdiction by the courts that adopted them.

The Supreme Court rejected the arguments of the appeal about the existence of grounds for closing the proceedings in the case in view of the following: in accordance with Article 54 of the Constitution of Ukraine, the state ensures the preservation of historical monuments and other objects of cultural value.[32] All owners of monuments or bodies (persons) authorised by them, regardless of the forms of ownership of these objects, are obliged to conclude a protection agreement with the relevant body for the protection of cultural heritage (Article 23 of the Law of Ukraine "On the protection of cultural heritage"). The specified agreement establishes clear requirements for the preservation of historical monuments and other objects of cultural value, and the procedure for its conclusion is approved by the Cabinet of Ministers of Ukraine.[33]

Taking into account the content of the legislative provisions regulating disputed relations, the Supreme Court reached a conclusion about the administrative legal nature of the disputed contract. It argued that the protection agreement is an act with the participation of the subject of authority and the owner of the cultural heritage monument, which determines their mutual rights and obligations in the field of state management of cultural heritage protection. The latter derives from the management functions of the subject of authority, which is a party to this contract. The protection agreement is concluded by the cultural heritage protection authority instead of issuing an individual act, which obligates the owner to ensure the preservation of the monument. The Supreme Court also emphasised that this contract does not resolve the issue of ownership of a cultural heritage object but establishes the regime of its use.

We consider it necessary to note one more specific feature of the studied type of administrative contract. First of all, we should remind you that in accordance with the prescriptions of Clause

31 Case No 806/1536/18 (Supreme Court of Ukraine, 23 December 2019) <https://reyestr.court.gov.ua/Review/86552104 > accessed 1 September 2022.

32 Constitution of Ukraine No 254 k/96-BP of 28 June 1996 <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> accessed 1 September 2022.

33 Law of Ukraine No 1805-III 'On Protection of Cultural Heritage' of 8 June 2000 <https://zakon.rada.gov.ua/laws/show/1805-14> accessed 1 September 2022.

16, Part 1, Art. 4 of the Code of Administrative Proceedings of Ukraine, an administrative contract is based on the consent of its parties. At the same time, the autonomy of the will of potential participants of an administrative contract is significantly limited compared to the almost unlimited freedom to enter or not enter into contractual relations of a private legal nature. It is clear that for the subject of authority, the conclusion of an administrative contract is often both its right and its duty. However, in the facts of the case we considered, it is noteworthy that the obligation to conclude an administrative contract is assigned by law to a person who is not endowed with any authority.

The criteria developed by the Grand Chamber of the Supreme Court for distinguishing administrative contracts from private legal contracts do not always appear to be indisputable. You can verify that this statement is correct from the results of the analysis of the decision of the Supreme Court dated February 27, 2019.[34]

According to the details of the case described in the resolution, an individual appealed to the administrative court with a statement of claim, in which he asked to declare the contract between the local self-government body and a private legal entity invalid. The subject of the disputed contract was the cooperation of its parties, aimed at carrying out work on the renewal or maintenance of the transport and operational characteristics of a locally important road. Repair works were to be carried out by a private legal entity under the conditions of their financing by the local self-governing body.

The court of first instance rejected the claim. The appellate court annulled the decision of the court of first instance and terminated the proceedings, noting that this dispute does not belong to the jurisdiction of the administrative court, since the disputed contract is not administrative.

The Grand Chamber of the Supreme Court, being the cassation instance, made a decision supporting the appellate court, not seeing any signs of an administrative contract in the cooperation agreement mentioned above. Referring to the legislative definition of an administrative contract, the Grand Chamber noted the following in its resolution:

1. In order to refer a dispute arising from contractual relations to the jurisdiction of an administrative court, it is not sufficient to establish that one of the parties to the relevant contract is a subject of authority.

2. Contracts concluded according to the rules of civil or commercial legislation cannot be considered administrative contracts.

3. An administrative contract assumes that there are relations of authority and subordination between its parties; this fact distinguishes it from a civil or economic contract, in which the parties are legally equal, free to express their will, and property independent.

4. If the subject of authority in disputed legal relations does not perform managerial functions in relation to another participant in them, then the dispute arising from these relations does not have the public-law features established by the Code of Administrative Proceedings of Ukraine, which means that it does not fall under the jurisdiction of an administrative court.

To date, the positions of the Grand Chamber of the Supreme Court presented above are taken into account by judges: when characterising contracts in the context of determining judicial jurisdiction, judges refer to them in their decisions.[35] In our opinion, not all of them

34 Case No 814/1375/17 (Supreme Court of Ukraine, 27 February 2019) <https://reyestr.court.gov.ua/Review/80427376> accessed 1 September 2022.

35 Case No K/9901/29462/19 (Supreme Court of Ukraine, 12 March 2020) <https://reyestr.court.gov.ua/Review/88150261> accessed 1 September 2022.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

are indisputable, and therefore some can become the subject of an interesting scientific discussion.

Thus, the first and second positions do not cause any doubts. They found their justification in numerous publications, the authors of which combine their science and judges experience[36].

Regarding the 'viability' of the third and fourth positions, we will express some warnings. They are interconnected and, in general, consist of the fact that a contract can be considered administrative and one of the parties performs administrative functions in relation to the other party, even in the relations that arose as a result of its (contract) conclusion. We agree that in certain situations the parties to the contract under consideration may be in a state of "power-subordination". However, this is rather the exception than the rule. After all, the very nature of contractual relations excludes it. If subordination is preserved, then why conclude a contract? In this case, it makes sense for the subject of authority to use another form of administration - to adopt an individual act.

For our study, it will not be superfluous to follow whether the given positions of development were found in the following decisions of the Supreme Court. For example, let us outline the resolution of May 5, 2022.[37]

The said resolution describes the conflict situation that arose as a result of the termination of the operation of the family-type children's house. The relevant order was adopted by the head of the local state administration. The parents-educators appealed to the administrative court with a statement of claim to declare the order illegal and to cancel it. The court of first instance satisfied the claims in full; the appellate court did not agree with the court of first instance, cancelled its decision and adopted a new one – on the refusal to satisfy the claims.

The claimant filed a cassation appeal, in which they claimed that the appellate court made its decision without taking into account the fact that the family-type orphanage operated on the basis of the order of the head of the local state administration on its formation, as well as the agreement between the administration and the foster parents on the organisation of its activities. According to the complainants, there were no grounds for unilaterally terminating the mentioned agreement. Therefore, the order to terminate the operation of the orphanage was illegal and subject to cancellation.

The Supreme Court, deciding this case, came to the conclusion that the adoption of the order on the termination of the operation of the orphanage should be preceded by an assessment of compliance by the parent-educators with the terms of the agreement on the organisation of its activities. This conclusion was also based on the fact that this agreement is an administrative contract by its nature and purpose. In this context, the Court in its resolution listed the features inherent in administrative contracts and projected them onto the agreement that was the subject of the case under investigation.

Thus, the Supreme Court noted that: a) the legal authority is a mandatory participant in an administrative contract; b) it is concluded on the basis of the law, i.e., the the legal authority is authorised to enter into relevant contractual relations by the law itself, and not by a bylaw; c) the content of the contract consists of mutual rights and obligations of the participants in

36 NB Pysarenko, 'Demarcation of the Jurisdiction of Courts Regarding the Resolution of Disputes Involving Subjects of Authority' (2011) 4 Law of Ukraine 59; O Kibenko and V Urkevych, 'Approaches of the Grand Chamber of the Supreme Court to determining the jurisdiction of disputes' (*Judicial and Legal Newspaper*, 24 March 2020) <https://sud.ua/ru/news/blog/164290-pidkhodi-velikoyi-palati-verkhovnogo-sudu-do-viznachennya-yurisdiktsiynosti-sporiv?fbclid=IwAR1AR7wlP-2E1DG2-pku6YtNanHFpyvTn2ieUdnMIn4Ru5Fi_ZRYF0U-OQ004> accessed 1 September 2022.

37 Case No K/9901/1416/21 (Supreme Court of Ukraine, 05 May 2022) <https://reyestr.court.gov.ua/Review/104191364> accessed 1 September 2022.

the public legal sphere, namely, those rights and obligations that, according to the Court, are determined not by reaching an individual agreement between the parties but by taking into account legislative prescriptions; d) the operation of the contract leads to the occurrence of legal consequences in the form of the emergence, change or termination of relations forming the subject of administrative law; e) the purpose of concluding a contract must be to satisfy public interests; and e) rules on the content of an administrative contract and the procedure for concluding it should be concentrated in the norms of administrative law.

As we can see in the previous court decision, the general features of administrative contracts are presented; that is, those that can be used to identify any agreement involving subjects of power. They have also been clarified, with a focus on their most important (contract) characteristics.

It should also be noted that in the resolution dated May 5, 2022, the Supreme Court no longer speaks about the subordination of the parties to the administrative contract. It emphasises the fact that the content of the agreement on the organisation of the activities of the orphanage is the rights and obligations of the participants, which arise from the powerful management functions of the defendant. It also claims that their (participants') obligations are not private law, since they ensure the implementation of the powers of the district state administration and are aimed at satisfying the interests of children, not the parties to the agreement.

Summarising, we note that the defining feature of administrative contracts is that they are concluded by public authorities in order to implement the powers granted to them. To this feature, we can add that the right to exercise authority through entering into contractual relations must be expressly provided for in the law. Similarly, in the law regulating public-legal relations, rules regarding the procedure for conclusion, execution and termination of the contracts under consideration should be fixed. The rest of the features (for example, the participation in an administrative contract of a private person who seeks to satisfy his own interests, or the subordination of such a person to another ruling party to the contract) should be isolated and studied in specific cases; they cannot be recognised as inherent in all administrative contracts without exception.

6 CONCLUSIONS

1. Administrative contracts (like any other contracts) are concluded voluntarily after the parties have reached agreement on all their essential terms, are of equivalent nature, and provide for mutual responsibility of the parties.

The constitutive feature of administrative contracts is that they are concluded by public authorities in order to implement the powers granted to them. The fact that the right to exercise power by entering into contractual relations must be expressly provided for in the law can also be mentioned as an indispensable feature of these contracts. Similarly, the law regulating public-law relations should establish rules regarding the procedure for concluding, executing and terminating these contracts. It makes sense to single out other signs and studies in specific cases - they cannot be recognised as inherent in all administrative contracts without exception.

2. The legislative definition of an administrative contract was put into circulation for the purposes of applying the rules of the Code of Administrative Proceedings of Ukraine; primarily those that outline the jurisdiction of administrative courts. Normative legal documents establishing the powers of subjects of public administration still do not include such definitions, neither do they contain most of the regulatory provisions necessary for the

Access to Justice in Eastern Europe
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Journal homepage http://ajee-journal.com

proper use of the considered form of administration. It would be correct to fix the relevant information in acts, the prescriptions of which are addressed to the specified entities. We are confident that the implementation of the Law 'On Administrative Procedure' will contribute to the formation of a staunch position on the expediency of placing in its text the provisions regarding the characteristics of administrative contracts, their types, grounds and general procedure for conclusion, as well as the procedure for their execution and termination.

3. According to the function in the mechanism of administrative and legal regulation, scientists propose to distinguish between law-making contracts aimed at the realisation of rights and delict administrative contracts. There is no objection to the separation of contracts establishing rights and those aimed at the realisation of rights. For further discussion, we leave the issue of distinguishing the so-called delict contracts among administrative contracts. After all, the latter do not foresee that their participants have corresponding rights and obligations.

4. Types of administrative contracts are named in the Code of Administrative Justice of Ukraine, one of which is defined as one that is concluded instead of issuing an individual act. For the purposes of applying procedural law, it is enough to indicate the existence of a similar type of contract. The rules addressed to entities exercising their powers through the conclusion of administrative contracts should be more specific. In order to prevent abuses by government officials, the rules on their powers should include a clear list of situations in which it is permissible to carry out the appropriate replacement.

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