DOI https://doi.org/10.36059/978-966-397-181-0/280-303

PROCEEDINGS IN THE COURT OF FIRST INSTANCE

Voronin Ya. G.

INTRODUCTION

Recall that the structural administrative process consists of the following elements: process-production-stage-stage-action.

Conventionally, the manufacture consists of the following stages: Proceedings in the court of first instance: 1) initiation of an administrative case; 2) pre-trial consideration of an administrative case; 3) trial of an administrative case; Proceedings in the court of appeal: 1) initiation of an administrative case; 2) pre-trial consideration of an administrative case; 3) trial of an administrative case; Proceedings in the court of cassation instance: 1) initiation of an administrative case; 2) pre-trial consideration of an administrative case; 3) trial of an administrative case; Proceedings for review of judgments in exceptional circumstances. Proceedings on review of judicial decisions of administrative courts after their review in cassation order. Enforcement proceeding.

However, despite the fact that the execution of court decisions in administrative cases is entrusted to the Executive authority-the State Executive service of the Ministry of justice of Ukraine, is a form of implementation of Executive power, then, accordingly, it is unacceptable to recognize the point of view on the recognition of this production as a classical stage of the administrative process. Therefore, enforcement proceedings mainly, with some exceptions, remains outside the regulatory impact of the norms of administrative procedural law, enshrined in the CAO of Ukraine. This is a completely independent type of production, regulated by administrative and procedural rules, which is part of the structure of administrative law.

Oral or written proceedings. Consideration of administrative cases by the court of any instance may be carried out in the form of oral or written proceedings. Oral proceedings are the consideration of an administrative case in a court session with the hearing of the parties and other persons involved in the case. However, to simplify the judicial procedure, to reduce court costs, when there is no need to hear the persons involved in the case, the CAO of Ukraine provides for the possibility of written proceedings. Written production – consideration and the decision of administrative case in court of the first, appellate or cassation instance without a call of the persons

participating in business, and carrying out court session on the basis of materials available at court in the cases established by CAO of Ukraine[1].

In the first and appellate instances, written proceedings may be conducted provided that all persons who take part in the case have filed a petition for consideration of the case in their absence (part 3 of article 122, article 197 of the CAO of Ukraine). For example, in the first instance, the court may consider simple cases where documents from the parties and written evidence are sufficient to make a court decision on the merits. However, if the court comes to the conclusion that the administrative case must be considered at the hearing, it appoints it to trial and may recognize the mandatory personal participation of the parties or third parties in the hearing.

In the appellate instance, it is advisable to consider the case in writing, for example, if the decision of the court of first instance is appealed only on the grounds of improper application of substantive or procedural law and there is no need to re-examine the evidence or study new evidence. However, this does not exclude oral proceedings in the appellate instance, if the court needs to strengthen the evidence base or clarify the circumstances with the help of the "human factor", i.e. through explanations or testimony of participants in the administrative process.

In the cassation instance, a different rule applies – the court may consider an administrative case in writing, if none of the persons involved in the case, has not filed a petition for resolution of the case with its participation in the court session (article 222 CAO Ukraine). This rule is explained by the fact that the court does not examine the evidence in the cassation instance, so it is not necessary to hear the parties, in principle.

1. Initiation of administrative proceedings

The judge after receiving the claim finds: 1) filed a statement of claim by a person who has administrative procedural legal capacity; 2) the representative of the appropriate authority (if the statement of claim filed by the representative); 3) whether the statement of claim requirements established by article 106 of this Code; 4) belongs to the statement of claim to consider in administrative proceedings; 5) filed an administrative lawsuit within the period prescribed by law (if the administrative claim is submitted with the passing of the statutory period of appeal to the court, or sufficient grounds for the recognition of the reasons for the missed deadline appeal to the court respectfully); 6) there are other grounds for returning the statement

[1] Shemshuchenko Y. administrative justice. Legal encyclopedia. Vol. Kiev: Ukr. ENCYCLOPAEDIA., 1998. P. 47–48.

of claim or refusing to open proceedings in the administrative case, established by this Code.

The judge opens proceedings in an administrative case based on a statement of claim, if there are no grounds for filing a statement of claim or refusal to open proceedings in the case[2].

If the defendant in the statement of claim, in respect of which there are no grounds for his return, leaving without consideration, or refusal to open proceedings, provided the natural person without the status of entrepreneur, a judge not later than two days from the date of receipt of the complaint the court turns to the relevant registration authority of the place of stay and place of residence of the person concerning the provision of information on registered place of residence (stay) of such physical entity.

Information on the place of residence (stay) of an individual must be provided within three days from the date of receipt by the relevant body of registration of the place of residence and stay of the person of the relevant court appeal.

If, because of the information received by the court, it is established that the case is not within the jurisdiction of this court, the court returns the statement of claim to the plaintiff.

If the court has received information does not allow to install was in accordance with the law of the place of residence (stay) of physical persons, the court decides about opening of the proceedings. The summons of such a person as a defendant in the case shall be carried out in the manner prescribed by article 39 of this Code.

The question of open proceedings in the administrative case, a judge decides within three days from the date of receipt of the complaint to the administrative court or the expiration of the term for elimination of deficiencies in the claim that in the case of abandonment of the claim without movement, and no later than the next day from the date of receipt by the court in the manner provided by part three of this article, information about the place of residence (stay) of physical entity[3].

On the abandonment of the statement of claim without consideration, the opening of proceedings in the case or refusal to open proceedings in the case, the judge decides to determine. In the resolution on opening of proceedings shall contain: 1) name of the administrative of the court, surname and initials of the judge who opened proceedings in an

[2] Rykov V. Some questions of creation of administrative justice in Ukraine. Legal state. 1999. Vol. 9. P. 171–175.

[3] Fundamentals of administrative justice and administrative law: studies. no. / for zag. ed. G. Kuibida, V. Shishkina Kyiv: Old world, 2006. 576 p.

administrative case, the case number; 2) by whom and to whom filed an administrative lawsuit; 3) the content of the claim; 4) the date, time and place of the preliminary hearing, if the court believes his conduct is necessary; 5) the offer to the Respondent to submit in the specified term written objections to the claim and proofs which it has (for the subject of powers – the Respondent it is specified about its obligation to provide in the term defined by court in case of the objection to the claim all materials which were or had to be accepted by it in.

A copy of the decision to open proceedings in an administrative case immediately after the decision is sent to persons participating in the case, together with information about their procedural rights and obligations. The defendants are also sent copies of the statement of claim and attached documents.

Leaving the statement of claim without movement, return of the statement of claim.

The judge, finding that the statement of claim filed without complying with the requirements established by article 106 of this Code, should pass a ruling on leaving the claim without movement, in which the author shows the shortcomings of the claim, the remedy and the period sufficient to address deficiencies. A copy of the ruling on the abandonment of the statement of claim without movement shall be immediately sent to the person who filed the statement of claim.

If the plaintiff has eliminated the shortcomings of the statement of claim within the period established by the court, it is considered filed on the day of its initial submission to the administrative court.

The statement of claim returned to the claimant if:

1) the plaintiff has not eliminated the shortcomings of the claim, which left without movement;

2) the plaintiff before the commencement of proceedings on the administrative case filed its opinion;

3) the statement of claim filed by a person that does not have administrative procedural legal capacity;

4) the statement of claim on behalf of the plaintiff is filed by a person without the authority of the proceedings;

5) in the production of that or of the other administrative court there is a dispute between the same parties on the same subject and on the same grounds;

6) it is not the jurisdiction this administrative court;

7) if the statement of claim demanding the recovery of funds, which is based on the basis of the decision of the authority filed with the authority

prior to the expiration of the term, provided by part fifth of article 99 of the code of Ukraine[4].

A copy of the ruling on the return of the statement of claim shall be immediately sent to the person who filed it, together with the statement of claim and all materials attached thereto.

The decision to leave the statement of claim without motion or to return the statement of claim may be appealed by the person who filed the statement of claim.

Leaving the claim without motion or return the claim not being denied the right to re-appeal to the administrative court in the manner prescribed by law.

Refusal to open proceedings in an administrative case

The judge refuses to open proceedings in an administrative case only if: 1) the application is not to be considered in administrative proceedings; 2) in a dispute between the same parties, on the same subject and on the same grounds, there is a valid: a court decision or a court decision on refusal to open proceedings in an administrative case, on termination of proceedings in such a case in connection with the refusal of the plaintiff from the administrative claim or reconciliation of the parties; 3) the death of a natural person or the termination of a legal person who filed a claim or to whom an administrative claim is filed, if the disputed legal relationship does not allow succession.

On the refusal to open proceedings in an administrative case, the judge decides to determine[5].

A copy of the decision to refuse to open proceedings in an administrative case shall be immediately sent to the person who filed the statement of claim, together with the statement of claim and all materials attached thereto.

The decision to refuse to open proceedings in an administrative case may be appealed by the person who filed the claim.

Repeated appeal of the same person to the administrative court with the same administrative claim, which issued a decision to refuse to open proceedings, is not allowed.

2. Abandonment of the claim without consideration

The court reserves its ruling the statement of claim without consideration if:

1) the statement of claim filed by a person that does not have administrative procedural legal capacity;

[4] Ponomarenko G., Kosyk A., Miller R. Bevzenko V., Administrative justice in Ukraine: textbook / under the General editorship of A. Kosyk. Moscow: Precedent, 2009. 198 p.

[5] Kivalov S. Administrative procedural law: subject, sources, legal relations. Sciences'. Odessa Ave. NATs. Yuri. Acad. 2005. No. 4. C. 3–9.

2) the statement of claim on behalf of the plaintiff is filed by a person without the authority of the proceedings;

3) in the production of that or of the other administrative court administrative proceedings concerning a dispute between the same parties on the same subject and on the same grounds;

4) re plaintiff arrived at the hearing without a valid reason or without a message to them about the reasons for the no-show, if not received statements on the proceedings in his absence;

5) a person who has administrative procedural capacity and for the protection of the rights, freedoms or interests of which in cases established by law, a body or another person has appealed, objects to an administrative claim and a corresponding statement has been received from him;

6) the proceedings in an administrative case were opened on the statement of claim, does not meet the requirements of article 106 of this Code, and the plaintiff has not eliminated these shortcomings within the term established by the court;

7) the plaintiff before the end of the trial left the hearing without good reason and did not apply to the court for judicial review in his absence.

On leaving the statement of claim without consideration, the court makes a determination. The court's decision to leave the statement of claim without consideration may be appealed[6].

A person, whose statement of claim is left without consideration, after the elimination of the grounds on which the application was left without consideration, has the right to appeal to the administrative court in a General manner.

Suspension and resumption of proceedings

The court shall suspend the proceedings if:

1) death or announcement in accordance with the law of the deceased person who was a party to the case, if the disputed relationships permit succession and the elimination of the authority of a merger, accession, division, transformation of the legal entity that was a party to the proceedings – until a successor is identified;

2) the need to appoint or replace a legal representative of the party or of a third party – before joining the business legal representative;

3) impossibility of consideration of this case to resolve other cases in accordance with constitutional, administrative, civil, commercial or criminal proceedings, until the entry into legal force of a court decision in another case;

[6] Osadchy A. Organizational and legal support of citizens ' appeal against illegal actions of Executive authorities in courts: abstract. Dis. for the Sciences. The degree candidate. Yuri. Sciences'. Kharkiv, 2003.19 p.

4) treatment of both parties with a petition to allow time for reconciliation – until the expiry of which the parties stated in the petition.

The court has the right to suspend proceedings in the case of:

1) illness of the person participating in the case, confirmed by a medical certificate, which prevents the arrival in court, if his personal participation will be recognized by the court mandatory, – until his recovery;

2) finding the person participating in the case, on a business trip, if his personal participation will be recognized by the court mandatory, – before returning from a business trip;

3) appointment by the court of expertise-until its results are received;

4) the presence of other reasons at the reasonable request of a party or a third party claiming independent claims on the subject of the dispute-before the term established by the court.

The court shall not stop the proceedings in the cases established by paragraphs 1, 2 of the second part of this article, if there is no party or a third person conducts the case through his representative.

On the suspension of proceedings in the case, the court makes a determination. The decision of the court to suspend the proceedings may be appealed.

The proceedings resumed on the request of the persons involved in the case, or by the court if there is no circumstances that were the basis for suspension of the proceeding. On the resumption of proceedings in the case, the court makes a determination. From the date of resumption of proceedings in the case, the procedural terms continue. The proceedings continue from the stage at which they were stopped[7].

3. The closure of the proceedings

The court closes the proceedings:

1) if the case is not subject to consideration in administrative proceedings;

2) if the plaintiff refused the administrative claim and the refusal is accepted by the court;

3) if the parties have reached reconciliation;

4) if there is a valid ruling or determination of the court from the same dispute and between the same parties;

5) in the event of death or Declaration in accordance with the law of the deceased person who was a party to the case, if the disputed legal

[7] Administrative law of Ukraine: textbook / under the General editorship of academician S. Kivalov. Odessa: The Faculty Of Law. l-ra., 2003. 892 p.

relationship does not allow succession, or liquidation of the enterprise, institution, organization that were a party to the case.

If the proceedings are closed on the basis established by paragraph 1 of the first part of this article, the court must explain to the plaintiff, to the jurisdiction of which court the consideration of such cases is referred.

On the closure of the proceedings, the court makes a determination. The decision of the court to close the proceedings in the case may be appealed. Repeated appeal with the same statement of claim is not allowed.

4. Preparation of the case for trial

The judge of the administrative court, who opened proceedings in the administrative case, carries out preparation of the case for trial.

The court before the trial of an administrative case shall take measures for a comprehensive and objective consideration and decision of the case in one court session within a reasonable time. For this purpose the court can:

1) make the decision on demand of documents and other materials; to make necessary inquiries; to carry out survey of written and material proofs on a place if they cannot be delivered to court; to appoint examination, to solve a question of need of attraction of witnesses, the expert, the translator;

2) take a decision on mandatory personal participation of the persons participating in business, court hearing, about the involvement of third parties to the case;

3) to call for trial of the administrative case witnesses, experts, specialists, interpreters;

4) decide on holding of preliminary hearing.

At the reasonable request of the plaintiff, the judge shall take measures for the immediate consideration and resolution of the case. In this case, the call of the persons involved in the case, notification of the court decisions are carried out by courier, telephone, Fax, e-mail or other technical means.

A preliminary hearing is held to determine the possibility of settling the dispute before the judicial review of the case or to ensure a comprehensive and objective solution of the case within a reasonable time.

Preliminary court session is conducted by the judge who is carrying out preparation of business for trial, with participation of the parties and other persons participating in business.

To settle the dispute, the court finds out whether the plaintiff refuses the administrative claim, whether the defendant does not recognize the administrative claim, and explains to the parties the possibility of reconciliation.

If the dispute is not settled in the procedure established by part three of this article, the court shall:

1) specify the claims and objections of the defendant against administrative action;

2) clarifies the question of the composition of the persons participating in the case;

3) determine the facts that need to be installed to resolve the dispute and which of them are acknowledged by the parties, and what to prove;

4) finds out what evidence the parties can justify their arguments or objections, and sets deadlines for their provision;

5) commit other actions necessary to prepare the case for trial.

According to the statement of one of the parties about impossibility of arrival to court, preliminary court session can be postponed if the reasons of non-arrival are recognized by court valid.

Refusal of the administrative claim and recognition of the administrative claim during the preparatory proceedings

The plaintiff may waive the administrative claim in completely or in part, and the defendant may recognize the administrative claim in completely or in part. Refusal of the administrative claim or recognition of the administrative claim during preparatory proceedings shall be stated in the written statement addressed to court, which is attached to business.

About acceptance of refusal of the administrative claim, the court takes out definition by which closes production on business. In case of partial refusal of the claimant from the administrative claim, the court decides definition by which closes production on business about a part of claim requirements.

In case of partial recognition of the administrative claim by the Respondent and its acceptance by court the court decision on satisfaction of the claims recognized by the Respondent according to article 164 of this Code can be accepted. In case of full recognition by the Respondent of the administrative claim and its acceptance by court the resolution of court on satisfaction of the administrative claim is accepted.

The court does not accept the refusal of the administrative claim, recognition of the administrative claim and continues consideration of the administrative case if these actions of the plaintiff or the defendant contradict the law or violate someone's rights, freedoms or interests.

Reconciliation of the parties during the preparatory proceedings

The parties may settle the dispute in whole or in part based on mutual concessions. Reconciliation of the parties can concern only the rights and obligations of the parties and the subject of the administrative claim.

At the request of the parties, the court suspends the proceedings for the time necessary for reconciliation.

In the case of reconciliation of the parties, the court issues a ruling on the termination of the proceedings in which the conditions of reconciliation are fixed. The terms of reconciliation shall not be contrary to the law or violate anyone's rights, freedoms or interests[8].

In case of failure to comply with the terms of reconciliation of one of the parties, the court at the request of the other party shall resume the proceedings.

Proposal of the court for additional evidence and explanations.

The court may propose to the persons participating in the case to Supplement or explain certain circumstances, as well as to provide the court with additional evidence within the period established by the court.

The question of acceptance of the proofs provided with violation of the term established by court is solved by court taking into account respectability of the reasons of untimely providing proofs.

The court considering the case, if it is necessary to collect evidence outside its territorial jurisdiction, instructs the relevant administrative court to carry out certain procedural actions.

The ruling on the court order briefly indicates the content of the case under consideration, indicates the circumstances to be clarified, and the evidence that should be collected by the court performing the order. The decision on the court order is immediately sent to the administrative court, which will perform it, and is mandatory for it.

A court order shall be executed immediately by the court in accordance with the rules of this Code, which establish the procedure for performing the relevant procedural actions.

Persons participating in the case shall be notified of the date, time and place of the court session. Failure to attend the court session of persons, who have been duly notified, does not interfere with the execution of the court order.

If the person participating in business, the witness who gave explanations or indications to court, which carried out the separate, assignment, appear in the court considering business, they give explanations and indications in the General order.

Administrative courts of Ukraine may apply to foreign courts with an order to conduct certain procedural actions, as well as execute orders of foreign courts based on international treaties, the consent to be bound by the Verkhovna Rada of Ukraine.

[8] Pedko Y. Formation and legal regulation of administrative justice: abstract. dis. for the Sciences. the degree candidate. Yuri. sciences'. Kiev, 2003. 17 sec.

5. Merging and separation of cases

The court may, by its determination, combine for joint consideration and resolution several administrative cases on homogeneous claims of the same plaintiff to the same defendant or to different defendants or on claims of different plaintiffs to the same defendant, as well as separate one or more claims United in one production into independent proceedings, if their joint consideration complicates or slows down the decision of the case.

The court at the request of the plaintiff or on its own initiative, may decide the definition of measures to ensure administrative claim, if there is a clear risk of harm to the rights, freedoms and interests of the plaintiff before the decision in the administrative case, or the protection of those rights, freedoms and interests becomes impossible without the adoption of such measures, or to restore them you will need to make considerable efforts and costs, and if there are obvious signs of unlawfulness of decisions, actions or inaction of the authority.

The decision to take measures to ensure the administrative claim is made by the court of first instance, and if appeal proceedings are initiated, such a decision may be made by the court of appeal.

The submission of an administrative claim and the commencement of proceedings in the administrative case do not suspend the contested decision of the authority, but the court in order to ensure that administrative action may be an appropriate definition to suspend the decision of the authority or its separate provisions that are appealed. The determination is immediately sent to the subject of authority, made a decision, and is binding[9].

An administrative action, except in the manner prescribed by part three of this article, may be secured by a prohibition to perform certain actions.

It is not allowed to secure a claim by suspending the decisions of the National Bank of Ukraine regarding the appointment and implementation of the interim administration or liquidation of the Bank, prohibiting the temporary administrator, the liquidator of the Bank or the National Bank of Ukraine from carrying out certain actions during the interim administration or liquidation of the Bank.

6. Procedure for securing an administrative claim

An application for securing an administrative claim shall be considered no later than the next day after its receipt and, if justified and urgent, shall be resolved by a resolution immediately without notice to the defendant and other persons involved in the case.

[9] Rudenko A. Administrative proceedings: formation and implementation: abstract. Dis. for the Sciences. The degree candidate. Yuri. sciences'. Kharkiv, 2016. 19 sec.

The defendant or other person participating in the case, at any time has the right to apply for the replacement of one method of securing an administrative claim by another or the abolition of measures to secure an administrative claim. Such an application shall be considered not later than the next day after its receipt and, if justified and urgent, shall be resolved by a resolution immediately without notice to the plaintiff and other persons involved in the case.

The question of the administrative claim, to replace one modality for the other administrative claim or cancellation of the measures for the administrative action, except in cases established by parts one and two of this article, is solved in the court session with notification of persons participating in the case. Failure to attend the hearing of persons who have been duly notified shall not preclude the consideration of such matters.

If satisfaction of requirements to the claimant will be refused, the taken measures of maintenance of the administrative claim remain before the entry of the judgment into force. However, the court may, simultaneously with the adoption of the decision or after that, order the abolition of measures to secure an administrative claim or the replacement of one method of securing an administrative claim by another.

The execution of decisions on the issues of ensuring an administrative claim shall be carried out immediately in the manner prescribed by law for the execution of court decisions.

The determination on the issues of securing an administrative claim may be appealed. Appeal of the decision does not stop its implementation, and does not prevent further consideration of the case.

The persons participating in business, during preparatory production can get acquainted with materials of administrative case, to do from them extracts and copies.

The persons participating in business, during preparatory production can order and receive at the expense in court the certified copies of documents and extracts from them.

The court may decide on the obligation of personal participation of the parties or third parties in the court session. It is also possible to call a party or a third party for personal explanations when their representatives are involved in the proceedings.

The results of the preparatory proceedings, the court decides the definition of: 1) leaving the claim without consideration; 2) the suspension of the proceedings; 3) closure of the proceedings; 4) the completion of the preparatory proceedings and assigning the case for trial.

In order to terminate the preparatory proceedings and assigning the case for trial indicate which preparatory actions are done, and sets the date, time and place of the hearing.

If during the previous court session to which all persons participating in business arrived, the questions necessary for its consideration are solved, then by the written consent of these persons trial can be begun in the same day.

If, during the pre-trial proceedings, the defendant acknowledged the claim, the court may decide to satisfy the administrative claim.

Copies of the court decision on the results of the preparatory proceedings shall be sent to persons participating in the case, except for the case provided for by part three of this article.

7. Preparatory part of the trial

An administrative case must be considered and resolved within a reasonable time, but not more than two months from the date of commencement of proceedings, unless otherwise established by this Code.

The trial of an administrative case is carried out in a court session with the summons of the persons participating in the case, after the end of the preparatory proceedings.

A person participating in the case has the right to file a petition for consideration of the case in her absence. If all persons participating in the case made such a request, the trial shall be carried out in writing.

The court session is held in a specially equipped room-the courtroom. Separate procedural actions in case of need can be made outside of the premises of court (written production-consideration and the decision of administrative case in court of appeal or cassation instance without a call of the persons participating in business, and carrying out court session on the basis of materials available at court).

At consideration of the case by court of the first instance the judge who carried out preparatory production is presiding in judicial session.

Presiding in court session directs the course of the hearing, ensures compliance with the sequence and order of the Commission proceedings, the implementation by parties of the administrative process their procedural rights and execution of duties directs the trial to ensure full, comprehensive and objective clarification of circumstances of the case, eliminating from the trial all that is irrelevant to resolution of the case[10].

[10] Administrative proceedings of Ukraine: textbook / Ed. O. Pasenyuk. Kyiv: Yurinkom Inter, 2009. 700 p.

The Chairman of the court session shall take the necessary measures to ensure proper order in the court session.

At the appointed time for the consideration of the case, the presiding judge opens the court session and announces which case is being considered.

The court clerk shall report to the court, who called and notified the parties arrived in court, handed a court summons and message to those who arrived, and reported the reasons for their non-arrival, if known.

The court establishes the identity of those who arrived at the hearing, as well as checks the powers of officials and officials, representatives.

Explanation to the translator of his rights and duties, oath of the translator.

The Chairman of the court session shall explain to the translator his rights and obligations established by article 68 of this Code, and shall warn him on receipt of criminal liability for knowingly incorrect translation and for refusal without valid reasons to perform the duties assigned to him.

The presiding officer shall take the interpreter under such oath:

"I, (surname, name, patronymic), swear to faithfully perform the duties of an interpreter, using all my professional capabilities".

The interpreter pronounces the oath orally, after which he signs the text of the oath. Signed by the translator, the text of the oath and the receipt are attached to the case.

The message on full fixing of trial by technical means:

1. The court clerk announces the implementation of a complete recording of court proceedings, as well as on the conditions of recording of court proceedings (the location of microphones and the need for the speaker to speak into the microphone, the inadmissibility of simultaneous speeches by participants in the administrative process, the observance of silence in the courtroom).

Announcement of the composition of the court and explanation of the right of challenge

The Chairman in court session declares structure of court, and also names of the expert, the translator, the expert, the Secretary of court session and explains to the persons participating in business and arrived in court session, their right to declare challenges.

The court postpones consideration of the case in the case of: 1) non-arrival at the hearing of the party (parties) or any of the other persons involved in the case, about which there is no information that they were handed a summons; 2) non-arrival at the hearing of the plaintiff, duly notified of the date, time and place of the trial, if; 3) non-arrival at the hearing of the defendant, who is not a subject of authority, duly notified of the date, time and place of the trial, if he did not receive an application for

consideration of the case in his absence; 4) if the court recognized mandatory personal participation of the person involved in the case in the trial, and she did not

Failure to attend the court session without valid reasons of the representative of the party or a third party who arrived at the court session or failure to notify them of the reasons for non-attendance is not an obstacle to the consideration of the case. However, at the request of the party and taking into account the circumstances of the case, the court may postpone its consideration.

In the case of repeated no-show of the plaintiff, duly notified about the date, time and place of trial, without a valid reason or without a message to them about the reasons of non-arrival, if not received statements on the proceedings in his absence, the court leaves the claim without consideration.

In case of non-arrival of the Respondent-the subject of powers duly notified of date, time and a place of trial, without valid reasons or without the message to them about the reasons of non-arrival consideration of business is not postponed and business can be solved on the basis of the proofs available in it.

The consequences defined by parts two to four of this article shall also apply if a party leaves the courtroom without valid reasons.

If at the hearing did not profit witness, expert, specialist, court hears opinion of the persons participating in business, about the possibility of continuing the trial in the absence of a witness, expert, specialist, not profit, and makes a decision about continuing the trial or declaring a break. At the same time, the court may decide to bring a witness, an expert, a specialist who did not arrive.

The Chairman of the court session shall explain to the parties and other persons participating in the case their rights and obligations established by this Code. At the same time, persons participating in the case shall be issued a memo on their rights and obligations established by this Code.

The Chairman of the court session shall explain to the expert his rights and obligations established by article 66 of the present Code, and shall warn him on receipt of criminal liability for knowingly false conclusion and for refusal without valid reasons to perform the duties assigned to him.

The presiding judge leads the expert to such an oath: “I, (surname, name, patronymic), swear to faithfully perform the duties of the expert, using all my professional capabilities”.

The expert declares the oath orally, after which he signs the text of the oath. The oath also applies to those cases where the conclusion was drawn up before its proclamation. The text of the oath signed by the expert and the receipt are attached to the case.

If the examination is appointed during the trial, the presiding officer explains the rights, duties of the expert and his responsibility immediately after his involvement in the administrative process.

To experts who work in the state expert institutions, explanation of the rights and duties of the expert and its sworn in are carried out by the head of expert institution at appointment of the person to a position and assignment of qualification of the judicial expert. Stamped by the expert institution copies of the text of the oath and receipt of familiarization with the rights and duties of the expert about criminal liability for false imprisonment, refusal without valid reason from the performance of his duties on request of the court.

The Chairman of the court session shall explain to the specialist his rights and obligations established by article 67 of this Code.

The petition of the persons participating in business, are solved by court immediately after the opinion of other persons present in court session participating in business about what the resolution is resolved will be heard. The court's decision to refuse to satisfy the petition does not prevent its repeated application during the judicial review of the case.

Persons present in the courtroom, at the entrance to the court and at the exit of the court must stand up. The persons participating in business, witnesses, experts, experts give explanations, indications, answer questions and ask questions standing and only after giving them the floor presiding in court session. The decision of the court persons present in the hall, hear standing. Deviation from these rules is allowed with the permission of the presiding officer at the hearing.

Participants of administrative process, and also other persons present in a hall of judicial session, are obliged to observe in judicial session an order and implicitly to obey the corresponding orders presiding in judicial session.

Participants of administrative process address to the judge "Your honor".

Documents and other materials are transferred to the presiding judge in court session through the court administrator.

8. Judicial review of the case on the merits

Judicial consideration of the merits begins with a report of the presiding officer at the hearing or the judge-Rapporteur on the contents of the claims, recognition by parties of certain circumstances during the preparatory proceedings, after which he finds out: does the plaintiff's administrative claim, whether it recognizes the defendant and whether the parties are willing to reconcile.

When considering the case in the absence of a person participating in the case, the Chairman of the court session shall report on his position regarding the claims, if it is set out in written explanations.

Refusal of the administrative claim, recognition of the administrative claim, reconciliation of the parties during the trial

The plaintiff can refuse the administrative claim, and the defendant-to recognize the administrative claim during all time of judicial consideration, having made the oral statement. If the refusal of the administrative claim or the recognition of the administrative claim is stated in a written statement addressed to the court, this statement shall be attached to the case.

The parties may reconcile during the whole time of the trial, or apply for time for reconciliation.

The court decision in connection with refusal of the administrative claim, recognition of the administrative claim or reconciliation of the parties is accepted according to the rules established by articles 112, 113 of this Code.

The plaintiff can change the claims throughout the trial by filing a written statement that joins the case.

The court at the request of the defendant declares a break in the court session and provides the defendant with a period sufficient for its preparation for the case in connection with the change of the plaintiff's claims.

The subject of proof are the circumstances that justify the claims or objections or that have other significance for the decision of the case (reasons for missing the deadline for appeal to the court, etc.) and which are to be established when making a judicial decision on the case.

Explanations of the persons participating in business, indications of witnesses are heard, written and material proofs, including information carriers with the information written down on them, conclusions of experts are investigated.

After the report of the case the court shall hear the explanation of the plaintiff and a third person, not declaring independent requirements on the subject of the dispute is involved on the part of the claimant, the Respondent and the third party, not declaring independent claims on the subject of the dispute is involved on the side of the defendant, as well as explanations of third parties with independent claims on the subject of the dispute.

If along with the party, the third person their representatives take part in business, the court after explanations of the party, the third person hears explanations of their representatives and on their petition, only the representative can give explanations.

If several claims are filed in the case, the court may oblige the parties and other persons participating in the case to give separate explanations for each of them.

If the parties and other persons participating in the case are unclear or it is impossible to conclude from their words that they recognize the circumstances or object to them, the court may require from these persons a specific answer – "Yes" or "no".

The parties and other persons participating in business, ask questions to each other in the order established by the Chairman.

If in business there are written explanations of the parties and other persons participating in business, the Chairman announces the maintenance of these explanations.

The court, having heard explanations of the parties and other persons participating in business, establishes an order of research of proofs by which they justify the requirements and objections.

The procedure for examining evidence is determined by the court depending on the nature of the disputed legal relationship and, if necessary, can be changed.

Each witness is questioned separately.

Witnesses who have not yet testified may not be present in the courtroom during the trial. The bailiff shall ensure that witnesses who have been questioned do not communicate with those who have not been questioned by the court.

Before questioning a witness, the presiding judge shall establish his / her identity, age, occupation, place of residence, attitude to the case and relations with the parties and other persons participating in the case, explain his / her rights and obligations established by article 65 of this Code, find out whether he / she refuses to testify on the grounds established by law, and on receipt warn him / her of criminal liability for knowingly false testimony and refusal to testify.

If obstacles for interrogation of the witness are not established, presiding in court session leads it to the following oath:

"I, (surname, name, patronymic), swear to tell the truth, hiding nothing and not distorting".

The witness proclaims the oath orally, after which he signs the text of the oath. Signed by the witness the text of the oath and the receipt are attached to the case.

The interrogation of the witness begins with the proposal of the presiding judge to tell all that he knows about the case, after which the first person asks him a question, at whose request the witness is called, and then other persons involved in the case.

A witness, when giving evidence, can use the records if his testimony is associated with any calculations and other data that are difficult to store in memory. After interrogation these records are shown to court and the persons participating in business, and can be attached to business by definition of court.

The presiding judge and other judges may question the witness at any time during the interrogation.

The interrogated witness remains in the courtroom until the end of the case. The court may allow such a witness to leave the courtroom until the end of the case.

A witness may be questioned again in the same or the next court session at his request, at the request of persons participating in the case, or at the initiative of the court. During the examination of other evidence, witnesses may be asked questions by the parties, other persons involved in the case, as well as the court.

The court may order the simultaneous examination of two or more witnesses to determine the causes of discrepancies in their testimony.

Interrogation of juvenile witnesses and, at the discretion of the court, juvenile witnesses is carried out in the presence of the teacher or parents, adoptive parents, guardians, Trustees, if they are not interested in the case.

Witnesses under the age of sixteen, the presiding officer explains the obligation to give truthful testimony, without warning about the responsibility for refusing to testify and for knowingly false testimony, and does not lead them to the oath.

The persons referred to in part one of this article may, with the permission of the court, ask the witness questions, as well as Express their opinion on the person of the witness, the content of his testimony.

In exceptional cases when it is necessary for objective clarification of circumstances of business, for the period of interrogation of the persons who have not reached eighteen years of age, this or that person participating in business can be removed from a hall of judicial session by definition of court. After the person returns to the courtroom, the presiding judge informs him of the testimony of the witness and gives him the opportunity to ask him a question.

Written evidence, including the minutes of their examination, drawn up on behalf of the court or in order to provide evidence, shall be announced at the hearing and presented for review to persons participating in the case, and if necessary – also to witnesses, experts, specialists or translators.

Persons participating in the case may ask questions to witnesses, experts, specialists about written evidence.

If the document attached to the case, provided to the court by the person participating in the case for familiarization raises doubts about its reliability, or is false, the person participating in the case may ask the court to exclude it

from the evidence and decide the case based on other evidence or require an examination.

Investigation of the contents of personal papers, letters, telephone records, telegrams and other types of correspondence

The content of personal papers, letters, telephone records, telegrams and other correspondence of individuals may be disclosed and investigated in open court only with the consent of persons defined by the Civil code of Ukraine.

Investigation of physical evidence.

Material evidence is examined by the court, and served for review to persons participating in the case, and if necessary-also to experts, specialists and witnesses. The persons, to whom material evidences are presented for acquaintance, can draw attention of court to those or other circumstances connected with the proof and its inspection.

Protocols of inspection of material evidences made in the order of providing proofs, execution of the judicial instruction or by results of inspection of proofs on a place, are announced in court session. The persons involved in the case can give their explanations about these protocols.

The persons participating in business, can ask questions concerning material evidences to experts, experts, witnesses who examined them.

Research of sound and video recordings.

Playback and recording demonstration videos are held in the courtroom or in another specially equipped room appear in the journal of the hearing of the main technical characteristics of equipment and storage media and indicating the playback time (demo). After that, the court hears the explanations of the persons involved in the case.

If necessary, the playback of the sound recording and demonstration of the video recording can be repeated in full or in a certain part.

For the purpose of clarification of the data containing in sound and video records, the court can involve the expert or examination is appointed.

The court considers the statement on falsity of sound and video records in the order established for consideration of statements on forgery of written proofs.

During the study of sound or video recordings of a personal nature, the rules of this Code for the study of the contents of personal papers, letters, telephone records, telegrams and other types of correspondence shall apply.

Written and material evidence that cannot be delivered to the court shall be examined at their location. About carrying out inspection of proofs on a place the court takes out definition.

Examination of proofs on a place is made by court with the notice of the persons participating in business, and in case of need-with a call of experts, experts, translators and witnesses.

At examination of proofs on a place the Protocol in the order established by articles 45, 46 of this Code is made.

To clarify and Supplement the expert's opinion, persons participating in the case, as well as the court may ask the expert questions. The first to ask questions to the expert is the person on whose application the examination is appointed, and his representative, and then other persons involved in the case. If the examination is appointed at the request of both parties, the first to ask questions to the expert plaintiff and his representative. The presiding judge and other judges may ask the expert questions at any time after the expert's opinion.

During the examination of evidence, the court may use oral advice or written explanations of a specialist.

The specialist may be asked questions on the merits of the oral advice provided or written explanations. The first to ask questions is the person at whose request the specialist is involved, and his representative, and then other persons involved in the case. If a specialist is involved at the request of both parties, the first to ask questions specialist plaintiff and his representative. The presiding judge and other judges may ask the expert questions at any time of the examination of evidence.

The explanations stated in writing and signed by the specialist are attached to the case.

Adjournment of consideration of the case or announcement of a break in its consideration.

The court shall postpone consideration of the case in cases established by this Code, as well as in case of impossibility of consideration of the case due to the need to replace the judge (because of satisfaction of the application for challenge or for other reasons) or involvement of other persons in the case.

The court shall adjourn in connection with the need to obtain new evidence or in other necessary cases. The duration of the break is established by the court depending on the circumstances of the case[11].

The court, postponing consideration of business or declaring a break in its consideration, establishes date and time of new court session about what reports under the receipt of the persons participating in business, witnesses, experts, experts, translators who were present at court session. Persons participating in the case, witnesses, experts, specialists, translators who have not arrived or whom the court for the first time attracts to participate in the administrative process, are summoned to the hearing by subpoenas.

If the case is adjourned, the court must question the witnesses who arrived. Only in exceptional cases, by court order, are witnesses not questioned and called again.

If the case has been adjourned, a new trial begins again. If the parties do not insist on repeating the explanations provided earlier by the persons

[11] Pedko Y. Formation and legal regulation of administrative justice: abstract. dis. for the Sciences. the degree candidate. Yuri. sciences'. Kiev, 2003. 17 p.

participating in the case, if the composition of the court has not changed and third parties have not been involved in the case, claiming independent claims on the subject of the dispute, the court continues the proceedings from the stage at which the case was postponed.

If a break has been declared in the consideration of the case, the proceedings after its termination shall continue from the stage at which it was interrupted.

The end of the clarification of the circumstances and verification of their evidence.

After clarification of all circumstances on business and check of their proofs the Chairman in court session gives to the parties and other persons participating in business, opportunity to give additional explanations or to provide additional proofs.

In connection with additional explanations of the persons participating in business, the court can ask questions to other persons participating in business, witnesses, experts, experts.

After hearing additional explanations and examining additional evidence, the court makes a determination on the end of clarification of the circumstances in the case and verification of their evidence and proceeds to the judicial debate.

9. Judicial debate

Judicial debate consists of speeches of persons involved in the case. In these speeches, it is possible to refer only to circumstances and proofs which are investigated in court session.

In the debate, the plaintiff, his representative, is the first to speak, and then the defendant, his representative.

The third person who has declared independent claims on the subject of the dispute, his representative act after the parties in the case.

Third parties who do not make independent claims on the subject of the dispute, their representatives act in the debate after the person on whose side they participate.

At the request of the parties or third parties, only their representatives may participate in the debate.

The court may not limit the length of the debate to a certain time. The presiding judge of the court session may stop the speaker only when he goes beyond the limits of the case under consideration. With the permission of the court at the end of the judicial debate, speakers can exchange remarks.

If during judicial debate there is a necessity of clarification of the new circumstances having value for business, or researches of new proofs, the court takes out determination about return to clarification of circumstances

on business. After the end of clarification of circumstances on business and check of their proofs, judicial debates are carried out in the General order.

10. Adoption and proclamation of the judgment in the case

After the judicial debate, the court goes to the deliberative room (a room specifically designed for the adoption of judicial decisions) to decide on the case, announcing the approximate time of its proclamation.

If at decision-making there is a necessity to find out any circumstance by repeated interrogation of witnesses or other procedural action, the court takes out a determination on resumption of judicial proceedings. Consideration of the case in this case is made within the limits necessary for clarification of the circumstances demanding additional check.

CONCLUSIONS

After the end of the resumed proceedings of the case, the court opens judicial debates about the additionally investigated circumstances and goes to the Advisory room to make a decision or, if the necessary procedural actions in this court session were impossible, decides to postpone the consideration of the case or to declare a break.

During the adoption of a court decision, no one has the right to be in the deliberative room, except for the composition of the court, which considers the case.

During the stay in the deliberative room, the judge has no right to consider other court cases.

Judges have no right to disclose the course of discussion and decision-making in the Advisory room.

SUMMARY

The opening of the proceedings. Leaving the statement of claim without movement, return of the statement of claim. Preparatory production. Settlement of the dispute with the participation of a judge. Refusal of the plaintiff from the claim. Reconciliation of the parties. Consideration of the case on the merits. Suspension and closure of proceedings. Abandonment of the claim without consideration.

Consideration of cases under the rules of simplified claim proceedings.

REFERENCES

1. Administrative proceedings of Ukraine: textbook / Ed. O. Pasenyuk. Kyiv: Yurinkom Inter, 2009. 700 p.

2. Administrative law of Ukraine: textbook / under the General editorship of academician S. Kivalov. Odessa: The Faculty Of Law. l-ra., 2003. 892 p.

3. Kivalov S. Administrative procedural law: subject, sources, legal relations. Sciences'. *Odessa Ave. NATs.* Yuri. Acad. 2005. No. 4. C. 3–9.

4. Osadchy A. Organizational and legal support of citizens ' appeal against illegal actions of Executive authorities in courts: abstract. Dis. for the Sciences. The degree candidate. Yuri. Sciences'. Kharkiv, 2003.19 p.

5. Fundamentals of administrative justice and administrative law: studies. No. / For zag. Ed. G. Kuibida, V. Shishkina Kyiv: Old world, 2006. 576 p.

6. Pedko Y. Formation and legal regulation of administrative justice: abstract. Dis. for the Sciences. The degree candidate. Yuri. Sciences'. Kiev, 2003. 17 p.

7. Ponomarenko G., Kosyk A., Miller R. Bevzenko V., Administrative justice in Ukraine: textbook / under the General editorship of A. Kosyk. Moscow: Precedent, 2009. 198 p.

8. Rykov V. Some questions of creation of administrative justice in Ukraine. Legal state. 1999. Vol. 9. P. 171–175.

9. Rudenko A. Administrative proceedings: formation and implementation: abstract. Dis. for the Sciences. The degree candidate. Yuri. Sciences'. Kharkiv, 2016. 19 sec.

10. Starilov Y. Administrative justice. Moscow: Norma, 2011. 274 p.

11. Pedko Y. Formation and legal regulation of administrative justice: abstract. Dis. for the Sciences. the degree candidate. Yuri. Sciences. Kiev, 2003. 17 sec.

12. Rykov V. Some questions of creation of administrative justice in Ukraine. Legal state. 1999. Vol. 9. P. 171–175.

13. Code of administrative procedure of Ukraine. URL: http://zakon5.rada.gov.ua/laws/show/2747–15/print1509551785369965

14. Fundamentals of administrative proceedings and administrative law / Scientific. Allowance / per zag. Edited by Kuibida R., Shishkina V. Kiev: Old World, 2006. 526 p.

15. Shemshuchenko Y. administrative justice. Legal encyclopedia. Vol. Kiev: Ukr. ENCYCLOPAEDIA. 1998. P. 47–48.

Information about the author:
Voronin Ya. G.,
Doctor of Law, Professor,
Professor at the Department of Administrative,
Criminal Law and Procedure,
International University of Business and Law
37-A, 49 HGD str., Kherson, 73040, Ukraine