

Judicial Jurisdiction of Consideration of Cases on Administrative Offences in the Field of Finance and Monitoring of their Implementation

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Abstract: Taking into consideration the rapid growth of administrative and criminal offenses in financial activities, criminal attempts to affect negatively development of the state in the economy and finance segment, negative trends in the detection and investigation of financial offenses indicate their low level and the balance of non-investigation, which have increased significantly compared to previous years. The purpose of the study is to analyze and summarize the administrative and jurisdictional powers of courts (judges) related to the monitoring and control of proceedings in cases of administrative offences in financial sphere. During the work, the main research methods were analysis, synthesis, comparison and in-depth research of normative legal acts of Ukraine related to this topic. The result of the study is a full-fledged analysis of the legislative, regulatory and legal framework of Ukraine regarding judicial jurisdiction over cases of administrative offenses in the financial sphere, and monitoring their implementation. Thanks to the study of the literature on this topic, the peculiarities of handling cases of administrative offenses, the interaction of law enforcement agencies were discovered, and the conclusion was made that the implementation of the principle of the rule of law and legality to protect the rights, freedoms and legitimate interests of the individual, society and the state was a real method of influencing the sphere of finance.

Keywords: Administrative Proceedings, Financial Sphere, Competence, Jurisdiction, Court Powers, Judicial Control.

JEL Codes: K10; F65; G3.

1. INTRODUCTION

Administrative legislation of Ukraine, despite its constant updating and improvement at the expense of new in content administrative and legal norms, remains one of the outdated regulations of the Soviet period, which does not meet the conditions and changes in socio-economic development of the state and society. Particular relevance of the implementation of administrative and legal norms should be manifested in combating financial and economic offenses (Petersone and Ketners, 2017; Kostruba and Kulynych, 2020).

The spread of destabilizing factors, which are evidence of financial offenses and crimes, negatively affect the stability of economic development and economic security of the state. The destabilizing level of financial security raises a number of problematic issues for practitioners and scholars to find a

new optimal mechanism for improving the fight against economic crime (Haliantych et al., 2021; Mukhamediyarova et al., 2021; Naumenkova et al., 2022). Finally, yet importantly, the judiciary, with its control capacity, should play a role in this resistance in considering cases and making decisions on bringing violators to justice.

It should be noted that the administrative type of responsibility in the field of finance should be understood directly as the reaction of the state, which arises as a result of the subjects of this type of offenses in the finance segment, in the form of applying to them measures based on administrative coercion (Ivanov et al., 2021; Yaroshenko et al., 2019b). As noted by B. Hanna (2022), the prevention of the occurrence of these offenses involves a number of measures implemented by state bodies, thereby preventing encroachment on the security of the state and eliminating negative trends in this segment. That is, according to O. Pabat (2021), it implies a purposeful mechanism that combines a diverse number of aspects, namely legal, educational and organizational.

The importance of the analysis of the researched topic is due to the fact that the economic security of the state is a broad

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category, which is based on financial security. According to V. Kovtun (2018), this can be explained by the actualization in the conditions of the transition to a market economy of many types of interests of the economic plan, namely in the areas of taxes, monetary obligations, the budget, etc.

Based on the above, as I. Komarnytska (2022) admits, the concept of the financial sphere should be understood as a rather specific sphere of social life, which is connected with many segments, including the state's guarantee of the implementation of its functions.

However, referring to the works of I. Kazanchuk (2021), administrative offenses arising in this area encroach on the state-defined order of regulation of formation, distribution, use of state budget funds, taxes and other mandatory payments. Thus, this type of illegal acts significantly undermines the functioning of the economic segment of the state, the stability of the economic and legal aspect of social relations, the interests of the population and economic security as a whole (Ryskaliyev et al., 2019; Kostruba and Hyliaka, 2020). In this regard, there is a special need to carry out a detailed analysis of this type of offense in order to identify a method of countermeasures.

The purpose of the study is to analyze and summarize the administrative and jurisdictional powers of courts (judges) related to the monitoring and control of proceedings in cases of administrative offences in financial sphere.

2. MATERIALS AND METHODS

This study was carried out in order to analyze administrative offenses in the financial segment. It was carried out with the help of various methods, which made it possible to reveal all the tasks set, taking into account theoretical and practical aspects. The method of analysis made it possible to identify the main features and principles of administrative offenses, in particular, their characteristic features in the financial segment. The dogmatic method provided an opportunity to analyze the normative legal norms of Ukrainian legislation, which provided for consideration of the legislative framework in many aspects. The method of functional analysis made it possible to reveal that the implementation of the principle of legality is a real and effective method of influencing the sphere of finance. The method of legal hermeneutics, based on the analyzed legal norms, gave an opportunity to analyze and summarize the powers of courts (judges) to exercise the functions of control over proceedings in cases of the type of offenses under study in the financial sector.

The method of comparative legal analysis made it possible to compare the legislative norms that regulate legal violations and litigation in the area under study, in particular, the Code of Ukraine on Administrative Offenses, the Basic Law, etc. The method of formal legal analysis helped considering the jurisdiction of court cases in situations of administrative offenses in the financial sector and supervision over their execution. The deduction method based on the identified characteristics and principles made it possible to characterize this type of legal violations in the field of finance. In turn, through the use of the induction method, based on the general mechanism for implementing the consideration of this category of cases, features and inherent elements were iden-

tified. The synthesis method based on the results obtained allowed drawing a conclusion regarding the current state of the legislative framework in the category under study and draw a conclusion about the most effective method of influencing the financial sector.

It should be noted that this study was carried out in several stages. The first stage revealed the essence of administrative offenses. The second stage was based on a comparative legal analysis of the legislative norms of domestic legislation, which made it possible to identify the characteristic features of these offenses in the field of finance. The third stage, based on the information received on the implementation of this mechanism, provided for identification of the most effective and efficient way to influence the financial sector.

3. RESULTS

According to the State Judicial Administration, and according to Article 205 of the Criminal Code of Ukraine in 2020, only 94 (in 2019 – 434, in 2018 – 523) criminal proceedings were pending in the courts, including those received in the reporting period - 9, including time, as in 2019 – 314 and in 2018 – 440, i.e., it is several tens of times less than in previous years. The number of persons heard in the courts last year was 153, which is also lesser than in the previous year - 516 and in 2018 - 591, including for committing a crime in an organized criminal group or criminal organization only 7, which is also much less than in 2019 – 18 and in 2018 – 11 (State Audit Service of Ukraine, 2021).

In general, the results of audits and inspections revealed losses of financial and material resources for more than 8.0 billion hryvnias (Figs. 1-2).

The increase in offenses in the financial sector from 2017 to 2020 indicates a low level of law enforcement and of implementing legal measures to exercise implementation of control by the courts over the execution of decisions made and the protection of the rights and freedoms of citizens in legal proceedings, both administrative and criminal (Akimbekova et al., 2021; Buribayev et al., 2020; Hyliaka et al., 2020). The number of reported crimes of this type is mainly only increasing – from 10756 in 2017 to 11160 in 2020. As a rule, these are obvious criminal offenses that can be solved as soon as possible, the percentage of their detection during this period on suspicion only worsened: from 54.3% in 2014 to 50.9% in 2020 (State Audit Service of Ukraine, 2021).

Historically, the function of judicial control took place in the draft normative legal act, which concerns the scope of courts for administrative proceedings of the Ukrainian People's Republic. Thus, in obedience to Articles 74 and 75 of the Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges” (2016), the court had a control function, and regardless of the instructions of the parties is entitled to take measures to clarify the circumstances of the case, to collect evidence concerning it (Article 74), and to verify proofs, but at the same time has not to be limited only by evidence denying them (Article 75) (Grytsenko et al., 2015).

Jurisdiction over administrative offences in financial sphere is an important legal instrument, the use of which affects the designation of illegal actions or inaction on the object and subject of encroachment (financial relations), the presence of

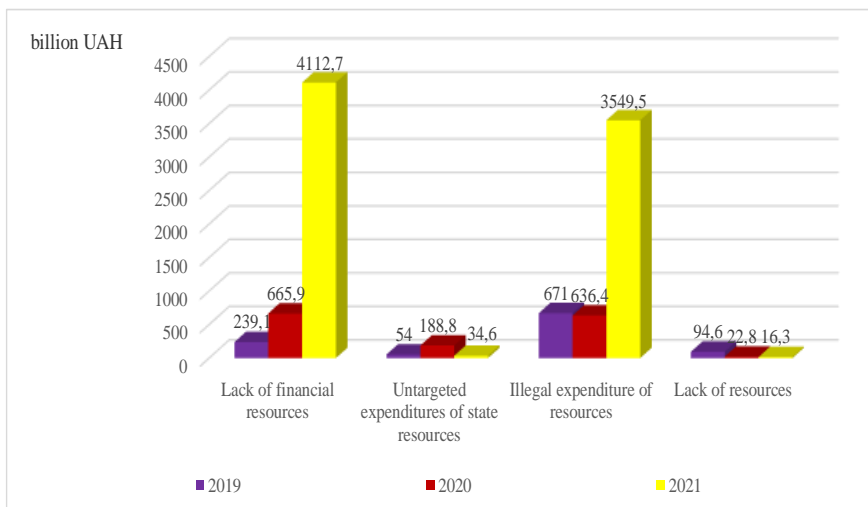


Fig. (1). Dynamics Of the Amount of Violations That Led To The Loss Of Resources During The January – June 2019-2021.

Source: State Audit Office of Ukraine (2021).

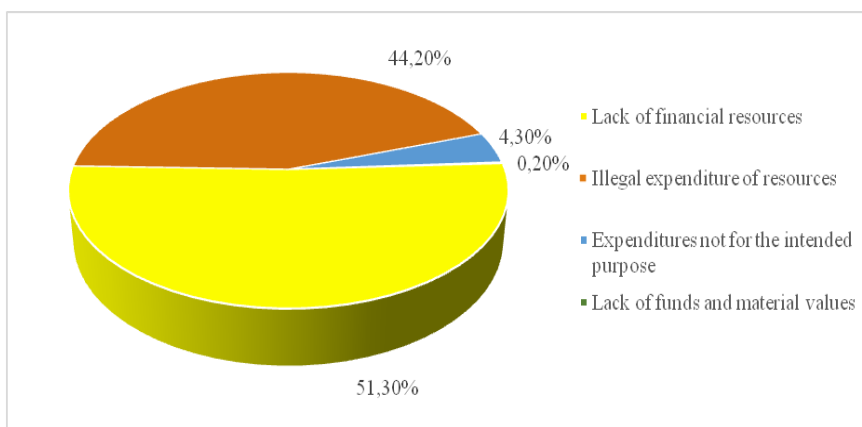


Fig. (2). The Structure of Violations That Led to The Loss of Financial and Material Resources During January – June 2021.

Source: State Audit Service of Ukraine (2021).

public danger and damage to administrative relations (Akimbekova et al., 2016; Zaborovskyy et al., 2021). Analyzing the jurisdiction of administrative offences, it should be noted that there is both a broad explanation of the jurisdiction of administrative offences, and a narrow dimension of jurisdiction, characterized by administrative and jurisdictional powers of entities authorized to consider administrative offences in financial sphere (Baganets, 2020; Kambarova et al., 2014).

In the discussions provided the scientific works, there is a fair criticism of the designation of the types of judicial bodies (officials) endowed with a range of powers in the field of consideration of cases of offenses that have an administrative context (Article 213 of the Code of Administrative Offences of Ukraine (1984) as inconsistent with public relations, and need an administrative protection against tort encroachments. This is especially true of the amendments to the current Code of Administrative Offences (1984) by the governmental “other entities” authorized to endow with a range of powers in the field of consideration of cases of offenses that have an administrative context among which a certain place is occupied by encroachments on relations in the field of finance.

The legislator assigned the greatest burden on the consideration of cases of administrative offences in financial sphere to the judiciary (59.1%) as one of the important public authorities designed to protect the rights, freedoms and legitimate interests of individuals and legal entities by reviewing and monitoring court decisions on the imposition of administrative penalties.

Administrative jurisdiction of administrative courts provides for the presence of: substantive jurisdiction; instance jurisdiction, territorial jurisdiction (The Code of Administrative Proceedings of Ukraine, 2005) and indicates the powers of administrative courts and establishes the procedure for judicial proceedings in administrative courts (Article 1 of the Code of Administrative Proceedings of Ukraine (2005). That kind of jurisdiction of courts as judicial authorities includes the following blocks: target, organizational, jurisdictional.

The jurisdictional block of judicial bodies’ activity provides for a set of normatively fixed powers (competences) concerning consideration of cases on administrative offences and acceptance of the corresponding decisions on them. While determining the limits of administrative and jurisdic-

Table 1. The Ratio of Jurisdiction Over Cases of Administrative Offences Between the Types of Bodies (Officials) Authorized to Consider Cases of Administrative Offences.

No.	Types of Judicial Bodies (Officials) Endowed with a Range of Powers in the Field of Consideration of Cases of Offences that have an Administrative Context (Article 213 of the Code of Administrative Offences)	The ratio as a percentage of total norms (Chapter 5-15 "A" of the Code of Administrative Offences of Ukraine)	
		Number of Articles Subject to Consideration by the Judicial Body (Official)	Percentages of the Total Amount of the Articles Review
1.	administrative commissions at executive committees, village, settlement, city councils	36	10.2
2.	executive committees of village, settlement, city councils and their officials	19	5.4
3.	district, district in the city, city or city district courts (judges)	207	59.1
4.	local administrative, commercial, appellate courts, the Supreme Court	2	0.6
5.	bodies of the National Police	47	13.04
6.	other bodies (state inspections, commissions, funds, banks)	39	11.1
Total:		350	≈100

tional competence in the activities of courts (judges), it is necessary to distinguish the following types:

- functional competence;
- substantive competence;
- territorial competence;
- procedural competence.

Functional competence of the judiciary is to consider cases of administrative offences (Chapter 22 of the Code of Administrative Offences (1984) including the appropriate sequence of consideration and compliance with the procedure for their implementation (e.g., place and timing of the case, etc.) and decision on the case.

Substantive competence of the judiciary characterizes its authority to hear cases of administrative offences committed by a certain category of individuals who have a special legal status (for example, servicemen and persons equated to them).

Territorial competence in the activities of judicial bodies is determined by the place of consideration of the case of an administrative offence. Article 276 of the Code of Administrative Offences (1984) provides for the consideration of cases:

- at the place of commission of an administrative offence;
- at the place of registration of vehicles or at the place of residence of violators who have violated traffic rules;
- at the place of processing and accounting of traffic safety violations recorded in automatic mode (Code of Ukraine on Administrative Offences, 1984).

As for the place of consideration of cases on the type of violations under study in the financial segment, they, like other cases on this type of legal violations, are considered at the

place of the offense or at the place of residence of the offenders. In addition, the courts, in accordance with the territorial jurisdiction, consider cases on an application for the annulment of the decision to award a penalty.

Chapter 12 of the Code of Administrative Offences (1984) provides an exhaustive list of administrative and legal norms for violation of which there is administrative liability.

Therefore, the legislator does not require the court to comply unequivocally with the place of consideration of the case of an administrative offence in financial sphere. This approach on the part of the legislator has a positive effect on ensuring the implementation of the decision on the case, as well as the implementation of both individual and special preventive action aimed at preventing the commission of administrative offences.

Procedural competence in the activities of judicial bodies provides due to the existence of the powers of the court (judge) in the administrative and legal aspect as a participant in the proceedings on an administrative offence. These powers are due to the procedural features of the administrative jurisdiction of the court. These include:

- the procedure for preparing the case for consideration with mandatory compliance with Article 278 of the Code of Administrative Offences of Ukraine (1984);
- the procedure for consideration of a case on an administrative offence (Article 279 of the Code of Administrative Offences of Ukraine (1984) and procedural registration of legally significant actions committed by the subject of the case.

The considered administrative-jurisdictional powers of judicial bodies are closely connected with the exercise of judicial control at all stages of administrative proceedings in financial sphere.

Judicial control occupies one of the important places in the segment of ensuring the legitimate activities of public authorities, in protecting the rights of subjects in the financial sector (Omarova et al., 2017; Kostruba and Vasylyeva, 2020). Judicial control is used to verify compliance with the law by participants of public relations in financial sphere in implementation of powers endowed to the subjects of public relations. This means that judicial control is the part of state control, which consists in monitoring and verifying the development of relations in financial sphere and their structural subdivisions in accordance with certain directions, as well as in preventing and correcting possible mistakes and illegal actions that prevent such development (Averyanov, 2004; Sarybayev et al., 2021).

Generalizations of the judicial practice of the activities of these courts in monitoring the execution of court decisions demonstrate the activities of administrative courts for the period from 03.10.2010, 2018 to 03.10.2019, when 10 applications were received to establish monitoring of the execution of court decisions in the category of cases under study, of which 4 were satisfied. According to the information from the district administrative courts in the mentioned period, in 779 cases the issue of judicial control was raised, and only in 36 cases such control was applied. It follows from the above that the practice implementation of the function of monitoring by the court over the execution of decisions is not a common phenomenon in law enforcement by administrative courts (Generalization of judicial practice..., 2014).

The main features of judicial control include:

- supervision of compliance with special rules and regulations in force in all or most industries and areas;
- the functioning of special state bodies endowed with broad supra-departmental powers;
- exercise of judicial powers in relation to bodies and organizations not subordinated to them;
- judicial authorities may apply measures of administrative coercion (Shemshuchenko, 2012; Yaroshenko et al., 2019a).

It is necessary to consider the features of judicial control over compliance with administrative legislation in the financial sector in the sector of regulation of administrative-legal relations:

1. Judicial control function, which is carried out both in the process of administrative proceedings (at all stages of consideration) and separately (for example, the execution of a decision to impose an administrative penalty).
2. Judicial control or supervision is exercised over the subjects of public relations that do not have organizational subordination to it.
3. Violations of the law revealed in the course of judicial observation are subject to the elimination or restoration of the violated rights of the subject.

Starting from the initiation of a case on an administrative offence in financial sphere, its consideration, decision-making on the case and execution of the decision on the case

of an administrative offence, the legislator gives the right to control a number of entities that implement different content and purpose administrative-procedural functions. Article 213 of the Code of Administrative Offences (1984) defines the list of bodies authorized to consider cases of administrative offences. These include district, district in the city, town or city district courts (judges), local administrative and commercial courts, courts of appeal, the Supreme Court (Code of Ukraine on Administrative Offences, 1984). A judge should be considered as a body of the judiciary that has the right and authority to administer justice and judicial control over its observance.

The judge in preparation for the case of an administrative offence in financial sphere must comply with the following control functions:

- to determine the jurisdiction of the case of an administrative offence;
- to find out the existence of circumstances that are an obstacle in the consideration of a specific administrative case by a judge;
- to get acquainted with the content of the drawn up protocol on administrative offence and other materials of the case;
- identify circumstances that may or may not be present, which impede the proceedings on an administrative offense case;
- to find out the available sufficiency of evidence in the case of an administrative offence or vice versa, their unreliability and insignificance;
- to find out the presence or absence of petitions in the case.

Procedural forms of control in the activities of courts are measures, the content of which affects the rule of law in proceedings on administrative offences in financial sphere. These are the peculiarities of proceedings on decisions, actions or omissions of the state executive service, private executor (Article 287 of the Code of Administrative Proceedings of Ukraine (2005), control function of the courts over the execution of their decisions (Article 382 of the Code of Administrative Proceedings of Ukraine (2005), recognition of illegal decisions, actions or inaction committed by the subject of power – the defendants to enforce the court decision (Article 383 of the Code of Administrative Proceedings of Ukraine (2005).

4. DISCUSSION

New and relevant in content approaches and proposals for administrative proceedings, jurisdiction over cases of administrative offences, organization and provision of judicial control have been considered in the works of V.B. Averyanov (2004), O.M. Bandurka and I.O. Bandurka (2020), V.M. Bevzenko (2010), Yu. P. Bityak (2008), I.P. Golosnichenko (2006), Ye. V. Dodin (1984), T.O. Kolomoyets and V.K. Kolpakov (2017), A.T. Komzyuk (2017), A.M. Selivanov (2021), V. Stefanyuk (2005) and others. However, despite the importance of work in this area, there is a lack of research not only in the study of financial violations, but also with insufficient methods of their detection, lawful court

decisions to prosecute perpetrators and, above all, judicial control over their implementation.

V.M. Bevzenko (2010), analyzing the participation of government entities in administrative proceedings notes, that the activities of each individual court, judges, officials of the court can be characterized, first, as procedural, i.e., that occurs in connection with the administration of justice and, secondly, as non-procedural, due to the implementation of a number of organizational, personnel and other functions. One of such functions of the court is control and supervision.

In order to achieve the goal, the following tasks were solved:

- • study normative and international data on the state of combating the commission of crimes and their types in the financial sector;
- • analyze and determine the administrative jurisdiction of administrative courts when considering offenses committed in the business management segment;
- • identify problematic issues of judicial control in the proceedings on cases of administrative offenses in the financial sector and in the process of enforcement of court decisions.

Among the tasks of the court (Article 2 of the Law of Ukraine “On the Judiciary and the Status of Judges” (2016) is in the implementation of everyone's right to a fair trial, which is guaranteed by the Basic Law and regulatory legal acts. The tasks and basic principles of administrative proceedings in Ukraine provide that one of the powers endowed to the administrative courts is monitoring of cases as to the appeal of decisions concerning actions or inactions of the government entities (The Code of Administrative Proceedings of Ukraine, 2005).

At the same time, Article 124 of the Basic Law (1996) regulates that the jurisdiction of the courts extends to any type of case relating to the exercise by the court of a supervisory function over the observance of the rule of law in the management of society relations.

It should be noted that the constitutions of the member states of the European Union, guided by the principle of the rule of law, provide for judicial control over its observance. For example, the Constitution of the Republic of Bulgaria (Article 120) (1991) obliges the judicial authorities of the state to monitor the legality of acts and actions of administrative bodies (Golovaty, 1996; Melnyk et al., 2020). In turn, Article 44 of the Constitution of the Republic of Hungary (1949) stipulates that the Supreme Court of the Republic of Hungary is obliged to control the functioning and proceedings of all courts.

The target block of judicial bodies provides for the implementation of court tasks (Article 2 of the Law of Ukraine “On the Judiciary and the Status of Judges” (2016), Article 2 of the Code of Administrative Proceedings of Ukraine (2005), which are aimed at protecting administrative relations regulated by administrative legislation.

The organizational block of judicial bodies has internal and external manifestations related to the judiciary, the status of judges, the principles of their activities and interaction in

coordination with the legislative and executive branches (Section 11, Chapters 1-5 of the Law of Ukraine “On the Judiciary and the Status of Judges” (2016).

Professor A.A. Selivanov (2021), analyzing the constitutional principles of formation and development of administrative jurisdiction and administrative process, draws attention to the grounds, on which administrative courts should exercise judicial control over solution, actions or omissions of subjects of power, starting from checking their compliance with Basic Law and regulations of Ukraine and ending with the making of relevant decision. This is especially true of monitoring for human and civil rights violations because of such actions or inaction of government entities in the segment of the studied type of legal relations.

Yu. Neklyayev (2017), considering the state of judicial control over the execution of decisions, has a similar opinion. He notes that in practice, the judicial control declared in the Constitution has not become a mechanism that guarantees full and timely execution of court decisions.

The judiciary should not be limited to the consideration of specific cases provided for in our analysis, only to the consideration of cases of administrative offences in financial sphere. Modern courts of Ukraine have legal opportunities to influence the decisions of the legislature and the executive, if these decisions are contrary to law, or violate the legality of the regulation of public relations (Stefanyuk, 2005; Kanatay et al., 2019). This means that courts are endowed with jurisdiction that covers all types of legal relationship that arise. Decisions of the court (judges) on the cases under consideration are binding on the entire territory of Ukraine (Zaychuk et al., 2010; Kostruba, 2018).

5. CONCLUSIONS

A full-fledged analysis of the legislative and regulatory legal framework of Ukraine regarding the jurisdiction of cases of administrative offenses in the financial sphere and control over their implementation is an important topic today. Despite the constant updating and improvement of the administrative legislation of Ukraine, there are still many unresolved problems and gaps. It is important that the judiciary had an influence during the case review and when deciding whether to prosecute the violators. Since the economic security of the state is a broad category based on financial security. Summarizing the analysis of judicial jurisdiction over cases of administrative offences in financial sphere, and monitoring their implementation, the following should be established:

1. The jurisdiction of courts (judges) in cases of administrative offences is one of the broadest in comparison with other subjects of administrative jurisdiction, which testifies to the actual implementation of the principle of the rule of law and legality to protect the fundamental aspects of the state, individual and society.
2. The definition of judicial control in the proceedings on cases of illegal acts of an administrative nature committed in the financial segment, it is worth realizing as a set of administrative and jurisdictional powers of judicial bodies aimed at checking, reviewing cases of administrative offences and taking

decisions on them in according to the rules of administrative law.

3. The peculiarity of the consideration of cases on the investigated type of legal violations in the financial sector requires close interaction with government agencies, which in accordance with Article 255 authorized to draw up reports on this type of offense committed in the field of finance. This cooperation will facilitate the prompt and objective consideration of cases in the field of finance, as well as provide a preventive effect on all participants in administrative proceedings.
4. Based on the works of Ukrainian lawyers, it was concluded that judicial control, despite the huge legal framework, had not become a mechanism that guaranteed full and timely execution of court decisions.
5. The courts in Ukraine are legal guarantors, which are not limited solely to the consideration of specific cases of administrative offenses in the financial sector, but also have a huge impact on the decisions of the legislative and executive authorities.

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