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PRE-TRIAL ADMINISTRATIVE DISPUTES RESOLUTION IN GERMANY, FRANCE, ITALY AND UKRAINE: COMPARATIVE ASPECT

Background. *This article highlights the main issues of the introduction and legislative approach to regulation of pre-trial administrative disputes resolution in Ukraine together with some examples from such European countries as Germany, France and Italy. Relevance of the contemplated study is that there is no exact definition of the concept "pre-trial administrative disputes resolution" in Ukrainian legislation, and there is also a lack of a clear understanding of the essence of pre-trial procedures in Ukraine. The purpose of the research is to analyze the existing practice of legal regulation regarding similar procedures in European countries of Romano-Germanic legal group as Germany, France and Italy and to define their effectiveness as well as to discuss the necessity of their being borrowed by Ukraine.*

Methods. *The methodological bases for the article are general and special methods of legal science, namely: the method of analysis, the method of synthesis, formal and logical, normative and dogmatic, comparative methods.*

Results. *It has been concluded that mediation and pre-trial administrative disputes resolution are different legal procedures both in Ukraine and in the legal practice of above-mentioned states. A brief description of the new institution for pre-trial dispute resolution in Ukraine – the complaint review commission – is offered. An illustrative comparative study of pre-trial dispute resolution procedures in Germany, France and Italy including an administrative complaint, objection to administrative act, remonstration, conciliation, extraordinary appeal, arbitration and examples of its application regarding administrative cases is observed. A brief description of the legal rules of Germany, France and Italy establishing mandatory pre-trial tax disputes resolution, disputes in the field of public service and disputes in the field of social guarantees is also provided.*

Conclusions. *The unequivocal need for the national legislature to apply the experience of legislative regulation and practice of mentioned countries regarding establishment of mandatory procedures for pre-trial administrative disputes resolution, in particular, tax disputes, is justified; the need for qualitative improvement and broader legal regulation of administrative appeal in Ukraine is confirmed; impracticality of establishing mandatory mediation in certain categories of administrative disputes before bringing an action to the administrative court is explained.*

Keywords: *administrative dispute, pre-trial administrative disputes resolution, mediation, administrative appeal, administrative court, administrative court proceeding.*

Background

This research is conducted to show key approaches and experience of European countries which already use the mechanisms of pre-trial administrative disputes resolution. Such countries as United Kingdom, France, Germany, Italy, The Netherlands, Poland, Croatia, Belgium and others have various practices of using pre-trial dispute resolution.

Prerequisites. Nowadays there is no defined concept of "pre-trial dispute resolution", including "pre-trial administrative dispute resolution" in Ukrainian legal system. Such a wording is used in legal rules and regulations which are legally binding for private persons but do not provide clear understanding of such mechanisms. It depends on the level of compliance with such legal rules by the participants of administrative legal relations.

Relevance of the study. This research is sufficient for the national doctrine of administrative law and process because the elaboration of effective pre-trial procedures for administrative disputes resolution will allow to reduce overload of administrative courts in Ukraine and facilitate the quick and fair resolution of the rest of complex cases by judges.

The purpose and the tasks of the study. The analysis of pre-trial dispute resolution procedures in several European countries will allow to realize which model of pre-trial disputes resolution is the most suitable for Ukraine at contemporary stage of political and legal development. This study allows to highlight positive and negative features of implementation pre-trial administrative dispute resolution in Ukraine. There is convincing attempt to present comparative scientific research to prove the necessity of wider legal regulation and more active usage with purpose to resolve legal administrative disputes in Ukraine with the help of pre-trial dispute resolution.

Methods

The methodological basis for the article are general and special methods of legal science, namely: the method of analysis, the method of synthesis, formal and logical, normative and dogmatic, comparative methods.

Results

Firstly it's necessary to outline that pre-trial dispute resolution is that concept which is very controversial in European countries as well as in Ukraine. Thus, there are no exact definition of pre-trial dispute resolution and concepts which it includes in Ukrainian legislation. In Europe the idea of pre-trial dispute resolution also differs from Ukrainian one. For example, according to the article 122 of Code of administrative justice procedure of Ukraine indirectly we can stipulate that pre-trial administrative disputes resolution refers to complaint of private person to the body of public administration in order to appeal its decision and to obtain suitable result without lawsuit to administrative court (Code of Administrative Justice of Ukraine, 2005, art. 122). At the same time, for example, in France the similar order to resolve one of kinds of administrative disputes – tax disputes – is established as competence of special tax commission which separately exists in each tax department. Recently similar procedure also was adopted and implemented in Ukraine. The special rules about the "commissions" within administrative body arose because of the implementation The Law of Ukraine "On administrative procedure" which is to become valid soon from 15.12.2023 (On the administrative procedure, 2021). First such commissions also are to be created from established date because it's stated directly at Exemplary Regulation on the Complaints Review Commission (hereinafter – Regulation). It's stipulated at Regulation that

commissions are to be created within separate administrative bodies (not everywhere), for example at central bodies of executive power, regional state administrations, local administrations and other various administrative bodies (On the approval of the Exemplary Regulation on the Complaints Review Commission, 2023, par. 5). So, there is as a group of competent people at apparatus of administrative body who are entitled to deal with complaints regarding administrative acts before they are to be appealed to administrative court. These "commissions" are considered as absolutely new collegial bodies for pre-trial administrative disputes resolution in Ukraine. They are created to resolve namely administrative disputes, not another groups of disputes in various fields of legal regulation.

That's why there are some options to define the essence of such phenomenon like pre-trial administrative disputes resolution depending on the particular jurisdiction. There is a special legislative act which deals with social relations related to mediation particularly in order to resolve civil, commercial, administrative and criminal disputes. It's called Law of Ukraine "On mediation", it was adopted comparatively recently – on the 16th of November, 2021. Since this moment the new page of development of dispute resolution in Ukraine was started. Because this Law contains legal definition and key characteristics of such legal instrument like mediation. Mediation under the legal rule is defined as out-of-court voluntary, confidential, structured procedure, during which the parties try to prevent the occurrence of conflict or settle an existing dispute through negotiations with the help of a mediator (On mediation, 2021, art. 1). That's why it is irrelevant to define mediation as pre-trial administrative dispute resolution procedure in Ukraine. Under Ukrainian national legislation mediation and pre-trial dispute resolution are different procedures because of their essence and ways of application. Mediation is strictly voluntary procedure, at the same time pre-trial dispute resolution can be established as mandatory procedure in some fields of administrative legal relations.

Nevertheless, lawyers in Ukraine affirm that mediation is the most perspective form of alternative dispute resolution as well as in administrative cases. In this context Oleksandr Drozdov, Oleh Rozhnov and Valeriy Mamnitskyi in their collaborative legal research about development of mediation emphasize that the state must guarantee access not only to the classic forms of the judiciary but also to alternative dispute resolution methods introduced at the national level. They mean mostly mediation when speaking about mandatory pre-trial dispute resolution which is established by the Constitution of Ukraine (Constitution of Ukraine, 1996, art. 124). So, they give possible explanation of implementation of pre-trial dispute resolution to national legislation through the mediation in some categories of cases, such as family and housing disputes, inheritance disputes, etc. But as was outlined above, this is controversial point of view to extend the concept of pre-trial dispute resolution to mediation which has the special regulation as out-of-court procedure and it differs from pre-trial procedure. Also, lawyers in this legal research made a general review that mediation particularly in administrative disputes it's something which is out of practice in Ukraine and even courts make false conclusions about it (Drozdov, Rozhnov, Mamnitskyi, 2021, p. 182-185). It can be assumed that it's complicated to apply mediation to administrative disputes at modern stage because clear understanding of such experience is currently absent in legal practice of Ukraine.

In contrary, another Ukrainian legal scientist Volodymyr Tylchyk in his qualified doctoral research notices that pre-trial dispute resolution of administrative disputes can be embodied as another mechanism which is different from mediation. He offers various practices of foreign countries and stipulates that administrative appeal is ratter to be considered as pre-trial dispute resolution than mediation. He explains that complaint to public administration in the pre-trial procedure isn't effective now in Ukraine because in most of cases it deliberately delays the process of consideration of administrative conflict. He also affirms that the problem of ineffectiveness of pre-trial administrative appeal in Ukrainian legal system can be solved by introducing obligatory pre-trial administrative appeals in separate categories of administrative disputes (Tylchik, 2020, p. 291).

In general, in order to define the necessity of full implementation of pre-trial dispute resolution in administrative disputes it's important to understand key advantages of resolving such disputes in such a way. The first advantage is quickness, that its faster than the process of trial in the court. Secondly, it's cheaper comparing to the litigation which is generally a wasteful way to resolve disputes, as it involves large costs (court fee, legal assistance of attorney, process of proofs gathering). Settling out of court also involves costs, but they are generally lower than court costs, and this is what we assume throughout. The total cost of a pretrial agreement is lower than the total cost of going to court. The key feature of these costs is that they are sunk by the time the settlement negotiation begins, and as such they are not the subject of negotiation, at the same in court we have another situation – during proceeding the issue of spending money for the services of court is to be resolved for the benefit of plaintiff or the defendant – that's why the parties can't fully concentrate on the case, they think about costs during all the trial. The third advantage of pre-trial dispute resolution is less quantity of formal procedures. The trial in the court demands lots of formal determined stages to be observed to move ahead to the dispute resolution. For example, during the proceeding in the court the parties have to file a lawsuit which must be strictly composed with elements according to the Law. If the lawsuit doesn't contain separate key information this one is to be left without action and if the mistake isn't eliminated by the plaintiff, then the claim is returned to plaintiff without consideration of essence of the dispute. The same situation occurs when the claimant doesn't pay the exact sum of court fee. During pre-trial dispute resolution parties usually aren't obligated to comply with these strict rules. In such a way there're illustrated the important advantages of pre-trial administrative dispute resolution over the court proceedings. And now it's clear why Ukrainian legal system also needs such a legal instrument to be fully implemented.

The qualified implementation of pre-trial administrative dispute resolution requires analysis of successful practices from abroad which can be used in Ukraine as positive experience. Many countries in European union have such examples to follow. The first of them is Germany.

German legal system has very similar construction and basic concepts as Ukrainian one. German legislation allows citizens to use pre-trial or "prejudicial" proceedings. The main aspects of prejudicial and judicial proceedings are codified into the Verwaltungsverfahrensgesetz (in German) or General Administrative Procedure Act and the Verwaltungsgerichtsordnung (in German) or Code of Administrative Justice Procedure (Code of Administrative Court Procedure Federal Law Gazette I, p. 846). There are various remedies of prejudicial proceedings in Germany exist. Some of them are fully formal (objection – Widerspruch) or mostly informal (informal complaint,

remonstration, petition). When challenging an administrative act citizen is usually obliged to file an objection with the administration before he can go to the court. And it isn't necessary to appeal the decisions taken after prejudicial administrative proceedings before going to the court. These pre-trial procedures save for the administration itself and citizens valuable time and costs because it means errors can be corrected without an expensive and time-consuming procedure before the courts. After the finishing the objection procedure parties have one month to claim to the administrative court. If the administrative authorities fail to decide on the filed objection a plaintiff can file a lawsuit to the court in three-month term after he filed his objection with the administrative authority (World bank, 2010, p. 70).

We can make an intermediate conclusion about obvious similarities between German and Ukrainian administrative procedures. For example, according to article 122 of Code of administrative justice procedure of Ukraine almost the same rules are established but with different terms (Code of Administrative Justice of Ukraine, 2005, art. 122). Thus, if the plaintiff has used the procedure of pre-trial dispute resolution a three-month period is established for an appeal to the administrative court, which is calculated from the day the decision after the consideration is delivered to the plaintiff. If a decision of administrative body on the complaint was not delivered to the claimant within the terms established by law, then a six-month term is established for applying to the administrative court. One feature in German legal system which differs from judicial procedures in Ukraine and another countries – the absence of formal requirements to file an action before a first instance courts: in Germany the parties do not need legal representation by a professional attorney or a university professor of law (World bank, 2010, p. 70). At the same time in Ukraine every clam which goes to the court must comply with the series of strict requirements which are obligatory to resolve the case, including the legal assistance only with professional attorney (but not in proceedings of little complexity as exception). The same regulation of mediation exists in Germany as in Ukraine. The Mediation Act in Germany as adopted to implement Directive № 2008/52/EG much earlier than in Ukraine – in 2012 (Mediation Act of Germany, Federal Law Gazette I p. 1474). Till present time mediation there functionates separately from pre-trial dispute resolution and has small impact on judicial system. Mediation there does in principle not diminish one's right to judicial protection (World bank, 2010, p. 7). Bavaria was the first land to introduce a mediation law and now only several lands in Germany have rules which require obligatory mediation procedures for certain types of claims (claims of up to 750 euros, disputes between neighbors, some defamation disputes). The role of mediation in Germany isn't so meaningful because judges there are obliged to initiate conciliation hearings prior to regular hearings and to foster amicable solutions at all stages of the court proceedings; and the necessity to apply alternative forms of dispute resolution outside the courtroom is small (Bälz, Hösch, 2023).

The next unique example of implemented pre-trial administrative dispute resolution is French legislation. France as Ukraine has the same form of governmental organization which is a mixed republic and the same form of territorial system is unitary state. In this context Germany has another way of statebuilding – it's parliamentary republic and federal state. That's why it's relevant to understand the separate principles of the judicial system through the model of pre-trial administrative dispute resolution especially in France. The first feature of pre-trial administrative dispute resolution in this country which differs from Ukraine and from Germany is the rule about compulsory mediation procedures in administrative law disputes. In 2016 in France mediation was defined as a form of alternative disputes resolution, and a mandatory preliminary mediation procedure was implemented as an experiment in some cases related to public service, as well as in cases regarding social benefits. So, when an administrative court receives a claim related to a dispute which is assigned to mandatory preliminary mediation procedure, and in case when the parties do not use alternative dispute resolution, such a case is to be transferred by the court to competent mediator. Decree № 2018-101 of February 16, 2018 which established a mandatory preliminary mediation procedure in some administrative cases as an experiment regulated the performing of mediator functions by administrative state bodies and this service is free of charge (Hrytsaenko, 2019, p. 125).

Among pre-trial administrative dispute resolution procedures in France it's possible to single out an "administrative appeal" (recours administratif) for the aggrieved citizen which can be filed to the body that took the contested decision, to a hierarchically superior authority or to governmental body with monitoring powers (Dragos, Neamtu, 2014, p. 63). Under the principle "if the administration does not answer the appeal within two months this silence amounts to a rejection" that can then be challenged before an administrative court. At the same time the powers of monitoring body have to be established by statute. All these administrative authorities usually have the same powers – quash or uphold the decision, change its legal basis; monitoring body also has powers to replace the decision which is adopted by the original authority (Dragos, Neamtu, 2014, p. 63). One more discussive question is the legality of mandatory appeals. French legal system contains special administrative appeal procedures which are obligatory. They concern tax law disputes, social security, labor law, banking, education, employment status of public servants etc. The main peculiarity that is worth to outline is the increasement of quantity of such groups of conflicts with mandatory preliminary procedure. On 25 of March 2022, the Code of Administrative Procedure of France was amended. So currently, mandatory pre-trial mediation is provided in administrative disputes regarding decisions of the Employment Center and individual decisions regarding public servants (in accordance with the Decree № 2022-433 on the mandatory mediation procedure applicable to some disputes regarding public servants and social disputes). Officials of local authorities, employees under the civil contract or employment contract in the Department of National Education, primary school, college or secondary school of such administrative-territorial units as Aix-Marseille, Bordeaux, Clermont-Ferrand, Lyon, Montpellier, Nantes, Nice, Normandy, Paris, Rennes, Versailles must firstly initiate mediation procedure before going to an administrative court to challenge the decision of their employer – the administrative body (Decree № 2022-433 of March 25, 2022 relating to the compulsory prior mediation procedure. 25.03.2022).

This indicates that the interest to pre-trial administrative dispute resolution currently grows and gives the results for judicial system. French legal scientists also emphasize the problem of the statutory provisions where it's difficult to define whether filing the appeal is mandatory or facultative. As we see not only Ukrainian legislation but also French legislation doesn't give exact list of mandatory pre-trial administrative disputes resolution procedures and it influences citizen's right to access court defence.

Some another way to solve public-law disputes in France is conciliation. Conciliation can be also mandatory. For example, conciliation committees are created in such fields as public health, intercommunal cooperation, state officials' disciplinary regulation, elaboration of urban development documents, public contracts. Public Contract Code stipulates about an advisory committee for amicable settlement of disputes between administrations and contractors (the contractors can bring an action before the administrative court only when pre-trial procedure isn't successful). What is really interesting is that Directive of European Union № 2008/52/CE of May 21, 2008 on mediation in civil and commercial matters, which was implemented in France through the ordinance of November 16, 2011, partly applies to administrative matters under the French administrative law. Nevertheless, the Parliament of European Union doesn't describe mediation in France as fully successful practice of implemented directive of European Union stated above (Dragos, Neamtu, 2014, p. 81).

The other European country which judicial system faces with regulations about pre-trial dispute resolution is the Italian Republic (Italy). These are some affirmations that in Italy mandatory pre-trial dispute resolution started its development even earlier than above mentioned European Directive № 2008/52/CE was adopted. Giuliana Romualdi in her scientific research notes about conciliation procedures which existed in the field of public services (disputes in communications matters, finance and investment service disputes between investors and financial agents, banking services disputes) (Romualdi, 2018, p. 53). She also indicates that for a long time in labor disputes and social security disputes it was required to make a mandatory hearing before bringing an action to the court. Then pre-trial settlement of these disputes became optional by Law which was adopted later (Romualdi, 2018, p. 54). But after the adoption of Directive № 2008/52/CE the situation repeated again but with mediation. The state authorities and legislative body with its new decrees and tax incentives encouraged to apply pre-trial mediation, part of procedures in several categories of disputes became mandatory again. Despite the Constitutional Court statements about the unconstitutionality of the mandatory mediation, the new rules establish compulsory mediation in tax-law disputes again.

Deeds of assessment of taxes which are to be issued by tax authorities when an amount of tax is lower than 50 thousands euros the Law enacts an advanced compulsory mediation procedure; mediation can involve disputes relating to deeds of assessment, deeds issuing penalties, notices of payment, denials of tax refunds, withdrawals of tax benefits or denials of tax amnesties, any other acts of tax administration (Maisto, 2022). Pre-trial mediation in these disputes is obligatory to apply. In another case it can be an obstacle to file a lawsuit to the court.

Italy also has another mandatory pre-trial mechanism in administrative matters which act nowadays. Till the reform of judicial system in 1971 it was widespread practice when appeal represented precedent for judicial review. But the inefficiency of such procedures at those times was proved. The administrative appeal that is still used widely enough across the range of administrative law is the riscorso straordinario. It means an extraordinary appeal which is much cheaper than court proceeding, provides more time to apply for (120 days) than trial (60 days) and is less of a challenge to hierarchical authority than judicial review (Dragos, Neamtu, 2014, p. 91). One more important feature of an extraordinary appeal which differs from the classic administrative appeal is that extraordinary appeal cannot be challenged in court. It's an exclusive type of appeal which is unlikely to be called pre-trial dispute resolution.

One more legal instrument which can be used by parties of administrative legal relations is arbitration. For now such procedure can be used in public procurement contracts. According to rules which Italian Public Procurement Code contains the authority which is a party of public procurement contract must propose in the public bid its intention to insert the arbitration clause in the contract. If the private contractor doesn't agree he must notify his position to the contracting authority. Other disputes which concern public interest with special bodies of public administration aren't allowed to be transferred to pre-trial arbitration process. Such amendments to legislative acts are being proposed but for now they haven't been adopted yet (Carrara et al., 2021). The main conclusion which is to be taken about means of pre-trial administrative disputes resolution is that Italian legal specialists and scientists consider them not so effective as other ways to resolve disputes. But the key thing which should be taken into account for Ukrainian lawyers, law-makers, professors is that such procedures and even mandatory procedures still exist. It proves their necessity for administrative justice and judicial system as a whole.

Discussions and conclusions

As understanded, the analyzed practices of administrative disputes resolution in Germany, France and Italy are not mostly defined as pre-trial procedures. Several of them are characterized with key features of pre-trial dispute resolution as appliance till the court procedure, the eligibility to initiate court proceeding by appeal of the result of pre-trial procedure and influence on general timing for filing the lawsuit (shorter terms). Such procedures as filing the objection, administrative appeal, special tribunals fall into such definition and key properties of pre-trial dispute resolution procedures. But in some exceptions (France) mandatory mediation in public service (educational) matters is established and such mechanism has the features of pre-trial procedure because mediation is the necessary requirement to apply for the further court defence. Thus, as realised it depends on the key rules of the particular procedure in certain jurisdiction to define whether it belongs to group of pre-trial dispute resolution; the name and the type of the procedure can't certainly indicate its essence without the context and the rules of appliance.

The proposed analysis of practice of pre-trial dispute resolution in Germany, France and Italy allows to stipulate that every mentioned in this research state tries to establish such procedures in order to reduce cases' amount in administrative courts. Another reason for extension of such practice is to ensure more accessible opportunities for private parties to defence their rights and interests with public administration before going to administrative court.

Obviously, in recent times in Ukraine this process also became more active (new rules about complaints review commission). But it isn't enough to achieve both of purposes of pre-trial administrative disputes resolution. It's highly recommended for Ukrainian legislature to consider the issue of implementation of compulsory dispute resolution in some areas of public-law regulation and to define by law categories of such disputes. The analysis of Ukrainian practice and legal regulation together with experience of European countries allows to allege that mediation can't be recognized as pre-trial dispute resolution procedure because it's absolutely separate process results of which cannot be appealed to administrative court. Moreover, the experience of Europe and pieces of research of Ukrainian scientists shows inexpediency of implementation mandatory mediation in separate administrative matters.

In general, the experience of all three above mentioned European countries demonstrates that mandatory pre-trial dispute resolution in separate categories of disputes positively influences on judicial system and particularly on the volume of cases in courts.

References

Bälz H., & Hösch A. (2023). The Dispute Resolution Review: Germany. *The Law Reviews*. https://thelawreviews.co.uk/title/the-dispute-resolution-review/germany

Carrara, C., Parlatore, S., Geronzi, D., Pastore, D., & Attanasio, E. (2021). *Arbitration procedures and practice in Italy: overview.* Country Q & A. Thomson Reuters Practical Law. https://uk.practicallaw.thomsonreuters.com/6-383-9187?transitionType=Default&contextData=(sc.Default)&firstPage=true

Code of Administrative Court Procedure of Germany from 1960 in the version of the promulgation of 19 March 1991 (Federal Law Gazette I page 686), amended by Article 5, subsection 24 of the Act of 21 June 2019 (Federal Law Gazette I page 846). https://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html

Code of Administrative Justice of Ukraine. (2005). *Vidomosti Verkhovnoi Rady Ukrainy.* Code from July 6, 2005. № 2747-IV, № 35–36, № 37, ст. 446 [in Ukrainian]. [Кодекс адміністративного судочинства України (2005). *Відомості Верховної Ради України.* Кодекс від 6 липня 2005 року, № 2747-IV, № 35–36, № 37, ст. 446]. https://zakon.rada.gov.ua/laws/show/2747-15#Text

Constitution of Ukraine. (1996). *Vidomosti Verkhovnoi Rady Ukrainy,* № 30, article. 141 [in Ukrainian]. [Конституція України. (1996). *Відомості Верховної Ради України,* № 30, ст. 141]. https://zakon.rada.gov.ua/laws/show/

Dacian, C., Dragos, D. C., & Neamtu, B. (2014). *Alternative Dispute Resolution in European Administrative Law.* Center for Good Governance Studies Babes Bolyai University Cluj Napoca. Springer. https://link.springer.com/book/10.1007/978-3-642-34946-1#bibliographic-information

Decree № 2022-433 of March 25, 2022 relating to the compulsory prior mediation procedure applicable to certain civil service disputes and certain social disputes. *Journal Officiel De La République Française*. Text № 25. Published on 27th of March 2022. https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045412363

Drozdov, O., Rozhnov, O., & Mamnitskyi, V. (2021). Mediation and Court in Ukraine: Perspectives on Interaction and Mutual Understanding. *Access to Justice in Eastern Europe*, 3(11), 181–190 [in Ukrainian]. [Дроздов, О., Рожнов, О., & Мамницький, В. (2021). Медіація та суд в Україні: перспективи взаємодії та взаєморозуміння. *Доступ до правосуддя у Східній Європі*, 3(11), 181–190].

Hrytsaenko, O. (2019). On the issue of alternative ways public-law disputes resolution. *Scientific notes of Lviv University of Business and Law*, 23, 122–126. https://nzlubp.org.ua/index.php/journal/article/view/209 [in Ukrainian]. [Грицаєнко, О. (2019) До питання альтернативних способів врегулювання публічно-правового спору. *Наукові нотатки Львівського університету бізнесу та права*, 23, 122–126]. https://nzlubp.org.ua/index.php/journal/article/view/209

Maisto, G. (2022). *Spotlight: commencing tax disputes in Italy*. Lexology. https://www.lexology.com/library/detail.aspx?g=e584967f-013a-4ecb-b9ae-33dcccd5b68f

Mediation Act of 21 July 2012 (Federal Law Gazette I, p. 1577), amended by Article 135 of the Statutory Instrument of 31 August 2015 (Federal Law Gazette I p. 1474). Federal Ministry of Justice of Germany. https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html

Official Visnyk of Ukraine. (2021). *On Mediation*. Law of Ukraine from November 16, 2021. № 1875-IX, № 98, p. 15, article 6340, code 108952/202 [in Ukrainian]. [Офіційний вісник України. (2021). *Про медіацію*. Закон України від 16 листопада 2021 року № 1875-IX, № 98, с. 15, ст. 6340, код акта 108952/202]. https://zakon.rada.gov.ua/laws/show/1875-20#Text

On the administrative procedure. (2023). *Uriadovyi kurier,* from July 12, 2022, № 151. Law of Ukraine from February 17, 2021, № 2073-IX [in Ukrainian]. [Про адміністративну процедуру. (2023). *Урядовий кур'єр,* 12 липня 2022 року, № 151. Закон України від 17 лютого 2022 року, № 2073-IX]. https://zakon.rada.gov.ua/laws/show/2073-20#Text

On the approval of the Exemplary Regulation on the Complaints Review Commission. (2023). *Uriadovyi kurier, 5 May, 2023,* № 90. Decision of the Cabinet of Ministers of Ukraine from 28 April, 2023 № 420 [in Ukrainian]. [Про затвердження Примірного положення про комісію з розгляду скарг. (2023). *Урядовий кур'єр*, 5 травня 2023 року, № 90. Постанова Кабінету Міністрів України від 28 квітня 2023 року № 420]. https://ips.ligazakon.net/document/view/kp230420?an=1.

Pre-trial Procedures in Administrative Justice Proceedings in England and Wales, France, Germany and the Netherlands. (2010). A comparative study with a view to the possible development of pre-trial procedures in administrative law in Turkey. World bank. https://openknowledge.worldbank.org/server/api/core/bitstreams/cb6de960-5eb1-5cd6-a90d-01cb19677404/content

Romualdi, G. (2018). Problem-Solving Justice and Alternative Dispute Resolution in the Italian Legal Context, 14, 3. http://doi.org/10.18352/ulr.468

Tylchik, V. (2020). *Theoretical, methodological and legal principles of resolution of disputes by administrative courts in the area of public legal relations* [Unpublished doctoral dissertation]. Institute of the Ministry of Internal Affairs of Ukraine [in Ukrainian]. [Тильчик, В. (2020). *Теоретико-методологічні та правові засади розв'язання адміністративними судами спорів у сфері публічно-правових відносин* [Рукопис докторської дисертації]. Державний науково-дослідний інститут Міністерства внутрішніх справ України].

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ДОСУДОВЕ РОЗВ'ЯЗАННЯ АДМІНІСТРАТИВНИХ СПОРІВ У НІМЕЧЧИНІ, ФРАНЦІЇ, ІТАЛІЇ ТА В УКРАЇНІ: ПОРІВНЯЛЬНИЙ АСПЕКТ

В с т у п . ***Висвітлено основні проблеми запровадження та законодавчого підходу до регулювання досудового розв'язання адміністративних спорів в Україні, наведено приклади такого регулювання у європейських країнах – Німеччині, Франції та Італії. Актуальність дослідження полягає в тому, що донині в українському законодавстві відсутня чітка дефініція поняття "досудове розв'язання адміністративних спорів", а також відсутнє чітке розуміння процедур, що належать до досудових. Мета дослідження – проаналізувати усталену практику правового регулювання зазначених процедур у європейських країнах із правовими системами романо-германської правової сім'ї, таких як Німеччина, Франція та Італія, і визначити їх ефективність та необхідність запозичення подібної практики для України.***

М е т о д и . ***У статті використано такі загальні та спеціальні методи юридичної науки, як-от: аналізу; синтезу; формально-логічний; нормативно-догматичний; порівняльний.***

Р е з у л ь т а т и . ***Установлено, що медіація та досудове розв'язання адміністративних спорів – це різні правові процедури, як в Україні, так і в юридичній практиці названих держав. Запропоновано коротку характеристику нової інституції для досудового розв'язання спорів в Україні – комісії з розгляду скарг. Проведено показове порівняльне дослідження процедур досудового розв'язання спорів у Німеччині, Франції та Італії, до яких належать: адміністративна скарга; заперечення на прийнятий адміністративний акт; протест; консиліація; надзвичайна скарга; арбітраж; роз'яснено особливості застосування таких процедур розв'язання адміністративних справ у названих країнах. Також наведено короткий опис законодавчих норм Німеччини, Франції та Італії, що встановлюють обов'язкове досудове врегулювання податкових спорів, спорів у сфері публічної служби та сфері соціальних гарантій.***

В и с н о в к и . ***Обґрунтовано однозначну необхідність використання національним законодавцем досвіду законодавчого регулювання та практичного застосування європейських країн у запровадженні обов'язкових процедур досудового розв'язання адміністративних спорів, передусім у податкових спорах; підтверджено необхідність якісного вдосконалення та ширшого правового регулювання інституту адміністративного оскарження в Україні; обґрунтовано недоцільність закріплення обов'язкового проведення медіації в окремих категоріях адміністративних спорів перед зверненням до адміністративного суду.***

К л ю ч о в і с л о в а : ***адміністративний спір, досудове розв'язання адміністративних спорів, медіація, альтернативне розв'язання адміністративних спорів, адміністративне оскарження, адміністративний суд.***

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