Administrative Justice as a Tool for Influencing Public Administration

In this article, we analyse how administrative justice affects public administration; the consequences of institutional instability in the judicial system, using the example of the liquidation of the District Administrative Court of Kyiv; and the prospects and risks of creating new administrative courts.

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The task of administrative justice is to ensure the fair, impartial and timely resolution of disputes in the field of public law relations by the court in order to effectively protect the rights, freedoms and interests of individuals, as well as the rights and interests of legal entities from violations by public authorities.

However, administrative justice is not only a mechanism for resolving disputes, but also a tool of democratic oversight and reform of public administration. It ensures a balance between the authorities and citizens, promotes transparency, legal certainty and trust in the state.

The right of individuals and legal entities to challenge decisions, actions or omissions of public authorities enables them to provide feedback to the state and monitor the extent to which the authorities comply with the law.

Administrative courts also play a role in shaping law enforcement practice through judicial precedents and typical court decisions, which force authorities to review their decisions and approaches to decision-making.

Gaps identified during court proceedings stimulate changes in legislation, and thus, administrative justice acts as a catalyst for reform.

The existence of an effective administrative justice system is a sign of a democratic, law-abiding state where the government is accountable to its citizens, which is important in the context of European integration and the fulfilment of the Copenhagen criteria. In particular, an applicant country must have stable institutions that promote democracy, the rule of law, human rights and respect for minority rights.[1] That is why the liquidation of the District Administrative Court of Kyiv (DACK) (as an example of the instability of such institutions) came to the attention of the European Commission.

The DACK had exclusive jurisdiction over appeals against acts of the Cabinet of Ministers of Ukraine, ministries, other central executive authorities, the National Bank and other bodies whose powers extend throughout Ukraine. In other words, the DACK was a court that considered cases of national significance and had a direct impact on the functioning of the highest authorities.

The liquidation of the DACK was initiated due to a series of high-profile scandals, allegations of corruption and decisions that were considered politically motivated.[2] On 13 December 2022, Law No. 2825-IX on the liquidation of the DACK was adopted, and on 15 December 2022, this court ceased to administer justice.

At the same time, this transformative decision, which civil society perceived as a step towards restoring trust in the judicial system and state authority, had a downside — it caused a collapse in the administrative justice system and led to violations of citizens' rights and a weakening of the protection of state interests.

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[1] The path to the EU: the Copenhagen criteria.

[2] For example, the cancellation of PrivatBank's nationalisation, the cancellation of the new Ukrainian spelling rules, the scandal with the so-called 'judicial roulette' — a system for circumventing the automatic distribution of cases among judges, and many others.

At the time of its liquidation, the DACK had more than 60,000 cases and files pending, of which almost 21,700 were received between 1 January and 14 December 2022 alone. This was one of the highest figures among all district administrative courts. During the same period, DACK judges considered 21,500 cases, of which 82% (17,500) were decided in favour of the plaintiffs.

To consider administrative cases with territorial jurisdiction in Kyiv (replacing the DACK), it was planned to establish a new Kyiv City District Administrative Court. Until its launch, the consideration of cases was temporarily transferred to the Kyiv District Administrative Court (Kyiv Oblast). However, at that time, only 23 judges were working in this court, who were already considering more than 30,000 cases, and the process of transferring files was delayed due to the low throughput capacity of its office.[3]

The citizens who appealed against the actions of state or local authorities were the most affected by the liquidation of the court. Significant difficulties also arose in cases that could previously only be considered by the DACK, which explained its special role in the national judicial system — in cases involving central executive authorities.

The Kyiv City District Administrative Court was only registered as a legal entity. Its launch was delayed due to a staffing crisis linked,[4] in particular, to the fact that the bodies responsible for selecting judges — the High Council of Justice and the High Qualification Commission of Judges (HQCJ) — were undergoing reform and were not functioning.

Thus, after the liquidation of the DACK, the system was unable to promptly replace this key institution, which led to delays in the consideration of cases, violations of deadlines and restrictions on citizens' access to justice.

The European Court of Human Rights in the case of Zimmermann and Steiner emphasised that the Convention for the Protection of Human Rights and Fundamental Freedoms obliges Contracting Parties to organise their legal systems in such a way as to enable courts to ensure that cases are heard within a 'reasonable time'. However, a temporary backlog of unresolved cases does not lead to the Contracting Party being held liable if it takes prompt measures to resolve the situation. At the same time, as MPs note, Ukraine remains one of the few countries in the Council of Europe where the European Court of Human Rights systematically finds structural problems with excessive length of court proceedings. The complication of the

[3] According to the then-head of the Supreme Court, V. Knyazev, the capacity of the Kyiv City District Administrative Court (if it only deals with this issue) is about 100–200 cases per day, or 3–4 thousand per month, and the transfer of all 60 thousand cases could take years. Administrative collapse, or how the 'victory' over the DACK will lead to widespread violations of Ukrainians' right to a fair trial.
[4] The human resources crisis in the courts and its impact on the administration of justice in Ukraine.

situation could have an extremely negative impact on Ukraine's European integration prospects.[5]

The establishment of a new court to hear administrative cases involving public authorities is identified as one of the indicators of Ukraine's implementation of the European Union's Ukraine Facility within the framework of the reform of Ukraine's judicial system to strengthen the accountability, integrity and professionalism of the judiciary.

In its EU Enlargement Report 2024, the European Commission noted that since the liquidation of the DACK in December 2022, a new court has not yet been established. The temporarily authorised Kyiv District Administrative Court is unable to cope with the volume of cases, which significantly undermines access to administrative justice, especially in cases against central executive authorities.

In the Memorandum of Economic and Financial Policies of 4 October 2024, Ukraine assured the International Monetary Fund (IMF) of its commitment to improving the rule of law and continuing judicial reforms. In particular, Ukraine's intentions, as announced by the IMF, included the establishment of a High Court for Public Law Disputes (HCPLD) (with chambers of first and appellate instances), which would hear administrative cases against national state bodies (e.g. the NBU, NABU and NACP) by judges who have undergone proper screening for professional competence and integrity, with the decisive and determining vote of independent experts with international experience, based on the model of the Public Council of International Experts (PCIE). The new body will have jurisdiction over cases falling within the competence of the liquidated DACK regarding appeals against central executive authorities whose powers extend throughout Ukraine, as well as administrative cases regarding appeals against the procedures of competition commissions and external audit commissions involving the participation of independent experts (in particular, the NACP, NABU and SAPO). **December 2024** has been set as the structural benchmark.[6]

Financial support from international partners and donors is usually tied to specific conditions and requirements set by the IMF. Fulfilling these conditions becomes the 'key' to further support and trust. According to the IMF, the establishment of a new administrative court will help strengthen the independence of the judiciary and predictability in dispute resolution for businesses.[7]

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[5] The text of the draft law is now available, revealing the principle according to which cases involving citizens that fall under the jurisdiction of the OASC are distributed among other courts.
[6] A structural benchmark is a clear guideline or promise made by the government as part of its cooperation programme with the IMF, the fulfilment of which signals the successful progress of reforms.
[7] IMF structural benchmarks: implementation and update for 2024.

State of Play and Progress of Reforms

In order to restore proper access to justice for citizens and legal entities in the Kyiv region in public law disputes, Law No. 3863-IX created the regulatory conditions for the distribution and transfer to all district administrative courts of Ukraine of the remaining unresolved cases of the DACK, which, under Law No. 2825-IX, were transferred to the Kyiv District Administrative Court.

In pursuance of Law No. 3863-IX, the State Judicial Administration of Ukraine adopted the Procedure for the Transfer of Court Cases Not Considered by the District Administrative Court of Kyiv, which stipulates that court cases that have not been considered by the District Administrative Court of Kyiv and have been transferred to the Kyiv District Administrative Court, but not distributed among judges, shall be transferred for consideration and resolution to other district administrative courts of Ukraine by means of their automatic distribution among these courts, taking into account the workload, according to the principle of random chronological receipt of cases.[8]

In order to restore access to administrative proceedings involving central executive authorities, Law of Ukraine No. 4264-IX of 26 February 2025 was adopted, which amended the Law of Ukraine 'On the Judiciary and the Status of Judges' and certain other legislative acts of Ukraine regarding the legal basis for the establishment and functioning of the Specialised District Administrative Court (SDAC) and the Specialised Administrative Court of Appeal (SACA). This Law aims to ensure the efficiency and transparency of the work of administrative courts in Kyiv through a clear division of jurisdiction between courts of first instance and courts of appeal, reducing corruption risks by adhering to the principle of judicial independence and bringing the judicial system in line with European standards. The law was signed by the President on 24 March 2025 (effective 26 March 2025).

Pursuant to Law No. 4264-IX, the High Qualification Commission of Judges of Ukraine shall announce a competition for the positions of judges of the relevant courts within one month after the law comes into force. These courts shall be established in order to take over the powers of the District Administrative Court of Kyiv (DACK).

As provided for by Law of Ukraine No. 4264-IX, from the start of its work, the SDAC will hear administrative cases against national state bodies, such as the NBU, NABU and NACP. It will be possible to appeal decisions on the appointment of ministers, heads of anti-corruption

[8] The cases of the liquidated DACK will be distributed among the administrative courts of Ukraine in proportion to their workload.

bodies, etc., as well as any acts (except for decrees of the President of Ukraine), actions or omissions of central executive authorities. In view of this, it can be argued that the decisions of these courts will have political and state significance.

The SACA will act as a court of appeal and review the SDAC's court decisions. Cases will be heard by judges who have undergone proper screening for professional competence and integrity.

In order to assist the HQCJ in determining whether candidates for the position of judge of the SDAC and SACA meet the criteria of integrity and professional competence, an Expert Council will be established and will operate for the purpose of qualification assessment. It will consist of six members: three from the Council of Judges of Ukraine (CJU) and three from international and foreign organisations.

By its decision, the CJU announced on 3 April 2025 the commencement of the selection process for the position of member of the Expert Council (under the CJU quota). The deadline for the acceptance of documents from candidates was 21 April 2025. 11 candidates had submitted their documents as of the end of the selection process. As a result, the CJU decided to send the HQCJ a list of nine candidates for the Expert Council under the CJU quota.

The final decision on the composition of the Expert Council rests with the HQCJ, which decides on the appointment of members of the Expert Council both under the CJU quota and from the quota of international experts.

In May 2025, the President of Ukraine submitted draft law No. 13302 to the Verkhovna Rada of Ukraine, which provides for the establishment of the SDAC and SACA with their location in Kyiv and territorial jurisdiction extending to the entire territory of Ukraine.

In July 2025, draft law 13439-3 was registered in the Verkhovna Rada of Ukraine, which provides for changes to the State Budget of Ukraine for 2025, in particular for the implementation of the provisions of Law No. 4264-IX regarding the creation of a legislative basis for the functioning of two separate higher specialised courts: SDAC and SACA, as well as the implementation of the European Union's Ukraine Facility. This draft law defines the tasks for the creation of a new court that will hear administrative cases against national state bodies: SDAC in the amount of UAH 880,400; SACA in the amount of UAH 880,300. That is, a total of over UAH 1.7 million in expenditures.

It is expected that the establishment of the SDAC and SACA will increase the effectiveness of protecting the rights, freedoms and interests of individuals in the field of public law relations.

At the same time, there are certain risks involved in forming the judiciary of these courts and their subsequent activities.

Problems and Potential Risks

Attempts to overcome the collapse of the administrative justice system have not been sufficiently effective.

〉 Failure to meet the structural benchmark for the IMF

Despite assurances that the issue of establishing the HCPLD would be resolved by the end of 2024, Law No. 4264-IX, which creates the legal basis for the establishment and operation of two courts — the SDAC and SACA — was only adopted in February 2025, while draft law No. 13302, which provides for the establishment of these courts, was submitted by the President in May this year and is still pending its second reading.

〉 Participation of civil servants in competitions for positions of SDAC and SACA judges

In addition to current judges, lawyers and academics, candidates who have professional experience in civil service positions of A and B categories may apply for positions as judges of the SDAC and SACA.

For example, the head of a ministry's legal department who has worked in that position for 20 years will be able to participate in the competition for the position of SDAC/SACA judge. At the same time, they can go through the competition procedures without leaving their position and remain a civil servant until the moment of appointment.

In such a situation, there is a risk of conflict of interest. A person who has worked in the public administration system for a long time, has been directly associated with the executive authorities and therefore depended on them, may in the future find themselves in the role of a judge hearing cases against these same authorities.

This could call into question the impartiality of the court and increase public distrust of the judicial system, especially in cases involving central executive authorities. This situation contradicts the principle of separation of powers and the independence of judges, who must be free from the influence of state institutions whose decisions they evaluate in court.

〉 Integrity of candidates for Expert Council membership

Unlike the PCIE, which includes retired foreign judges, prosecutors and lawyers — experts who have no personal or professional interests in Ukraine and are responsible for selecting judges for the High Anti-Corruption Court (HACC) — the Expert Council is expected to have a different format of participation.

The Expert Council is to include three representatives from the Council of Judges of Ukraine and three from international or foreign organisations. This structure creates a potential risk of conflict of interest, as CJU representatives may be connected to the internal judicial community and have personal or institutional interests in the outcome of the selection process.

This raises concerns about the impartiality and independence of the candidate evaluation and selection procedures, especially in the case of key judicial institutions that are supposed to strengthen public confidence in the judicial system.

In addition, the list of candidates submitted by the CJU to the HQCJ includes individuals whose integrity is questionable. In particular, this concerns a DACK judge, a CJU member, regarding whom the Public Integrity Council (PIC) approved a conclusion in 2019 that they did not meet the criteria of integrity and professional ethics; a judge of the Kyiv District Administrative Court, a CJU member, who did not pass the qualification assessment at the HQCJ.

The presence of such candidates on the list of applicants for new institutions of the judicial system undermines confidence in the transparency and impartiality of the selection process and contradicts the overall goals of judicial reform aimed at establishing the principles of integrity, independence and professionalism.

〉 Funding

Draft law No. 13439-3 provides for amendments to the Law of Ukraine 'On the State Budget of Ukraine for 2025', *inter alia*, with the aim of allocating funds for the establishment of SDAC and SACA. On 16 July 2025, draft law No. 13439-3 was adopted as a basis with a shortened preparation period, and it is currently pending consideration.

Similar provisions were contained in the initial government draft law No. 13439, regarding which the Verkhovna Rada Committee on Budget pointed out the risks to fiscal stability in its conclusion**.** In particular, it was noted that the implementation of this draft law would lead to an increase in public debt and the state budget deficit, and in the medium term — to an additional burden on the budget associated with servicing and repaying debt obligations.

In the context of high spending on the security and defence sector, as well as the overall budget deficit, these proposals require careful financial and economic justification and prioritisation of expenditures**.**

In addition, due to the lengthy procedure for selecting judges and the fact that there are only about five months left until the end of the current fiscal year, it makes no sense to allocate funds in the state budget for 2025 for the work of the SDAC and SACA, since their actual establishment and start of work will likely take place no earlier than the next fiscal period.

〉 Expert Council's conclusions

The conclusion of the Expert Council on the non-compliance of a candidate for the position of judge of the SDAC and SACA with the criteria of integrity and/or professional competence shall be considered adopted if it is voted for by at least four members of the Expert Council, at least two of whom are nominated by international and foreign organisations. After the conclusion of non-compliance is adopted, as well as in the event of an equal number of 'for' and 'against' votes, the further fate of the candidate will be determined by a joint meeting of the HQCJ and the Expert Council.

During the joint meeting, the support of the majority of the joint composition of the HQCJ and the Expert Council is required for the candidate to proceed further. At the same time, the decision shall be supported by at least two international experts.

This approach to the selection of SDAC and SACA judges will only be applied for three years, i.e., during the first selection process. In the future, the HQCJ, together with the CJU, will be responsible for the competition. In other words, the selection of judges will take place without the participation of international experts.

Reducing the role of independent international experts (as a safeguard against lobbying for 'desired' candidates) in the process of selecting judges for the new specialised administrative courts may affect the quality of selection and the independence of future judges.

〉 Workload of the HQCJ as a factor delaying the launch of the SDAC and SACA

As of today, the HQCJ is facing a significant workload due to the simultaneous conduct of several large-scale procedures: *(1) qualification assessment of current judges; (2) competitions for vacant positions in local and appellate courts; (3) selection of judges for the HACC.*

These procedures are lengthy by nature, so there is a high probability that the selection of judges for the SDAC and SACA will also take a long time.

Therefore, it is unlikely that the new administrative courts will be launched before the third quarter of 2026. This, in turn, should be taken into account when forming the budget and planning organisational steps for their creation.

Recommendations

Considering all possible risks, it would be advisable to consider the following issues:

- introduction of a mechanism for verifying the integrity of candidates to the Expert Council from the CJU;
- the exclusion of category A and B civil servants from potential candidates for the SDAC and SACA through appropriate amendments to Law of Ukraine No. 4264-IX;
- excluding the 2025 State Budget expenditures for the functioning of the SDAC and SACA from draft law No. 13439-3.