

THE RIGHT TO A FAIR TRIAL IN ADMINISTRATIVE PROCEEDINGS

Zhuravel T. V., Nikitina D. S., Dorofeeva S. V.

INTRODUCTION

The fundamental guarantee of the protection of individual rights, as well as the basic criterion of democracy of any modern society, is the right to a fair trial. Its content and normative architecture are disclosed in detail in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This international legal norm is not just a declaration, but an effective procedural mechanism that provides every person with a real opportunity for a public hearing of his case by a proper, independent and impartial court established exclusively on the basis of law. Moreover, such a hearing must take place within a reasonable time, which prevents the prolongation of legal uncertainty. It is important to emphasize that the scope of this article is as broad as possible: it covers both civil disputes (regarding private rights and obligations) and the verification of the validity of any criminal charges brought against a person.

At the current stage of the transformation and modernization of the legal system of Ukraine, the issue of implementing the principles of fair trial in the administrative sphere is gaining particular urgency and practical significance. Since in cases of this category an ordinary individual or legal entity directly confronts a powerful state apparatus endowed with power and financial resources, the right to a fair trial becomes the main, and often the only effective legal safeguard against administrative arbitrariness, bureaucracy, and illegal decisions of government bodies.

According to the systematic findings of the European Commission for Democracy through Law (Venice Commission), this right is an integral and central element of the general paradigm of the Rule of Law. Without proper judicial protection, all other substantive human rights are transformed into an illusion. A comprehensive analysis of the provisions of the Convention itself, as well as the vast body of case law of the European Court of Human Rights (ECHR), allows us to structure this institution and identify its key, interconnected components.

In its decisions, the European Court consistently interprets the right to a court not as an abstract or purely theoretical declaration, but as a real, practical ability of a specific person to initiate proceedings in a judicial institution. This implies a direct positive obligation of the state: government institutions must refrain from any actions or regulatory steps that create artificial legal or factual obstacles to

the implementation of this opportunity. Access to court must be effective, and not only formally prescribed in the texts of codes.

At the same time, it is worth noting that this right, by its legal nature, is not absolute. The States Parties to the Convention are granted a certain “margin of appreciation” in regulating and establishing the rules of judicial procedure, including the introduction of limitation periods, requirements regarding the form of claims or the payment of court fees. However, the ECtHR strictly supervises that the established internal restrictions do not narrow or nullify the very essence and core of the right to a court. Any restriction of access to a court will be contrary to Article 6 § 1 of the Convention if it does not pursue a legitimate State or public aim, or if there is no reasonable balance of proportionality between the chosen procedural methods and that aim. A classic example of such a strict position of the Court is the well-known case “Prince Hans-Adam II of Liechtenstein v. Germany”, where it was emphasized: restrictions must not undermine the very essence of the right, and their application must be foreseeable for the person seeking justice.

The fairness of the judicial process and public trust in it are inextricably linked to the strict observance of the principle of legal certainty. One of its main manifestations is the doctrine of *res judicata*, i.e. the principle of the finality of a court decision.

1. Conceptual principles and content of the right to a fair trial

The Ukrainian model of implementing this right is currently operating under the simultaneous influence of several factors. First, judicial reform and the renewal of judicial governance bodies are ongoing. Second, martial law has objectively complicated the organization of the work of courts, territorial accessibility of justice, issues of security of participants in the process, personnel stability and financing of the system. Third, administrative justice itself generates a significant number of socially sensitive disputes related to pensions, social payments, public service, migration, tax and customs relations, as well as appealing decisions of executive authorities. All these categories of cases require not only legal accuracy, but also timeliness, since delaying consideration here often means a long-term violation of the individual's rights. It should be emphasized separately that the modern implementation of the right to a fair trial in Ukraine is already largely based on international legal standards. This is manifested both at the level of legislation and through judicial practice, in which the standards of the Convention and the practice of the ECHR are increasingly used. However, the implementation of these standards often remains uneven. The problem is not only that the judge knows the Convention approaches, but also that the system as a whole allows them to be followed. If a judge has an excessive amount of cases, lacks time to prepare a full motivation for a decision, and works in conditions of a general personnel imbalance, then even a high level of legal

culture of an individual judge does not eliminate the systemic risk of violating the right to a fair trial.

That is why the path to better implementation of this right in Ukraine must be comprehensive. First of all, it is necessary to accelerate the procedures for selecting, evaluating, and appointing judges, especially for those jurisdictions and regions where the workload is most critical. Official materials of the judiciary directly link increasing the efficiency of justice with filling vacancies and strengthening the institutional capacity of the Supreme Court of Justice of the Kyrgyz Republic and the Supreme Court of Justice. Further, more precise planning of the network of vessels and load redistribution mechanisms is needed¹.

If in some courts the workload indicators are critically high, and in others they are lower, the system should have flexible organizational tools that do not destroy the principle of the natural judge, but allow to avoid chronic overload of individual courts.

No less important is the digitalization of administrative justice. Electronic court, remote participation in meetings, digital management of case flow, electronic notification of participants in the process and proper functioning of court information systems can significantly affect the speed and predictability of the process. But digitalization should not be considered as a self-sufficient means. It will be effective only if the system is staffed, properly funded and equally technical accessibility for participants in the process. Otherwise, there is a risk that digital solutions will only superimpose on existing organizational problems².

Another area of improvement is to strengthen the quality of reasoning of court decisions in administrative cases and the unity of practice. The right to a fair trial includes not only the opportunity to be heard, but also the right to receive a decision whose motives are clear, consistent and verifiable. This is especially important for administrative justice, since it is through motivation that the court outlines the limits of permissible administrative discretion, standards of proof in a public-law dispute, and criteria for monitoring the legality of decisions by subjects of power. Qualitative motivation also affects trust in the judiciary, which official documents of the judicial system directly call one of the basic conditions for the legitimacy and effectiveness of justice.

¹ Tytykalo R., Pavlovska N., Kovalenko I. Legal liability of local self – government bodies and officials for failure to implement programs of socio-economic development of the hromada Baltic journal of economic studies 2022 Vol 8 Iss 5 P 191-197 DOI 10.30525/2256-0742/2022-8-5-191-197 <https://www.webogscience.com/wos/woscel/jull-record/wos/00934017000015>.

² Kovalenko L., Koval K., Gorban T., Mykhailenko T. APPLICATION OF INFORMATION TECHNOLOGIES IN ADOPTION OF ADMINISTRATIVE ACTS. Court cases, human rights and philosophy as the main components of the study of jurisprudence: collective monograph / Boldyriev S., Steshenko T., Hovorukha L., Linnyk M. – etc. – International Science Group. – Boston : Primedia eLaunch, 2024. 106 p. Available at : DOI – ISG.2024.MONO.LEGAL.3.C. 17-26.

The right to a fair trial in administrative justice in Ukraine today has an appropriate regulatory basis, but its full implementation is significantly complicated by organizational and institutional factors. The main unresolved part of the problem is the gap between the standard of a fair trial, formed in legislation and international law, and the actual ability of administrative courts to ensure timely, high-quality and impartial consideration of cases in conditions of excessive workload and staff shortage. Data on 508,060 cases and materials received by local administrative courts in 2024, as well as 1,455 vacant judicial positions in local courts as of April 1, 2026, convincingly demonstrate the systemic nature of this problem.

In practical terms, this means that none of the parties to the proceedings has the right to demand a review of a final and binding court decision solely for the purpose of re-hearing and adopting a new verdict in its favor. Higher courts may overturn decisions only to correct fundamental errors or miscarriages of justice, and not because of a subjective desire to reassess the evidence.

A final and binding verdict of a court of last instance cannot be unreasonably or arbitrarily revised or overturned out of court. This clear position has been reflected and developed in detail in a number of ECHR decisions regarding Ukraine.

In particular, in the cases of *Tregubenko v. Ukraine*, *Naumenko v. Ukraine*, *Poltorachenko v. Ukraine* and *Timotievich v. Ukraine*, the Court stated that the practice of annulling final decisions due to outdated or non-transparent supervisory procedures directly violates the stability of civil and economic turnover, undermining citizens' faith in the rule of law.

The cornerstone and core of the entire paragraph 1 of Article 6 of the Convention is the concept of "equality of arms". According to this standard, each party participating in the process must have identical and adequate chances to present its legal position, submit evidence and participate in the study of the circumstances of the case. The procedural order must be constructed in such a way that none of the participants is in a knowingly losing or significantly worse position compared to its opponent (especially when the opposition is a powerful state body).

This approach is directly implemented through the fundamental principle of adversarial proceedings. The participants in the case have the legal right not only to know about the existence, but also to familiarize themselves in detail with all the arguments, written materials and evidence provided by the other party or which appear at the disposal of the court, as well as to express their own objections and considerations regarding them. Any backrooming or concealment of materials destroys trust in the court. Clear examples of the finding of systemic violations of these

The preserved adversarial principles due to the procedural passivity of the courts or the privileged position of prosecutors are contained, in particular, in the cases of “Koval v. Ukraine” and “Belukha v. Ukraine”.

The judicial branch of power by its nature must be absolutely autonomous from political or administrative pressure and completely objective. Any direct or indirect attempts at state or extrajudicial influence on the course of the pre-trial investigation or directly on the trial are harshly criticized and blocked by the practice of the ECHR. The doctrine at work here is that justice must not only be administered, but also demonstrate with all its appearance that it is administered fairly (the test of external perception).

The key is both the institutional right of judges to independently, guided exclusively by the Constitution and laws, make decisions without regard to the position of the executive or legislative branches, and the absolute impossibility of arbitrarily delimiting the powers of courts and administrative bodies. This provision is based on the classical constitutional principle of separation of powers, which guarantees a balance of checks and balances. If an administrative body takes over the function of a court or if a court replaces an official, the entire logic of the rule of law breaks down. Important benchmarks in this context are the relevant cases: “Sokurenko and Stryhun v. Ukraine” (which concerned the court’s exceeding its legal competence) and “Sovtransavto-Holding v. Ukraine”, where the Court directly indicated the inadmissibility of interference by senior state officials in the consideration of a commercial dispute³.

The criterion of “reasonableness of time” of judicial proceedings is dynamic and directly depends on the unique specifics of each specific proceeding. To objectively assess the duration of the consideration of a case by national courts, the ECHR uses a clearly defined system of parameters, which includes:

- the degree of legal and factual complexity of the case (number of volumes, expert opinions, witnesses);
- efficiency, speed and consistency of actions of state bodies (both investigations and courts);
- the procedural behavior of the applicant himself (whether he abused his rights or disrupted the meeting);
- the presence of exceptional or critical circumstances that require special efficiency (for example, labor disputes, cases of child custody or the health of the person).

In turn, the openness of the process (the principle of publicity) performs the most important social function – it protects citizens from arbitrariness and "secret justice", ensuring the transparency of the work of the judiciary.

³ LARISA KOVALENKO, David Eldar Ogly Dzhaferov & Anastasia Arnautova. (2025). Features of digitalization and artificial intelligence of public administration. *Metaverse Science, Society and LAW*, 2. 20-47 p. (2025)1(2). 31-56 p. DOI: <https://doi.org/10.69635/mssl.2025.1.2.24>

Although in certain cases clearly defined by law (protection of private life, state secrets, interests of minors) the direct consideration of the case may take place in closed mode, the announcement or publication of the final court decision under any circumstances must be public and accessible to the public.

2. Features of the implementation of the right to a fair trial in criminal proceedings

The criminal aspect of Article 6 of the Convention contains increased standards of protection, since the freedom, reputation and personal integrity of a person are at stake.

1. Presumption of innocence (Article 6, paragraph 2): Everyone is considered absolutely innocent of committing a crime until his guilt is proven in accordance with the procedure established by law and confirmed by a court verdict that has entered into legal force. This implies a strict prohibition: state officials, prosecutors, police representatives or political figures do not have the right to make public statements, assert the guilt of a person or call him a “criminal” before the official court verdict. Such premature statements form biased public opinion and put pressure on the court.

2. Minimum guarantees of protection (Article 6, paragraph 3): This paragraph contains a detailed list of imperative rights of the accused, which cannot be narrowed down. They include:

- the right to be informed promptly, in detail and intelligibly in the accused’s own language of the nature and cause of the accusation against him;
- providing sufficient time and opportunities to prepare one’s defense strategy and communicate with lawyers;
- the right to defend oneself in person or through a defense attorney of one’s own choosing, and in the absence of funds, to receive free legal assistance at the expense of the state;
- the right to cross-examine witnesses for the prosecution and equal conditions for calling and examining witnesses for the defense;
- the absolute right to free interpreter services if the person does not understand the language of the proceedings.

Systematic violations of these minimum criminal standards in Ukraine, related to pressure on the defense or untimely explanation of rights, have been recorded in many decisions, a vivid example of which is the case of Oleg Kolesnyk v. Ukraine.

Scope of Article 6 of the Convention in administrative disputes

Historically, Article 6 of the Convention was created mainly for classic civil and criminal proceedings. However, thanks to the long-term evolutionary interpretation and dynamic practice of the ECHR, its scope has been significantly expanded and today covers the vast majority of public law and administrative disputes. The Court applied the autonomous concept of “civil rights and

obligations”, shifting the focus from the form of relations to their immediate content and consequences for the individual. In particular, the following key areas of administrative justice fall under the protection of Article 6:

- Public service: Any property and procedural issues related to the recruitment of citizens to the service, its direct passage, bringing to disciplinary responsibility, as well as dismissal from office (resonant and defining for Ukrainian practice cases “Olexandr Volkov v. Ukraine” and “Vilho Eskelinen v. Finland”).

- Social protection and pensions: Acute disputes between citizens and social protection bodies or the Pension Fund regarding the accrual, payment or deprivation of benefits, subsidies and pensions (the basic precedents are “Salesi v. Italy” and “Feldbrugge v. the Netherlands”).

CONCLUSIONS

- Specific administrative procedures: These include complex environmental issues (right to a safe environment), procedures for issuing, revoking or suspending business licenses, as well as constitutional and quasi-judicial disputes, if their outcome directly and significantly affects the property status or fundamental rights of an individual (judgments in the cases of Ruiz Mateos v. Spain and Tashkin v. Turkey).

The specificity of disputes with the state determines the specific content of the key elements of fair trial:

1. Accessibility of justice: It involves the creation by the state of such conditions under which a person can freely apply to the court for protection. This means the absence of excessive property (high court fees) or procedural barriers. The established procedural restrictions – for example, the clear deadlines for applying to the court, provided for by the Code of Administrative Procedure of Ukraine (CAPU) – are recognized as legitimate, but they must be clear, foreseeable and proportionate, without becoming a trap for the plaintiff (the case of Leslie Stubbing v. the United Kingdom).

2. Procedural equality (equality of arms): In the landmark judgment in the case of *Dombo Becher v. the Netherlands*, the ECtHR emphasized the critical importance of ensuring a “fair balance” between the parties. In administrative proceedings, this balance is by default biased in favor of the state body that owns the archives, documents and legal staff. Therefore, a situation is recognized as a gross violation when a person is not given the opportunity to familiarize himself with and express his opinion on internal documents, reports or inspection materials on which the contested decision of the authorities is based (see the precedent ECH-1995-1-004).

3. The criterion of reasonable time: The duration of the consideration of an administrative dispute is of great importance, since a delay in the cancellation of an unlawful act can lead to the bankruptcy of an enterprise or the loss of a person’s livelihood. The State bears direct responsibility for the proper organization of its

judicial system. A heavy workload for judges or a shortage of personnel is no justification for chronic delays in the consideration of cases (the fundamental case of *Guincho v. Portugal*).

The current norms of the Code of Administrative Procedure of Ukraine have been systematically and deeply adapted to the requirements of the Convention, which has been reflected in specific institutions:

- Reasonableness of terms (Articles 2, 122 of the Code of Administrative Procedure): It is legally established that the terms of consideration of cases and performance of individual procedural actions are determined as objectively necessary, minimum time for a high-quality resolution of the dispute, which cannot be unreasonably extended by the court.

- The principle of adversarial nature and the principle of official clarification of circumstances (Article 9 of the Code of Administrative Procedure): This is a unique and most important philosophical feature of the administrative process. Unlike a purely civil dispute, in an administrative court there is a presumption of guilt of the subject of power (the burden of proof is placed on the official). Moreover, the court has the right, on its own initiative, to request additional evidence, to go beyond the claims for the full protection of human rights. This really compensates for the actual inequality of power between the average citizen and the state apparatus.

- Publicity and transparency (Article 152 of the Code of Civil Procedure): The right of participants to be heard, to participate in court debates and to express their arguments openly is guaranteed. The court's unjustified refusal to hold an open hearing or the unjustified consideration of a case in a simplified (written) procedure, when the circumstances required an oral discussion, is recognized as a direct violation of the right to a court (see case ECH-1995-1-005).

- The right to professional legal assistance (Article 16) and language guarantees (Article 68 of the Code of Civil Procedure): Ensures that a person has the opportunity to engage qualified lawyers, use the services of interpreters at the expense of the budget, which eliminates any language or professional barriers in court.

- Direct examination of evidence (Article 86 of the Code of Administrative Procedure): The judge is obliged to personally perceive, study and evaluate all the evidence available in the case (interrogate witnesses, examine original documents).

In parallel, the constitutional right of a person not to testify against himself (Article 63 of the Constitution of Ukraine) operates in the process, which is an integral part of the pan-European “right to silence” and protection against self-incrimination (see the classic decision “*Saunders v. Great Britain*”).

It can be reasonably argued that the right to a fair hearing within the framework of administrative justice is not just an abstract

procedural norm, but a basic, fundamental tool for real control over the legality and legitimacy of the activities of government institutions. This institution integrates a complex set of interrelated guarantees: from real, unconstrained by financial factors, accessibility of the judicial institution to ensuring the absolute impartiality of arbitrators, compliance with the equality of "procedural weapons" and the efficiency of dispute resolution. It is the quality, transparency and speed of the functioning of administrative courts that are the main, unmistakable indicator of the real implementation of the principle of the rule of law in the country and the ability of the state to provide effective, rather than declarative, protection of human rights and interests in its difficult relations with the authorities.

SUMMARY

The analysis clearly demonstrates that despite the thorough, high-quality implementation of European standards in the text of the Code of Administrative Procedure of Ukraine, the practical implementation of the right to a court in everyday life faces a number of chronic systemic challenges. In particular, the catastrophic overburdening of the judiciary, long-term vacancies in the courts, as well as serious shortcomings in the procedures for the enforcement of court decisions against the state and its bodies often nullify the very legal essence of the protection received by a person. This once again confirms the well-known thesis of the ECHR that fair proceedings are not limited only to the stage of consideration of the case and the issuance of a decision, but necessarily also cover the stage of actual, real implementation and execution of a judicial act.

The result of the further development of administrative justice in Ukraine is the overcoming of the existing unfortunate gap between progressive legislative declarations and their real practical implementation.

The priority areas of reform should be:

- strengthening the real institutional and financial independence of courts;
- cardinal optimization of procedural terms through total digitalization of processes (development of the "Electronic Court" system, remote sessions);
- creation of effective mechanisms for holding officials accountable for failure to comply with court decisions;
- strengthening the authority and trust in the judiciary in the eyes of the public.

References

1. Tytykalo R., Pavlovska N., Kovalenko I. Legal liability of local self – government bodies and officials for failure to implement programs of socio-economic development of the hromada Baltic journal of economic studies 2022 Vol 8 Iss 5 P 191-197 DOI 10.305 25|2256-0742|2022-8-5-191-197 <https://www.webgoscience.com/wos/wosce/jull-record/wos/00934017000015>.

2. Kovalenko L., Koval K., Gorban T., Mykhailenko T. APPLICATION OF INFORMATION TECHNOLOGIES IN ADOPTION OF ADMINISTRATIVE ACTS. Court cases, human rights and philosophy as the main components of the study of jurisprudence: collective monograph / Boldyriev S., Steshenko T., Hovorukha L., Linnyk M. – etc. – International Science Group. – Boston : Primedia eLaunch, 2024. 106 p. Available at : DOI – ISG.2024.MONO.LEGAL.3.C. 17-26.

3. Larisa Kovalenko, David Eldar Ogly Dzhafarov & Anastasia Arnautova. (2025). Features of digitalization and artificial intelligence of public administration. Metaverse Science, Society and LAW, 2. 20-47 p. (2025)1(2). 31-56 p. DOI: <https://doi.org/10.69635/mssl.2025.1.2.24>

Information about the authors:

Zhuravel Taras Vitaliyovych,

higher education student,

Yaroslav Mudryi National Law University

77, Hryhoriia Skovorody str., Kharkiv, 61024, Ukraine

Nakitina Daryna Serhiivna,

higher education student,

Yaroslav Mudryi National Law University

77, Hryhoriia Skovorody str., Kharkiv, 61024, Ukraine

Dorofeeva Sofia Vasylivna,

higher education student,

Yaroslav Mudryi National Law University

77, Hryhoriia Skovorody str., Kharkiv, 61024, Ukraine