# Some aspects of out-of-court settlement of administrative disputes

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**Annotation.** This article is devoted to issues related to the study of the possibilities of resolving administrative disputes, clarifying their nature and determining their role as a system of fundamental values in a modern democratic legal state. Out-of-court settlement of administrative disputes, along with the rule of law, is one of the most important components of the content of law, but it remains insufficiently studied to date.

This article defines theoretical approaches to the concept and types of forms of out-of-court settlement of administrative disputes. The author analyzes the administrative-procedural aspects of resolving administrative disputes and the activities of administrative bodies and other competent bodies aimed at overcoming the main disagreements in administrative-legal relations.

The results of consideration of administrative cases are expressed in the form of law enforcement. Administrative proceedings are activities for the resolution of disputes arising between participants in administrative-legal relations that do not have public authority, as well as activities for the application of administrative coercion measures.

Out-of-court settlement of disputes by state bodies, local self-government bodies and their officials is carried out, as a rule, in cases where court intervention is not required or when this procedure is mandatory before court intervention in accordance with the law.

The author examines administrative disputes in the context of possible disagreements regarding the exercise, provision or violation of the rights, freedoms or legal interests of individuals and legal entities. The author describes actions to resolve disputes related to the protection or restoration of violated rights, freedoms or legitimate interests. The author singles out the areas of administrative dispute resolution: mediation, ombudsman activities and conciliatory procedures.

**Keywords:** administrative dispute, legality, out-of-court dispute resolution mechanisms, principles, responsibility**.**

## Деякі аспекти позасудового врегулювання адміністративних спорів

**Анотація**. Ця стаття присвячена питанням, пов'язаним із вивченням можливостей вирішення адміністративних спорів, уточненням їхньої природи та визначенням їх ролі як системи фундаментальних цінностей у сучасній демократичній правовій державі. Позасудове вирішення адміністративних спорів, поряд із верховенством права, є одним з найважливіших складових змісту права, але на сьогоднішній день залишається

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недостатньо дослідженим. У статті визначаються теоретичні підходи до поняття та видів форм позасудового вирішення адміністративних спорів. Автор аналізує адміністративно-процедурні аспекти вирішення адміністративних спорів та діяльності адміністративних органів та інших компетентних органів, спрямовану на подолання основних розбіжностей у адміністративно-правових відносинах.

Результати розгляду адміністративних справ виражаються у формі правозастосування. Адміністративне провадження - це діяльність по вирішенню спорів, що виникають між учасниками адміністративно-правових відносин, які не мають публічної влади, а також діяльність щодо застосування заходів адміністративного примусу. Позасудове вирішення спорів державними органами, органами місцевого самоврядування та їхніми посадовими особами здійснюється, як правило, у випадках, коли судове втручання не потрібне або коли ця процедура є обов'язковою перед судовим втручанням відповідно до закону.

Автор розглядає адміністративні спори в контексті можливих розбіжностей щодо здійснення, надання або порушення прав, свобод чи правових інтересів фізичних та юридичних осіб. Автор описує дії щодо вирішення спорів, пов'язаних із захистом або відновленням порушених прав, свобод чи законних інтересів. Автор виділяє сфери вирішення адміністративних спорів: медіацію, діяльність омбудсмена та примирні процедури.

**Ключові слова:** адміністративний спір, законність, позасудові механізми вирішення спорів, принципи, відповідальність.

## Introduction

Since the signing of the Association Agreement between Ukraine and the European Union, significant changes have taken place in the sphere of interaction between public authorities. Legislation in this area is developing rapidly, a number of normative legal acts have been adopted in the administrative sphere affecting the rights, freedoms and legitimate interests of individuals and legal entities, administrative procedures involving citizens and organizations are becoming more complicated. At the same time, the regulatory restructuring of state administration requires the consistent strengthening of legal technologies for resolving administrative disputes, in particular the development of new forms of social interaction, such as conciliation and mediation. The importance of out-of-court forms of settlement of administrative disputes by means of conciliation and mediation procedures to protect the rights, freedoms and legitimate interests of individuals and legal entities is obvious. These forms make it possible to resolve administrative disputes in a qualitative, timely, economical and confidential manner. This is important in order to reduce the burden on the courts, to avoid the material costs associated with court proceedings, and also to avoid the bias of court decisions in favor of the state.

*Analysis of recent studies and publications.* The problems of consideration of administrative and legal disputes have always attracted the attention of scientists, which was reflected in the works of, in particular: V. B. Averyanov, Y. P. Bytyak, V. M. Harashchuk, G. V. Dikova, O. B. Zelentsov, N. B. Pisarenka, V. A. Seminoi, P. M. Rabinovych, A. O. Selivanov, M. I. Smokovicha, V. S. Stefaniuk, V. P. Tymoshchuk, M. M. Tyshchenko, V. I. Shishkin and other scientists. Actually, the place of out-of-court settlement of administrative disputes in the system of administrative proceedings is not definitively determined, which makes it necessary to study it.

*Purpose of the article.* The purpose of the article is to analyze the features of out-of-court settlement of administrative disputes and the problems of legislative regulation of out-of-court settlement of public-law disputes.

**The results**

In the decision of the Constitutional Court of Ukraine of July 9, 2002 No. 15-rp in the case of pre-trial settlement of disputes, it is stated that the right to judicial protection does not deprive the subjects of legal relations of the possibility of pre-trial settlement of disputes [1].

At the same time, out-of-court settlement of administrative disputes should be based on certain principles. The principles of law are not an abstract category of administrative procedures, but their fundamental element. The construction of the principles of resolving administrative disputes is based on the general theory of law, in particular on the administrative-legal theory, which is a system of theoretical provisions reflecting objective law. The principles affect the processes, forms and methods of resolving administrative disputes. The principles establish the basic requirements for the internal and external functioning of administrative bodies and the subject of administrative dispute resolution.

The principles of resolving administrative disputes are determined by the socio-economic and political development of the state and society and can be considered as the guiding principles of the procedural activity of the state and authorized persons for the resolution of administrative disputes, enshrined in the norms of administrative law. The general theory of law recognizes the existence of three levels of legal principles in a generally accepted classification: general legal principles, cross-sectoral legal principles, and sectoral legal principles [2, c. 6].

Common law principles usually include the equality of citizens, the protection of the rights and freedoms of citizens, humanism and justice. Being constitutional, these principles have a direct relationship to all branches of law and are therefore unconditionally used in bodies for out-of-court resolution of administrative disputes.

The principles of legality, objectivity, accessibility, openness, comprehensiveness, timeliness and competence are interdepartmental principles. In administrative law, in particular, the principles of equality before the law and the presumption of innocence, as well as in the Code of Administrative Procedure of Ukraine (hereinafter referred to as the Code of Administrative Procedure of Ukraine), the independence of judges, the equality of all before the law and the court, legality and justice during the consideration and resolution of administrative cases, implementation within a reasonable period of judicial proceedings in administrative cases, the independence of judges, equality of all before the law and the court, legality and justice during the consideration and resolution of administrative cases, implementation of judicial proceedings in administrative cases within a reasonable period, legality and justice, implementation of administrative proceedings in administrative cases within a reasonable period [3].

The principles enshrined in the Code of Ukraine on Administrative Offenses (hereinafter referred to as the Code of Administrative Offenses) can be considered as general principles for the industry as a whole; the principles enshrined in the Code of Administrative Procedure of Ukraine can be attributed to the special principles of administrative procedure, which represent the procedure for resolving administrative disputes (judicial form); the principles enshrined in the Code of Administrative Offenses are applied, in particular, for the out-of-court settlement of administrative disputes [4].

It should be noted that administrative law does not actually establish a set of principles for out-of-court settlement of administrative disputes. These principles legally exist in one form or another, but can only be defined in an agreement regarding the system of principles that underlie specific administrative-legal relations.

Potentially, any administrative-legal relationship can be a dispute, and therefore, the resolution of this dispute is indirectly influenced by certain principles, in particular, the principles underlying the consideration of citizens' appeals in the administrative procedure,

the principle of public service organization, etc. For this reason, it is necessary to formulate a unique system of principles for out-of-court settlement of administrative disputes.

The European integration aspirations of society and the state at the current stage of the development of the Ukrainian state naturally generate new requirements for Ukrainian state legal and social institutions and phenomena [5, p. 152]. In order to determine the nature of out-of-court settlement of administrative disputes, it is necessary to define the concept of out-of-court settlement of administrative disputes and forms of settlement of administrative disputes. The concept of the form of settlement of an administrative dispute corresponds to the philosophical understanding of form and the general concept of legal form, which correlates with the concept of structure. As a rule, the concept of form is presented together with the concept of content. «Content» and «form» are philosophical categories: «content», defining the whole, represents the unity of all components of the object, its properties, internal processes, connections, contradictions and trends; «form» is a way of existence and expression of «content». The term «form» means the way of existence, expression and transformation of content. In jurisprudence, the definition of form is expressed in the concept of legal form. Forms of law are used in the theory of law to reflect the existing legal realities that are formed in the course of social development, and indicate specific ways of organizing (designing) the legal existence of the state [6, c. 56].

The form of resolution of administrative disputes is the external expression of acts and decisions that have legal significance for the resolution of administrative disputes. The resolution of administrative disputes is practiced in the activities of authorized entities. Thus, if an administrative dispute is a conflict, then conflict resolution is an activity aimed at overcoming the conflict, and the form of conflict resolution is an external expression of such activity.

Administrative disputes are possible disagreements regarding the exercise, provision or violation of rights, freedoms or legal interests, and dispute resolution is an activity to protect or restore violated rights, freedoms or legal interests, which has a form established by law. Different approaches to the concept of out-of-court settlement of administrative disputes are offered in special literature.

The resolution of administrative disputes is expressed within the framework of administrative dispute settlement procedures. Such procedures represent the activity of administrative bodies (administrative authorities and other competent bodies). These procedures are related to consideration and resolution of administrative cases arising from administrative-legal relations. Individual, specific cases that are the subject of administrative disputes are considered within the framework of procedures established by law, based on legal procedures [7, c. 196].

The results of consideration of administrative cases are expressed in the form of legal acts. Initially, the principles of administrative procedure were expressed in two concepts: jurisdiction and control.

In the first case, the administrative procedure is conceived as an activity to resolve disputes arising between participants of administrative legal relations who are not in a relationship of official subordination, and as an activity to apply measures of administrative coercion.

This is due to the fact that such procedures can be interpreted exclusively as administrative activities of authorized subjects, carried out in the established procedural forms. At the same time, proceedings on administrative-legal complaints and disputes can be considered within the framework of the administrative-complex concept of administrative procedure.

The doctrine of administrative law describes specific features of forms of out-of-court settlement of administrative disputes. In particular, the authors distinguish pre-judicial, extra-

judicial, non-state, non-jurisdictional, pre-jurisdictional, claim or mediation, informal or quasi-legal forms [8, c. 98].

In the scientific literature, it is proposed to use the following categories: amicable dispute resolution, out-of-court dispute resolution and settlement, autonomous dispute resolution, private (non-state) dispute resolution and settlement procedures.

According to modern legal theory and practical realities, different forms of out-of-court settlement of administrative disputes can be distinguished. These include out-of-court settlement of administrative disputes by state bodies, local self-government bodies and their officials, mediation, ombudsman activity, reconciliation. At the same time, there are no restrictions on the appearance of new forms.

Out-of-court settlement of disputes by state bodies, local self-government bodies and their officials is carried out, as a rule, in cases where court intervention is not required or when this procedure is mandatory before court intervention in accordance with the law.

Of particular interest is the work of O. Bondarenko. It distinguishes two alternative forms of pre-trial settlement of disputes arising from tax relations. The first is a preventive procedure, and the second is a form such as mediation, which is carried out immediately after the occurrence of a disputed situation in which a complaint is filed against the act of the tax authority, the action or inaction of its officials [9, p. 118].

Procedures for out-of-court dispute resolution are an integral part of the structure of administrative procedures and therefore they are usually considered to be based on a system of principles of administrative procedure. Scientists interpret and classify the system of principles of administrative procedure according to various criteria.

The analysis of a number of scientific studies devoted to administrative and procedural principles proves that the principles of the system of administrative procedures for out-of-court settlement of administrative disputes can be divided into general law (inherent in all types of judicial proceedings) and branch ones (characterizing administrative procedures for out-of-court settlement of administrative disputes). Legality, justice, publicity, authority, equality before the law, responsibility of state bodies and parties involved in the case are the general legal principles of the administrative-procedural system of out-of-court settlement of administrative disputes.

However, at the current stage of the development of the Ukrainian legal system, administrative justice is mostly formed from the point of view of resolving disputes in court. Most often, administrative justice is synonymous with judicial activity, proceedings within the framework of administrative proceedings or legal proceedings. It should be noted that the existing legislative construction of administrative proceedings raises certain doubts as to whether it can be classified as an administrative proceeding [10, c. 154].

The out-of-court settlement of administrative disputes should be understood as the activity of administrative bodies and other competent bodies aimed at overcoming, on the basis of the norms of the Law on Administrative Proceedings, disputes arising from administrative-legal relations in an out-of-court manner.

Out-of-court procedures for the settlement of administrative disputes are one of the forms of administrative proceedings carried out without the participation of judicial authorities. Distinctive features of out-of-court procedures for the settlement of administrative disputes from other types of procedures are the simplification and acceleration of some procedural actions, as well as the presence of a number of subjects empowered to make decisions in administrative disputes.

This is due to the fact that the Code of Ukraine on Administrative Offenses allows for appropriate procedural actions to be taken without the involvement of a court. Such proceedings represent a negative reaction of the state and society to illegal acts committed in the sphere of state administration and administrative functions, that is, administrative offenses,

and are grounds for bringing to administrative responsibility, which is carried out in the form of administrative proceedings.

Proceedings in cases of administrative offenses are one of the forms of administrative-procedural activity carried out by state authorities at the central and local levels and their employees in a wide variety of administrative bodies. The procedural nature is manifested in the implementation of legal norms that establish administrative responsibility for administrative offenses committed by individuals and legal entities. The purpose of these procedures is to ensure comprehensive and objective resolution of cases of administrative offenses by competent bodies or officials in accordance with the law [11, c. 126].

The resolution of disputes in cases of administrative offenses is expressed in the adoption of a reasoned resolution on the imposition of an administrative penalty or on the refusal to impose a penalty, or in the compulsory execution of the penalty in accordance with the procedural results. The purpose of extrajudicial proceedings in cases of administrative offenses is to resolve administrative disputes between the parties participating in administrative proceedings regarding the legality (illegality) of the application of measures of administrative responsibility.

Thus, the authority to resolve administrative disputes and impose legal sanctions is characterized by jurisdiction. With regard to administrative proceedings, the jurisdiction determines the range of administrative bodies and their employees authorized to resolve issues, as well as the list of specific cases assigned to their competence. It derives from the administrative legal personality of an authorized body or person and includes, in particular, functional responsibility for the application of substantive administrative law to specific situations arising in its competent territory.

The effectiveness of out-of-court procedures in resolving administrative-delict disputes is ambiguous. This is due to the fact that a significant number of out-of-court decisions on bringing to administrative responsibility are canceled in connection with the violation of procedural norms during proceedings in cases of administrative offenses and subsequent judicial control over violations of substantive law norms or their incorrect application by bodies or officials persons empowered to draw up protocols on administrative offenses.

## Conclusions

The effectiveness of mechanisms for out-of-court settlement of administrative disputes can be considered as one of the signs of the rule of law. The rule of law is mediated by the effectiveness of administrative and legal norms that regulate the mechanisms of out-of-court settlement of administrative disputes, in particular by the activities of competent bodies and their officials who implement the relevant administrative and legal norms, and the legality of such activities. Such mechanisms are designed to ensure a proper balance of private and public interests in state administration, feedback from the state to society, and an opportunity for citizens to protect themselves from violations of their rights and freedoms in the administrative sphere.

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