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IMPROVING THE LEGAL FOUNDATIONS FOR THE APPLICATION OF THE PRINCIPLE OF TRANSPARENCY BY ADMINISTRATIVE COURTS

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ABSTRACT

This article examines the legal foundations for the application of the principle of transparency in the activities of administrative courts and analyzes issues related to its further improvement. Drawing upon judicial practice, the study identifies instances of misapplication of substantive and procedural legal norms and explores their causes and legal consequences. Particular attention is paid to the factors leading to the annulment of lower court decisions by higher judicial instances. The article substantiates the necessity of clarifying the provisions of the Law “On Administrative Procedures,” expanding the normative content of the transparency principle, and ensuring the completeness and reliability of publicly disclosed information. It further proposes the adoption of a Plenum Resolution of the Supreme Court to ensure uniform judicial practice and recommends advanced professional training for judges in the sphere of administrative procedural principles.

Keywords: principle of transparency, administrative courts, administrative procedures, judicial practice, legislative improvement, procedural norms, substantive law, annulment of judicial decisions, legal reforms, openness.



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The principle of transparency occupies a central place within the legal system, serving as a fundamental guarantee of justice and public trust in judicial institutions. In the sphere of administrative justice, the proper application of the transparency principle constitutes an essential component of the rule of law and effective judicial protection of rights and legitimate interests. Its correct and consistent implementation is indispensable for advancing legal reforms, strengthening legal culture, and ensuring legality in public administration.

The principle of transparency implies that judicial proceedings, including the reasoning and adoption of decisions, must be clear, open, and accessible to the public and to the parties involved. Within the framework of administrative procedural legislation, this principle requires that the legal grounds for administrative decisions and measures be explicitly articulated and properly substantiated. Transparency also contributes to safeguarding judicial independence and impartiality.

However, judicial practice demonstrates that the application of the transparency principle by courts is not always consistent or uniform. Discrepancies in judicial approaches and certain legislative ambiguities hinder its effective realization. Statistical data from the fourth quarter of 2024 illustrate this concern. Within the judicial panel for administrative cases, 488 cases were examined under supervisory review procedures, of which 50 cases were considered by the supervisory instance. In 24 cases, judicial acts were upheld; in 25 cases, they were annulled; and in one case, proceedings were terminated.

Of the 25 annulled judicial acts, in 12 cases new decisions were adopted; in 7 cases decisions were quashed and remitted for reconsideration (including one to the court of first instance, five to the appellate instance, and one to the supervisory instance); and in 6 cases the decisions of higher instances were annulled while previously quashed decisions of lower courts were reinstated.



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Overall, 48 percent of the annulled cases resulted in the adoption of new decisions by the supervisory instance of the Supreme Court, 28 percent were remitted for substantive reconsideration, and 24 percent involved reinstatement of lower court decisions. The overall rate of final decision-making reached 72 percent [1].

A breakdown by respondent authorities indicates that, among the 50 cases reviewed under supervisory procedure in the fourth quarter of 2024, 36 percent concerned local executive authorities (khokimiyats), 24 percent involved tax authorities, and 14 percent related to cadastral bodies. These figures demonstrate a significant rate of annulment of lower court decisions by higher judicial instances.

Pursuant to Article 220 of the Code of Administrative Court Proceedings, one of the grounds for annulment of a lower court decision on appeal is the violation of substantive legal norms. Such violations include: (1) failure to apply a law that should have been applied; (2) application of a law that should not have been applied; and (3) incorrect interpretation of a legal norm. The improper application of substantive law constitutes an independent ground for quashing a judicial act [2].

A representative example is a dispute challenging a decision of the Zangiota district khokim dated September 19, 2019 (No. 7536), which recognized inheritable lifetime possession rights to a land plot and ownership of unauthorized constructions. Although lower courts correctly established that the applicants had missed the statutory time limit for filing a claim without valid reasons, they erroneously applied civil law provisions concerning the inapplicability of limitation periods to property claims, instead of the relevant administrative procedural norms. Consequently, by its decision of August 28,



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2024, the supervisory instance of the Supreme Court annulled the lower courts' decisions and adopted a new judgment dismissing the claim.

This case illustrates systemic shortcomings in the application of legal norms by administrative courts, particularly in relation to the principles of administrative procedure. In this regard, it appears expedient to adopt a Plenum Resolution of the Supreme Court providing authoritative clarification on the proper application of administrative procedural principles. Such a resolution would contribute to the establishment of a uniform judicial approach and enhance legal certainty.

Moreover, practical difficulties persist among judges in interpreting the substantive content of administrative procedural principles. Therefore, the organization of specialized short-term training programs aimed at deepening judicial understanding of these principles is advisable.

When adjudicating disputes concerning the invalidation of decisions of local executive authorities or their officials, courts must first determine the scope of competence and jurisdiction of the relevant administrative body. In examining the merits, the court is required to assess whether the authority or official acted within the powers conferred by law, including those established by Article 25 of the Law "On Local State Authority," and whether the procedural requirements governing the adoption of decisions—such as form, time limits, grounds, and procedural safeguards—were duly observed. The court must also evaluate whether the contested decision or omission complies with the substantive legal norms regulating the relevant legal relationship [3].

The existence of at least one circumstance evidencing unlawfulness constitutes sufficient grounds for granting the claim. Conversely, if the contested act or omission is found to be lawful and not in violation of the applicant's rights or legitimate interests, the court must dismiss the claim. Where unlawfulness is established, the court may impose obligations on the relevant authority or



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official to adopt a lawful decision, perform specific actions, or otherwise remedy the violation and report on compliance within the prescribed time limit.

At present, certain legislative deficiencies hinder the consistent application of administrative procedural principles. In particular, the Law “On Administrative Procedures” does not fully define the content of some principles, leading to divergent judicial interpretations [4]. Article 10 of the Law establishes that administrative procedures must be open, transparent, and comprehensible to interested persons, and that administrative bodies must ensure free access to relevant information. However, the provision does not explicitly require that such information be complete and reliable. As a result, administrative bodies sometimes limit disclosure to minimal information, thereby formally complying with transparency requirements without ensuring substantive openness.

To address this shortcoming, it is proposed to amend Article 10 by expressly stipulating that information disclosed by administrative bodies must be complete and reliable. Furthermore, the current wording does not provide for exceptions relating to activities connected with national security. Given the specific nature of services rendered by state security authorities, it is advisable to introduce a legislative clause excluding administrative-legal activities directly related to the protection of national security from the general transparency requirement.

In conclusion, the enhancement of the legal framework governing the application of the transparency principle by administrative courts requires both legislative refinement and doctrinal clarification. Only through the systematic development of coherent judicial practice, supported by authoritative interpretative guidance and professional judicial training, can the principle of transparency effectively serve its function as a cornerstone of administrative justice and the rule of law.



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