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Judicial practice as a source of formation of standards of administrative procedure: Ukrainian experience in the European context

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L'instaurazione di un processo amministrativo efficace, che garantisca la tutela delle libertà e dei diritti individuali in cooperazione con i soggetti dell'amministrazione pubblica, è fondamentale per il percorso di affermazione dell'Ucraina quale Stato di diritto. La prassi giudiziaria, sempre più riconosciuta come fonte del diritto, sta diventando uno strumento cruciale per la definizione delle norme in questo ambito nel quadro dell'integrazione europea. L'esempio dell'Ucraina dimostra come la giurisprudenza possa essere progressivamente incorporata nei processi di creazione di standard amministrativi e procedurali conformi ai modelli europei. Per un esame approfondito del ruolo della prassi giudiziaria nella definizione degli standard amministrativi in Ucraina, nel contesto dell'integrazione europea, la presente ricerca adotta un approccio interdisciplinare che combina prospettive scientifiche generali e specialistiche di carattere giuridico. L'articolo si propone di analizzare il ruolo della prassi giudiziaria nella formazione degli standard del procedimento amministrativo in Ucraina e la sua evoluzione nell'ambito dei processi di integrazione europea.

An effective administrative judicial procedure that ensures the protection of individual freedoms and rights in cooperation with the subjects of public administration is critical to establishing Ukraine as a State governed by the rule of law. Judicial practice, which is increasingly recognised as a source of law, is becoming a crucial tool for establishing norms in this area within the framework of European integration. The case of Ukraine illustrates how judicial jurisprudence can be progressively integrated into the development of administrative and procedural

standards that conform to European models. This research utilises an interdisciplinary method, integrating broad scientific and specialised legal viewpoints, to thoroughly examine the influence of judicial practice on the development of administrative standards in Ukraine within the framework of European integration. The article aims to examine the role of judicial practice in shaping the standards of administrative procedures in Ukraine and its evolution within the context of European integration processes.

Summary: 1. Administrative process: Concept, context, and challenges.- 2. Lessons from France and Germany: Codification pathways.- 3. EU principles, case law, and the ReNEUAL framework.- 4. Key Findings and Reform Prospects for Ukraine.- 5. Conclusions.

1. Administrative process: Concept, context, and challenges

The issue of the proper provision of human rights, freedoms, and legitimate interests in their interaction with public administration agencies is particularly relevant, given the current level of development of the Ukrainian state as a legal, democratic, and social nation. To create a truly successful model of state-individual interaction, it is necessary to update the law and implement transparent, fair, and unambiguous administrative processes. The Foundation for the Faith of Citizens in State Bodies was established in the field of administrative law, as it regulates the decision-making process that directly affects how the rights and obligations of an individual are fulfilled. The implementation of European standards for administrative processes is becoming increasingly relevant in the context of European integration, the Association Agreement with the European Union, and Ukraine's application for EU membership. In this article, "administrative process" refers to the broader framework encompassing the principles, stages, and institutional mechanisms of public administration decision-making, while "administrative procedure" denotes the legally regulated sequence of actions within that process.

Harmonization of the national legal system with modern European methods of

public administration, which entails both regulatory adjustments and a change in the way laws are applied, is one of the main obstacles in this direction. It is common in European countries, especially those that have undergone a period of transition in their legal systems, to recognize the role of judicial practice in the development of administrative norms. Court definitions, especially those relating to administrative jurisdiction, serve as a tool for interpreting, defining, and establishing specific legal standards, in addition to fulfilling the role of law enforcement. Judicial practice enables the elimination of gaps in legislation, the identification and correction of defects in legal regulation, and the formulation of stable approaches to the implementation of key principles, including the rule of law, legal certainty, proportionality, and good governance.

Due to its mixed legal heritage, which is of continental origin but susceptible to Anglo-Saxon instruments of interpretation and application through international obligations and involvement in the European Court of Human Rights, Ukraine gradually incorporates the essence of the case in its system of sources of administrative law. The study of how Ukrainian court decisions affect the development of administrative procedural rules, their consistency, and effectiveness, as well as the difficulties associated with institutionalizing them, is crucial in this context.

Several scientists have investigated the tangential issues related to the topic of research; in particular Perekhrestyuk and Kohut^[1] examined the impact of the European Convention on Human Rights (hereinafter- ECHR) practice on the formation of judicial practice in Ukraine, emphasizing its role as a source of legal standards and a factor in changes to administrative proceedings. Although, Boiko^[2] revealed the content of public administration, classified individual acts, and substantiated the importance of administrative procedure as a tool for protecting rights and approaching European standards. Kovbas and Kraiinyi^[3] analyzed the experience of foreign countries in regulating administrative procedures and emphasized the importance of introducing a general law in Ukraine, taking into account European practices.

Thus, Bezpalienko^[4] explored the importance of administrative procedure as an instrument of the rule of law, focusing on its role in implementing the principles of transparent and legitimate governance, as well as the significance of the law “On Administrative Procedure.” Furthermore, Kolpakov et al.^[5] described

“administrative procedure” as a key category of administrative and procedural law, separated it from related concepts, and proposed an author’s definition. Thus, the purpose of this article is to analyze the Ukrainian experience of using judicial practice as an instrument for the formation of standards of administrative proceedings in the context of pan-European trends, as well as to outline the prospects for the development of this approach in the context of legal reform and European integration.

2. Lessons from France and Germany: Codification pathways

To conduct a comparative analysis in the study, the practices of France, Germany, the Court of Justice of the European Union, and the European Court of Human Rights were purposefully chosen. France and Germany were selected as reference models due to their longstanding traditions in administrative law and their differing paths toward codification. France’s codification is relatively recent (2015), offering insights into the challenges and opportunities of implementing a modern administrative code, while Germany’s codification, rooted in the 1970s, represents a mature and widely respected model. These two approaches provide contrasting perspectives valuable for assessing Ukraine’s potential reforms. These systems demonstrate the established methods of creating administrative-procedural norms through judicial practice, which is relevant to the Ukrainian environment, where court decisions are becoming increasingly important. Although the Court of Justice and the ECHR establish rules that are binding or recommended for EU member states and future members, France and Germany serve as examples of established continental models. The time range of the analysis, which spans from 2005 to 2024, was chosen in consideration of the introduction of administrative justice in Ukraine in 2005, as well as relevant legislative and practical events, such as the adoption of the Law “On Administrative Procedure” in 2022^[6].

The methodology of this study is based on an interdisciplinary approach that combines general scientific and special legal methods. It takes into account both the theoretical aspects of the administrative procedure and the practical application of this procedure in Ukraine within the context of European

integration. The primary focus of the analysis was the administrative procedure as a tool for implementing public power and protecting human rights. The dual nature of the concept of administrative procedure was taken into account, considering it both a formalized procedure for the actions of a state body and a form of interaction between authorities and private individuals.

Within the framework of the study, a logical-system method was used to identify internal connections between the stages of administrative procedure, a normative-analytical method for analyzing legislation, court decisions, and regulations, a comparative legal method for comparing national and European practices, a structural-functional approach for determining the functions of administrative process subjects, a formal legal method for interpreting legal concepts and categories, as well as a case-method (analysis of court precedents) to study specific decisions, in particular decisions in case No. 9901/11/20 and *Sotnikov and Pavelko v. Ukraine*^[7]. Case No. 9901/11/20 was an example of the application of the principles of good governance, legal certainty, and restriction of discretion.

The ECHR decisions (for example, *Sotnikov and Pavelko v. Ukraine*) are also examined as a factor influencing Ukrainian jurisprudence in terms of proper information, access to the procedure, and the right to be heard^[8]. These decisions are identified as sources of the formation of a new judicial doctrine of administrative process in Ukraine. A comparative analysis of the practices of France (*Conseil d'État*), Germany (*Bundesverwaltungsgericht*), the CJEU, and the ECHR enabled the identification of parallels with Ukrainian practice, as well as the outlining of directions for adaptation. The study was based on sources of international administrative law (EU Code of Good Administrative Conduct, conclusions of the Venice Commission, CEPEJ). Thus, the applied methodology provided a holistic analysis, ranging from a theoretical rethinking of the concept of administrative procedure to practical recommendations for the institutionalization of judicial standards within the legal system of Ukraine. It allowed the integration of Ukrainian practice into the European context of public administration and legislation.

3. EU principles, case law, and the ReNEUAL framework

Without a re-evaluation of institutions, such as administrative procedures, that take a decisive position in the public relations system to provide high-quality administrative services, it is impossible to guarantee the adequate performance of the duties and responsibilities of public administration bodies in Ukraine in cooperation with private individuals. The definition of this concept, which has two components in its content, is the basis for understanding the basic ideas of any sphere of public administration, including the administrative process. The term “administrative” in science refers to both what is associated with leadership and what is intended to serve.

An extensive explanatory dictionary defines “procedure” as the officially recognized or usual order of doing, implementing, or registering something. Given this, it is essential to examine the topic of participant interaction in administrative operations, which can be categorized into two distinct areas. On the one hand, it is a relationship in which the subject of power initiates the relationship. As a result, individuals and legal organizations are required to fulfill their respective duties. It is important to note that the European Union lacks a unified, general codification of administrative procedure. In this context, the jurisprudence of the EU Courts has been instrumental in articulating general principles of good administration, many of which have subsequently been embedded within sector-specific legislative frameworks. Moreover, initiatives such as the ReNEUAL Model Rules on EU Administrative Procedure contribute significantly to the progressive harmonization of these principles across Member States.

In other words, representatives of public administration organizations take the initiative and possess the necessary administrative authority and institutional capacity. Conversely, a private individual exercises their own legal rights and defends personal interests by interacting with public administration entities (or their representatives). Now we turn to the legislative consolidation of the concept mentioned above, which states that the Law of Ukraine “On Administrative Procedure” treats it as a legal process for considering and resolving cases. Accordingly, administrative proceedings are a series of procedural actions consistently conducted by the administrative authority, including procedural

decisions to assess and determine the case, complete the adoption, and, in some cases, implement the Administrative Procedure Act^[9]. Therefore, for the adoption of an administrative law and the adoption of this decision, this legislative act defines the administrative procedure through the category of integrity of the activities of the state administrative body^[10].

The authors can understand administrative procedures in three ways: first, as a formalized procedure defined by legal norms; Second, as one of the procedural measures of public administration for the implementation of the rights, freedoms, obligations, and interests of individuals and legal organizations; Thirdly, as the activities of public administration bodies (executive bodies, local governments, their officials and official staff-administrative bodies), which are established by legal norms and implemented within the framework of their relations with individuals and legal entities (private) to achieve these rights, freedoms and legitimate interests. The initial statement will inform our investigation. Therefore, the administrative procedure is a systematic and logically constructed method of action that should be performed by a public administration body to resolve an individual administrative case. Public administration bodies are the main subjects of administrative and procedural activities.

That is, an authorized person of a public administration body within the framework of current legislative acts may make a decision (individual law) as a result of performing managerial or organizational and administrative activities. Since the Code of Administrative Procedure was introduced in 2005, establishing a clear jurisdiction for administrative courts and providing citizens with a valuable tool to protect their rights in disputes involving public law, case law has played a significantly larger role in Ukraine as a source of administrative and procedural standards. In practice, judicial jurisprudence increasingly plays both an interpretive and a regulatory role despite the official affiliation of the Ukrainian legal system with the continental tradition, which holds that the source of law is exclusively a regulatory act.

In the context of decentralization, deregulation, and digitization of public administration, as well as compliance with European legal norms, this is especially evident in the constantly evolving administrative law^[11]. In the absence of a single codified law, the practice of administrative courts—especially the

Supreme Court after its reform in 2017—supports the law. This practice evolved from simply resolving individual disputes to actually determining the normative substance of the administrative process. In its decisions, the Grand Chamber of the Supreme Court gradually establishes norms that have broad applicability to the entire system of public administration.

The ruling of 25 June 2020 in case No. 9901/11/20, in which the Court established a significant concept regarding the limits of the authorities' discretionary powers, is one of the most instructive examples. The Court concluded that discretion is not a matter of free will but rather should be exercised, taking into account the values of fairness, proportionality, legal clarity, and good governance. Since this forced the authorities to provide more thorough justifications for their judicial decisions and courts to assess not only the existence of powers but also compliance with the basic norms of public administration, this discretion set the basis for further administrative practice. This ruling served as the basis for a new piece of case law that recognized that administrative actions with ordinary or formulaic justifications, even if carried out within their competence, did not adhere to proper process standards^[12].

Consolidating procedural protection in the field of access to public information was another important way in which administrative jurisprudence evolved. Despite Ukraine having a unique law called “On Access to Public Information”, judicial practice has demonstrated that a good administrative procedure cannot be ensured by interpreting the law literally. Thus, the Supreme Court of Ukraine^[13] and Sixth Administrative Court of Appeal^[14] provided a detailed explanation of the responsibilities of public authorities in several cases, particularly No. 826/13123/18 and No. 9901/137/21.

These responsibilities include immediately reviewing information requests, providing thorough and well-grounded responses, adhering to the principle of openness, and acting within a reasonable timeframe. These decisions led to the practical establishment of norms through judicial practice, which was consistent with European notions of proper administration but was not provided for by law. These decisions have had a systemic impact, requiring state and municipal government entities to revise their request processing procedures, establish institutional channels for citizen participation, and adopt these criteria as established norms in lower courts^[15].

These decisions helped create a new administrative culture in Ukraine that prioritized actual access to administrative justice through formal adherence to protocols. Given the gradual development of the law, judicial practice, therefore, serves as a mechanism of compensation in form. These precedents were eventually analyzed in doctrinal scientific writings and began to appear in draft legislation and executive recommendations. In addition, international reports - especially those conducted by the Venice Commission and the European Commission for the Efficiency of Justice (CEPEJ) - increasingly cite Supreme Court practice in cases concerning the right to a fair administrative procedure as an illustration of the progressive integration of Europe at the law enforcement level.

The decision of the European Court of Human Rights on January 14, 2021, in the case of *Sotnikov and Pavelko v. Ukraine*, was one of the important events that drew the attention of Ukrainian legislators and law enforcement officials to significant systemic shortcomings in the field of administrative proceedings^[16]. The court found a violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in this case, noting the lack of adequate procedural guarantees in the adoption of an individual administrative act, in particular regarding the possible exercise of the right to participate in the procedure and the proper notification of persons concerned by the decision of the subject of authority^[17]. The issue was that, when it comes to rights, freedoms, and legitimate interests, the state failed to provide the basic procedural components of a fair trial, which must be present even in non-jurisdictional procedures^[18].

In this case, the ECtHR specifically emphasized that the administrative activities of the Ukrainian authorities were not only legally justified but also fundamentally incomprehensible, unstable, and devoid of substantiated legal justification. The court also drew attention to the fact that, within the framework of public administration, there is currently no effective means to stop or prevent the violation of the applicant's rights. Because of these factors, the decision in the case of *Sotnikov and Pavelko* was interpreted as a warning sign of more serious structural problems with the administrative procedure system of Ukraine rather than just an isolated incident^[19]. He sparked intensive discussions in the legal community, was cited in expert reports by scientists, specialized

NGOs, and the Commissioner for Human Rights of the Verkhovna Rada, and was later directly or indirectly considered in the decisions of Ukrainian administrative courts in cases of a similar nature. This precedent prompted a revision of the concept of due administrative procedure as a crucial component of the protection of human rights under national law, which had an impact that extended far beyond the scope of a particular case.

The principles of proportionality, sufficient motivation, timeliness of notification, the right of a person to be heard before a decision is made, and the right to effective treatment have been more closely examined by Ukrainian courts, especially administrative courts, after 2021. In administrative procedures, courts have often relied on the ECHR as a necessary source of interpretation for the meaning of legal guarantees, mainly when issues are not explicitly regulated by statute or left to the discretion of the executive branch. Administrative courts increasingly issued judgments in which the rationale for the actions of public authorities was deemed insufficient, in particular in light of the European standards formulated in the above case. This is especially true in many cases involving appeals against decisions on the assessment of fines, cancellation of permits, and refusal of social benefits or public services^[20].

The decision in the Sotnikov and Pavelko case had a normative effect in addition to its law enforcement effect since this was one of the main justifications for the need to adopt a Law “On Administrative Procedure” (European Court of Human Rights, 2024). This precedent has made it abundantly clear that Ukraine lacks a comprehensive law that establishes universal guidelines for interaction between citizens and the government in the state legal sphere. As a result, the authorities often act independently, observing the internal rules or directives of the department. Legal clarity, responsibility for the administrative decision, and public confidence in state institutions seriously threaten this circumstance. As a result, the case of Sotnikov and Pavelko against Ukraine served not only as a significant illustration of how international law was applied in the Ukrainian situation but also served as a driving force behind significant changes in the paradigm of public administration in Ukraine^[21].

It compelled legislators, judges, and authorities to view the administrative process as a legal instrument directly related to the application and protection of fundamental rights and freedoms rather than as a series of formal steps or

technical tasks. In addition, we can say that this precedent has significantly expanded Ukrainian administrative legislation to deeper European integration - not declarative, but essential - through the examination of the level of public administration, procedural fairness, and the role of the individual in the administrative process, even if the full implementation of the conclusions of the ECHR is still ongoing^[22].

Here, we can talk about the development in Ukraine of the so-called “judicial doctrine of administrative justice”, which is a set of repeated and consistent court decisions that establish the scope of rights and obligations of the parties involved in administrative justice, the limits of authority of administrative bodies, standards of proof, justification, proportionality, participation of the parties, access to information, the possibility of appeal, etc. All these components existed due to the stable and reliable practice of the courts, even if they were not normative enshrined in unified legislation until 2022. Thus, the Ukrainian experience makes it abundantly evident that judicial practice can be a systemic source for the development of a high-quality administrative procedure that meets both the external expectations of European partners and international obligations, as well as the internal expectations of the rule of law in the context of regulatory fragmentation and delay of reforms^[23].

The long-awaited shift from fragmented, often contradictory rules to a comprehensive, methodically organized model of administrative proceedings, which corresponds to the internal practice of the Ukrainian courts, and the best examples of the European legal tradition was marked by the adoption of the Law of Ukraine “On Administrative Procedure” (No. 2073-IX) in 2022. Numerous sector laws and subordinate regulations have governed the administrative decision-making process in Ukraine for decades, but they have not established a unified standard for the relevant administrative procedure.

Case law played a crucial role in filling this regulatory vacuum. It established standards for the legitimacy of the definition, respect for the individual’s right to be heard, limits on discretion, and standards for assessing the impartiality of administrative acts. The Supreme Court and the administrative courts created the positions that eventually -rests occurred as principles for the entire system of public administration. These positions were then incorporated into the draft law’s standards, which were formulated over a long period with the assistance of

international experts, human rights defenders, civil society representatives, and domestic scholars^[24].

The Law “On Administrative Procedure” is a clear illustration of the synthesis of two sources of legal evolution: firstly, the long experience of law enforcement agencies of Ukrainian courts; Second, the application of the Council of Europe and the principles and recommendations of the European Union, in particular The Code of Good Administrative Behaviour, which was adopted by the statute of the European Ombudsman. The law created basic institutions that were previously only judicial standards or components of international legal practice^[25].

This includes the principle of human participation in the procedure, which stipulates that a person should be allowed to be heard before a decision is made that affects their rights or interests. An obligation of proper notification that requires the authority to provide clear information about the progress of the procedure, timelines, human rights, and the ability to object or provide explanations; and an obligation to justify a decision that requires a description of the actual circumstances, the reasoning behind the decision and the motivation of the authorities. According to the best European practices in the areas of deregulation and pro-business management, the rule of acquiescence was first codified in law. It states that if the authority is not valid within a specific period, the request is considered satisfied. Administrative appeal procedures were another important innovation. They encourage agencies to self-monitor, conduct internal reviews, and avoid violations before they become serious. They also offer an alternative to court protection^[26].

With the adoption of this statute, what was previously developed gradually - through court decisions that created a substantial framework for administrative activities due to the lack of explicit regulatory guidance - is now institutionalized. He established the conditions of predictability and legal certainty of the operations of public administration bodies, determined the norms of good governance, and developed a single algorithm for assessing administrative issues. The law also combined approaches to procedures in various areas, from the registration of rights to the granting of permits, from disciplinary proceedings to social benefits, and reduced the chaos of establishing a norm in contract legislation.

As a result, this marked not only the conclusion of a protracted reform cycle but also the beginning of a new administrative-plausible paradigm in which the law itself served as a link between administration and legislation, between national customs and European values of public administration, and in that the practices shaped by the court were consolidated by legislation. Its adoption is evidence of a slow shift in legal opinion from reviewing the administrative process as a formality to considering it as a guarantee of protection from individual rights, an instrument of good governance, and a necessary condition for the legitimacy of state power in the eyes of the public.

It is essential to examine the European experience in this context. Unlike the Anglo-Saxon legal tradition, where the Court's precedent has a binding effect and is compared with the law, case law is generally not recognized as the formal source of legal norms in the traditional continental legal system. The principle of written legislation, which is based on regulating legal acts adopted by authorized entities, prevails in continental Europe. However, the focus of European legal theory has shifted significantly in recent decades, especially in the 21st century, from merely emphasizing normative to recognizing case law as a crucial tool for promoting public law. These phenomena are especially evident in countries undergoing institutional changes, both within the framework of supranational EU legislation and at the national level.

The rulings of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU) have had the most significant impact on the development of administrative law throughout the European Union. Since EU law and the Convention for the Protection of Human Rights and Fundamental Freedoms have a direct impact on national legal systems in member states, the decisions of these courts not only affect how individual cases are decided but also establish legally binding guidelines on how administrative legislation should be interpreted and applied^[27].

Principles such as legal certainty, transparency of administrative processes, proportionality of state intervention, and the duty of public administration to act in good faith, predictably, within reasonable expectations, and to provide effective means - all by Articles 6 and 13 of the ECHR - are of particular importance. These concepts were later incorporated into the legal systems of several countries within the continental legal area, particularly in the

administrative laws of France, Germany, Italy, Poland, Hungary, and Romania, as a result of ECHR jurisprudence. For example, the decisions in the cases of “*Běleš and others v. Czech Republic*”, “*Fazliiski v. Bulgaria*”, “*Grzęda v. Poland*” and “*Kudla v. Poland*”. The European Court of Human Rights (ECTRE) clearly outlines the requirements of the relevant administrative procedure, which should be even in the application of jurists^[28].

Consequently, national courts are forced to develop their judicial theory based on Sudburg’s practice, in addition. Similar circumstances have arisen in the area of EU law, where the CJEU has clearly stated that Member States must adhere to the principles of impartiality, openness, efficiency, and equality in regulating their interactions with private citizens through several productions, including the *Costa and Siphon* C-72/10, the *Hartlauer* C-169/07 and the *Kommission* C-518/07. *Deutschland*. So, regardless of their past adherence to a certain legal system, the administrative laws of the EU-nations reflect the new pan-European criteria for good administration^{[29], [30]}.

As a result, the doctrine of judicial practice of public law has developed. Court decisions are increasingly serving as true “norms of behavior” for the authorities, whereas previously, they were considered exclusively as an auxiliary source of interpreting the norm. The established practice of national administrative courts, decisions of constitutional tribunals, and court decisions of international judicial organizations should be considered by administrative bodies in addition to the letter of the legislation. As a result, judicial practice becomes a dynamic source of establishing norms that ensure the administrative process is adjusted to social changes and the emergence of difficulties in public administration, particularly in conditions of legal diversity and complex interaction between national and supranational law.

The experience of Europe demonstrates that judicial institutions are increasingly involved in the development of administrative legal norms. In countries such as Germany and France, which have a long history of applying continental law, courts serve not only as law enforcement agencies but also as topics that help shape and update administrative law. The Federal Administrative Court (*Bundesverwaltungsgericht*) in Germany is at the forefront of this process. By its interpretation of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz - VwVfG*), it develops consistent approaches to fundamental issues, including the

discretion of administrative authorities, the need for motivation in decisions, compliance with procedural guarantees for participants in administrative proceedings, and the application of the principle of proportionality. Outlining the provisions of the law in its decisions, the Federal Administrative Court establishes a doctrinal framework that is recognized as important for study by both lower courts and public administration organizations^[31].

Administrative law has historically been significantly influenced by the French *Conseil d'État*, the country's highest administrative Court. Historically, this body has exercised a semi-pristine role, forming an administrative doctrine by creating draft legislative acts and advisory opinions in addition to solving certain cases. Its precedents are recognized as such in both legal studies and the practice of public administration; however, they do not have the official authority of a source of law in the continental sense. The autonomy of administrative authorities, the unique nature of the civil service (public service), and the processes of reasoned administrative law are just some of the basic concepts of French administrative law that have been defined and consolidated by the Conseil.

Following the active development of the jurisprudence of the Court of Justice of the European Union (CJEU), which establishes binding interpretations of EU law within the competencies defined by treaties, it has become a particularly prominent understanding of courts as subjects of administrative standard-setting. The ruling in the case of C-169/07 Hartlauer, in which the Court of Justice examined the issue of obtaining permission to establish a private clinic in Austria, serves as a notable example^[32]. In this ruling, the Court made it clear that the administrative processes of Member States for issuing licenses must comply with the fundamental principles of EU law, including the rules of impartiality, transparency, and non-discrimination.

Even in the absence of specific national rules, these ideas were considered relevant and had immediate consequences. As a result, Hartlauer's ruling established a legal precedent for modernizing licensing, authorizing, and controlling processes in several EU countries, compelling state administrations to amend their laws to conform to the guidelines established by case law^[33]. Similar trends can be observed in other CJEU precedents, where issues of administrative procedure are considered not only a national prerogative but also an integral part of the guarantees for the functioning of the single European market. For example, the

cases of C-141/00, “*Kécükdeveci*”, C-518/07, “*Commission v. Germany*”, and C-424/99, “*Commission v. Austria*”, highlight the need to ensure adequate administrative protection, as well as procedural fairness, transparency, and equal access to administrative processes^[34]. As a result, the jurisprudence of the CJEU increasingly serves the purpose of adopting rules that exceed only the interpretation of EU law.

It is imperative that these strategies progressively transform national legal cultures, as they compel the administrative courts of the member states to adapt their procedures to the decisions of the European judicial authorities. Although national legal systems continue to maintain some independence, this leads to a progressive harmonization of procedural rules^[35]. As a result, national and supranational European courts are now developing standard methods of understanding and applying the concepts of good administration rather than simply applying the law. In this environment, judicial practice turns into an instrument of legal harmonization, ensuring that the activities of administrative bodies comply with European human rights standards while maintaining the effectiveness of management and transparency of power. The history of Europe demonstrates that courts have fully participated in the legislative process of administrative law, providing specific interpretations of broad legal principles and setting new procedural standards.

4. Key Findings and Reform Prospects for Ukraine

The experience of Ukraine in recent decades demonstrates that judicial practice serves as the primary source of stabilization and development of legal standards in the field of administrative procedure within an unstable, fragmented, and periodically contradictory legislative framework, which is constantly evolving due to pressure from political, economic, and social factors. In transitional legal systems, where the appropriate degree of legislative coherence is not always guaranteed, and the standard for establishing a norm often does not meet the requirements of public administration, this approach is critical. The Supreme Court and other decisions of the administrative courts in Ukraine served as catalysts for the slow development of a new administrative-legal paradigm, which focuses on the values of efficiency, good governance, citizen participation,

transparency, and accountability of state bodies.

Actively using the precedents of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU), these decisions are also increasingly incorporated into the global legal system, which helps bring Ukrainian administrative law into line with European norms^[36]. By establishing consistent approaches to interpreting legal norms, standards for making administrative decisions, and the content of procedural guarantees, Ukrainian judicial practice not only fills regulatory gaps but also serves as a doctrinal source of law.

All this is especially important when the state undergoes structural changes, particularly decentralization, digitization of administrative services, deregulation, and revitalization of the public sector through anti-corruption measures. In this situation, case law has the potential to serve as an “anchor of legal predictability” that maintains a framework of trust between individuals and the government. Its sustainable operation is crucial for maintaining the overall atmosphere of legal stability, attracting investments, and enhancing the efficiency of state institutions, except in specific situations. The experience of European countries shows that the primary means of determining the norms of good governance in the field of public law is increasingly judicial practice. In this regard, the practices of the Court of Justice of the EU, the ECHR, the Federal Court for Land Management (Germany), and the Council of State (France) are considered, which establish European standards for the development of administrative procedures.

Court practice of the ECHR on legal certainty, proportionality, proper informing, and participation in the procedure (in particular, *Kudla v. Poland*, *Grzęda v. Poland*, and *Běleš v. Czech Republic*), as well as decisions of the Court of Justice of the EU in the cases of *Hartlauer* (C-169/07), *Commission v. Germany* (C-518/07) and *Költer Çükdeveci* (C-555/07) became crucial for the harmonization of administrative law in the EU^[37]. These examples form a single European strategy for guaranteeing a fair administrative procedure. This experience directly affects Ukraine’s adaptation of national practices and the development of an administrative process ideology focused on human rights and good governance as a candidate for EU membership^[38].

The main components that are now being gradually introduced in Ukraine have

long been enshrined in their administrative and procedural systems, as evidenced by the experiences of France and Germany. In particular, the Administrative Proceedings Act (VwVfG) in Germany, which has been in force since 1977, clearly establishes such principles as the need to justify administrative decisions (§ 39), the right to be heard (§ 28), the right to review an administrative case (§ 29) and a clear time frame for consideration of the case. These criteria are consistently set out in the jurisprudence of the Federal Court for the Management of Trials (*Bundesverwaltungsgericht*), particularly regarding the limits of discretion of administrative authorities and the proportionality of their actions. The doctrine of good governance is also developed in France by the Council of State. The principle of *du contradictoire* (the right to be heard), enshrined in the Code of Relations between the State and the Administration, specifically provides for the participation of individuals in the process.

Additionally, the principles of openness and the validity of decisions are incorporated into the legislation and applied in judicial practice. Thus, the established and already implemented practices of France and Germany directly confirm the proposals for the realization of the right to be heard in Ukraine, as well as the principles of proper notification, clear justification of decisions, limits of discretionary powers, and tacit consent. These components form the basis of the modern paradigm of excellent management, as exemplified in the European context. Such norms are gradually being introduced into Ukrainian judicial practice, creating prerequisites for further rapprochement with European methodologies^[39].

However, the use of judicial practice as a compensatory source of rule-making in Ukrainian administrative law has its drawbacks, which require critical study. First, imbalances between branches of government can arise from potential excessive judicial rulemaking. The continued fragmentation of legislation leads to the courts assuming the role of legislators, which, although it contributes to the rapid filling of gaps, also increases the risk of unstable legal control. The predictability of the administrative process for people and subjects of public Administration is complicated by the unequal application of judicial practice by lower courts and the lack of a recognized mechanism for its institutionalization and systematization^[40].

The developed model of good governance in France and Germany, as European

experience demonstrates, is primarily based on clearly defined principles, and judicial practice serves as an auxiliary mechanism that clarifies the interpretation of norms rather than replacing them. Instead, Ukraine faces the risk of legal instability and a situation where courts and public administration bodies depend on changes in certain legal positions if judicial practice is used as the primary source of standards for an extended period without proper legislative support. As a result, additional reforms should gradually transfer fundamental principles to the legislative level, maintaining a balance between the judicial and regulatory aspects of the good governance model^[41].

At the same time, it is necessary to take specific organizational and structural steps to fully use the potential of judicial practice as a source of creating norms of administrative procedure. First and foremost, maintaining internal consistency in law enforcement practice, avoiding arbitrary changes to established procedures, and ensuring the stability of court decisions is crucial. The creation of internal coordination mechanisms, such as necessary assessments of the legal position, inter-chamber coordination of practice, and expert examination of court decisions, is necessary in addition to the self-discipline of the judicial system^[42]. Secondly, judicial standards should be included in official rulemaking. This means that when legislators create new regulations or administrative regulations, they must directly take advantage of established judicial approaches, include them in their explanatory notes, and consider them in regulatory assessments. This will close the gap between regulation and law enforcement, making the latter more pragmatic, situational, and people oriented.

Third, it is essential to ensure that employees in the civil service and legal field receive professional training, including learning about significant judicial roles, the procedures of the ESP and CJEU, methods of interpreting administrative norms, and the ability to apply precedent. Higher education programs and the system of advanced training for judges, lawyers, and civil servants should naturally include this information in their curricula. Only then can judicial practice serve as a living source of law and cease to restrict a small group of specialists. Fourth, it is essential to establish a centralized, open, and functional register of the Supreme Court's legal positions in the field of administrative law, where decisions will be organized by topic, marked by the degree of stability and applicability. In addition to the tool for legal practice, such a register will help

spread the culture of legal confidence throughout the administrative administration^[43].

Ukraine has all the necessary conditions to become a model of a transformational state, where judicial practice is not an additional tool for interpreting the law but rather a full-fledged source of legal standards. Currently, Ukraine is at a key point in its historical development and integration into the European space of the rule of law. To ensure the legitimacy of judgments and to build faith in institutions, this is especially important in administrative law, an area where the state interacts directly with persons where error or formality can cause specific harm and in a fair manner. The daily operations of the judicial system, its ability to think doctrinally, its consistent and responsible behavior, and the consideration of both the text and the spirit of the law contribute to the development of a high-quality administrative procedure^[44]. Therefore, until the role of judicial practice is recognized institutionally, systematized, and incorporated into managerial and educational processes, the European future of Ukrainian administrative justice will remain a declaration rather than a reality.

5. Conclusions

The study revealed that judicial practice in Ukraine has become a significant source of creating rules for the administrative process, particularly in the context of regulatory fragmentation and the prolonged absence of unified, codified legislation. In particular, at the level of the Supreme Court, judicial jurisprudence assumed a compensatory role, defining key concepts of good governance, discretion, proportionality, transparency, and individual rights, as well as filling legislative gaps and determining the content of administrative rules. The Europeanization of Ukrainian administrative justice is demonstrated by the generalization of the Ukrainian Court's decisions and a comparison with the practices of the ECHR, CJEU, *Conseil d'État*, and *Bundesverwaltungsgericht*.

Domestic courts increasingly use good administration standards as a criterion for determining whether there is legitimate action by public authorities. Particularly significant decisions have been made regarding the right to be heard, the need for sufficient notice, the reasoning behind the decisions, and acquiescence. Subsequently, these aspects were codified in the Law of Ukraine "On

Administrative Procedure”.

However, the institutionalization of judicial adoption of rules is necessary for the effectiveness of this approach. All subjects of public administration should be able to access, stabilize, and standardize judicial practice. It is necessary to create an open register of legal positions, standardize practice reviews, and integrate judicial approaches to rule-making and training, which is critical. In the absence of this, jurisprudence will continue to function as a disparate and complex tool instead of a system regulator. Thus, the Ukrainian experience confirms the ability of judicial practice to serve as a driver of administrative law reform, thereby increasing legal predictability, the quality of management, and harmonization with European standards. Institutionalizing one's role is a prerequisite for building a fair, effective, and rights-oriented model of administrative procedure. The corresponding vector of development for Ukraine is demonstrated by the use of fundamental components that already exist in the systems of France and Germany, such as the right to be heard, the obligation to justify decisions, the limits of discretionary powers, the right of access to administrative information and the principle of tacit consent. These European methods have already been integrated into Ukrainian judicial practice, paving the way for further alignment of the country's good governance model with the norms of EU member states. However, to maintain the stability of legal regulation, excessive judicial rulemaking should be avoided; the fundamental principles of good governance should be established at the legislative level, and the central role of judicial practice should be to interpret and explain.

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