Conflict-of-Laws Issues of Determining Administrative Jurisdiction and Deviation From Established Judicial Practice: The Case of Ukraine

Oksana Shcherbaniuk[1,*] and Laura Bzova[2]

[1]*Department of the Procedural Law of Yuriy Fedkovych Chernivtsi National University, professor of the Faculty of Law of Vilnius University, Ukraine*

[2]*Department of Procedural Law of Yuriy Fedkovych Chernivtsi National University, Ukraine*

Abstract: The issue of the occurrence of the causes of conflicts of law is relevant, since its solution will depend on the clarity of the presentation of the legal problem. In addition, the formation of a proper functioning mechanism for resolving conflicts of law will increase the efficiency of legal regulation and ensure the stability and development of the legal system as a whole.

It should be stated that the conflict problem before the twentieth century. was not the subject of special analysis and study. Everything, as a rule, was limited to stating the legal fact of the existence of collisions, as well as highlighting the most typical ways to overcome them.

One of the obstacles to the proper functioning of the mechanism for determining and delimiting the administrative jurisdiction of cases of administrative offenses and other administrative cases is the existence of separate legal conflicts. At the same time, legal conflicts are characteristic not only in the issues of delimitation of jurisdiction for consideration of administrative and tort cases, but they also take place in the delimitation of the subjects of competence of administrative jurisdiction bodies.

The imperfection of legislative technique and contradictions in laws, the presence of cases of regulation of the same legal relations by the norms of different laws leads to unequal application by the court of the same norms of substantive law and the adoption of different court decisions in similar legal relations. Therefore, the Constitution of Ukraine guarantees the right to appeal and cassation review of court decisions. As S. Shevchuk notes, acting according to the law, courts can violate the organic essence of law, taking the norm out of context. The norms of the law should be applied in the context of European standards – to promote the protection of human rights and freedoms in order to comply with the principle of the rule of law: finding a principle in which a norm can only be an element of argumentation.

Keywords: Administrative jurisdiction, judicial practice, principle of legal certainty, administrative cases, Supreme Court.

INTRODUCTION

Courts overcome legal conflicts in the following way: they choose one of the contradictory norms, guided by the conflict rules of sectoral supremacy: "the next law cancels the effect of the previous one", "a special law cancels the effect of the general one". The right choice based on the definition and study of the objective conditions of the case and the explanation of the norms applied in a particular case belongs to the jurisdiction of administrative courts and general courts. Administrative and general courts are obliged to individually decide which rules should be used in the case under consideration, in the presence of a conflict in legal regulation, as well as in cases of detection of rules of law that have not been abolished in accordance with the established procedure, but in fact have become invalid. Disputes in conflict situations are considered in court. The need to use court procedures arises when other procedures and methods of resolving legal conflicts have not yielded proper results. The effectiveness of this method lies in the fact that the court decision is imperative, it is generally binding. Therefore, the interpretation of laws by the Administrative Court of Cassation within the Supreme Court will be a way to overcome conflicts in administrative law.

The implementation of administrative norms is accompanied by the emergence of conflict situations - the period from the occurrence of a conflict to its resolution by administrative and legal means. Within the framework of a conflict situation, conflict relations may arise as a type of administrative procedural relations regulated by the norms of administrative law of social relations, the content of which is the mutual rights and obligations of subjects aimed at resolving conflicts. This type of relationship is always specific legal relations, they arise on the basis of decisions of authorized entities that exercise rights aimed at

*Address correspondence to this author at the Head of the Department of the Procedural Law of Yuriy Fedkovych Chernivtsi National University, professor of the Faculty of Law of Vilnius University, Ukraine;
E-mail: o.shcherbanyuk@chnu.edu.ua

resolving conflicts, and is terminated by the fulfillment by another subject (or several) of corresponding obligations.

The procedural nature of conflict relations is manifested in their content - the rights and obligations of subjects that enable or oblige to participate in procedures (out-of-court and judicial) for resolving conflicts.

COLLISIONS OR "BLIND SPOTS" OF THE PROCEDURE FOR JUDICIAL CONSIDERATION OF ADMINISTRATIVE CASES

The Constitution of Ukraine provides for many ways to resolve conflicts: suspension and cancellation of normative legal acts by the head of state, conflict of laws, conciliation procedures, constitutional control. In turn, the Constitution of Ukraine does not establish the priority of the application of a particular law, including depending on the subject of legal regulation. There is also no law of Ukraine that would regulate the issue of overcoming the conflict of norms of laws that have the same legal force.

The existence of a specialized administrative court is certainly not specific to France (Aguila Y., 2007): among the 28 Member States of the European Union, only 5 chose unity of jurisdiction with certain nuances. Among the other 23 states, two models can be distinguished (Olson T., 2012). The first group of countries has a complete specialized jurisdictional system "from the bottom up", with two or three levels of jurisdiction devoted exclusively to the consideration of administrative disputes. This applies to France, Germany, as well as Italy, Greece, Sweden, Finland, Poland, the Czech Republic and Lithuania. In rare cases, the supreme court is the ordinary judge of the first and last instance, as in Belgium, Luxembourg and the Netherlands. In the second group of states, there are specialized administrative bodies consisting of general courts. This specialization of the chamber can apply to all levels of jurisdiction, as for example in Spain (Marcou G., 2007) or only the supreme court, as is the case in Hungary. Thus, there are different degrees of specialization of judges, whether it is functional only within a single court or institutional, depending on whether the procedure and law applicable to the consideration of the case on the merits are more or less specialized. At the same time, it can be concluded that "in the European Union, the duality of courts – in its absolute or relative form – is the rule, and judicial unity is the exception" (Olson T., 2012).

On the example of France, it is possible to study the problem of the procedure for judicial consideration of disputes with the state and their impact on the protection of fundamental rights. M. Degoffe points out that the existence of two levels of courts, each of which has a supreme court at its level (Court of Cassation, Council of State), implies the creation of a court responsible for resolving disputes that may arise when both levels of the court consider that the same case falls under their jurisdiction or that neither of the two orders considers itself competent (Degoffe M.). This court is called the Court of Conflicts. The Court of Conflicts, consisting of half of the members of the Council of State and the other half of the members of the Court of Cassation (four members from each of these courts), was headed by the Minister of Justice until 2015. The latter rarely went there. But his presence was needed when there was a division, the court had an even number of members, it is possible that they would not be able to decide between them. He did so, for example, in a very political case that became the basis for the court's decision of May 12, 1997. The minister denied access to the territory to two off-road boats. The latter, like the shipowner, considered that the refusal should be qualified as an attack and, therefore, referred the case to a judge. The prefect raised the conflict.To obtain the jurisdiction of an administrative judge, the Minister of Justice sat down and tipped the scales in favor of administrative jurisdiction. This caused the symbolic resignation of the councilor of the Court of Cassation, Sargos. G. Bachelier, taking into account the figures given by René Chapuy, points out that in the last 133 years after the division, eleven decisions have been made, that is, hypotheses when the Minister of Justice comes to sit down because the members of the Conflict Court cannot decide between them.

For the normal provision of the right to access to justice, such elements as procedural and physical possibilities of applying to the court are necessary. Access to justice is postulated as an unhindered opportunity to go to court without special tools, burdensome pre-trial means of dispute resolution, special procedures, etc. For example, a direct violation of the power of access to the court is the need to obtain special permits to apply to the court or the obligation of a person to exhaust the methods of pre-trial settlement of the dispute or the internal system of filing complaints provided for by law before filing a lawsuit (Huivan P.D., 2019).

Despite the introduction of the legal regime of martial law on the territory of Ukraine, the right of access to an administrative court is not subject to restrictions, and it must be ensured by the proper administration of administrative justice. The functioning of the judicial system should not be restricted, except in situations of absolute necessity or in the case when such functioning is actually impossible (CDL-AD(2020)014 of 19.06.2020).

One of the obstacles to the proper functioning of the mechanism for determining and delimiting the jurisdiction of cases of administrative offenses and other cases is the existence of separate legal conflicts. At the same time, legal conflicts are characteristic not only in the issues of delimitation of jurisdiction for consideration of administrative and tort cases, but also in the delimitation of the subjects of competence of administrative jurisdiction bodies (Vasyliv S.S.).

ANALYSIS OF THE JUDICIAL PRACTICE OF THE ADMINISTRATIVE COURT OF CASSATION WITHIN THE SUPREME COURT

The Resolution No. 560/17953/21 states that the jurisdiction of cases on the establishment of legal facts in the event of appealing against the decisions of the subject of authority. The issue of establishing the fact of living in one family without a registered marriage of the plaintiff with a deceased serviceman was also included in the subject of evidence in case No. 290/289/22-c (resolution of the CCC of the Supreme Court dated 22.03.2023 in case No. 290/289/22, which was considered by the CCC of the Supreme Court and the decision on which was made by the court of cassation on 22.03.2023 [Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №560/17953/21 vid 22 veresnia 2023 roku]. The CCC of the Supreme Court came to the conclusion that the claims of PERSON_5 to establish the fact that a man and a woman lived in the same family without registering a marriage with PERSON_6, who died while participating in hostilities and ensuring the implementation of measures for national security and deterring the armed aggression of the Russian Federation, are not subject to resolution in civil proceedings. The Cassation Court of the Supreme Court disagrees with this conclusion and considers it necessary to deviate from the Resolution of the CCC of the Supreme Court dated 22.03.2023 in case No. 290/289/22, taking into account the following. In the context of case No. 560/17953/21, the panel of judges of the Court of Cassation of the Supreme Court considers erroneous the conclusions of the CCC of the Supreme Court that the applicant's claims to the court related to proving the fact that the plaintiff lived in one family without a registered marriage with a deceased serviceman in order to recognize (confirm) her certain social and legal status and possible legal consequences, such claims are related to the applicant's public law relations with the state, Therefore, they are not subject to resolution in civil proceedings.

BIn another ruling of the Cassation Administrative Court No. 500/3752/21 Jurisdiction of disputes on the claim of a trade union organization to cancel the decision of a local government body (founder of an educational institution) on re-profiling (changing the type) and name of a general secondary education institution. Deviation from the conclusion set out in the Resolution of the Supreme Administrative Court of 09.09.2020 in case No. 260/91/19 that the delimitation of jurisdiction of disputes on appealing decisions of the council as the owner of corporate rights (founder) of a municipal institution on the creation, reorganization or termination of the activities of such an institution, depending on the nature and scope of activities of such a municipal institution, is not based on the provisions of the legislation [Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №500/3752/21 vid 3 travnia 2023 roku]. According to the panel of judges, the dispute about challenging the legality of the city council's decision on the reprofiling (change of type) and name of the gymnasium to an elementary school does not apply to disputes arising from corporate relations, therefore the application of clause 3, part 1, article 20 of the Code of Civil Procedure of Ukraine to the disputed legal relations is groundless, and therefore this dispute should be considered in a court of administrative jurisdiction.

Another reason for departing from existing case law is the urgency of bringing case law to a uniform interpretation and application. Thus, in the decision of the Supreme Administrative Court of Ukraine in case No. 260/4199/22 it is indicated that the deviation from the legal conclusions expressed by the Supreme Administrative Court in the decision of the Supreme Administrative Court of Ukraine dated May 15, 2019 in case No. 820/4717/16 [Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava № 260/4199/22 vid 11 zhovtnia 2023 roku]. The basis for the deviation, in particular, is the urgency of bringing judicial practice to a uniform interpretation

and application of Part 3 of Article 23 of the Law of Ukraine "On the Prosecutor's Office" and Parts 4 and 5 of Art. 53 of the CAS in terms of the prosecutor's powers to protect the interests of the state by exercising the right to apply to the court in the person of a subject of government authority with a claim. The controversial issue in this case is the presence or absence of the head of the Khust District Prosecutor's Office of the Transcarpathian Region with the right to apply to the court in the interests of the state in the person of the Main Directorate of the State Emergency Service in the Transcarpathian Region with a claim to the Civil Protection Agency for an obligation to take action, in particular by bringing the protective structure into readiness for use for its intended purpose.In this case, when filing a lawsuit with the court, the prosecutor notes that the Main Directorate of the State Emergency Service in the Transcarpathian region, which should be the plaintiff in the case, does not fulfill its functions and, accordingly, does not protect the interests of the state, and therefore the prosecutor is filing the lawsuit in the interests of this body, as the plaintiff in this case. Thus, the legislation provides for the right of the State Emergency Service, as a subject of government powers when exercising its competence, to file a lawsuit exclusively with claims for the application of response measures (clause 48 of the Civil Protection Code).

Deviation from the conclusion set out in the resolution of the Supreme Court of Ukraine dated 29.10.2019 in case No. 922/1391/18 regarding the impossibility of reviewing, under exceptional circumstances, a court decision that refused to satisfy the claim, on the grounds of the Constitutional Court establishing the unconstitutionality (constitutionality) of a law, other legal act, or a separate provision thereof, applied (not applied) by the court when deciding the case, indicating that a person who has been denied satisfaction of the claim has the right to review court decisions in connection with exceptional circumstances, if the Constitutional Court has established the unconstitutionality (constitutionality) of a law, other legal act, or a separate provision thereof, applied (not applied) by the court when deciding the case. Provisions of clause 1, part 5, art. 361 of the CAS of Ukraine, “if the court decision has not yet been executed” in the context of disputed legal relations should be understood as meaning that the phrase “if the court decision has not yet been executed” refers to the impossibility of reviewing under exceptional circumstances only those court decisions that are subject to execution (i.e. the operative part of the decision contains an obligation to perform a certain action, make a decision, pay money, etc.), and at the time of filing the application for review under exceptional circumstances were executed [Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №140/2217/19 vid 22 chervnia 2022 roku].

Studying the judicial practice of recent years, it can be argued that “blind zones” when considering administrative cases are an exceptional legal problem of the lack of norms in the legislation regulating legal relations and the lack of uniform judicial practice. For example, the resolution of March 23, 2025 indicated that the transfer of the case to the Presidium of the Supreme Court is justified by the fact that:

the case contains an exceptional legal problem regarding the powers of the State Emergency Service of Ukraine (SES) and the prosecutor in disputes about bringing civil defense protective structures to proper condition;

consideration of the case is necessary for the development of the issue of law - clarification of the powers of the SES and the creation of an effective mechanism for protecting the public interest - the rights of the population to safe shelters in martial law, as an implementation of Article 3 of the Constitution of Ukraine;

the lack of uniform judicial practice regarding the powers of the SES and the prosecutor in this category of disputes contradicts the principle of legal certainty (Article 8 of the Constitution of Ukraine, the practice of the European Court of Human Rights), which leads to a state of uncontrollability of the maintenance of civil defense protective structures; — transferring the case will eliminate the inconsistency of the positions of the Supreme Court since 2019 regarding the grounds for a prosecutor to appeal to court in the interests of the state in the person of a state body that does not exercise its powers within the limits of the functions assigned to it, taking into account the provisions of Article 28 of the Law of Ukraine “On Central Executive Bodies” and the need to protect the public interest;

transferring the case to the Grand Chamber of the Supreme Court is necessary to eliminate the gap in the legislation, ensure legal certainty and fulfill the state's obligation to protect the lives of citizens in accordance with the Constitution and international obligations of Ukraine.

Also, an exceptional legal problem lies in the uncertainty of the legislative regulation of legal issues and the provision of a systematic interpretation of the norms of the current legislation of Ukraine, which was adopted in implementation of the Decision of the Constitutional Court of Ukraine dated February 18, 2020 No. 2-p/2020, by which the legislator provided for the procedure for transferring a judge of the High Specialized Court of Ukraine for Civil and Criminal Cases, the High Economic Court of Ukraine, the High Administrative Court of Ukraine to an appellate court or local court, as well as a monthly lifetime allowance upon dismissal, in particular regarding: - the presence (absence) of grounds for recalculating the judicial remuneration, health care allowance and severance pay in connection with the resignation of a judge of the High Administrative Court of Ukraine with the application of the official salary of a judge of a high specialized court in accordance with the provisions of Article 135 of the Law of Ukraine "On the Judiciary and the Status of Judges"; establishing the date with which the law links the equalization of judges of the High Specialized Court of Ukraine for Civil and Criminal Cases, the High Economic Court of Ukraine, the High Administrative Court of Ukraine, who have expressed a desire to resign, to judges of higher specialized courts, since the specified issue does not have a clear legislative regulation and allows for ambiguous interpretation of the norms that regulate the disputed legal relations; determine The rightful defendant in the case in part of the claims for the recovery of the amounts of judicial remuneration [Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №240/9028/24 vid 28 sichnia 2025 roku].

Deviation from the conclusions set forth by the Supreme Court in the resolutions of 01/19/2023 in case No. 140/1770/19, dated 02/16/2023 No. 803/1149/18, dated 04/13/2023 No. 320/12137/20, that a VAT payer may apply to an administrative court with demands to declare the inaction of a subject of public authority to repay the VAT refund debt and/or the penalty accrued on such debt unlawful within six months from the date on which the person learned or should have learned about the violation of his rights, freedoms or interests; change in legal regulation, change in the Supreme Court of the method of protecting the violated right and factual circumstances confirmed in the established procedure regarding the impossibility of exercising the right by a person, the list of measures aimed at achieving this goal are subject to assessment by the court upon the plaintiff's application for renewal of the missed deadline for applying to the administrative court in each specific case when clarifying the validity of the reasons for missing this deadline. The panel of judges indicated that in the above-mentioned resolutions of the Supreme Court of the Supreme Court, in fact, only a conclusion was formed regarding the determination of the beginning of the inaction of the regulatory body, and the establishment of the moment when the person learned or should have learned about the violation of his rights and interests is left to the court to decide the fact in each specific case. The following also indicate the existence of an exceptional legal problem:

- the application of case law regarding the six-month period for applying to court in cases for the collection of penalties, the claim of which was filed before 02/15/2023, does not take into account the inability of a person to foresee a corresponding reduction in the period for applying to court, and may actually deprive such persons of the right to a fair trial in the context of access to court;
- the calculation of the period for applying to court with a claim for the collection of penalties accrued on the amount of budget debt from value added tax should begin from the day when the taxpayer became aware (or could have been aware) of the cessation of unlawful inaction and the repayment of budget debt from VAT [Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №200/9658/21 vid 16 zhovtnia 2024 roku].

CONCLUSIONS

Therefore, when addressing the issue of overcoming legal conflicts and unequal application of legislation by courts of first instance of administrative jurisdiction, the main means of preventing their occurrence is the systematization of administrative tort and administrative procedural legislation, the consolidation of general and special norms in one regulatory act, as well as the timely introduction of amendments and additions to the current legislation and subordinate regulatory legal acts.

REFERENCES

Aguila Y., « La justice administrative, un modèle majoritaire en Europe, le mythe de l'exception française à l'épreuve des faits », AJDA, 2007, p. 290.

Degoffe M. Le règlement des conflits. URL: https://droit.cairn.info/droit-administratif-4e-edition--9782340040014-page-77?lang=fr

Dotrymannia pryntsypiv demokratii, prav liudyny ta verkhovenstva prava v umovakh nadzvychainoho stanu – mirkuvannia: CDL-AD(2020)014 vid 19.06.2020 / Venetsiiska komisiia «Za demokratiiu che rez pravo». S. 19. URL: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL AD(2020)014-ukr [in Ukrainian]

Huivan P.D. Pravo na spravedlyvyi sud: sutnist ta temporalni vymiry za mizhnarodnymy stan dartamy: monohrafiia. Kharkiv: Pravo, 2019. S. 133. [in Ukrainian] https://doi.org/10.3917/pouv.123.0133

Marcou G. « Une cour administrative suprême : particularité française ou modèle en expansion ? », Pouvoirs, 123, 2007.

Olson T., « Justice administrative et Constitution en Europe : état des lieux », Nouveaux Cahiers du Conseil constitutionnel, n°37, octobre 2012. https://doi.org/10.3917/nccc.037.0139

Olson T., « Justice administrative et Constitution en Europe : état des lieux », Nouveaux Cahiers du Conseil constitutionnel, n°37, octobre 2012. https://doi.org/10.3917/nccc.037.0139

Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №560/17953/21 vid 22 veresnia 2023 roku. URL: https://reyestr.court.gov.ua/Review/108806369 [in Ukrainian]

Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №500/3752/21 vid 3 travnia 2023 roku. URL: https://reyestr.court.gov.ua/Review/110616040[in Ukrainian]

Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava № 260/4199/22 vid 11 zhovtnia 2023 roku. URL: https://reyestr.court.gov.ua/Review/114137522[in Ukrainian]

Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №140/2217/19 vid 22 chervnia 2022 roku. URL: https://reyestr.court.gov.ua/Review/104975539[in Ukrainian]

Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №240/9028/24 vid 28 sichnia 2025 roku. URL: https://reyestr.court.gov.ua/Review/124884094[in Ukrainian]

Ukhvala Kasatsiinoho administravtynoho sudu u skladi Verkhovnoho Sudu. Sprava №200/9658/21 vid 16 zhovtnia 2024 roku. URL: https://reyestr.court.gov.ua/Review/122521671 [in Ukrainian]

Vasyliv S.S. Pravovi kolizii pidvidomchosti rozghliadu sprav pro administratyvni pravoporushennia URL: https://science2016.lp.edu.ua/sites/default/files/Full_text_of_%20papers/vnulpurn_2016_837_30.pdf [in Ukrainian]

Received on 14-10-2025 Accepted on 12-11-2025 Published on 11-12-2025

https://doi.org/10.6000/2817-2302.2025.04.09