

INNOVATION, WORK, SOCIETY

COMPETENCE OF SPECIALIZED ADMINISTRATIVE COURTS IN UKRAINE

Anna Barikova

Dr. habil. in Law, Associate Professor,

National Academy of Internal Affairs, Ukraine

e-mail: anna.barikova@gmail.com, orcid.org/0000-0002-9707-0106**Summary**

The purpose of the paper is a comprehensive research of the institutional, legal and methodological principles of the functioning of higher specialized administrative courts in Ukraine in the context of judicial reform and European integration processes. The feasibility of creating such courts has been substantiated, which is due to both the internal needs for improving the judicial system and the international obligations of the state in accordance with the Ukraine Facility plan. It has been proved that higher specialized administrative courts are an important element in ensuring the rule of law, protecting human rights and forming the unity of judicial practice. The feasibility of transferring part of the atypical powers of the Supreme Court to specialized administrative courts has been indicated in order to optimize the workload and increase the efficiency of considering public – law disputes. Special attention has been paid to judicial discretion as a mechanism for flexible application of law and unification of judicial practice. The role of the ratio decidendi principle in forming precedents and ensuring the predictability of legal decisions has been highlighted. The research has used systemic, institutional, analytical and logical methods: the systemic approach has allowed to determine the place of specialized courts in the general structure of the judicial system, the institutional approach – to identify the differences between the previous and new models of the organization of administrative justice, the analytical approach – to investigate legislative initiatives and issues of competence delimitation, the logical approach – ensured the consistency of argumentation and conclusions. The prospects for further research are in the comparative analysis of the effectiveness of the activities of specialized administrative courts according to the continental and anglo-american models, the assessment of the impact of judicial discretion on the stability of law enforcement, the research of the risks of corruption and the search for mechanisms to minimize them, as well as in the study of the interaction of specialized courts with other judicial authorities.

Key words: judicial reform, justice, administrative jurisdiction, prospective legal precedent, judicial discretion.

DOI <https://doi.org/10.23856/7214>

1. Introduction

Reforming the system of administrative justice in Ukraine is one of the key directions of modernization of the national judiciary and an important element of fulfilling the international obligations of the state within the framework of the European integration course. In particular, the institutionalization of higher specialized administrative courts in Ukraine is an urgent challenge that meets the European integration aspirations of Ukraine, since after the liquidation of the Supreme Administrative Court of Ukraine and the District Administrative Court of Kyiv, there was an objective need to create new institutions capable of ensuring the effective functioning of administrative justice and the proper implementation of the principles of the rule of law. That is why the formation of the Specialized District Administrative Court and the Specialized Appeal Administrative Court became a logical continuation of the judicial reform aimed at increasing trust in the judicial system, strengthening institutional independence and reducing the burden on the Supreme Court.

The relevance of the research topic is due to the need for effective institutional renewal of the administrative justice system, capable of ensuring the protection of human rights and freedoms in public law disputes. The foreign doctrine emphasizes the original idea of a tort – oriented approach, according to which the occurrence of damage in a specific place depends on the condition that the relevant right is subject to protection in the territory of this state (*Gonçalves, 2022: 129*). Predictability is ensured mainly by fundamental legal principles (know how to act / decide), and it is also important for the institution of responsibility (*Pečarič, 2021: 86*), particularly in the context of the lack of epistemological foundations necessary for law enforcement (*Prince Tritto et al., 2025: 183*).

In the context of long-term political and legal transformations and harmonization of Ukrainian legislation with European standards, it is important to understand the role of specialized administrative courts in the judicial system of Ukraine, to determine their legal status, competence boundaries and mechanisms for implementing procedural guarantees. The novelty of the research lies in the comprehensive analysis of specialized administrative courts as a separate link in the judicial system, taking into account the latest legislative initiatives, international obligations and modern trends in the development of judicial discretion.

It is also important to consider the technological aspect of the outlined judicial reform, regarding the two dimensions of regulatory interest in the context of technology regulation and regulation by technology itself (*Brownsword, 2025: 41*). In particular, legal technologies based on artificial intelligence have enormous potential to structurally change all aspects of law (*Soukupová, 2021: 280*). At the same time, algorithmic and automated decision-making means less freedom, and without freedom of action, people do not develop ethical principles as part of their personality (*Razmetaeva et al. al., 2022: 248*).

The purpose of the research is to reveal the legal, organizational and methodological foundations of the functioning of higher specialized administrative courts in Ukraine, to determine their role in ensuring the rule of law, the unity of judicial practice and the implementation of the principles of judicial independence.

To achieve the goal, the following tasks need to be solved:

- analyse legislative initiatives considering the creation and legal status of higher specialized administrative courts, as well as the features of their institutional autonomy;
- to determine the competence of higher specialized administrative courts, in particular to identify problems of the division of powers between higher specialized administrative courts and other judicial authorities in Ukraine;

– to investigate the content and practical significance of judicial discretion in the context of the functioning of newly created courts.

The research methodology is based on a combination of systemic, institutional, analytical and logical methods. The systemic approach has allowed to consider specialized administrative courts as part of the general judicial system; institutional – to compare the old and new institutional models, to show the relationship between judicial reform, legislative changes and international obligations of Ukraine; analytical – to identify trends in legal regulation and issues of law enforcement; logical – to consistently build an argument from a general description of the judicial system to specific problems of competence higher specialized administrative courts.

2. Institutionalization of specialized administrative courts in Ukraine

After the liquidation of the Supreme Administrative Court of Ukraine and the District Administrative Court of Kyiv, the issue of the optimal distribution of competence between the new and existing courts arose. Judicial authorities, such as the Supreme Court, the Kyiv District Administrative Court, the Kyiv City District Administrative Court (which has not been considering cases yet), as well as the newly created Specialized District and Specialized Appeal Administrative Courts. The following stages of the creation of higher specialized administrative courts in Ukraine could be distinguished depending on the content of legislative initiatives:

1) institutionalization of a single higher specialized administrative court (with established qualification requirements for a judge of a specialized court under the legislation of Ukraine, as well as the opportunity to participate in the competition for persons with at least seven years of professional experience in the field of law in civil service positions in state authorities whose powers extend to the entire territory of Ukraine) – the Higher Court for Public – Legal Disputes (in accordance with draft law No. 12206 of 14.11.2024); the Higher Specialized Administrative Court (based on government draft law No. 12206-1 of 22.11.2024); the Higher Administrative Court (in accordance with draft law No. 12206-2 of 28.11.2024); the Specialized Administrative Court (based on government bill No. 12368 of 12/30/2024);

2) the creation of two different higher specialized administrative courts with the jurisdiction of courts of first and appellate instance (according to alternative draft law No. 12368-1 of 07.01.2025, supported by the Verkhovna Rada of Ukraine, which in its original wording concerned the creation and functioning of the Kyiv City District Administrative Court and the Kyiv City Appeal Administrative Court as specialized administrative courts).

The analysis of the aforementioned legislative initiatives indicates the special status of the higher specialized administrative courts in Ukraine. Judges are elected through a public competition, and their powers and grounds for termination are clearly defined by law. The state guarantees the safety and security of judges, as well as adequate social security, which supports the stability and efficiency of the judicial system. However, the final name, which combines the terms “Specialized District” and “Specialized Appellate”, is controversial, as it does not fully separate the legal status of these courts from ordinary district and appellate administrative courts. In addition, given the strict qualification requirements for judges of specialized administrative courts, attention should be paid to the potential corruption risk associated with the consideration of cases by those judges who, before the competition, held positions in state bodies that act as defendants in cases transferred to the relevant courts.

It is worth clarifying that the establishment of higher specialized administrative courts in Ukraine was one of the requirements put forward by the International Monetary Fund and the European Commission. This condition was officially enshrined in the Ukraine Facility plan,

which defines the key areas of reforming the judicial system of Ukraine. Researchers in the field of administrative process recognize that the highest specialized courts of Ukraine are a key element in the structure of the judicial system and the administration of justice, ensuring the protection of human rights and fundamental freedoms. These courts function as instances for considering certain categories of cases, and their activities are regulated by a separate regulatory act that determines the legal status of courts and their place in the general judicial system of Ukraine (*Chumak, 2020: 255–256*). The high status of these courts is confirmed by the guarantees of their activities regarding legal status, organizational autonomy, as well as the procedural dimension of functioning (*Antipova, 2021: 7–8*). Thus, the organizational autonomy of higher specialized courts is guaranteed by the independence of territorial location, a separate organizational structure, and a special procedure for financing and managing funds. Procedural guarantees They define clear forms and procedures for considering cases, prohibit the delegation of judicial powers, ensure equality of participants in the process, monitor compliance with behavioural norms, and provide for the functioning of appeal chambers to review decisions.

Thus, we could draw an interim conclusion that the higher specialized courts in Ukraine are integrated into the continental legal system that meets international standards, similar to judicial institutions in many countries in Europe, Asia, Africa and America. This approach contributes to the proper implementation of judicial control, the protection of human rights and freedoms and ensuring the stability of public law even in periods of transformation or in crisis circumstances. The higher specialized administrative courts in Ukraine play a key role in the system of justice, ensuring the protection of human rights and freedoms from arbitrariness on the part of the subjects of power, given the independence and inviolability of the judges of these courts, their immunity and opportunities for professional development and advanced training.

3. Competence risks in the activities of specialized administrative courts in Ukraine

As for the Kyiv City District Administrative Court, after the liquidation of the Kyiv City District Administrative Court, no changes were made to the Article 27 of the Code of Administrative Proceedings of Ukraine, therefore its exclusive jurisdiction remains. After the formation of specialized administrative courts, the Kyiv City District Administrative Court will consider cases on appeals against decisions of the Antimonopoly Committee of Ukraine in the field of public procurement (except for cases on the claim of the Antimonopoly Committee of Ukraine in the field of state aid to business entities), administrative cases involving diplomatic missions and consular institutions, as well as other cases in accordance with the general rules of jurisdiction.

A considered step by the legislator is the transfer to the newly established specialized administrative courts the powers of the Sixth Administrative Court of Appeal as a court of first instance considering the financing of the statutory activities of political parties, although with the preservation of the competence of this court to resolve disputes in view of decisions and actions of the Central Election Commission, candidates for the post of President of Ukraine and their proxies, issues of banning political parties, as well as appealing decisions of the National Agency for the Prevention of Corruption regarding state funding of parties.

After the liquidation of the Supreme Administrative Court and the creation of the Supreme Court, the powers of the Cassation Administrative Court within the Supreme Court were expanded and include both cassation review of decisions of local and appellate administrative courts, and the resolution of cases of both the court of first and appellate instance considering the results of elections or referendums, early termination of the powers of people's

deputies, appealing against actions or inaction of government bodies, in particular the Verkhovna Rada, the President, the Accounting Chamber, the High Council of Justice and other responsible bodies, as well as appealing against decisions and actions related to the appointment of judges of the Constitutional Court of Ukraine. Special attention should be paid to the atypicality of such an approach, when the court of cassation simultaneously has the powers of a court of first instance. However, such practice will remain even after the creation of higher specialized administrative courts in Ukraine.

Thus, given the inconsistency in the distribution of competence between administrative courts in Ukraine, it is necessary to harmonize their jurisdiction and subject jurisdiction by reducing the burden on the Supreme Court by transferring the authority to hear cases as a court of first and appellate instance to the Specialized District and Specialized Appeal Administrative Courts. These courts should also include to transfer and resolve cases in the appellate district, which includes the city of Kyiv, as well as sanction disputes, in particular those currently being considered by the Supreme Anti-Corruption Court in accordance with the rules of administrative justice.

4. The Precedent Dimension of Judicial Discretion

The concept of discretionary conditionality of law emphasizes the choice between several potentially applicable legal norms, determining which of them in specific conditions most fully ensures justice and legal certainty. The active – volitional interpretation of judicial discretion is most widespread in American legal doctrine, but is gradually gaining importance in the Romano – Germanic continental system as a result of rapprochement with Anglo – American case law. This approach is based on a pragmatic concept that considers the application of law as a choice from a limited number of permissible lawful options for behaviour. Judicial discretion in this context, the court has a limited competence to choose the most appropriate, legal and fair way to resolve a specific case, given its factual circumstances. This is a legally enshrined discretion of the court, which is exercised within the framework of established procedural norms, to ensure the principles of justice, the rule of law and the effective restoration of the violated rights of the parties to the administrative process.

Regarding the functioning of higher specialized administrative courts in Ukraine Firstly, it is necessary to differentiate the following two types of powers: 1) procedural discretion of the administrative court, associated with the consideration and resolution of an administrative case by the court; 2) non-procedural (extrajudicial) discretion of the administrative court during participation in administrative – legal relations (*Panova, 2017: 50*). Such a possibility of the administrative court, which considers and resolves the case, regulated by the norms of administrative procedural law and based on the norms of substantive law and factual circumstances, is associated with the adoption of a procedural decision at its own discretion (*Bevzenko et al., 2018: 71*). At the same time, it is important to take into account the approaches of the sociological school of law and legal realism, which deny the absolute predictability of a judicial decision. According to this direction, judicial discretion is not only a tool for interpreting the law, but also a reflection of the personal experience, psychological characteristics and internal motives of the judge, which directly affect the formation of “living law”. Hence, a judicial decision is considered as the result of individual reflection, assessment of circumstances and volitional choice aimed at preventing negative consequences.

The basic principle of “ratio decidendi”, which underlies the resolution of cases, is not subject to strict algorithmization, since it is oriented not only to logical reasoning, but also to

the judge's intuitive perception of legal norms "through the eyes of the predecessor", that is, the one who made a decision that became a precedent and is subject to application in similar cases. A prospective judicial precedent arises only by means of a court decision, when a general principle of application of law is inferred from a particular case by induction. However, difficulties might arise in determining the discretionary limits of such a precedent, the possibility of its non-application or annulment, as well as in establishing criteria for the similarity of cases and choosing from among the multitude of relevant precedents.

As a rule, legally interpretative judicial precedents contain rules for understanding legal norms. As a result, established and unified judicial practice is formed, judicial customs, in particular, within the framework of the exercise of judicial discretion, the clarification of regulatory acts and judicial practice by higher judicial authorities, and acts terminating rights might be adopted. (*Stepanenko, 2019: 27*). Undoubtedly, the norms of law are the main reference point for judges of specialized administrative courts. in Ukraine in the process of law enforcement. However, in situations where these norms turn out to be uncertain, ambiguous or contain conflicts, the judge is forced to go beyond the literal meaning of the law and turn to the basic principles of the legal system. In the process of interpretation, a mechanism is formed for extending the meaning of the norm to specific factual circumstances of the case. The result of such interpretation is a new understanding of the law, reflected in the motivational part of the court decision as a conclusion, which becomes the basis for making a final decision in the case. Such a process has a dynamic and discursive nature, since it takes into account the specifics of a specific situation, as well as historical, sociocultural, economic and other factors of legal reality.

Therefore, the most flexible and liberal model of judicial practice for higher specialized administrative courts in Ukraine might be the Anglo-Saxon precedent, built on the doctrine of "stare decisis" considering the broad scope of judicial powers in lawmaking, with the possibility of granting judicial decisions retroactive effect in time. At the same time, in the common law system, to which the legal system of Ukraine belongs, it is also necessary to apply tools for overcoming precedent, in particular, the method of distinction, which allows the judge to recognize the precedent as unsuitable for application in a specific case under consideration.

Methodological approach to applying the relevant court decision in a similar case covers the analysis of a homogeneous space of possible options for judicial discretion, which allows forming a mechanism for a gradual transition to a new decision by modifying the previous approach. Such a heuristic approach functions as an algorithm that ensures the selection of the optimal solution within a reasonable time by means of a sequential, logical review of all potential alternatives. The evaluation process could be started from any element of the system, with subsequent movement through intermediate stages in a certain direction, until each of the possible options meets the established global criteria of efficiency and feasibility. At the same time, it should be taken into account that achieving a local optimal result might make it impossible to find globally the best solution, since the choice of one path often narrows the space of further alternatives. Prejudicial legal categories should be applied taking into account the unique factual circumstances of a particular case, which excludes the possibility of their universal assessment or use in all contexts without exception.

5. Conclusions

Consequently, the higher specialized administrative courts in Ukraine are a key tool for the modernization of the judicial system and the implementation of the state's European integration aspirations. Their creation after the liquidation of the Higher Administrative Court of Ukraine

and the District Administrative Court of Kyiv allowed to optimize the distribution of competence between the Supreme Court, Kyiv District and Kyiv City District Administrative Courts, as well as the newly created Specialized District and Specialized Appeal Administrative Courts. These courts have legislatively defined powers and guarantees: competitive appointment of judges, independence and immunity, protection and social security, as well as opportunities for professional development, which ensures the stability and efficiency of administrative justice.

Transferring the atypical powers of the Supreme Court for the cassation level to the competence of specialized administrative courts allows reducing its workload and increasing the efficiency of considering cases regarding election results, activities of government bodies, state financing of political parties and other public – law disputes. Preservation of the exclusive jurisdiction of the Kyiv City District Administrative Court will ensure legal certainty in specific categories of cases.

An important aspect of the functioning of higher specialized administrative courts in Ukraine is judicial discretion, which allows choosing the most fair option for applying the law taking into account the factual circumstances. The use of the principle of “ratio decidendi” and precedents contributes to the unification of judicial practice, while ensuring an individual approach of judges and taking into account the peculiarities of each case under consideration. The methodology of relevant interpretation of decisions indicates the expediency of applying a heuristic approach, which allows gradually modifying judicial precedents and achieving optimal legal results.

Prospects for further research include an analysis of the effectiveness of the activities of specialized administrative courts in comparison with the continental and Anglo-Saxon models, the application of case law in the administrative justice of Ukraine, an assessment of the impact of the discretionary component on the stability of judicial practice, as well as a research of potential corruption risks and ways to minimize them. It is also advisable to study the mechanisms of interaction of higher specialized administrative courts with other bodies of judicial and non-judicial power.

References

1. Antypova, I. (2021). *Administratyvno-pravovyi status vyshchyykh spetsializovanykh sudiv v Ukraini* [Administrative and legal status of higher specialized courts in Ukraine]. (PhD Thesis), Kyiv. [in Ukrainian]
2. Bevzenko, V.; Panova, H. (2018). *Sutnist ta pidstavy vtruchannia administratyvnoho sudu u rozsud sub'iekta publichnoi administratsii* [The essence and grounds for the administrative court's intervention in the discretion of a public administration entity]. Kyiv: Dakor. [in Ukrainian]
3. Brownsword, R. (2025). *Five conversations and new directions for law and technology*. *Law, Innovation and Technology*, 17 (1), 37–57. doi: 10.1080/17579961.2025.2469342.
4. Chumak, V. (2020). *Rol i mistse vyshchyykh spetsializovanykh sudiv u systemi sudoustroiu Ukrainy* [The role and place of higher specialized courts in the judicial system of Ukraine]. *Bulletin of Kharkiv National University of Internal Affairs*, 2 (89), 250–257. doi: 10.32631/v.2020.2.23. [in Ukrainian]
5. Gonçalves, A. (2022). *International jurisdiction in cross-border infringement of personality rights in the European Union*. *Masaryk University Journal of Law and Technology*, 16 (2), 125–142. doi: 10.5817/MUJLT2022-2-1.

6. Panova, H. (2017). *Vtruchannia administratyvnoho sudu v rozsud sub'iekta publichnoi administratsii: sutnist ta pidstavy* [Intervention of an administrative court in the discretion of a public administration entity: essence and grounds]. (PhD Thesis), Zaporizhzhia. [in Ukrainian]
7. Pečarič, M. (2021). *Lex ex machina: reasons for algorithmic regulation*. Masaryk University Journal of Law and Technology, 15 (1), 85–117. doi: 10.5817/MUJLT2021-1-4.
8. Prince Tritto, P.; Torres Ortega, I. (2025). *Jurists of the gaps: large language models and the quiet erosion of legal authority*. Masaryk University Journal of Law and Technology, 19 (2), 179–204. doi: 10.5817/MUJLT2025-2-4.
9. Razmetaeva, Y.; Satokhina, N. (2022). *AI-based decisions and disappearance of law*. Masaryk University Journal of Law and Technology, 16 (2), 241–267. doi: 10.5817/MUJLT2022-2-5.
10. Soukupová, J. (2021). *AI-based legal technology: a critical assessment of the current use of artificial intelligence in legal practice*. Masaryk University Journal of Law and Technology, 15 (2), 279–300. A doi: 10.5817/MUJLT2021-2-6.
11. Stepanenko, V. (2019). *Yurydychni ta moralni zasady sudovoi dyskretsii (sudovoho rozsudu)* [Legal and moral foundations of judicial discretion (judicial latitude)]. Law Bulletin, 9, 83–91. doi: 10.32850/2414-4207.2019-9.11. [in Ukrainian]