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ADMINISTRATIVE ACTIVITY AND ITS CONTROL: COMPARATIVE ANALYSIS

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ABSTRACT

This thesis explores the comparative legal frameworks of administrative oversight in Ukraine and the United States, with a specific focus on judicial review as a mechanism for ensuring accountability in public administration. It analyzes key doctrinal principles—such as legality, proportionality, transparency, and accountability—and traces their implementation in both legal systems. Through the comparative lens, the study investigates how U.S. doctrines like the "arbitrary and capricious" standard, preliminary injunctions, and structured standing rules can inform institutional reforms in Ukraine. Drawing on a combination of legal texts, case law, and scholarly commentary, the thesis reveals the strengths and limitations of each model and proposes a context-sensitive adaptation of selected U.S. mechanisms to strengthen Ukraine's administrative justice system, particularly in the context of post-war reconstruction and EU integration. The work contributes to the broader scholarship on public law reform in transitional democracies by offering both conceptual insights and practical recommendations.

Keywords: administrative activity, judicial review, oversight mechanisms, rule of law, Ukraine, United States, comparative law, accountability.

SUMMARY

This master's thesis examines the mechanisms of administrative oversight in Ukraine and the United States, focusing on judicial review and its role in maintaining legal accountability in public administration. The study is divided into three chapters: (1) the theoretical and doctrinal foundations of administrative activity; (2) the legal nature and judicial review of administrative acts; and (3) the external and societal forms of administrative control, including civil society and media oversight. Using a comparative legal method, the research identifies how U.S. administrative law doctrines—such as the "arbitrary and capricious" standard, robust injunctive relief, and court-agency dynamics—can inform Ukraine's ongoing reform of administrative justice. The thesis highlights the importance of enforceable court decisions, access to judicial protection, and the institutional culture surrounding legality. It concludes with recommendations aimed at enhancing Ukraine’s legal capacity to oversee administrative discretion, particularly in light of EU accession and post-war recovery challenges.

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LIST OF ABBREVIATIONS

APA – Administrative Procedure Act

ARMA – Asset Recovery and Management Agency

GAO – Government Accountability Office

CAPU – The Code of Administrative Proceedings of Ukraine

CCU – Constitutional Court of Ukraine

CHU – The Central Harmonisation Unit

CoE – Council of Europe

CIGIE – Council of the Inspectors General on Integrity and Efficiency

CMS – Centers for Medicare & Medicaid Services

CRA – Congressional Review Act

CSOS – Civil Society Organizations

DATA Act – Digital Accountability and Transparency Act

DHS – Department of Homeland Security

DTT – Double Taxation Treaty

ECJ – European Court of Justice

ECtHR – European Court of Human Rights

EPA – The Environmental Protection Agency

EU – European Union

FDA The Food and Drug Administration

FOIA – Freedom of Information Act

FISA – Foreign Intelligence Surveillance Act

HACC – High Anti-Corruption Court

MOU – Memoranda of Understanding

NABU – National Anti-Corruption Bureau of Ukraine

NACP – National Agency on Corruption Prevention

NARA – National Archives and Records Administration

NSA – National Security Agency

NSDC – National Security and Defense Council of Ukraine

OECD – Organisation for Economic Co-operation and Development

OGIS – Office of Government Information Services

OMB – Office of Management and Budget

OIRA – Office of Information and Regulatory Affairs

PE – Permanent Establishment

PIL – Public Interest Litigation

PPP – Public procurement, public-private partnerships

SAPO – Specialized Anti-Corruption Prosecutor's Office

SDG – Sustainable Development Goals

SIGMA – Support for Improvement in Governance and Management

TIC – Temporary Investigative Commissions

U.S. – United States

UK – United Kingdom

UN – United Nations

UNDP – United Nations Development Programme

USA – United States of America

USAID – United States Agency for International Development

USC – United States Code

U.S.S.R. – Union of Soviet Socialist Republics

INTRODUCTION

This thesis examines administrative activity in Ukraine and the United States through a comparative legal perspective, focusing on mechanisms of judicial and non-judicial oversight. In transitional democracies like Ukraine, where the quality of administrative control directly impacts legal certainty and international integration, a functional comparison with established systems becomes essential. The analysis seeks to develop a hybrid oversight model tailored to Ukraine's reform context.

In an increasingly interconnected world, administrative practices no longer operate solely within national boundaries – they transcend them. As Ukraine aligns itself with European legal standards, administrative efficiency and accountability have become strategic reform goals, especially in the context of EU candidacy (2022–2025). Supranational frameworks such as SDG 16 further emphasize the global importance of fair and transparent governance systems. The United States provides a contrasting example of administrative oversight, grounded not in codified procedures, but in judicially developed doctrines and agency autonomy. As a common law democracy with a decentralized administrative system, the U.S. illustrates how legitimacy can be sustained through precedent and institutional balance rather than procedural formalism.

In Ukraine and the U.S., administrative activity is central to public governance, shaped by different constitutional cultures. This activity—encompassing decision-making and enforcement—exercises public authority and protects individual rights. Both countries require effective control mechanisms to ensure legality and prevent abuses. Legal scholar Schwarze emphasizes that binding acts and enforcement must adhere to the rule of law. In transitional democracies, weak oversight can result in systemic failures, making strong administrative control a constitutional necessity.

The relevance of this study lies in its focus on how administrative power is controlled in practice, rather than in theory. Instead of analyzing abstract doctrinal models, the research explores the actual functionality of oversight institutions, their interaction with political and societal actors, and their evolution under conditions of crisis—such as Ukraine's martial law and the United States' post-Chevron environment.

The scientific novelty of this thesis lies in the formulation of an original hybrid model—developed by the author—of administrative control tailored to transitional democracies. This model integrates comparative legal analysis with digital governance and supranational legal convergence, offering an applied framework that combines U.S. judicial doctrines with European procedural safeguards. It tests applicability in Ukraine's digital court system and compares it with U.S. administrative law precedents. By examining judicial review doctrines—like Chevron

deference in the U.S. and proportionality tests in ECtHR jurisprudence—this thesis develops a hybrid administrative oversight model, blending U.S. institutional pragmatism with the rights-based rigor of European human rights law. The model addresses the limitations of transitional democracies like Ukraine and ensures compliance with international human rights obligations.The central research gap addressed by this study is the lack of functional comparative evaluations of administrative control mechanisms between transitional legal systems such as Ukraine and mature common law jurisdictions like U.S. In result, the absence of this comparative lens continues to hinder Ukraine's institutional capacity to adopt effective administrative control practices in line with both European human rights standards and foundational U.S. doctrines.

This thesis is significant for its actionable recommendations to reform Ukraine's administrative justice system. It adapts oversight tools from U.S. administrative law and ECtHR jurisprudence, offering Ukrainian policymakers, reform bodies, and judicial institutions strategies to enhance legal accountability, reduce procedural inefficiencies, and align governance with European human rights standards. The comparative perspective highlights key differences in administrative control and provides scalable solutions to Ukraine's challenges.

Recognizing the existing research gap, this thesis primarily aims to create a comparative legal framework for examining and reforming administrative control mechanisms in Ukraine, informed by established practices in the U.S. The overarching objective is to identify flexible oversight models that improve legal accountability and support Ukraine's alignment with European governance standards. To achieve this aim, the following research objectives are pursued:

1. To investigate the theoretical and legal foundations of administrative activity in Ukraine and the United States by conducting a comparative analysis that includes key principles such as legality, proportionality, transparency, and accountability, as well as analyzing administrative acts, contracts, and digital governance tools in both systems.
2. To evaluate the effectiveness and procedural guarantees of judicial review mechanisms in both jurisdictions, focusing on doctrinal contrasts between European proportionality standards and U.S. administrative discretion.
3. To assess alternative forms of administrative control—parliamentary, internal, and societal—and identify mechanisms that may be adapted to strengthen accountability in Ukraine.

The central research question is: To what extent can a comparative legal analysis of judicial and non-judicial administrative oversight mechanisms in Ukraine and the United States inform Ukraine's administrative reform and align it with European governance standards?

To systematically and academically investigate this topic, the research employs a mix of doctrinal, comparative, and specific empirical methods throughout the three chapters, aligning them with the primary objectives of the thesis.

Methodologically, the thesis combines doctrinal and jurisdictional comparison, supported by selected empirical data. It examines primary legal sources, landmark court rulings, and administrative practices in Ukraine and the U.S., with special reference to the HUDOC database and U.S. Supreme Court jurisprudence. Comparative insights focus on administrative acts, judicial doctrines, and control mechanisms, including digital innovations.

This research employs empirical analysis of Ukraine's official court statistics from 2020 to 2024 to identify inefficiencies in the administrative judiciary. It also explores instances of digital governance, such as the Diia system, to evaluate the impact of innovation on administrative control. Legal modeling integrates these components into a hybrid approach tailored to Ukraine's transitional situation. The thesis is organized into three interrelated chapters, each focusing on a distinct research objective and adding to the overall analytical framework.

Structurally, the thesis is divided into three chapters. Chapter One explores theoretical foundations and legal principles. Chapter Two offers a comparative analysis of judicial review. Chapter Three examines parliamentary, internal, and societal forms of oversight. The conclusion presents reform-oriented recommendations grounded in the findings.

This thesis was linguistically reviewed and edited using two artificial intelligence-based tools: ChatGPT (OpenAI, 2023–2024) and Grammarly (Advanced version). Both were employed exclusively for linguistic purposes to improve grammar, syntax, and academic clarity to ensure correct and academic English expression.

These tools was necessitated by the fact that the author is not a native English speaker and did not grow up in an English-speaking legal environment, making it challenging to understand the nuances of complex legal terminology fully.

Particularly, ChatGPT was used to assist with the translation of older and complex legal sources from English into Ukrainian, such as A.V. Dicey's Introduction to the Study of the Law of the Constitution (8th ed., 1915) and Max Weber's Economy and Society: An Outline of Interpretive Sociology. It also supported the translation and interpretation of U.S. case law, especially where the structure of judicial reasoning posed challenges.

All U.S. case law cited in this thesis and listed in the references was translated by the author from the official source Justia to ensure full comprehension and legal precision in places where linguistic ambiguity could pose risks. This applied to cases discussed across all three chapters, including Chevron v. NRDC, Marbury v. Madison, Massachusetts v. EPA, Motor Vehicle

Manufacturers Association v. State Farm, McGrain v. Daugherty, and New York Times Co. v. United States.

Chevron v. NRDC underwent multiple translations using the official text from Justia, with the translations revised by the author. The final revised and accurate version was used to support the analysis of U.S. doctrinal developments.

In addition, ChatGPT was used to verify the accuracy of footnotes and reference formatting following the Chicago Manual of Style, 16th edition (full note and bibliography format).

After internal translation and comprehension in Ukrainian, the author re-expressed these ideas in English and used Grammarly to refine sentence structure, ensure terminological consistency, and preserve the intended legal meaning.

No artificial intelligence tool was used to generate any content, arguments, analytical reasoning, or structural elements of this thesis. All doctrinal analysis, legal interpretation, research and conclusions were developed independently by the author.

Ultimately, this research contributes to the field of public law in transitional democracies by showing how effective control over administrative power requires not just legal formality, but systemic enforceability, institutional pluralism, and societal participation.

CHAPTER 1 THEORETICAL FOUNDATIONS OF ADMINISTRATIVE ACTIVITY THROUGH THE LENS OF COMPARATIVE ADMINISTRATIVE LAW (UKRAINE AND THE USA)

1.1. Doctrinal Foundations and Key Principles of Administrative Activity

Understanding how administrative activity operates within systems of public governance requires a clear theoretical basis. This section employs a comparative legal method to examine how two major legal families approach administrative authority and its oversight and compares civil law (continental Europe) with common law (United States), both of which provide contrasting approaches. This framework allows for a comparative evaluation of how administrative governance is structured around the principles of legality, proportionality, and rational accountability, rooted in both civil law formalism and common law pragmatism, as articulated by early thinkers Max Weber,[1] A.V. Dicey,[2] and modern comparative scholars such as Craig[3].

Ukraine's administrative doctrine, for instance, is historically rooted in the Romano-Germanic legal tradition, which prioritizes formal codification, hierarchical legal structures, and legal positivism. As Yurii Bytiak and Dmytro Luchenko noted, this foundation evolved from police law in the 19th century through the Soviet legal order into an independent national doctrine after 1991.[4] In the U.S.S.R., this tradition acquired a particularly rigid and command-based character: administrative authority operated through vertical exclusion, denying legal subjectivity to civil society and reinforcing structural detachment between state and citizen. As Nataliia Volovchuk observes, the divide was so deep that the state was perceived as "they" and civil society as "we".[5]

This legacy continues to influence Ukraine's post-Soviet legal culture, which is characterized by a low degree of legal development and is distinguished by a passive legal nihilism. While there is still a view that legal nihilism in Ukraine originated after independence as a reaction against the Soviet legal system.[6] However, it is more often explained as a legacy of the

[1] Weber, Max. *Economy and Society: An Outline of Interpretive Sociology.* Edited by Guenther Roth and Claus Wittich. Berkeley: (Berkeley: University of California Press, 1978), 215-226.
[2] Dicey, A. V. *Introduction to the Study of the Law of the Constitution*, 8th ed. (Indianapolis: Liberty Fund, 1982), 107-122.
[3] Paul Craig, *Administrative Law*, 9th ed. (Oxford: Oxford University Press, 2021), paras. 1–021 to 1–034.
[4] Yurii Bytiak and Dmytro Luchenko, "The Doctrine of Administrative Law of Ukraine: Evolution and Prospects for Further Development," Pravo Ukrainy, no. 10 (2021): 44–46.
[5] Nataliia Volovchuk, "Ukrainian Civil Society: Past Lessons and Future Possibilities," Scientific Notes of NaUKMA. Political Science 3, no. 1 (2019): 179-180.
[6] N. V. Pilhun, "Legal Nihilism in Contemporary Ukraine: Concept, Causes, and Methods of Overcoming," Legal Bulletin 3, no. 56 (2020): 69

Soviet administrative past, as noted above, and this approach seems more convincing. This is understandable, considering how deeply rooted certain institutional habits and behavioral patterns are, and how difficult it is to overcome them when they were ingrained over decades. Ukraine has taken significant steps through democratic reforms to introduce gradually and promote more open and accountable governance in recent years. Society has become more active in public life but still lacks real influence over government decisions. Rigid administrative subordination has left lasting impacts, delaying civic actors' recognition as legitimate participants in governance, placing Ukraine and the U.S. on different developmental levels. The U.S. administrative system is mature with established procedural checks, while Ukraine is in a democratic reconstruction phase from 1991 to present, focusing on institutional deficiencies. Reform roadmaps, guided by American and European experts, are developed actively. A comprehensive wave of reforms emerged after the Revolution of Dignity, targeting decentralization, law enforcement, healthcare, public procurement, state asset privatization, data transparency, land, and anti-corruption reforms. These reforms, while far from perfect, have addressed key aspects of governance but also produce side effects and new corruption risks.[7]

One of the most effective reforms implemented in Ukraine has been the reform of local self-government and the territorial organization of power. Launched in 2014, its core objective was to create the conditions for an efficient and accountable local authority system. The country approached this task with remarkable thoroughness: Ukrainian decentralization involved not only the transfer of powers and resources from the state to local governments, but also the deliberate construction of capable territorial communities. Over the past eleven years, decentralization has come to be recognized as perhaps the most successful of Ukraine's post-Maidan reforms. This success has also been acknowledged internationally. Notably, in its resolution of February 11, 2021, the European Parliament urged the European Commission to study Ukraine's decentralization efforts in detail and consider them as a model for other countries.[8]

Dicey's conception of the rule of law remains one of the clearest doctrinal foundations for understanding administrative legality in the Anglo-American tradition. He defined it through three key elements: first, "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power," which excludes wide discretionary authority by the executive; second, "the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts," with no exemptions for officials or special tribunals like those of the French

[7] Reanimation Package of Reforms, Democratic Governance Reform Roadmap 2019–2023, February 2019, https://rpr.org.ua/wp-content/uploads/2019/02/DKR-RPR-2019-2023.pdf.
[8] Cabinet of Ministers of Ukraine, "The European Parliament Recognized Decentralization as One of the Most Successful Reforms in Ukraine", February 11, 2021, https://www.kmu.gov.ua/news/yevropejskij-parlament-viznav-decentralizaciyu-odniyeyu-z-najuspishnishih-reform-v-ukrayini.

administrative model; and third, the idea that in England, the constitution is not the source but the consequence of rights established and enforced through ordinary law.[9] While sharply criticizing the continental model of droit administratif, describing it as utterly unlike any branch of modern English law, the institutional distinctiveness of continental administrative systems remains analytically relevant. [10] His concern reflected a broader divergence in legal cultures: in the Anglo-Saxon tradition, as later echoed in comparative analyses, civil society and courts are seen as intrinsic checks on the administrative state. In contrast, continental systems historically preserved firmer institutional boundaries between state and citizen, reinforcing hierarchical authority and administrative supremacy.[11]

Continuing from the abovementioned principles—legality, proportionality, and accountability—this subsection turns to how these concepts are defined, developed, and embedded in the administrative systems of Ukraine and the United States.

In this context, the analytical framework draws upon Paul Craig's classification of these principles as the normative foundations of administrative governance. In his comparative discussion, Craig outlines key systemic distinctions between civil law and common law approaches. While the former prioritizes codification and structural legal certainty, the latter relies more heavily on judicial precedent and values procedural fairness and institutional adaptability in administrative oversight.[12] These concepts are also complemented by international frameworks such as the Venice Commission's Rule of Law Checklist, which further specifies that the principle of legality includes accessibility, foreseeability, and non-retroactivity of legal norms—criteria particularly useful for assessing how legality is operationalised across jurisdictions.[13]

Administrative processes derive their institutional legitimacy from rule of law elements such as predictability and efficiency, which are widely recognized as core goals in many conceptions of the rule of law. As Belton explains, these features are among five socially desirable ends that together define what the rule of law seeks to achieve: (1) a government bound by law, (2) equality before the law, (3) law and order, (4) predictable and efficient rulings, and (5) human rights.[14]

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[9] Dicey, A. V. *Introduction to the Study of the Law of the Constitution*, 8th ed. (Indianapolis: Liberty Fund, 1982), 120–121.
[10] Dicey, A. V. *Introduction to the Study of the Law of the Constitution*, 8th ed. (Indianapolis: Liberty Fund, 1982), 245.
[11] The Oxford Handbook of Public Management, ed. Ewan Ferlie, Laurence E. Lynn Jr., and Christopher Pollitt (Oxford: Oxford University Press, 2005), 697.
[12] Paul Craig, Administrative Law, 9th ed. (Oxford: Oxford University Press, 2021), paras. 1–021 to 1–034.
[13] Venice Commission, Rule of Law Checklist, adopted at its 106th Plenary Session (Venice, 11–12 March 2016), Council of Europe, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e.
[14] Rachel Kleinfeld Belton, Competing Definitions of the Rule of Law, Carnegie Papers Rule of Law Series No. 55 (Washington, D.C.: Carnegie Endowment for International Peace, 2005), 3.

The OECD Recommendation on Public Integrity (2017) also reinforces the centrality of these principles for democratic accountability. [15] These sources provide comparative reference points that make visible the structural divergence between legal cultures, as differences in interpretation already emerge at the level of internal components of each principle.

This tension between institutional maturity and transitional reform continues to shape how administrative principles are embedded in practice.

Among the four principles, proportionality is particularly well-suited for opening the comparative analysis by exposing the depth of how legal traditions shape the limits of administrative discretion. The principle of proportionality was formally embedded in Ukraine's administrative adjudication system following the European Court of Human Rights' judgment in Volkov v. Ukraine, as the 2021 Judicial Reform Strategy, adopted by Presidential Decree No. 231/2021, explicitly prioritised aligning national administrative procedures with European norms.[16] In this case, the Court found that the dismissal of a Supreme Court judge violated Article 6 of the European Convention on Human Rights, emphasizing the lack of appropriate safeguards and the excessive nature of the disciplinary sanction. [17] This ruling catalyzed doctrinal and institutional developments: Ukrainian courts began incorporating proportionality as a multi-factor test assessing the legitimacy, necessity, and balance of administrative measures.

This approach has been further institutionalised through domestic legislation. Article 2 of the Code of Administrative Proceedings establishes proportionality as a general rule for evaluating administrative actions,[18]. In contrast, Article 6 of the Law of Ukraine on Administrative Procedure mandates that every administrative decision must be necessary, appropriate, and balanced.[19] It establishes now that any interference with individual rights by administrative authorities must be necessary, appropriate, and balanced in relation to the pursued objective. These three cumulative elements—suitability (appropriateness), necessity, and proportionality in the narrow sense (balancing)—form the doctrinal test used to assess whether an administrative measure justifiably restricts rights. Accordingly, leading Ukrainian legal scholars underline that proportionality is no longer viewed as a foreign transplant, but rather as an objectively grounded doctrinal principle

[15] Organisation for Economic Co-operation and Development, Recommendation of the Council on Public Integrity, OECD/LEGAL/0435, adopted 26 January 2017. Accessed May 15, 2025. https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0435.
[16] President of Ukraine, Decree No. 231/2021 on the Approval of the Strategy for Reforming the Judiciary and Constitutional Justice for 2021–2023, adopted June 11, 2021, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/231/2021#Text.
[17] European Court of Human Rights. Case of Oleksandr Volkov v. Ukraine, no. 21722/11, Judgment of 9 January 2013, §§182–183. Accessed May 16, 2025.
[18] Code of Administrative Proceedings of Ukraine, No. 2747-IV, adopted July 6, 2005, art. 2, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/2747-15#Text.
[19] Law of Ukraine "On Administrative Procedure", No. 2073-IX, adopted November 17, 2022, art. 6, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/2073-20#Text.

forming the interpretive core of Ukrainian administrative law.[20] According to Tanchyk, five implementation models have emerged in the context of sanctioning legal entities: conditional, discretionary, evaluative-discretionary, stepwise, and integral proportionality. The stepwise model—applying sanctions in gradual escalation—has proven the most practical and legally sound.[21] Judicial interpretation also plays a pivotal role as Ukraine formally follows the civil law tradition; recent developments show a hybrid evolution. Furthermore, under Article 13(6) of the Law of Ukraine "On the Judiciary and Status of Judges," administrative authorities must consider the legal conclusions of the Supreme Court when interpreting similar legal provisions.[22] While not binding precedents in the common law sense, these rulings function as quasi-authoritative interpretations. Courts may deviate from them only with detailed justification, reinforcing their role as interpretive anchors within Ukraine's administrative system.

In contrast to Ukraine's codified reliance on proportionality, the United States legal tradition approaches administrative discretion through a different conceptual lens: instead of "proportionality," the controlling standard in federal administrative law is known as the "arbitrary and capricious" review. This is codified in the Administrative Procedure Act of 1946, specifically in 5 U.S.C. § 706(2)(A), which authorizes courts to hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.[23] The U.S. Supreme Court clarified and expanded this standard in Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983), emphasizing that agencies must offer a reasoned explanation for their actions, supported by the administrative record, and must consider all relevant factors, including plausible alternatives such as airbags in the case at issue.[24] The decision imposed a structured rationality review, requiring agencies to articulate reasons for decisions and consider alternatives. While not labeled "proportionality," this approach functions similarly by ensuring administrative decisions are justified and balanced.[25]

Thus, while both systems aim to control administrative discretion, they do so through different legal logics. Ukraine's model offers stronger safeguards for rights protection. The U.S. model leaves more room for regulatory flexibility—but at a cost to legal certainty.

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[20] Bronislav Totskyi, "The Principle of Proportionality: Historical Context and Theoretical Components," Theory and History of State and Law. Philosophy of Law UDC 340.131-021.263(091) (2023): 70.
[21] Oleksandr Tanchyk, "The Principle of Proportionality in Administrative Proceedings about Using Sanctions to Entities," Knowledge, Education, Law, Management 3, no. 31 (2020): 200–204.
[22] Law of Ukraine "On the Judiciary and Status of Judges," No. 1402-VIII, adopted June 2, 2016, art. 13(5)–(6), https://zakon.rada.gov.ua/laws/show/en/1402-19#Text.
[23] United States Code, Administrative Procedure Act, 5 U.S.C. § 706(2)(A) (1946).
[24] U.S. Supreme Court, Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983), especially at 43, 46, 48 and 52. https://supreme.justia.com/cases/federal/us/463/29/.
[25] Paul Craig, Administrative Law, 9th ed. (London: Sweet & Maxwell, 2021), para. 21–006.

Moving to the second principle, the United States legal system understands legality as encompassing not only the requirement that agency action be authorized by law, but also that such action respects procedural constraints. Substantively, Section 706(2)(A) of the Administrative Procedure Act empowers courts to set aside agency decisions that are "not in accordance with law," codifying judicial oversight over the legality of administrative conduct.[26] Procedurally, legality also implies fair treatment of individuals subjected to state power. In Goldberg v. Kelly, the U.S. Supreme Court held that terminating welfare benefits without a prior evidentiary hearing violated the Due Process Clause of the Fourteenth Amendment.[27] Consequently, it defines the dual nature of legality central to American administrative law: first, substantive authorization, where benefits stem from legal entitlements; and second, procedural fairness, requiring that any removal of those entitlements adheres to fair, impartial, and prompt procedures. This dual aspect, endorsed by the Court, illustrates how legality limits state power within the administrative framework context. Even under Chevron, the existence of agency jurisdiction remains a threshold judicial question as Chevron does not require a court to accept an agency's view of the scope of its delegated authority, jurisdictional or substantive.[28] Merrill emphasizes that the Chevron era marked a distinct time when the U.S. Supreme Court clearly supported the concept that "when Congress leaves gaps, it is for the agency, not the court, to fill them," effectively acknowledging agencies' superior policy accountability and expertise in such contexts. Also recalling that Strauss defended this delegation of interpretive authority, arguing that agencies, as part of the political branches, are "superior accountability" when resolving statutory gaps, while courts, lacking direct political legitimacy, are less suited to perform such policy judgments.[29]

Thus, the Chevron doctrine was not perceived as an abdication of judicial responsibility but rather as a recognition of the different institutional competencies and accountability structures between agencies and courts.[30]In other words, legality in the American model entails judicial guardianship over both the substance and the scope of lawful administrative action. However, this model is not without its critics. Scholars such as Philip Hamburger argue that administrative discretion in the U.S. represents a constitutional deviation, reviving forms of extralegal and supralegal power historically rejected by Anglo-American constitutionalism. He warns that administrative agencies now combine rulemaking, adjudication, and enforcement functions, bypassing Congress and the courts and creating what he describes as a modern version of absolute

[26] United States Code, Administrative Procedure Act, 5 U.S.C. § 706(2)(A), accessed May 16, 2025, https://www.law.cornell.edu/uscode/text/5/706.
[27] Goldberg v. Kelly, U.S. Supreme Court, 397 U.S. 254 (1970), paras. 260–261, 263–264, 266–271. https://supreme.justia.com/cases/federal/us/397/254/.
[28] Michael Herz, "Chevron Is Dead; Long Live Chevron," Columbia Law Review 115 (2015): 1904–1905.
[29] Thomas W. Merrill, The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State (Cambridge: Harvard University Press, 2022), 69.
[30] Ibid 66-67.

power—outside and above the law. This critique suggests that, despite formal procedural checks, the American system leaves space for executive overreach masked as administrative legality.[31]

In Ukraine, the principle of legality is defined directly in Article 19 of the Constitution, which requires all public authorities to act only on the grounds, within the limits of authority, and in the manner provided by the Constitution and the laws of Ukraine.[32] Setting clear legal boundaries for administrative activity serves as a structural guarantee against discretionary overreach. It is further elaborated in Article 6 of the Law of Ukraine "On Administrative Procedure," which states that administrative acts must be based on legal grounds and adopted in accordance with procedural guarantees[33] and confirmed by the Code of Administrative Proceedings that administrative courts are responsible for verifying whether public authorities have acted lawfully and within their competence.[34]

Scholars and judges in Ukraine often interpret legality as formal compliance with statutory norms, rejecting any notion of implied administrative authority. This doctrinal view is supported and confirmed in the Constitutional Court's Decision No. 6-r/2020, which emphasizes that public authorities must act strictly on the basis of the Constitution and laws of Ukraine, and that the absence of legal authority constitutes a direct prohibition to act. The Court also clarified that any public function affecting constitutional rights—such as determining prosecutorial salaries—must be regulated exclusively by law, not delegated to subordinate acts.[35] Furthermore, Article 9 of the Constitution[36] and Article 17 of the Law on the Execution of ECtHR Judgments integrate European Court of Human Rights case law into the Ukrainian legal system, making legality not only a national rule but also one aligned with international obligations.[37]

In this context, Ukraine's focus on formal legality and strict statutory clarity remains more suitable for its system, which is still consolidating its legal institutions. Borrowing the U.S. model of flexible judicial review would risk undermining predictability and would not match Ukraine's need for stable legal hierarchies.

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[31] Philip Hamburger, Is Administrative Law Unlawful? (Chicago: University of Chicago Press, 2014), 22-23.
[32] Constitution of Ukraine, adopted June 28, 1996, art. 19, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр.
[33] Law of Ukraine "On Administrative Procedure", No. 2073-IX, adopted November 17, 2021, art. 6, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/2073-20#Text.
[34] Code of Administrative Proceedings of Ukraine, No. 2747-IV, adopted July 6, 2005, art. 2, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/2747-15#Text.
[35] Constitutional Court of Ukraine, Decision No. 6-r/2020, March 26, 2020, paras. 2.2–2.3, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/v006p710-20#Text.
[36] Constitution of Ukraine, adopted June 28, 1996, art. 9, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр.
[37] Law of Ukraine "On the Execution of Judgments and Application of the Case-Law of the European Court of Human Rights," No. 3477-IV, adopted February 23, 2006, art. 17, https://zakon.rada.gov.ua/laws/show/en/3477-15#Text

Transparency mechanisms illustrate perhaps the sharpest contrast between Ukraine and the United States. In Ukraine, transparency has become synonymous with digitalization. The 2011 Law of Ukraine "On Access to Public Information," particularly Articles 1 and 5,[38] establishes the general presumption of openness of information held by public authorities, obliging them to disclose data and provide information upon request proactively. This legal framework is reinforced by Article 34 of the Constitution of Ukraine, which guarantees the right to access and disseminate information. [39] According to the Venice Commission's Rule of Law Checklist, transparency, as a fundamental element of the rule of law, requires that laws and decisions are not only accessible but also clear, foreseeable, and enable public participation and oversight over governmental action.[40] Yet, in Ukraine, the emphasis has predominantly been placed on technological tools for access rather than institutional guarantees of transparency in decision-making processes.

Since 2020, this legal framework has been technologically embodied in the "Diia" platform, which exemplifies the term “digital constitutionalism”—a form of technological state-building aimed at enhancing access to rights through a centralized digital interface[41]. Diia provides access to over 70 digital public services and 11 official documents. However, while the platform streamlines public access, it raises concerns about risks of selective disclosure, data misuse, and political manipulation, especially without strong data protection guarantees. These concerns have been flagged by civil society actors and in Transparency International Ukraine’s Annual Report 2023, which emphasizes risks of over-centralization and insufficient safeguards against politicization.[42]

The United States, in turn, builds its transparency regime around an adversarial, litigation-driven model. The Freedom of Information Act (FOIA), codified at 5 U.S.C. § 552, obliges federal agencies to publish key rules, policies, and procedures proactively and governs how agencies must handle individual requests. The Act also specifies nine exemptions, including protections for personal privacy under subsections (b)(6) and (b)(7)(C), which agencies must justify when denying access. [43] This framework was reinforced in Department of Justice v. Reporters

[38] Law of Ukraine "On Access to Public Information," No. 2939-VI, adopted January 13, 2011, arts. 1, 5, https://zakon.rada.gov.ua/laws/show/en/2939-17#Text.
[39] Constitution of Ukraine, adopted June 28, 1996, art. 34, accessed May 16, 2025, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр#Text.
[40] Venice Commission, Rule of Law Checklist (Strasbourg: Council of Europe, 2016), 18–19, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e.
[41] Oleksiy Kresin, “Digital Constitutionalism in the Ukrainian Context: Between Symbol and Practice,” in Legal Reform and Digital Transformation in Eastern Europe, ed. Yevheniy Khlus (Kyiv: Legal Studies Institute, 2021), 102–118.
[42] Transparency International Ukraine, Annual Report 2023: Restoring Justice, Building Transparency, June 2024, 43, accessed May 16, 2025, https://ti-ukraine.org/wp-content/uploads/2024/06/zvit2023_eng.pdf.
[43] Freedom of Information Act, 5 U.S.C. § 552, particularly §§ 552(a)(1)–(3), (b)(6), (b)(7)(C), and (h) (originally enacted as Pub. L. No. 89-487, 80 Stat. 250 (1966), as amended by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016)), https://www.justice.gov/oip/freedom-information-act-5-usc-552.

Committee for Freedom of the Press, where the U.S. Supreme Court clarified that the core purpose of FOIA is to illuminate government conduct, not to provide public access to personal data held by the state.[44] Even information originally part of public records gains a heightened privacy status when compiled in federal databases, making its disclosure under FOIA's Exemption 7(C) categorically unwarranted.

In addition to litigation mechanisms, the United States transparency system incorporates institutional oversight bodies, most notably the Office of Government Information Services (OGIS), established within the National Archives and Records Administration (NARA) pursuant to the Open Government Act of 2007 and codified at 5 U.S.C. § 552(h).[45] OGIS functions as the federal FOIA ombudsman, providing mediation services between requesters and agencies, reviewing agency compliance with FOIA, and submitting recommendations directly to Congress and the President to improve transparency practices. These institutional checks complement the judiciary, ensuring that transparency is not solely reactive through court enforcement but also proactively supported via administrative facilitation and systemic oversight. Craig emphasizes that the U.S. model of transparency mirrors a wider administrative culture that relies on adversarial procedures, litigation incentives, and mechanisms for agency accountability mechanisms, reflecting deep-rooted constitutional values of public oversight and governance accountability.[46]

Parallel to transparency, accountability defines the enforceability of public law constraints on administration. As a fundamental principle of administrative law, accountability ensures that public authorities are held responsible for their actions and omissions through institutional oversight and judicial mechanisms. According to the Venice Commission's Rule of Law Checklist, accountability requires the existence of effective remedies, including judicial review and institutional mechanisms of control such as parliamentary oversight and independent supervisory bodies.[47] In Ukraine, accountability is primarily enforced through legal and bureaucratic channels, aligning with Romzek and Dubnick's model that outlines four accountability types: bureaucratic, legal, professional, and political. In this framework, adherence to formal rules, judicial oversight, and parliamentary control form the foundation mechanisms.[48]

The Constitution of Ukraine explicitly embeds accountability, which mandates that all public authorities exercise their powers strictly on the grounds, within the limits of authority, and in the

[44] DOJ v. Reporters Comm. for Free Press, 489 U.S. 749 (1989) https://supreme.justia.com/cases/federal/us/489/749/.
[45] United States Code. Freedom of Information Act, 5 U.S.C. § 552(h) (as amended by the Open Government Act of 2007, Pub. L. No. 110-175, § 10, 121 Stat. 2524 (2007)).
[46] Paul Craig, Administrative Law, 9th ed. (London: Sweet & Maxwell, 2021), 4-029.
[47] Venice Commission, Rule of Law Checklist, Council of Europe, CDL-AD(2016)007, adopted March 18, 2016, para. 95–101, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e.
[48] Romzek, Barbara S., and Melvin J. Dubnick. "Accountability in the Public Sector: Lessons from the Challenger Tragedy." Public Administration Review 47, no. 3 (1987): 228-229.

manner provided by the Constitution and the laws of Ukraine.[49] Additionally, Article 85(33) of the Constitution assigns to the Verkhovna Rada the competence to oversee the activities of the Cabinet of Ministers, ensuring political accountability at the legislative level.[50]

Judicial review is institutionalized and which empowers courts to review actions, omissions, and decisions of public authorities for legality, thus providing a primary channel for holding the administration accountable to the public.[51]

Post-Euromaidan reforms have further expanded the accountability framework by establishing the National Anti-Corruption Bureau (NABU) under the Law of Ukraine "On the National Anti-Corruption Bureau," where Article 1 defines its mandate as detecting and investigating corruption offenses committed by high-ranking officials.[52] Moreover, the Law of Ukraine "On the Prosecutor's Office" reinforces prosecutorial independence, particularly through Article 2, which ensures that prosecutors act only on the basis of law, free from interference.[53] In addition, the Specialized Anti-Corruption Prosecutor's Office (SAPO) was created to ensure procedural oversight of these investigations, and the High Anti-Corruption Court (HACC) was established to adjudicate such cases. Ukraine also introduced the National Agency on Corruption Prevention (NACP), which is responsible for verifying asset declarations, shaping national anti-corruption policy, and protecting whistleblowers.[54] Furthermore, the Asset Recovery and Management Agency (ARMA) was created to trace, evaluate, manage, and dispose of assets that may serve as evidence in corruption and other criminal proceedings.[55]

Despite these developments, Transparency International's 2023 report highlights that Ukraine continues to struggle with elite capture and political interference, illustrating that while formal mechanisms of accountability are in place, their effectiveness remains constrained by institutional fragility and political instability.[56]

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[49] Constitution of Ukraine, adopted June 28, 1996, art. 19, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр#Text.
[50] Ibid art. 85(33)
[51] Code of Administrative Proceedings of Ukraine, Law No. 2747-IV, adopted July 6, 2005, arts. 2, 19, https://zakon.rada.gov.ua/laws/show/en/2747-15#Text.
[52] Law of Ukraine "On the National Anti-Corruption Bureau," Law No. 1698-VII, adopted October 14, 2014, art. 1, https://zakon.rada.gov.ua/laws/show/en/1698-18#Text.
[53] Law of Ukraine "On the Prosecutor's Office," Law No. 1697-VII, adopted October 14, 2014, art. 2, https://zakon.rada.gov.ua/laws/show/en/1697-18#Text.
[54] Law of Ukraine on Prevention of Corruption, No. 1700-VII, October 14, 2014, https://zakon.rada.gov.ua/laws/show/en/1700-18
[55] Law of Ukraine on the National Agency of Ukraine for Detection, Search and Management of Assets Derived from Corruption and Other Crimes, No. 772-VIII, November 10, 2015, https://zakon.rada.gov.ua/laws/show/772-19#Text
[56] Transparency International Ukraine, Annual Report 2023 (Kyiv: Transparency International Ukraine, 2024), 7, https://ti-ukraine.org/wp-content/uploads/2024/06/zvit2023_eng.pdf.

In contrast, the U.S. accountability framework blends Congressional oversight (e.g., GAO investigations),[57] presidential regulatory control through Executive Order 12866,[58] and robust judicial review under the Administrative Procedure Act (APA). Specifically, section 10(e), now codified at 5 U.S.C. § 706, empowers courts to invalidate agency actions deemed arbitrary, capricious, or not in accordance with law.[59] Jerry Mashaw observes that this model reflects a layered grammar of governance, where hierarchical, legal, political, and professional forms of accountability interact dynamically to control administrative behavior and reinforce systemic checks and balances, rather than relying on a singular oversight mechanism. Mashaw highlights that such multiplicity of accountability forms is both a strength and a source of friction within the American system, deeply rooted in its constitutional tradition of fragmented authority and adversarial governance.[60] Similarly, Merrill emphasizes that the Chevron doctrine became emblematic of this institutional balance, affirming that legislative gaps should be filled by agencies, not courts, precisely because agencies are accountable through political channels, while courts are not designed to resolve policy disputes. This framing positioned administrative agencies as the more democratically legitimate actors in the face of statutory ambiguity. However, recent doctrinal shifts have challenged this assumption and reignited debates on the constitutional role in administrative oversight.[61]

While Ukraine has adopted this model's elements, including ex ante and ex post legal scrutiny, it still faces the challenge of consolidating institutional independence amid ongoing political transitions.

To sum up, states operate under the same four principles—legality, proportionality, transparency, and accountability—but in practice, they reveal distinct approaches to state power. In the U.S., these principles work through contestation, procedural flexibility, and negotiated discretion, reflecting a governance culture that tolerates ambiguity as a check on authority. In Ukraine, the same principles are embedded in rigid legal formalism, aiming to limit discretion and ensure predictability, largely shaped by its post-Soviet experience and European integration influence. Thus, even with similar terms, they carry different institutional meanings and expectations.

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[57] U.S. General Accounting Office (GAO), *Principles of Federal Appropriations Law* (Washington, D.C.: U.S. Government Accountability Office, 2004), Vol. I, 1-17.
[58] Executive Order No. 12866, "Regulatory Planning and Review," *Federal Register* 58, no. 190 (October 4, 1993): 51735–51744.
[59] Administrative Procedure Act, Pub. L. No. 79-404, § 10(e), 60 Stat. 237 (1946), codified at 5 U.S.C. § 706, https://www.govinfo.gov/content/pkg/STATUTE-60/pdf/STATUTE-60-Pg237.pdf.
[60] Jerry L. Mashaw, Accountability and Institutional Design: Some Thoughts on the Grammar of Governance, Yale Law School Legal Scholarship Repository, Working Paper No. 116 (2006), 120.
[61] Thomas W. Merrill, The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State (Cambridge: Harvard University Press, 2022), 18.

1.2. Administrative Acts as a Core Element of Public Administration: A Comparative Analysis of Classification and Legal Nature in Ukraine and the USA.

Building on the principles discussed in the previous section, this part focuses on administrative acts as a primary tool through which states exercise executive authority. In public law, the administrative act is more than a procedural step — the legal form directly affects individual rights and obligations. In transitional systems like Ukraine, precise regulation of administrative acts is key in preventing arbitrary governance and ensuring predictability and trust in public decisions. For this reason, their doctrinal design is crucial for assessing the legitimacy of administrative actions. While the concept of an administrative act is central to civil law systems, its legal form and practical function differ significantly across jurisdictions, as will be explored below.

Ukraine defines it in Article 9(1)(2) of the Law of Ukraine "On Administrative Procedure"as a unilateral decision by an administrative body in an individual case, aimed at creating, changing, or terminating legal rights or obligations.[62] This reflects the classical elements of unilateralism, binding force, and individualized applicability. Furthermore, under Article 19 of the Constitution of Ukraine, such acts enjoy presumption of validity until overturned by a court.[63]

Ukrainian doctrine, further clarifies that an administrative act must possess specific features, including addressability, external action, legal effect, and the purpose of directly influencing rights and obligations of specific persons, thus excluding acts of organizational or internal character.[64] Additionally, a detailed typology of administrative acts has been developed – classification system distinguishes administrative acts by their form, legal consequence, temporal scope, nature of impact, mode of adoption, result, function in legal regulation, type of issuing authority, and lawfulness, among other criteria.[65] This typology aligns Ukraine with the continental European administrative tradition. It reflects a doctrinal emphasis on predictability, legal certainty, and formal hierarchy, ensuring that the exercise of public authority remains structured and legally transparent.

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[62] Law of Ukraine "On Administrative Procedure," No. 2073-IX, adopted November 17, 2022, art. 9(1)(2), https://zakon.rada.gov.ua/laws/show/en/2073-20#Text.
[63] Constitution of Ukraine, adopted June 28, 1996, art. 19, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр#Text.
[64] Iryna Turchak, "Features of an Administrative Act as a Legal Form of Public Administration Activity," Pravo Ukrainy, no. 8 (2022): 17–18.
[65] Valentyn Halunko, Platon Dikhtievskyi, and Oleksandr Kuzmenko, Administrative Law of Ukraine. Full Course (Kherson: OLDI-PLUS, 2018), 160–173, http://lib-net.com/book/109_Administrativne_pravo_Ykraini_Povnii_kyrs.html.

By contrast, the U.S. Administrative Procedure Act (APA) of 1946 does not define "administrative acts" as a unified legal category. Instead, Section 551(13) defines "agency action" broadly as including any rule, order, license, sanction, relief, or failure to act, distinguishing between rulemaking—general policy formulation—and adjudication [66] individualized determinations under §§ 554–556 of the APA.[67] In addition, the APA recognizes non-binding instruments such as interpretive rules, policy statements, and advisory opinions.

In practice, the U.S. system relies less on formal presumption of administrative validity and more on a dynamic interplay of institutional checks, where judicial review, legislative oversight, and internal agency procedures converge to shape agency behavior. Judicial control under Section 706 of the APA remains the backbone of this system, requiring courts to decide all relevant questions of law and to ensure that agency action is not arbitrary or ultra vires.[68] The 2024 Supreme Court decisions in Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce definitively ended the Chevron doctrine, reaffirming that courts, not agencies, bear ultimate responsibility for interpreting statutory ambiguities.[69] As a result, agencies no longer enjoy presumptive interpretive authority, and the legal system now places even greater weight on courts as the final arbiters of administrative legality.

This model isn't purely judicial. Rather than depending on a single doctrinal concept like the Ukrainian administrative act, the American system shares responsibility across multiple veto points—Congress, the judiciary, executive oversight, and internal evaluations. This leads to a governance structure where discretion is perpetually negotiated and challenged instead of being fixed. This arrangement reflects a constitutional caution towards centralized executive authority, channeling power through procedural adversarialism and fostering an administrative mindset where ambiguity is viewed as a characteristic of democratic governance rather than a flaw. As a result, the American method does not eliminate discretion; instead, it intertwines it with competing institutional influences, preventing any one entity from dominating the interpretive process. Ukraine's defined concept of administrative acts provides a strong foundation for a hybrid model. Incorporating select U.S. procedural protections—like tools for public participation and more defined standards for review—could improve transparency and accountability while still respecting Ukraine's civil law principles. These components wouldn't replicate the U.S. model but would enhance Ukraine's system, advancing its current reform trajectory. Ultimately, a

[66] Administrative Procedure Act, 5 U.S.C. § 553(13),
[67] Administrative Procedure Act, 5 U.S.C. § 554–556
[68] Administrative Procedure Act, 5 U.S.C. § 706
[69] Loper Bright Enterprises v. Raimondo, No. 22-451, and Relentless, Inc. v. Department of Commerce, No. 22-1219, U.S. Supreme Court (2024), https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

successful administrative model needs to find a balance between legal certainty and procedural flexibility—a mean that ensures discretion is both managed and responsive.

1.3. Analysis of Administrative Contracts and Alternative Forms of Administrative Activity in Ukraine and the USA.

Administrative contracts and alternative forms of administrative activity have become part of this transformation, signaling a broader shift from unilateral, command-based models to more participatory, negotiated, and collaborative approaches. This evolution is driven by demands for administrative efficiency, legal adaptability, and more dynamic interaction between state authorities and private actors. However, this shift is not without risks. Especially in transitional democracies like Ukraine, where formal legality serves as a key defense against arbitrariness, the introduction of more flexible contractual forms challenges the stability and predictability of administrative actions. Such tools could weaken procedural guarantees and erode public trust without clear safeguards. Therefore, while Ukraine and the United States are expanding their repertoires of administrative tools, their distinct legal cultures and governance traditions mean that the consequences—and the necessary institutional precautions—differ fundamentally.

In Ukraine, administrative contracts (адміністративні договори) remain an underdefined and underregulated category, as neither the Law of Ukraine "On Administrative Procedure" nor the Code of Administrative Proceedings of Ukraine provides a formal definition or comprehensive procedural framework for such instruments. There is no dedicated statute or codified act in Ukrainian administrative law that systematically governs administrative contracts as a sui generis category distinct from civil contracts.

Instead, their legal existence and functionality are derived de facto from sectoral legislation, such as the Law of Ukraine "On Public-Private Partnership", where Article 1 outlines the purpose of ensuring cooperation between the state and private actors through contractual forms,[70] and the Law of Ukraine "On Public Procurement", which regulates state contractual relations in procurement procedures.[71] This legislative fragmentation creates uncertainty regarding the legal nature of such contracts, their classification, procedural guarantees, and mechanisms of accountability, leading to doctrinal reliance on analogies with civil law contracts or on European jurisprudential approaches.[72] As such, Ukrainian legal doctrine increasingly

[70]Law of Ukraine "On Public-Private Partnership," No. 2404-VI, July 1, 2010, art. 1, https://zakon.rada.gov.ua/laws/show/en/2404-17#Text
[71] Law of Ukraine "On Public Procurement," No. 922-VIII, December 25, 2015, https://zakon.rada.gov.ua/laws/show/en/922-19
[72] Bezpalova, "Administrative Contracts in Ukraine: Doctrinal Uncertainty and Practical Gaps," 2022, 53.

emphasizes the need for clearer differentiation between administrative and civil contracts, particularly to safeguard the public interest, balance asymmetrical power relations, and ensure procedural transparency within administrative law's public framework. [73]

These contracts typically arise in areas such as public procurement, public-private partnerships (PPPs), delegation of public services, and land use planning, where mutual agreement between a public authority and a private party can achieve administrative goals more effectively than unilateral acts.[74]

In contrast, the United States administrative state has long embraced a pragmatic and diverse toolkit of contractual and cooperative instruments that extend beyond the confines of classical binding contracts. Underpinned by constitutional permissiveness and a federalist system encouraging decentralization, U.S. agencies routinely employ various forms of negotiated governance, including grant agreements, memoranda of understanding (MOUs), consent decrees, negotiated rulemaking, and intergovernmental agreements. These instruments, while not always legally enforceable in the same manner as private law contracts, create binding frameworks of mutual expectations and coordination, often serving as flexible tools to advance specific policy objectives.[75]

This approach reflects an administrative culture that favors adaptability and responsiveness over procedural rigidity. The Federal Grants and Cooperative Agreements Act,[76] along with executive orders such as Executive Order 13132 on federalism,[77] grants agencies broad discretion in structuring these arrangements, while the Administrative Procedure Act (APA) ensures judicial oversight over agency action, including informal instruments.[78] However, as repeatedly noted by both scholars and accountability institutions like the U.S. Government Accountability Office (GAO), this model also introduces systemic vulnerabilities.[79] The GAO's evaluations of negotiated rulemaking practices have highlighted that while these mechanisms can enhance stakeholder engagement and efficiency, they may simultaneously erode legal certainty, obscure clear lines of accountability, and allow agencies to bypass formal rulemaking safeguards.[80] The proliferation of soft law instruments such as MOUs or consent decrees can blur the distinction between legally binding obligations and advisory positions, making it

[73] Ibid., 54–56.
[74] Yurii Bytiak and Dmytro Luchenko, "The Doctrine of Administrative Law of Ukraine: Evolution and Prospects for Further Development," *Pravo Ukrainy*, no. 10 (2021): 44–59
[75] Federal Grants and Cooperative Agreements Act, 31 U.S.C. §§ 6301–6308.
[76] Ibid.
[77] Executive Order 13132, "Federalism," 64 Fed. Reg. 43255 (August 4, 1999).
[78] Administrative Procedure Act of 1946, 5 U.S.C. § 706.
[79] U.S. Government Accountability Office (GAO), Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Negotiated Rulemaking, GAO-07-1049 (Washington, D.C.: U.S. Government Accountability Office, 2007), 15–18
[80] Ibid.

difficult for courts, citizens, and regulated entities to discern the enforceability and scope of such arrangements.[81]

Moreover, as Mashaw argues, while supporting administrative pluralism, this layered governance structure risks informalizing essential functions of rulemaking, thereby weakening transparency and predictability for citizens and the judiciary.[82] These concerns are further amplified in the wake of the Supreme Court's 2024 decisions which curtailed deference doctrines, signaling a shift toward stronger judicial policing of agency interpretations.[9] While this may reinforce accountability, it also risks narrowing the space for negotiated and flexible governance, potentially discouraging agencies from employing innovative instruments where statutory clarity is lacking.[83]

The American experience suggests that the strength of negotiated governance lies not in the tools themselves, but in the maturity of the system that embeds them within transparent, contested, and procedurally robust environments. In Ukraine, where even the definition of administrative contracts remains absent, any attempt to borrow such instruments without first establishing clear legal foundations and systemic safeguards risks entrenching informalism rather than fostering genuine administrative innovation.

[81] Ibid., 19–21.
[82] Jerry L. Mashaw, Accountability and Institutional Design: Some Thoughts on the Grammar of Governance, Yale Law School Legal Scholarship Repository, Working Paper No. 116 (2006), 118–120
[83] Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce, 603 U.S. ___ (2024) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

2. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIVITY UNDER UKRAINIAN AND U.S. ADMINISTRATIVE LAW

2.1. The Role of the Constitution and the Fundamental Principles of Constitutional Law in Ukraine: Key Features of Judicial Review of Administrative Activity

The Constitution of Ukraine embodies the most significant democratic achievements of Ukrainian society: the inviolability of human rights, separation of powers, the rule of law, and democratic governance. It possesses the highest legal authority and, according to Part 3 of Article 8, has direct effect. This means that the supremacy of constitutional norms extends to all areas of state activity, including legislative processes. All laws must be adopted in accordance with the Constitution and must not contravene its provisions. Moreover, even without specific legislative acts, individuals may seek judicial protection of their rights by directly invoking the Constitution of Ukraine.[84]

The President of Ukraine is the guarantor of the Constitution, while the Constitutional Court of Ukraine is the sole body authorized to ensure its supremacy. It is also the only institution empowered to interpret constitutional provisions, and its decisions are binding throughout the country.

The principles of constitutional law are the foundational concepts on which it rests. These include general principles such as publicity, priority, universality, proactive effectiveness, scientific grounding, continuity, systemic coherence, and programmability. Based on the system of constitutional institutions in Ukraine, further principles are recognized: the fundamentals of the constitutional order, the constitutional and legal status of the individual, forms of direct democracy, the organization and functioning of public authorities, local self-government, constitutional justice, and national security and defense.

According to prominent Ukrainian constitutional scholar V.M. Kampo, the principles of the rule of law enshrined in the Constitution include: the supremacy of the Constitution (Art. 8(2), Arts. 147–152); the separation of powers (Art. 6, Ch. IV–VIII); the democratic nature of the state (Art. 1, Ch. III); the social state principle (Arts. 1, 13, 24, 43, 45, 46, 48); the priority of human rights (Arts. 3, 21, 22, 64); the real guarantee of rights and freedoms (Arts. 1, 3, 5–8, 15, 19, 21–24, 55–57, 60); legality (Arts. 56, 75, 85(1)(3), 92–95, 129); and the mutual responsibility of the state and the individual (Arts. 3, 56, 68, 152).[85]

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[84] Constitution of Ukraine, art. 147, art. 150, art. 151-2, adopted June 28, 1996, as amended, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр#Text

[85] V.M. Kampo, Constitutional Law of Ukraine (Kyiv: Yurinkom Inter, 2002), esp. arts. 6, 8, 13, 21–24, 43, 56, 68, 75, 85, 92, 95, 129, 147–152.

As Serhiy Holovatyi notes, the notion of "rule of law" represents one element of the foundational triad of Western civilization: genuine democracy, human rights, and the rule of law—three indivisible components of political and legal culture, with human dignity at the center.[86]

Judicial reform in Ukraine has required extensive constitutional and legislative amendments and was critically needed. International experience shows that the judiciary—and the civilizational mindset of those who serve within it—is a decisive factor in lifting a society toward a values-based system governed by an independent, fair, and impartial court. Conversely, failure in this area risks regression toward "lynch law."

One of the key innovations was the removal of the Verkhovna Rada's power to appoint and dismiss judges, transferring this authority to the High Council of Justice. Judges lost full immunity, and—for the first time—lawyers and legal scholars were permitted to compete for judicial appointments, subject to rigorous qualification assessments by the High Qualifications Commission of Judges and the Public Integrity Council. The court system was reduced to three tiers: local and district courts, courts of appeal, and the reformed Supreme Court, whose new composition was determined via open competition. Although concerns remain about some judges, including the former Supreme Court President Vsevolod Knyazev, the institution operates at a reasonably professional level. Within the framework of this reform, specialized courts were also created, including the High Anti-Corruption Court and the High Intellectual Property Court.[87]

The constitutional framework of Ukraine firmly establishes judicial review as a key safeguard against administrative abuse. Article 55 explicitly affirms that "Everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of state power, local self-government bodies, officials and officers." [88] It establishes judicial review as a constitutional imperative, binding on both the legislature and executive, and enforceable through an independent judiciary. The same guarantee is reinforced by Article 124, which proclaims that "Justice in Ukraine is administered exclusively by the courts," thus excluding any parallel systems of administrative justice outside the judiciary.[89] The combination of both provisions secures a model in which legality, as a principle, is protected through institutionalised judicial remedies.

Moreover, Article 129-1 strengthens these guarantees by affirming that the primary task of the judiciary is the protection of human rights and freedoms, and that all branches of power must respect and facilitate the execution of court decisions.[90]

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[86] Serhiy Holovatyi, "Decommunize the Law", Zbruc, November 24, 2017, https://zbruc.eu/node/73468.
[87] Ibid.
[88] Constitution of Ukraine, No. 254к/96-BP, adopted June 28, 1996, *Official Bulletin of the Verkhovna Rada of Ukraine,* no. 30 (1996): art. 141, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр.
[89] Ibid., art. 124.
[90] Ibid., art. 129-1.

Since 2005, administrative justice in Ukraine has been exercised through a system of administrative courts and administrative proceedings, governed by The Code of Administrative Proceedings of Ukraine.[91] In 2016, administrative justice was formally enshrined at the constitutional level: in order to protect the rights, freedoms, and interests of individuals in public-law relations, administrative courts now function as a distinct judicial branch.[92]

Administrative justice refers to a system of courts that oversee legality in public administration by adjudicating public-law disputes in a specific procedural manner. These disputes typically arise from actions or inaction of executive authorities, local self-government bodies, or their officials in response to complaints by individuals or legal entities.

The core functions of administrative justice include: ensuring legality during decentralization processes; preventing overlapping competences and inter-agency conflicts; promoting "competence discipline" by preventing overreach or inaction by local authorities, executive agencies, or their officials; and addressing regulatory gaps within administrative governance at both the national and local levels.

Securing guarantees for individuals' subjective rights in interactions with administrative bodies is a fundamental duty of the rule-of-law state. This necessitates the existence of a system of administrative justice that, on one hand, protects the rights of individuals and, on the other, promotes legality in executive decision-making through judicial precedent, thereby strengthening legal order in the state. The introduction of administrative justice in Ukraine was thus motivated by the nature of public-law disputes, in which citizens face the power imbalance of an extensive administrative apparatus.

It is important to emphasize that administrative justice in Ukraine performs legal control, not policy-based or discretionary control over public administration. Administrative legal protection is strictly judicial in nature, as courts best meet the standards of independence and impartiality required for human rights protection.

Through administrative justice, Ukraine ensures the enforcement and reinforcement of legal order in public administration. It provides individuals the procedural means to defend their rights by challenging unlawful decisions, actions, or omissions of public authorities.

[91] The Code of Administrative Proceedings of Ukraine No. 2747-IV, adopted July 6, 2005, art. 2, https://zakon.rada.gov.ua/laws/show/2747-15.
[92] Constitution of Ukraine, art. 125 (as amended by Law No. 1401-VIII, June 2, 2016), https://zakon.rada.gov.ua/laws/show/en/254к/96-вр#Text

Ultimately, administrative justice serves as a vital constraint on executive power and a mechanism for enforcing the principle of separation of powers. Administrative courts act as additional safeguards for protecting the subjective rights and freedoms of citizens.[93]

The Code of Administrative Proceedings of Ukraine operationalizes these guarantees, stating that its primary function is to protect individuals' rights, freedoms, and interests in public law relations from violations by decisions, actions or inaction of subjects of power.[94] This wording reflects a significant doctrinal shift from a state-centric to a citizen-centric model of administrative justice.[95] Nevertheless, this shift remains incomplete, particularly at the level of judicial culture and enforcement realities.

Structurally, Ukraine's administrative court system includes local administrative courts, courts of appeal, and the Administrative Cassation Court within the Supreme Court. The latter plays a critical role not only in resolving cassation complaints but also in unifying judicial practice. According to Parts 5 and 6 of Art. 13 of the Law of Ukraine "On the Judiciary and the Status of Judges", the legal positions expressed in decisions of the Supreme Court are binding on all authorities applying the respective legal norm in their activities and must be considered by other courts.[96] This quasi-precedential function of the Supreme Court enhances legal certainty, prevents fragmentation, and helps form a coherent national approach to interpreting public law.

Compounding these challenges is the chronic problem of non-enforcement of administrative court decisions. Despite constitutional and procedural guarantees, cases such as Burmych and Others v. Ukraine and Volkov v. Ukraine[97] before the European Court of Human Rights have repeatedly demonstrated Ukraine's structural inability to ensure timely and effective implementation of judicial rulings, especially when they challenge powerful executive bodies or sensitive policy areas. [98] These systemic failures erode both public trust and the broader legitimacy of the rule of law, reducing judicial review to a declarative function in high-profile cases.

The Code incorporates key European public law doctrines, such as the principle of legality and proportionality.[99] It also grants administrative courts the power to apply interim measures,

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[93] "Poniattia ta pravova pryroda administratyvnoi yustytsii" [The Concept and Legal Nature of Administrative Justice], Studies.in.ua, accessed May 17, 2025, https://studies.in.ua/admin-pravo-shpora/2095-ponyattya-ta-pravova-priroda-admnstrativnoyi-yusticyi.html.

[94] The Code of Administrative Proceedings of Ukraine, art. 2, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/2747-15.

[95] Pavlo Rabinovych, Fundamentals of the General Theory of Law and the State, 9th ed. (Lviv: Kalvariia, 2007), 145.

[96] Law of Ukraine "On the Judiciary and the Status of Judges", adopted June 2, 2016, No. 1402-VIII, *Official Bulletin of the Verkhovna Rada of Ukrain*e, 2016, no. 31, art. 545, https://zakon.rada.gov.ua/laws/show/en/1402-19

[97] European Court of Human Rights, Volkov v. Ukraine, Application no. 21722/11, Judgment, January 9, 2013

[98] European Court of Human Rights, Burmych and Others v. Ukraine, Applications nos. 46852/13 et al., Judgment (Grand Chamber), October 12, 2017,

[99] The Code of Administrative Proceedings of Ukraine art. 8, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/2747-15.

[100]authorizing the suspension of contested administrative acts or imposing prohibitions to prevent irreversible harm. Despite their critical function, these tools are still applied inconsistently. Ukrainian courts often avoid granting interim relief in politically sensitive cases or in disputes concerning high-value licenses, land use, or tariffs—situations where swift judicial intervention is most needed to prevent arbitrary or harmful administrative action. This reluctance reflects an enduring culture of procedural conservatism and risk aversion, undermining the preventive potential of judicial review.

If constitutional guarantees are to mean anything in practice, reform cannot wait. Firstly, there is an urgent need to improve the effectiveness of enforcement mechanisms. Legislative amendments should strengthen institutional accountability for non-compliance with court decisions, including through the introduction of personal liability for officials who willfully delay or obstruct enforcement. Secondly, courts must be empowered—both legally and culturally—to apply interim measures more confidently, particularly in cases involving vulnerable claimants or urgent public interest. This requires procedural reform, judicial training, and internal motivation to engage more proactively with complex administrative disputes.

Thirdly, the judicial review system must evolve to address the substantive quality of administrative decision-making, moving beyond formal legality to assessing whether public authorities respect broader principles of fairness, reasonableness, and transparency. As confirmed in the 2023 OECD SIGMA monitoring report, Ukrainian courts have increasingly applied the principles of European administrative law, such as proportionality and reasonableness, even under martial law, treating them as binding standards rather than abstract doctrines.[101]

Restoring public trust in administrative courts remains a pressing challenge in Ukraine. While institutional reforms have strengthened the legal framework, persistent corruption scandals undermine the perceived legitimacy of judicial review. One of the most notorious examples concerns the now-dissolved Kyiv District Administrative Court (OASK). In 2020, criminal charges were brought against its head judge, deputy, and several other members of the bench, as well as the Head of the State Judicial Administration. According to the investigation, the accused acted within a criminal organization led by the head of OASK, allegedly seeking to seize control

[100] The Code of Administrative Proceedings of Ukraine art. 117, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/2747-15.

[101] OECD, Public Administration in Ukraine: Assessment Against the Principles of Public Administration (Paris: OECD Publishing, 2023), 157–158, https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/02/public-administration-in-ukraine_27a46a58/078d08d4-en.pdf.

over the High Council of Justice and the High Qualifications Commission of Judges to manipulate judicial appointments and undermine institutional oversight.[102]

On December 15, 2022, the Law of Ukraine on the Liquidation of the Kyiv District Administrative Court and the Establishment of the Kyiv City District Administrative Court came into effect.[103] OASK officially ceased to operate, and a new first-instance court was created with jurisdiction over the city of Kyiv. At the time of its dissolution, OASK had over 60,000 pending cases—many of them involving reinstatements, recalculation of pensions, and disputes with significant financial stakes. Observers noted signs of informal influence over the proceedings: certain politically sensitive cases remained unresolved for over a decade. For example, two high-profile lustration cases (No. 826/18004/14 and No. 826/148/16) were not adjudicated for more than 9 and 11 years, respectively, before or after the court's liquidation.

Further damage to public confidence occurred in May 2023 when the President of the Supreme Court of Ukraine, Vsevolod Knyazev, was formally charged with accepting a bribe of USD 2.7 million together with a practicing attorney.[104] These incidents demonstrate the entrenched nature of judicial corruption, not only at the district level but within the highest echelon of Ukraine's judicial system. They underscore the urgent need for more effective oversight, internal accountability mechanisms, and a sustained cultural shift toward transparency and independence.

Finally, Ukraine must address the incomplete integration of EU legal standards within its administrative procedure. Although the Constitution[105] recognises the supremacy of international treaties ratified by the Verkhovna Rada, this recognition remains under-implemented, particularly regarding non-binding EU norms, such as directives, recommendations, and administrative best practices.[106] While Ukraine is not a Member State of the European Union, and therefore not formally bound by Article 288 of the Treaty on the Functioning of the European Union,[107] These instruments play a vital role in Ukraine's journey toward aligning its laws with the EU-Ukraine

[102] "Suspicion to Vovk: NABU Raided the Kyiv District Administrative Court," UNIAN, August 5, 2020, https://www.unian.ua/politics/pidozra-vovku-nabu-priyshlo-z-obshukami-do-okruzhnogo-adminsudu-kiyeva-novini-kiyeva-11079152.html.
[103] Law of Ukraine on the Liquidation of the Kyiv District Administrative Court and the Establishment of the Kyiv City District Administrative Court, No. 2826-IX, adopted December 13, 2022, entered into force December 15, 2022, https://zakon.rada.gov.ua/laws/show/2826-20.
[104] "NABU Announced Suspicion to the President of the Supreme Court Knyazev," Ukrinform, May 15, 2023, https://www.ukrinform.ua/rubric-society/3710164-nabu-ogolosilo-pidozru-golovi-verhovnogo-sudu-knazevu.html.
[105] Constitution of Ukraine, adopted June 28, 1996, as amended, art. 9. https://zakon.rada.gov.ua/laws/show/en/254к/96-вр
[106] "Adaptation of the Ukrainian Administrative Justice System to EU Requirements: Transparency, Efficiency and Accessibility in Public Law Disputes." *CERIDAP*, June 10, 2024. https://ceridap.eu/adaptation-of-the-ukrainian-administrative-justice-system-to-eu-requirements-transparency-efficiency-and-accessibility-in-public-law-disputes/.
[107] Treaty on the Functioning of the European Union (TFEU), art. 288, OJ C 326, 26.10.2012. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT.

Association Agreement and the broader accession framework. As Ukraine moves closer to EU membership, the administrative courts will play a central role in ensuring that public administration operates in conformity not only with domestic law but also with evolving supranational legal obligations. Ukraine needs to incorporate EU legal standards into its daily judicial reasoning, extending beyond simple formal references. Doctrines such as proportionality, transparency, and participation should become operational legal standards, not rhetorical devices. In this process, experiences from jurisdictions like the United States may offer critical, though carefully adapted, insights.

2.2 Institutional Framework and Key Features of Judicial Review of Administrative Activity in the United States

A fundamental characteristic of judicial review in the United States is the doctrine of judicial deference, which regulates the extent to which courts are required to respect agency interpretations of statutes and regulations. Judicial review in the United States, while not explicitly codified in the Constitution, has been recognized as an implied power deriving from Articles III and VI,[108] as established by the landmark case Marbury v. Madison. Chief Justice John Marshall famously articulated in this decision that "[i]t is emphatically the duty of the Judicial Department to say what the law is."[109] This foundational principle underscores that it is ultimately the responsibility of courts, rather than agencies, to expound and interpret the law. At the same time, courts remain cautious to respect the separation of powers doctrine, ensuring that judicial interpretation does not usurp the legislative function of lawmaking—a balance that remains central in administrative law, where judges must assess the legality of agency actions without substituting their own policy judgments. Judicial review of administrative activity is operationalized through the Administrative Procedure Act (APA) § 706, which provides courts with the authority to "decide all relevant questions of law" and set aside agency actions that are arbitrary, capricious, or in excess of statutory jurisdiction. [110]Historically, U.S. courts' authority to review administrative action stems from the broader judicial duty to "decide all relevant questions of law" and to interpret statutory provisions independently,[111] as codified in § 706 of the APA. This provision instructs courts to set aside agency actions that exceed statutory authority or are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". Indeed, Merrill underlines that in its early years, Chevron was largely ignored or treated as one among many interpretive tools, with the Court

[108] U.S. Constitution arts. III, § 1; III, § 2; VI.
[109] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177–178 (1803), https://supreme.justia.com/cases/federal/us/5/137/.
[110] Administrative Procedure Act, 5 U.S.C. § 706 (2012).
[111] 5 U.S.C. § 706(2) (2012), https://www.law.cornell.edu/uscode/text/5/706.

showing “relative indifference to Chevron’s two-step approach,” often resorting to traditional factors of judicial review rather than the two-step formula itself.[112] For several decades, this doctrine was influenced by the landmark Supreme Court decision in Chevron U.S.A., Inc. v. Natural Resources Defense Council, which established a two-step framework. Firstly, courts must ascertain whether Congress has “directly spoken to the precise question at issue,” and if not, the court must uphold the agency’s interpretation provided it is “reasonable."[113] However, Merrill points out that this simplicity masked significant indeterminacies in both steps: step one relied on the ambiguous standard of “clarity.” In contrast, step two invoked the equally nebulous “reasonableness,” resulting in considerable judicial discretion under both steps.[114]Yet, as Merrill critically observes, Chevron's "attractive simplicity" came at the cost of compounding two indeterminate standards—clarity at step one and reasonableness at step two—both of which offered courts significant discretion under the guise of methodological rigor. [115] However, Scalia defended Chevron as a practical doctrine reflecting the realities of the modern administrative state. Although he recognized that binding deference may seem to initially conflict with the principle that “it is emphatically the province and duty of the judicial department to say what the law is,” he rejected this concern as overstated—referring to it as “a striking abdication of judicial responsibility” only to present it as a caricature. He dismissed the idea that Chevron is constitutionally justified by the separation of powers, stating, “even I cannot agree with this approach”. Instead, he supported Chevron as a rational presumption of congressional intent in an era of broad statutory delegations to agencies. [116]

Under the Skidmore deference standard, courts give weight to an agency’s interpretation depending on its persuasiveness, consistency, and thoroughness of reasoning, but not as a matter of binding obligation.[117] Similarly, the Auer deference required courts to defer to an agency’s interpretation of its own ambiguous regulations[118]—although this too was narrowed in 2019 by Kisor v. Wilkie, where the Court held that Auer should apply only when a regulation is genuinely ambiguous and the agency’s interpretation is reasonable and based on expertise. [119] These

[112] Thomas W. Merrill, The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State (Cambridge, MA: Harvard University Press, 2022), 82.
[113] Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842–845 (1984). https://supreme.justia.com/cases/federal/us/467/837/
[114] Merrill, The Chevron Doctrine, 259.
[115] Ibid 258-259.
[116] Antonin Scalia, “Judicial Deference to Administrative Interpretations of Law,” Duke Law Journal 1989, no. 3 (1989): 513-517.
[117] Skidmore v. Swift & Co., 323 U.S. 134 (1944). https://supreme.justia.com/cases/federal/us/323/134/
[118] Auer v. Robbins, 519 U.S. 452 (1997). https://supreme.justia.com/cases/federal/us/519/452/
[119] Kisor v. Wilkie, 588 U.S. 558, 139 S. Ct. 2400 (2019). https://supreme.justia.com/cases/federal/us/588/18-15/

competing doctrines created a complex landscape of layered deference, where courts moved along a spectrum of scrutiny depending on context, statute, and political sensitivity of the issue.[120]

However, this balance shifted dramatically in 2024, when the U.S. Supreme Court in Loper Bright Enterprises v. Raimondo[121] overruled the Chevron doctrine altogether. In its majority opinion, the Court argued that statutory interpretation is the exclusive duty of the judiciary and that deference to agency interpretations is inconsistent with Article III of the U.S. Constitution.[122] The ruling marked a fundamental reassertion of judicial supremacy in administrative governance. The Court's ruling reflects a broader shift identified by Merrill, where statutory interpretation has been reclaimed as the exclusive function of the judiciary, aiming to restore what he terms the "rule of law values" and the constitutional principle of legislative supremacy.[123] As a result, judicial review has become more assertive, requiring courts to conduct independent and exhaustive legal analysis even in highly technical regulatory fields.[124] While some hailed this development as a victory for the rule of law, others warned that it may lead to Legal instability, forum shopping, and increased judicial politicization of regulatory policy. This reaffirms that while courts have reclaimed their role as the "sole expositors of the law," they must also navigate the delicate constitutional balance between judicial independence and the realities of a modern administrative state.[125] This institutional shift is already marked by mounting litigation fatigue, strategic forum shopping, and fragmented regulatory policies, as agencies, litigants, and lower courts struggle to navigate increasingly complex statutory interpretations without the anchor of deferential doctrines. This shift risks overburdening courts with highly technical disputes, creating procedural bottlenecks, and delaying effective policy implementation, developments particularly destabilizing in sectors like environmental and financial regulation, where legal uncertainty can paralyze enforcement and policymaking.[126]

Kagan further cautions that the absence of structured deference risks amplifying executive dominance over agencies, as Presidents, through direct control over administrative priorities, can increasingly instrumentalize agency actions for political ends, intensifying what she terms the "presidentialization" of administration.[127]

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[120] Cleary Gottlieb Steen & Hamilton LLP, "After Chevron: What the Supreme Court's Loper Bright Decision Changed, and What It Didn't," *Clearygottlieb.com*, July 11, 2024, https://www.clearygottlieb.com/news-and-insights/publication-listing/after-chevron-what-the-supreme-courts-loper-bright-decision-changed-and-what-it-didnt.
[121] Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024), slip op. at 2–4. https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.
[122] Ibid.
[123] Merrill, The Chevron Doctrine, 260.
[124] Seyfarth Shaw LLP, "The Chevron Doctrine is Dead. Long Live the Administrative State," *Seyfarth.com*, June 28, 2024, https://www.seyfarth.com/news-insights/chevron-is-dead-long-live-the-administrative-state.html.
[125] Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024), slip op. at 7–35, https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.
[126] Merrill, The Chevron Doctrine, 280.
[127] Elena Kagan, "Presidential Administration," Harvard Law Review 114, no. 8 (2001): 2250-2252.

In the context of emerging democracies with fragile institutional checks and dominant executive branches, such a recalibration may exacerbate governance instability, as courts are pulled into policy battles they may lack the capacity or legitimacy to resolve effectively.

Scalia explicitly rejected the view that constitutional separation of powers requires deference, contending that [p]olicy evaluation is part of the traditional judicial tool-kit, and that judicial deference to agency interpretations should rest on a pragmatic presumption of congressional intent, not on constitutional obligation.[128]

The 2024 ruling not only shifted doctrine, precisely reshaped administrative practice, forcing agencies to justify their actions more precisely, knowing courts will now review them de novo. This doctrinal shift echoes earlier transformations in judicial review practice that began in the late 1960s and intensified through the 1970s, when courts, especially the D.C. Circuit, developed what Schiller terms the "hard look review," applying strict scrutiny even on complex policy matters. This approach was later embraced by the Supreme Court in State Farm (1983), marking a critical point where courts demanded agencies justify decisions not merely as reasonable, but as products of transparent, evidence-backed reasoning consistent with APA procedural guarantees.[129] Agencies must now be more legally precise and procedurally robust in justifying their actions, knowing that courts will no longer "fill in the gaps" for them. Merrill has proposed that moving beyond Chevron requires a rethinking of the entire deference structure, advocating a three-step model where courts first determine the boundaries of agency authority, then ensure the agency's interpretation complies with statutory directives with a high degree of certainty, and finally assess whether the interpretation followed a transparent notice-and-comment process.[130]

Within this complex framework, examined through the lens of separation of powers, judicial administration merges the boundaries between legislative, administrative, and adjudicatory governance forms, undermining crucial higher-level principles such as democratic accountability, transparency, and the rule of law.[131]

Unlike the United States, where administrative oversight is integrated within a general judiciary, Ukraine has established a specialized system of administrative courts, reflecting its civil law tradition and the influence of European models. This distinction has critical implications for balancing efficiency, legality, and political neutrality in administrative justice, particularly in transitional contexts. The United States incorporates administrative review into its general judiciary, comprising District Courts, Courts of Appeals, and the Supreme Court, each serving a

[128] Scalia, "Judicial Deference," 515
[129] Kristin E. Hickman, "Categorizing Chevron," *Ohio State Law Journal* 81, no. 3 (2020):645-669.
[130] Merrill, The Chevron Doctrine, 262–264.
[131] Jonathan Petkun and Joseph Schottenfeld, "The Judicial Administrative Power," Yale Law Journal 133, no. 2 (2023): 350.

distinct role in the review process.[132] It is critical to emphasize that, unlike European jurisdictions with specialized administrative courts, the U.S. general judiciary retains full competence over agency review, applying APA § 706 as the central procedural framework for scrutinizing administrative rulemaking, adjudication, and enforcement actions. The U.S. judiciary includes District Courts (first instance), Courts of Appeals, and the Supreme Court.

District courts conduct the initial review of agency action, but their jurisdiction is conditioned by doctrines like exhaustion of administrative remedies and ripeness, which require that all internal agency procedures be exhausted by a claimant before judicial proceedings begin.[133]At the appellate level, Courts of Appeals serve as the main forums for challenging final agency rules, often analyzing complex materials, such as statistical models from the FDA,[134] environmental projections from the EPA,[135] or immigration assessments from DHS.[136] Their task is not to replicate agency expertise but to ensure that the agency's reliance on such data meets legal standards and follows procedural mandates like the notice-and-comment requirement under Section 553 of the APA.[137]

Yet, as Merrill warned prior to Chevron's overruling, integrating administrative oversight within generalist courts risks drawing judges without specialized expertise into complex technocratic disputes involving intricate data models, environmental assessments, and financial regulations. He argued that such judicialization of policy disputes could lead to procedural inefficiencies, inconsistent rulings, and further politicization of judicial processes, undermining predictability and eroding public trust in regulatory governance.[138]This institutional division reflects a deeper principle: agencies serve as fact-finders and implementers, while courts act as legal gatekeepers. In Massachusetts v. EPA, the Supreme Court rejected the EPA's refusal to regulate greenhouse gases, not by disputing the science, but because the agency failed to offer a reasoned legal explanation, as required by the APA.[139] Such insistence on reasoned decision-making reflects the broader U.S. judicial philosophy that agencies' discretion, while broad, is constrained by procedural and substantive review mechanisms rooted in APA § 706, particularly the arbitrary and capricious standard, which courts have interpreted through doctrines such as hard

[132] Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007). https://supreme.justia.com/cases/federal/us/549/497/
[133] Administrative Procedure Act of 1946, 5 U.S.C. § 704.
[134] Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.
[135] Clean Water Act, 33 U.S.C. § 1251 et seq.
[136] Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.
[137] Administrative Procedure Act of 1946, 5 U.S.C. § 553.
[138] Merrill, The Chevron Doctrine, 271-283
[139] Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007). https://supreme.justia.com/cases/federal/us/549/497/

look review to ensure administrative accountability. This decision was not a scientific rebuke but a legal one: the EPA had failed to offer a "reasoned explanation" as required by the APA.

Similarly, in FDA v. Brown & Williamson Tobacco Corp., the Supreme Court held that the FDA had exceeded its statutory authority by attempting to regulate tobacco products as "drugs" under the Food, Drug, and Cosmetic Act. The Court reasoned that Congress had repeatedly excluded tobacco from the FDA's jurisdiction and that agency action could not override this clear legislative intent.[140] Chevron's core institutional virtue was to differentiate between clear congressional limits—where agencies had no discretion—and ambiguous areas—where agencies could exercise discretion, provided they offered cogent reasons for their interpretation.[141]

Each institution, therefore, has distinct legal features and powers: agencies act with delegated authority but within statutorily defined limits; courts possess interpretive supremacy but lack policy initiative. The legitimacy of the system depends on a tense but necessary balance between these roles. Agencies innovate and respond quickly to policy needs, but courts ensure that this innovation remains within the rule-of-law framework.[142] An illustrative case involved the FAA attempting to fine a man for flying an inflatable pool, where a federal judge clarified that, despite appearances, it did not meet the legal definition of an aircraft. This highlights the judiciary's role as the final arbiter ensuring regulatory action remains within the legal framework. Yet, beneath this carefully balanced institutional structure lies a system under increasing pressure—from litigants, politics, and the sheer scale of modern administrative governance. Courts are asked not only to review legality, but to weigh in on politically divisive questions ranging from environmental regulation to immigration bans and vaccine mandates.

In today's regulatory climate, individual rights have emerged as a critical front line of judicial review. Courts routinely invoke the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act (APA) to ensure that agencies provide not only lawful outcomes, but also fair procedures. A landmark example is Goldberg v. Kelly (1970), where the U.S. Supreme Court held that welfare benefits cannot be terminated without a prior evidentiary hearing, establishing a constitutional floor for due process in administrative matters affecting vital interests.[143]

These developments have both empowered individuals and complicated the role of agencies. As courts demand clearer justifications, better reasoning, and more transparent procedures, agencies must adjust by formalising internal practices, developing more robust rulemaking

[140] FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120 (2000). https://supreme.justia.com/cases/federal/us/529/120/
[141] Merrill, The Chevron Doctrine, 258.
[142] Todd S. Aagaard, "Administrative Law as Ecosystem," Administrative Law Review 72, no. 4 (2020): 802. https://administrativelawreview.org/wp-content/uploads/sites/2/2019/02/Aagaard_Final.pdf.
[143] Goldberg v. Kelly, 397 U.S. 254 (1970). https://supreme.justia.com/cases/federal/us/397/254/.

records, and anticipating litigation.[144] While this has improved overall administrative discipline, it has also slowed down regulatory processes and led to litigation fatigue, in areas like environmental law, where every rule issued by the EPA may be tied up in court for years before implementation.

At this crossroads, U.S. administrative law faces a well-known dilemma: balancing efficiency with legality, expert discretion against judicial oversight, and technocratic governance alongside democratic accountability. These issues are not unique to the United States; they resonate in jurisdictions such as Ukraine.

As Ukraine continues to reform its administrative justice system under the dual influence of European and international models, the U.S. experience offers both critical warnings and valuable insights. Although differences in legal tradition and institutional design limit direct replication, the American system demonstrates how robust judicial institutions and evolving interpretative doctrines can ensure legal oversight within a dynamic regulatory environment. From a comparative perspective, the American experience cautions that while judicial deference promotes efficiency, its absence may force courts into technical areas, risking inconsistency and overreach. Merrill, however, warns that eliminating Chevron altogether might not automatically resolve concerns of judicial overreach or inconsistency, as the legacy of discretionary judicial review persists, requiring courts to develop more refined frameworks for reviewing agency interpretations in ways that respect both constitutional structure and procedural legitimacy.[145] Nevertheless, the American experience demonstrates that institutional design is never static and that judicial review evolves in response to deeper constitutional currents and public expectations regarding democratic accountability. However, scholars argue that eliminating Chevron deference alone will not address the fundamental tensions in judicial review. Courts will still have to deal with intricate statutory ambiguities while balancing constitutional structure against practical concerns regarding regulatory expertise and procedural legitimacy.[146] Ultimately, as Scalia concluded, Chevron endured because it "more accurately reflects the reality of government, and thus more adequately serves its needs," by balancing political accountability with the agility required in administrative governance.[147]

Following the analysis of the Ukrainian and U.S. models, the next step is to move to a comparative assessment, highlighting elements that could reinforce the Ukrainian system.

As Shapiro reminds, courts inevitably function as political actors within broader governance systems, regardless of their formal institutional design, as their decisions shape, constrain, or

[144] Ibid., 607.
[145] Merrill, The Chevron Doctrine, 261–262.
[146] Kristin E. Hickman, “Categorizing Chevron,” *Ohio State Law Journal* 81, no. 3 (2020):618-620.
[147] Scalia, "Judicial Deference," 518

enable executive power and policy directions.[148] Against this backdrop, the U.S. experience raises critical questions for Ukraine's evolving administrative justice system: Does the presence of specialized administrative courts create a more stable and depoliticized balance between legality and governance efficiency? Or does Ukraine risk encountering similar trends of juridification and judicial overreach, particularly given its fragile institutional environment and historically dominant executive?

2.3. Comparative Analysis and Perspectives for Improving Judicial Review of Administrative Activity in Ukraine based on U.S. Experience

This section offers a comparative analysis of judicial review in Ukraine and the United States, focusing on procedural guarantees, court-agency dynamics, and review standards. The goal is to identify lessons that could inform Ukraine's ongoing reform efforts to ensure more effective, accountable, and procedurally robust administrative justice. Despite their different legal traditions, Ukraine and the United States face systemic tensions in maintaining this balance. In Ukraine, where administrative courts are specialized but still institutionally vulnerable, the challenge lies in transforming formal procedural guarantees into effective constraints on administrative discretion. In the United States, the post-Loper Bright era has revealed the risks of judicial overreach and politicization as courts assume more assertive roles in areas traditionally occupied by executive agencies. These patterns, however, should not obscure the foundational aim of judicial review as a mechanism to constrain administrative arbitrariness and secure accountability, rather than to empower courts as primary decision-makers—an important distinction for Ukraine, where any expansion of judicial review must be carefully balanced against the risks of institutional overreach and politicization. [149] Such dynamics expose a dual threat not only from judicial overreach but also from executive instrumentalization of administrative bodies, where agencies may be co-opted to advance presidential policy agendas or shield decisions from broader public accountability. This blurring of administrative and political boundaries creates systemic vulnerabilities, where neither courts nor agencies function as neutral arbiters, but rather become arenas for institutional competition and politicization. These risks are particularly acute in transitional democracies like Ukraine, where the institutional autonomy of agencies and the judiciary remains fragile, and historical patterns of executive dominance continue to shape governance practices. Against this backdrop, this section examines how both systems address these institutional risks and what

[148] Martin Shapiro, Courts: A Comparative and Political Analysis (Chicago: University of Chicago Press, 1981), 12-15.
[149] Irina Krivelskaya and Natalia Patsatsia, "Features of Judicial Review over Administrative Actions in the United States," Pravo i upravlenie, no. 4 (2020): 8.

lessons can be drawn to enhance Ukraine's administrative justice in its current phase of legal reconstruction and European integration.

One of the core divergences between the two systems concerns the standard of review applied to administrative discretion. Ukraine's legal framework—anchored in the principle of legality and reinforced by recent codifications—primarily employs a formal legality check, often confined to assessing whether an authority acted within its competence and followed the prescribed procedures. However, deeper scrutiny of the substance of administrative decisions, particularly through proportionality review, remains sporadic and often underdeveloped, especially in politically sensitive areas like national security and economic regulation. By contrast, the U.S. system, through the "arbitrary and capricious" standard codified in APA § 706(2)(A), requires courts to examine both the procedural integrity and the substantive rationality of agency action, compelling agencies to demonstrate that their decisions are evidence-based, transparent, and responsive to relevant factors. This standard has evolved into a critical doctrinal tool enabling courts to review the exercise of discretion without fully substituting their own policy preferences.

The key strength of the U.S. model lies not in courts acting as substitute policymakers, but in ensuring that agencies justify their actions through transparent, reasoned, and procedurally sound processes. This function as procedural gatekeepers, rather than substantive evaluators, remains essential to maintaining the balance of powers in a system where agencies enjoy broad policymaking discretion. This approach, developed as a response to concerns over executive arbitrariness during the New Deal era, reinforces the role of courts not as ultimate policymakers, but as procedural watchdogs ensuring that agencies justify their actions transparently, within clear legal standards, and subject to judicial verification if necessary.[150] For Ukraine, where courts often default to formal legality checks without engaging with the substantive reasoning of administrative decisions, this model illustrates the potential of strengthening procedural rationality without encouraging courts to intrude upon policy domains.

The hallmark of American judicial review lies not in the court substituting its own policy preferences but in compelling agencies to provide a reasoned explanation that survives rigorous procedural scrutiny—a principle crystallized in the hard look review doctrine of State Farm. In practice, the decentralized U.S. judiciary enables more accessible and responsive oversight of administrative action.

However, this approach is not without institutional costs. Excessive judicial scrutiny risks entrenching procedural formalism, creating litigation backlogs, and drawing courts into highly technical or politicized disputes beyond their institutional competence. Such patterns, increasingly

[150] Irina Krivelskaya and Natalia Patsatsia, "Features of Judicial Review over Administrative Actions in the United States," Pravo i upravlenie, no. 4 (2020): 11–12.

visible in the contemporary U.S. system, highlight the need for carefully calibrated judicial oversight mechanisms that empower courts to scrutinize administrative decision-making processes while preventing procedural rigor from becoming an obstacle to efficient governance. In Ukraine's context, where courts are still consolidating their legitimacy and capacity, the challenge will be to reinforce procedural accountability mechanisms without fostering judicial overextension or regulatory paralysis.

Moreover, while Article 117 of the CAPU allows for interim relief, its usage is infrequent and often overly cautious.[151] In contrast, U.S. courts regularly apply injunctive relief and preliminary injunctions, which play a central role in preserving the claimant's rights pending full judicial review. U.S. courts robustly enforce procedural rights, including hearings and reasoned decisions, with agency non-compliance typically resulting in annulment.[152]

The issue of bindingness and enforceability of court decisions also reveals significant divergence. In Ukraine, the Constitution and legislation formally provide that judgments are binding on public authorities; however, non-execution remains a chronic issue, particularly where state bodies perceive a ruling as politically or institutionally inconvenient.[153] In contrast, U.S. agencies are legally and institutionally constrained to comply with court orders, under penalty of contempt and other legal remedies. This enforceability, coupled with mechanisms of judicial oversight embedded in the Administrative Procedure Act, ensures that judicial review operates not merely as a declarative safeguard, but as an enforceable check on administrative arbitrariness—something still underdeveloped in the Ukrainian system, where weak enforcement mechanisms often undermine the potential of judicial review to serve as an effective constraint on executive power. [154]This difference is not merely legal but cultural: it reflects divergent levels of respect for institutional autonomy and judicial independence, as well as the practical entrenchment of the rule of law.

A particularly striking point is the role of courts in protecting individual rights against administrative discretion. In Ukraine, despite constitutional protections and ECHR jurisprudence, courts are often hesitant to engage in deep proportionality review, especially when national security or economic regulation is at stake.[155] U.S. courts, by contrast, have a long tradition of applying constitutional principles directly to administrative action. This includes not only procedural due process but also substantive constitutional values. For example, in Department of

[151] The Code of Administrative Proceedings of Ukraine, art. 117, adopted July 6, 2005, as amended.
[152] Administrative Procedure Act, 5 U.S.C. § 553–706 (1946); see also Richard J. Pierce Jr., *Administrative Law Treatise*, 5th ed. (New York: Wolters Kluwer, 2010), 489–493.
[153] European Court of Human Rights, Case of Volkov v. Ukraine, no. 21722/11, ECHR 2013.
[154] Irina Krivelskaya and Natalia Patsatsia, "Features of Judicial Review over Administrative Actions in the United States," Pravo i upravlenie, no. 4 (2020): 9.
[155] Ibid.

Commerce v. New York (2019), the Supreme Court invalidated an attempt to add a citizenship question to the U.S. Census on the grounds that the agency's justification was pretextual and violated the standards of administrative rationality.[156] This demonstrates a level of judicial confidence and institutional assertiveness that has yet to fully develop in the Ukrainian system.

When courts are forced into the vacuum left by weakened agency deference, they risk becoming embroiled in politicized disputes and overextending their institutional capacity, producing litigation fatigue and undermining systemic predictability

A notable exception is Yuliia Vashchenko's comparative study, which situates Ukraine's administrative law within the broader context of post-socialist legal transformation, while also identifying selective U.S. procedural instruments—such as due process reasoning and notice-and-comment rulemaking—that could inform future reforms.[157]

Then, scholars such as Deviatnikovaite and Bareikytė trace the delayed development of administrative law in Ukraine due to Soviet legal influence. They argue that, unlike Poland or Hungary, which had interwar traditions of administrative justice, Ukraine only initiated meaningful reforms after independence, with early initiatives like the 1917 Central Rada decree offering limited procedural guarantees.[158] Some of the most comprehensive regional comparative efforts can be found in Comparative Administrative Law: Perspectives from Central and Eastern Europe, where scholars such as Deviatnikovaite and Bareikytė trace the delayed development of administrative law in Ukraine due to Soviet legal influence. They argue that, unlike Poland or Hungary, which had interwar traditions of administrative justice, Ukraine only initiated meaningful reforms after independence, with early initiatives like the 1917 Central Rada decree offering limited procedural guarantees. This historical divergence supports the case for context-sensitive comparisons that go beyond formal institutional borrowing.[159]

From a broader comparative perspective, the work of Martin Shapiro and Jerry Mashaw provides conceptual tools for evaluating judicial review as more than a form of institutional control. Shapiro's thesis on the "giving reasons requirement" establishes that courts compel public authorities to articulate not only their conclusions but the logic and evidence behind them.[160] Similarly, Mashaw's notion of "bureaucratic justice" situates judicial review as a

[156] Department of Commerce v. New York, 588 U.S. ___ (2019) https://supreme.justia.com/cases/federal/us/588/18-966/; see also Tara Leigh Grove, "The Supreme Court's Legitimacy Dilemma," *Columbia Law Review* 132, no. 2 (2022): 228–273.
[157] Yuliia Vashchenko, "Administrative Law in Ukraine," in Comparative Administrative Law: Perspectives from Central and Eastern Europe, ed. Ieva Deviatnikovaitė (Abingdon: Routledge, 2024), 193–221.
[158] Ibid.
[159] Ieva Deviatnikovaite and Simona Bareikytė, "Comparative Remarks," in Comparative Administrative Law: Perspectives from Central and Eastern Europe, ed. Ieva Deviatnikovaite (Abingdon: Routledge, 2024), 225–239.
[160] Martin Shapiro, "The Giving Reasons Requirement," University of Chicago Legal Forum 1986, no. 1 (1986): 179–220.

mechanism to inject fairness, deliberation, and rationality into otherwise opaque bureaucratic processes.[161] These insights are increasingly applicable in Ukraine, where courts have begun to demand not just the formal legality but the substantive justification of administrative acts.

Post-2022 reconstruction will require Ukrainian courts to guarantee transparency, proportionality, and rights protection. Judicial review will become central in cases involving the distribution of reconstruction funds, property restitution, and national security regulation. In this sense, administrative courts are not only legal guardians but also institutional gatekeepers of democratic governance and public trust.

Accordingly, selective adaptation of U.S. elements—such as interim measures, procedural standing, and review of discretion—could enhance Ukraine's administrative justice in a constitutionally compatible manner.

What emerges from this comparative inquiry is not a preference for one system over the other, but a recognition of the value of selective adaptation. Ukraine can draw from the American experience those elements that reinforce the culture of legal accountability—without disrupting the structural foundations of its own administrative justice. These include stronger interim remedies, clearer standards of review, the enforcement of court judgments as constitutional obligations, and a reimagined role for judges as both interpreters and guardians of legality.

Ultimately, as Ukraine progresses toward full integration with the European legal space and faces the unprecedented task of post-war reconstruction, its courts will increasingly be called upon to adjudicate not only disputes, but the legitimacy of policy choices, the rationality of administrative design, and the fairness of state intervention in private life. A system of judicial review that is capable, principled, and contextually responsive will be indispensable to this task.

The following chapter will therefore shift the focus from the foundations and controls of administrative action to the forms and alternatives that extend beyond unilateral acts—namely, administrative contracts and non-traditional instruments. These evolving practices signal an important transformation in the role of public administration and offer yet another dimension through which administrative law must be critically analysed.

[161] Jerry L. Mashaw, Bureaucratic Justice: Managing Social Security Disability Claims (New Haven: Yale University Press, 1983), 25–49.

3. OTHER FORMS OF CONTROL OVER ADMINISTRATIVE ACTIVITY IN UKRAINIAN AND U.S. LAW

The phenomenon of control over administrative activity beyond the scope of judicial review is multidimensional, encompassing legal, institutional, political, and informational elements. It cannot be fully understood through a single mechanism or doctrinal category, due to the hybrid nature of modern administrative states. Instead, it should be approached as a composite framework in which multiple actors—parliamentary institutions, presidents, internal executive bodies, civil society, and the media—operate within overlapping and sometimes competing domains of oversight. This diversity reflects each state's constitutional culture, administrative capacity, and governance traditions.

Accordingly, the comparative analysis in this chapter integrates statutory and doctrinal perspectives with a contextual assessment of institutional functionality and normative coherence.[162] the chapter adopts an institutional-functional perspective, examining how formal mechanisms operate in practice and what informal substitutes emerge where legal capacity is weak. Third, intra-executive controls—such as performance audits and disciplinary regimes—are analyzed for their autonomy, transparency, and institutional leverage. This includes oversight arrangements in Ukraine's Cabinet of Ministers and local administrations, and the U.S. Inspector General system.

Finally, the chapter applies a pluralistic public law framework to non-state oversight actors: investigative journalists, civil society watchdogs, and public access initiatives. These actors increasingly influence administrative accountability, especially in post-crisis or corruption-prone settings. Throughout the chapter, legal norms are treated not as static texts, but as parts of broader institutional ecosystems shaped by politics, administrative culture, and public expectations. The chapter's goal is not to extract a universal model of oversight, but to identify transferable strategies and evolving vulnerabilities—using the United States both as a contrast and a reference point.

3.1 Parliamentary and Presidential Oversight of Administrative Activity in Ukraine and the United States

A retrospective analysis of democratic countries participating in European integration shows the evolution of parliamentary and executive oversight to harmonize national governance with

[162] Vicki C. Jackson, "Comparative Constitutional Law: Methodologies," in *The Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and András Sajó (Oxford: Oxford University Press, 2012), 54–75.

supranational legal frameworks. In Ukraine, such oversight mechanisms are shaped by both local constitutional reforms and the requirements of European Union membership. The constitutional doctrine in Ukraine perceives parliamentary oversight as more than a procedural obligation; it is regarded as an essential part of the system of checks and balances and as a significant institutional representation of public participation accountability. The oversight function of the Verkhovna Rada is inextricably linked to its legislative powers. It ensures the legal responsibility of the executive to both the legislature and society.[163] Similarly, the Constitutional Court of Ukraine, in Decision No. 6-rp/2010, reaffirmed that parliamentary oversight is a core component of the principle of separation of powers, serving as a mechanism to prevent executive overreach and maintain the constitutional order. In this ruling, the Court found that the Cabinet of Ministers had exceeded its constitutional powers by unilaterally transferring certain functions of the Ministry of Internal Affairs to the newly established State Migration Service, thereby infringing upon the exclusive competence of the Verkhovna Rada to determine the structure and powers of central executive bodies.[164]

Strengthening control within and beyond the executive is thus no longer a matter of institutional maturity alone—it is a core requirement of post-war reconstruction and international credibility.

Legislative and executive oversight of administrative activity constitutes a core safeguard of lawful governance in constitutional democracies. As emphasized by comparative constitutional scholars, the separation of powers is not a rigid or monolithic formula but a flexible institutional arrangement that varies significantly across jurisdictions. Even within systems labeled as parliamentary or presidential, the actual balance between legislative, executive, and judicial powers depends on historical legacies, political conditions, and societal expectations. Oversight of governmental activity is ensured by courts and parliaments, ombudsmen, administrative agencies, and the media, all contributing to a multilayered framework of accountability designed to prevent concentration of power and promote the rule of law. [165] As noted by comparative constitutional scholars, even in systems formally labeled as parliamentary or presidential, the separation of powers is not a fixed formula but a flexible arrangement, which may lean toward stronger legislative or executive dominance depending on historical and political conditions. Accordingly, executive oversight takes multiple institutional forms—through parliaments, courts, ombudsmen, or the media—and serves as a core feature of constitutional democracies to prevent concentration

[163] A. Bondarenko and N. O. Pustova, "Parliamentary Control in the System of State Oversight," in Administrative Law and Process, Law and Safety 1, no. 64 (2017): 161–166, https://dspace.lvduvs.edu.ua/bitstream/1234567890/1821/1/1-2017%2B19--.pdf .
[164] Constitutional Court of Ukraine, Decision No. 6-rp/2010, February 17, 2010, Summary, para. 1.1.
[165] Michel Rosenfeld and András Sajó, eds., The Oxford Handbook of Comparative Constitutional Law (Oxford: Oxford University Press, 2012), 3–4.

of power and preserve accountability[166] In both Ukraine and the United States, parliaments and presidents possess supervisory authority over the bureaucracy that goes beyond symbolic politics—it constitutes a functional mechanism for ensuring accountability and legal compliance. Yet the development, configuration, and efficacy of these mechanisms diverge significantly, reflecting distinct constitutional structures. In the United States, Congress has developed a powerful oversight regime centered on its investigatory powers, including the authority to issue subpoenas and hold hearings, which have historically served as essential tools to examine executive conduct.[167] These mechanisms are embedded in the broader system of legislative supremacy over administrative governance, complemented by Congress's constitutional power to regulate federal courts and jurisdiction, further reinforcing its capacity to oversee all branches of government.[168] Ukraine's Verkhovna Rada, by contrast, often struggles to implement meaningful follow-up after investigations reports.[169]

In Ukraine, parliamentary oversight is grounded in Articles 75–89 of the Constitution[170] and detailed in the Rules of Procedure of the Verkhovna Rada.[171] The legislature may initiate inquiries, conduct hearings, issue interpellations, and establish temporary investigative commissions.

Ukraine has established special parliamentary institutions to oversee the protection of constitutional rights. One such official is the Verkhovna Rada Commissioner for Human Rights, who acts as the parliamentary ombudsman responsible for ensuring compliance with human and civil rights and freedoms. This position is enshrined in Article 101 of the Constitution of Ukraine and detailed further in the Law of Ukraine on the Verkhovna Rada Commissioner for Human Rights.[172]

In addition, Ukraine has created the office of the Commissioner for the Protection of the State Language, a position designed to defend the constitutional status of Ukrainian as the state language and to ensure its use in all spheres of public life throughout the country. The legal basis for this role is provided in Article 49 of the Law of Ukraine on Ensuring the Functioning of the Ukrainian Language as the State Language.[173]

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[166] Ibid.
[167] Morton Rosenberg, Congressional Oversight Manual, Congressional Research Service Report RL30240 (2014), 12–18.
[168] Justia, U.S. Constitution Annotated, Article III, Judicial Department – Power of Congress to Control the Federal Courts, https://law.justia.com/constitution/us/article-3/35-the-theory-of-plenary-congressional-control.html.
[169] Oleh Martynenko, "Parliamentary Oversight in Ukraine: Between Text and Practice," Legal Reform Journal 4, no. 1 (2021): 17–27.
[170] Constitution of Ukraine, art. 75–89, accessed April 7, 2025, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр.
[171] Rules of Procedure of the Verkhovna Rada of Ukraine, No. 1861-VI, adopted September 10, 2010, art. 29–42.
[172] Constitution of Ukraine, art. 101; Law of Ukraine on the Verkhovna Rada Commissioner for Human Rights, No. 776/97-VR, adopted December 23, 1997, https://zakon.rada.gov.ua/laws/show/776/97-вр.
[173] Law of Ukraine on Ensuring the Functioning of the Ukrainian Language as the State Language, No. 2704-VIII, adopted April 25, 2019, art. 49, https://zakon.rada.gov.ua/laws/show/2704-19.

However, the historical trajectory of parliamentary oversight in Ukraine reveals persistent challenges of enforcement and institutional independence. During the presidency of Viktor Yanukovych (2010–2014), parliamentary oversight mechanisms were largely neutralized through political capture of key bodies, manipulation of parliamentary commissions, and systematic sidelining of opposition initiatives. The Verkhovna Rada operated primarily as an instrument of executive control, while investigative commissions functioned as political tools rather than genuine accountability forums. As Dobosh notes, parliamentary reports under Yanukovych were often ignored, while key control bodies, including the Accounting Chamber, were deprived of autonomy and resources.[174] Article 85(33) grants it the authority to issue a vote of no confidence in the Cabinet of Ministers. However, in practice, these mechanisms often prove politically ineffective. For example, in 2015, following a corruption scandal involving the Ministry of Ecology, the Verkhovna Rada launched a temporary investigative commission.[175] While the commission produced a report alleging misconduct, no dismissals or prosecutions followed, highlighting the weak enforcement capacity of parliamentary oversight bodies. Parliamentary oversight in Ukraine remains primarily declarative, often reduced to formal procedures without substantive follow-up or sanctions. [176]

In the United States, executive oversight of the regulatory process is centralized under the President pursuant to Article II of the Constitution and delegated to the Office of Management and Budget (OMB) by Executive Order 12291 (1981), which established presidential oversight of the regulatory process and required all federal agencies to submit major rules for review to OMB before publication, as set out in Section 3.[177] This framework was later reinforced by Executive Order 12866, particularly Sections 3 and 6, which formalized the role of the Office of Information and Regulatory Affairs (OIRA) within OMB, granting it the authority to review significant regulatory actions and ensure agency compliance with presidential priorities, cost-benefit analysis standards, and inter-agency coordination requirements.[178] These mechanisms will be explored further in the context of emergency governance below.

In stark contrast, the wartime governance model adopted by Ukraine since the full-scale Russian invasion in 2022 has further marginalized parliamentary oversight.

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[174] Iryna Dobosh, “Parliamentary Oversight under Conditions of Democratic Regression: The Ukrainian Case 2010–2014,” Ukrainian Law Review, no. 1 (2021): 25–27.
[175] Temporary Investigative Commission Report on the Ministry of Ecology (2015), available via Verkhovna Rada Archives (in Ukrainian).
[176] Vitalii Dobosh, "Parliamentary Control in Ukraine: Between Law and Political Practice," Kyiv-Mohyla Law and Politics Journal 6 (2020): 8.
[177] Exec. Order No. 12291, § 3(b), 46 Fed. Reg. 13193 (Feb. 17, 1981), codified at 3 C.F.R. 127 (1981), https://www.archives.gov/federal-register/codification/executive-order/12291.html.
[178] Exec. Order No. 12866, §§ 2(b), 6(b), 58 Fed. Reg. 51735 (Oct. 4, 1993), codified at 3 C.F.R. 638 (1993), https://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf.

Following the full-scale invasion by the Russian Federation, Ukraine was compelled to swiftly adapt its legal framework to the realities of war. It invoked the right of derogation under Article 15 of the European Convention on Human Rights, which permits states to temporarily suspend certain obligations "in time of war or other public emergency threatening the life of the nation," provided such measures are strictly required by the exigencies of the situation.[20] This legal mechanism enabled Ukraine to derogate from selected international obligations to ensure effective governance during the state of emergency.[179]

In addition, due to the imposition of martial law, regular presidential elections were not held. As a result, President Volodymyr Zelenskyy has remained in office beyond the five-year term prescribed by the Constitution of Ukraine, provoking debate within parts of Ukrainian society, where some perceive this as a potential risk of power usurpation.[180]

The introduction of martial law, combined with the concentration of decision-making within the National Security and Defense Council (NSDC) and the Office of the President, has effectively reduced the Verkhovna Rada to a reactive body, primarily formalizing executive decrees.[181] This has de facto positioned the President as the central oversight actor during wartime governance, often bypassing formal parliamentary procedures and utilizing decrees, advisory councils, and security services to steer administrative activity. Such informal oversight lacks transparency and operates without institutional checks.

For example, executive decrees during martial law have allowed the NSDC and security agencies to expand their influence over procurement, defense, and civil mobilization matters, often without parliamentary approval or independent review.[182][183]

Moreover, the wartime context has amplified challenges to societal oversight. Investigative journalists and civil society watchdogs have reported systemic obstruction, including denial of front-line access, censorship pressures, and intimidation by security services, particularly in sensitive areas such as defense procurement, humanitarian aid, and the operations of the NSDC. [184] Until October 2023, public officials in Ukraine were not required to submit asset declarations, and the Unified State Register of Declarations of Persons Authorized to Perform Functions of the State or Local Self-Government remained inaccessible to the public. This restriction severely

[179] European Convention on Human Rights, art. 15, "Derogation in time of emergency," https://www.echr.coe.int/documents/convention_eng.pdf.
[180] Constitution of Ukraine, art. 103; Law of Ukraine on the Legal Regime of Martial Law, No. 389-VIII, adopted May 12, 2015, https://zakon.rada.gov.ua/laws/show/389-19.
[181] Iryna Dobosh, "Parliamentary Oversight under Conditions of Democratic Regression," 28.
[182] Law of Ukraine, "On the Legal Regime of Martial Law," No. 1642-IX, adopted 03.12.2022, Article 12.
[183] Venice Commission. Urgent Joint Opinion of the Venice Commission and Directorate General of Human Rights on the Draft Law on the High Council of Justice, CDL-PI(2021)004, 5 May 2021.
[184] Dinara Khalilova, "Ukrainian journalists report continued pressure, censorship attempts as previous cases remain unsolved," Kyiv Independent, 3 July 2024, https://kyivindependent.com/pressure-on-journalists-press-freedom-limitations-continue-in-wartime-ukraine/.

limited civil society's ability to monitor potential corruption among public servants. It was only under sustained pressure from watchdog organizations and the general public that the Law of Ukraine No. 3384-IX, adopted on September 20, 2023, was passed, restoring the obligation of declaration and reopening public access to the register.[185]

For instance, multiple cases in 2023–2024 documented by Transparency International Ukraine, ZMINA, and the Kyiv Independent exposed attempts to surveil, discredit, or obstruct journalists investigating high-level corruption—most notoriously the illegal surveillance of the Bihus.Info investigative team by Ukraine's Security Service (SBU), and retaliatory draft notices issued to reporters exposing procurement abuses. These incidents reveal that while martial law was designed to protect national security, its vague provisions and lack of transparent oversight mechanisms have enabled the executive branch to limit scrutiny and marginalize independent media and watchdogs, undermining both institutional and societal accountability in critical wartime sectors. Moreover, as wartime practice demonstrates, corruption adapts to emergency conditions much faster than oversight frameworks, taking advantage of procedural loopholes, secrecy, and weakened institutional controls to consolidate influence over procurement, security, and decision-making processes. The specific impact of these dynamics on civil society and media oversight, including the growing risks to journalistic independence and access to information, will be explored in one of the following sections, with a particular focus on the accessibility and effectiveness of civil and media oversight mechanisms during wartime in Ukraine, as well as a comparative reflection on the United States' experience in balancing national security needs with transparency and accountability.

By contrast, in the United States, emergency conditions have historically triggered enhanced congressional scrutiny and judicial oversight over executive action, ensuring that even under crisis governance, core accountability mechanisms such as congressional hearings, OIRA regulatory reviews, and public access to information remain operational and institutionally safeguarded. Beyond the judicial safeguards, the U.S. system integrates executive oversight into emergency governance through OIRA's continuous regulatory review process, mandated by Executive Order 12866, which remains applicable even during emergencies. This ensures that emergency regulations undergo cost-benefit analysis, inter-agency coordination, and public comment procedures, preventing unchecked executive discretion. In parallel, congressional oversight intensifies during emergencies, as seen during the post-9/11 response, the Hurricane Katrina investigations (via the House Select Committee on Katrina), and the COVID-19 pandemic, where

[185] Law of Ukraine on Amendments to Certain Legislative Acts Regarding the Resumption of the Submission of Declarations by Public Officials and Ensuring Public Access to the Unified State Register of Declarations, No. 3384-IX, adopted September 20, 2023, https://zakon.rada.gov.ua/laws/show/3384-20.

Congress utilized hearings, subpoenas, and appropriations controls to scrutinize executive decisions and agency performance.[186] The Trump administration further tested the resilience of oversight mechanisms during the COVID-19 pandemic and in broader disputes over congressional investigations. In Trump v. Mazars USA, LLP, the Supreme Court acknowledged that while Congress holds legitimate investigatory powers, subpoenas directed at a sitting President's private financial records raised heightened separation of powers concerns, necessitating stricter judicial scrutiny to prevent potential abuses or politicization of oversight processes.[187]

In McGrain v. Daugherty (1927), it was determined that congressional investigations can reach administrative operations when they serve a legislative purpose.[188]

Unlike Ukraine, U.S. media and civil society maintain oversight even during emergencies, protected by the First Amendment and court rulings. Landmark cases like New York Times Co. v. United States (1971) affirmed the press's authority to release classified information (the Pentagon Papers), regardless of executive efforts to impose prior restraint during wartime. This upholds the right to examine government actions, ensuring the information landscape remains competitive and transparent, limiting the executive's narrative control.[189] Thus, the U.S. system embeds both legislative and executive oversight into emergency governance as a means to proactively curb executive overreach and ensure legality, transparency, and proportionality of crisis responses.

A fundamental difference between the Ukrainian and U.S. models is the operational enforceability of oversight instruments. In Ukraine, Temporary Investigative Commissions (TICs) established under Article 89 of the Constitution are often politically weaponized and lack effective legal and procedural follow-up, as illustrated by Transparency International's findings (2022) that no TIC reports in recent years led to prosecutions or binding administrative action.[190] However, these bodies frequently lack procedural autonomy, financial support, and enforcement capacity. As noted in empirical studies, TIC reports seldom lead to concrete disciplinary or legislative consequences, functioning more as reactive political gestures than substantive accountability tools.[191] For instance, a 2021 review of seven TICs found that none had produced binding

[186] 5 U.S.C. § 553(b), (d); 44 U.S.C. § 3504(h)
[187] Trump v. Mazars USA, LLP, 591 U.S. __ (2020), https://www.supremecourt.gov/opinions/19pdf/19-715_febh.pdf.
[188] McGrain v. Daugherty, 273 U.S. 135 (1927) https://supreme.justia.com/cases/federal/us/273/135/ ; see also Harold H. Bruff, Untrodden Ground: How Presidents Interpret the Constitution (Chicago: University of Chicago Press, 2015), 106–108
[189] New York Times Co. v. United States, 403 U.S. 713 (1971), https://supreme.justia.com/cases/federal/us/403/713/.
[190] Constitution of Ukraine, July 28, 1996, art. 89, Official Bulletin of the Verkhovna Rada of Ukraine 1996, no. 30: 141.
[191] A. Bondarenko and N. O. Pustova, "Parliamentary Control in the System of State Oversight," in Administrative Law and Process, Law and Safety 1, no. 64 (2017): 161–166, https://dspace.lvduvs.edu.ua/bitstream/1234567890/1821/1/1-2017%2B19--.pdf.

outcomes or initiated prosecution. The practical impact of such commissions is thus often minimal, despite their robust constitutional mandate.

Compared to Ukraine's fragile investigatory commissions, the U.S. Congress operates a highly institutionalised oversight regime, historically recognized by the Supreme Court as possessing an "indispensable" power of inquiry necessary for effective legislation. [192] This authority includes the issuance of subpoenas, the conduct of hearings, and the power to compel testimony from executive officials.[193] These mechanisms are legally enforceable, with refusal to comply potentially resulting in contempt of Congress. In addition to its investigatory powers, Congress exercises financial control, using budget appropriations to sanction or constrain agencies that fail to meet oversight expectations.

However, as established in Watkins v. United States, the U.S. Supreme Court emphasized that even these powerful investigative tools are constitutionally bounded. Congressional committees must act with a clearly defined legislative purpose, and their inquiries cannot serve solely as instruments for exposing private affairs without legitimate justification, reinforcing the broader principle that administrative discretion and oversight must be conducted within strict procedural safeguards to prevent abuse or overreach. [194]

One powerful statutory tool is the Congressional Review Act (CRA), enacted in 1996, which allows Congress to nullify newly issued federal regulations via a joint resolution of disapproval.[195] The CRA has been employed to strike down a variety of regulations, including Obama-era environmental rules and labor protections, particularly during inter-administrative transitions.[196] As noted by Feinstein, even the prospect of CRA invocation can influence agency behavior, incentivising pre-emptive alignment with congressional priorities. [197] Unlike Ukraine, where legislative review often lacks enforceability, the American model demonstrates how credible legislative threats can shape bureaucratic rulemaking from inception. Despite its intention to limit presidential discretion, in practice the War Powers Resolution has often been bypassed, with presidents from Reagan to Trump engaging military forces abroad without explicit congressional authorization, invoking executive prerogative.[198]

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[192] Congressional Research Service, Congressional Oversight Manual, IF10015.6 (Washington, D.C.: Congressional Research Service, March 5, 2024), 1, https://crsreports.congress.gov/product/pdf/IF/IF10015/6.
[193] Congressional Research Service, Congressional Oversight Manual, 2.
[194] Watkins v. United States, 354 U.S. 178 (1957), https://supreme.justia.com/cases/federal/us/354/178/.
[195] Congressional Review Act, 5 U.S.C. §§ 801–808 (1996).
[196] Maeve P. Carey, The Congressional Review Act: Frequently Asked Questions, Congressional Research Service R43992 (Washington, D.C.: CRS, July 10, 2020), 9–10, https://sgp.fas.org/crs/misc/R43992.pdf.
[197] Brian D. Feinstein, Designing Executive Agencies for Congressional Control, Coase-Sandor Working Paper No. 778 (Chicago: University of Chicago Law School, 2016), 5-8.
[198] D. S. Krylov, "Parlamentskiy kontrol' v sfere natsional'noy bezopasnosti v SShA i Rossii: Sravnitel'nyy politiko-pravovoy analiz," Journal of Comparative Politics 4 (2016): 24–25

This fragility of parliamentary control in Ukraine has become especially pronounced in high-risk sectors, such as defense procurement and humanitarian aid distribution, where watchdog organizations and investigative journalists have documented multiple cases of mismanagement and corruption in 2023–2024. Moreover, the erosion of parliamentary oversight mechanisms in Ukraine poses not only internal risks to the rule of law, but also undermines the country's international obligations. According to the SIGMA Monitoring Report 2023, Ukraine must align its legislation governing independent oversight bodies with international standards by eliminating politically driven dismissal procedures and ensuring merit-based appointments through transparent competitive procedures.[199] These recommendations echo Venice Commission and GRECO findings, which consistently emphasize the necessity of safeguarding the autonomy of oversight bodies to preserve the democratic balance of powers.

By contrast, the United States adopts a more purpose-oriented legal framework for executive oversight. The U.S. President exercises broad coordination powers through Article II of the Constitution, supplemented by doctrines such as the necessary and proper clause and implied executive authority.[200]

This framework allows the President to exert significant influence over administrative activity without the need for direct statutory amendments. As Kagan argues, the President exercises such influence through tools like executive orders, regulatory review mechanisms managed by the Office of Information and Regulatory Affairs (OIRA), and inter-agency policy bodies such as the Domestic Policy Council and the National Economic Council, which enable centralized policy direction and coordination across federal agencies while preserving formal agency autonomy.[201] This form of oversight has been framed as an evolution of presidential administration, enabling the executive to impose political priorities within the administrative state in ways that are both strategically proactive and procedurally embedded in ordinary governance cycles. [202]

Complementing these tools, Balkin highlights that the development of the National Surveillance State has further contributed to consolidating informal presidential control, as surveillance increasingly involves collaboration between public agencies and private actors. Noting that much public and private surveillance occurs without any knowledge that one is watched, and that data mining enables both the state and private enterprises to record perfectly

[199] OECD/SIGMA, Public Administration in Ukraine – Assessment against the Principles of Public Administration (Paris: OECD, 2023), pp. 152–154. https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/02/public-administration-in-ukraine_27a46a58/078d08d4-en.pdf.
[200] U.S. Constitution, art. I, § 8, cl. 18; see also Jack M. Balkin, "The Constitution in the National Surveillance State," Minnesota Law Review 93, no. 1 (2008): 1–25.
[201] Elena Kagan, "Presidential Administration," Harvard Law Review 114, no. 8 (2001): 2285–2302, 2331–2340.
[202] Ibid., 2299–2302.

innocent behavior and derive robust inferences about individuals' beliefs and actions.[203] However, this shift has occurred outside congressional and judicial control. Balkin stresses that executive officials have institutional incentives to label their operations as secret and beyond the reach of judicial scrutiny, and that unless legislatures and courts can devise effective procedures for inspecting and evaluating secret programs, the Presidency will become a law unto itself.[204]

Legislative oversight in reality plays only a limited role in checking the executive," especially given the secrecy and compartmentalization surrounding national security programs. In this context, he warns the risk moving toward an "authoritarian information state," where power is accumulated through secrecy and information hoarding, rather than transparent democratic governance.[205]

Such developments demonstrate the President's ability to steer administrative priorities through both formal and informal channels, leveraging the structural capacities of the executive branch while utilizing emerging technologies and information infrastructures.[206]

In Ukraine, the inability to operationalize presidential or parliamentary scrutiny often renders oversight mechanisms declarative rather than corrective. Even when critical, oversight reports rarely lead to disciplinary action or policy reversal.[207] In contrast, in the U.S. administrative system, agencies anticipate both congressional investigation and White House coordination as part of ordinary operations.[208] Oversight in the American model functions not as an exceptional remedy but as an integrated feature of the governance cycle.

In conclusion, although both Ukraine and the United States constitutionally recognize the principles of parliamentary and presidential oversight over administrative activity, the depth, institutional maturity, and enforcement strength of these mechanisms diverge substantially. In Ukraine, oversight remains largely normative in design but weak in execution, undermined by political fragmentation, shifting coalitions, and a lack of legal or procedural enforcement. Temporary investigative commissions and parliamentary interpellations are often used as symbolic instruments in response to scandals, but rarely result in administrative sanctions or corrective measures.[209] Presidential oversight, while anchored in Article 106 of the Constitution,

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[203] Jack M. Balkin, "The Constitution in the National Surveillance State," Minnesota Law Review 93 (2008): 8-12.
[204] Ibid. 21-24.
[205] Ibid. 17-22.
[206] Ibid., 13–19.
[207] A. Bondarenko and N. O. Pustova, "Parliamentary Control in the System of State Oversight," in Administrative Law and Process, Law and Safety 1, no. 64 (2017): 161–166, https://dspace.lvduvs.edu.ua/bitstream/1234567890/1821/1/1-2017%2B19--.pdf.
[208] Morton Rosenberg, "Congressional Oversight Manual," *Congressional Research Service Report* RL30240 (Washington, D.C.: Library of Congress, 2022), 18–24.
[209] Andrii Shapovalov, Parliamentary Control in Ukraine: Challenges and Prospects of Institutionalisation (Kyiv: Institute of Legislation of the Verkhovna Rada, 2021), 32–36.

is restricted by a strict textualist approach adopted by the Constitutional Court, which prohibits expansion of powers through functional or purposive interpretation.[210]

In contrast, the United States provides a model of operational oversight, where mechanisms are embedded into the daily functioning of the administrative state. Congressional committees—through subpoena powers, budgetary control, and permanent investigative staff—shape agency conduct not only reactively but proactively.[211] The President, through formal institutions like the Office of Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA), exercises continuous regulatory review, policy coordination, and agenda-setting. These tools allow the executive branch to align administrative rulemaking with political priorities while respecting the autonomy of expert agencies.[212]

This comparison does not imply that one system is normatively superior to the other. Instead, it reveals the trade-offs between legal rigidity and institutional adaptability. Ukraine's model prioritizes constitutional fidelity and legal restraint, offering safeguards against abuse of power. However, it also risks institutional stagnation when administrative failures require coordinated oversight responses. Indeed, the Ukrainian experience illustrates how oversight mechanisms embedded in formal legal texts can be hollowed out in times of institutional crises or wartime governance, leading to a predominance of executive unilateralism and the erosion of parliamentary authority. This underscores that the effectiveness of oversight cannot be reduced to constitutional design alone but requires political will, institutional credibility, and the procedural empowerment of legislative bodies to act as meaningful constraints on executive power, especially in periods of emergency. Conversely, the U.S. system illustrates how institutionalized flexibility, though politically contentious, can generate dynamic accountability, ensuring administrative responsiveness in real time. Oversight mechanisms cannot be divorced from their broader political and cultural contexts. Even structurally similar models of legislative and executive oversight may operate differently depending on historical legacies, patterns of political competition, and levels of societal trust in state institutions. [213]

For Ukraine, the central lesson lies in combining legal precision with institutional functionality. Parliamentary oversight should be bolstered through enhanced investigative capacity, clear procedural follow-up, and the professionalisation of committee operations. Presidential influence over the bureaucracy should not be expanded through informal prerogatives,

[210] Constitutional Court of Ukraine, Decision No. 11-p/2020, September 16, 2020, Official Bulletin of Ukraine No. 78 (2020): 15–24.
[211] Morton Rosenberg, Congressional Oversight Manual, Congressional Research Service Report RL30240 (Washington, D.C.: Library of Congress, 2022), 20–27.
[212] Elena Kagan, "Presidential Administration," Harvard Law Review 114, no. 8 (2001): 2245–2385.
[213] Michel Rosenfeld and András Sajó, eds., The Oxford Handbook of Comparative Constitutional Law (Oxford: Oxford University Press, 2012), 4.

but via statutory delegation that respects the constitutional separation of powers while enabling coordination in complex policy domains.

Ultimately, effective oversight of administrative power depends on more than legal design. It requires institutional credibility, access to enforcement mechanisms, and a governance culture that values accountability as a structural principle. The next section will therefore shift focus to internal administrative control mechanisms.

3.2. Internal Administrative and Departmental Control within Ukrainian and U.S. Public Administration Systems

Internal oversight within public administration remains a structurally vital yet institutionally obscured form of control.[214] It operates below the political radar, distinct from the more overt mechanisms of parliamentary supervision and judicial review.

The necessity of internal control mechanisms has been long acknowledged in the theory and practice of Western democracies, where a fundamental doctrinal distinction exists between external legal supervision and internal procedural legality. In Ukraine, by contrast, internal administrative control remains institutionally fragmented and inconsistently enforced. Formally, the legal framework includes several legislative acts: the Law of Ukraine "On Central Executive Authorities," which mandates the organization of internal control units;[215] the Budget Code of Ukraine, which requires fiscal discipline in public spending;[216] and the Law of Ukraine "On Prevention of Corruption," which obliges public bodies to ensure ethical compliance and conflict-of-interest monitoring among civil servants.[217] And introduced the concept of a whistleblower—an individual who, having reasonable grounds to believe that the information is truthful, reports violations of the Law of Ukraine on Prevention of Corruption committed by another person. This definition is codified in Part 1 of Article 53 of the Law. Whistleblowers are guaranteed protection, including safeguards against unlawful dismissal and financial rewards for substantiated disclosures.[218] Additional oversight provisions are dispersed among ministerial regulations and sector-specific bylaws, which often differ in scope and binding force. Each executive authority is expected to create and maintain internal audit divisions responsible for compliance with

[214] Paul Craig, *Administrative Law*, 9th ed. (London: Sweet & Maxwell, 2021), 678–79.
[215] Verkhovna Rada of Ukraine, Law of Ukraine "On Central Executive Bodies", No. 3166-VI, adopted March 17, 2011, https://zakon.rada.gov.ua/laws/show/3166-17.
[216] Verkhovna Rada of Ukraine, Budget Code of Ukraine, No. 2456-VI, adopted July 8, 2010, https://zakon.rada.gov.ua/laws/show/2456-17.
[217] Verkhovna Rada of Ukraine, Law of Ukraine "On Prevention of Corruption", No. 1700-VII, adopted October 14, 2014, https://zakon.rada.gov.ua/laws/show/1700-18.
[218] Law of Ukraine on Prevention of Corruption, No. 1700-VII, adopted October 14, 2014, art. 53(1), https://zakon.rada.gov.ua/laws/show/en/1700-18#Text

procurement procedures, internal operational rules, and anticorruption standards. Supplementing this system is the State Audit Service of Ukraine, which is authorized to carry out ex-post inspections, draft inspection reports, and recommend corrective measures to audited agencies.[219] However, this institution plays only a marginal role in shaping or coordinating internal audit strategy across ministries

The institutional configuration of the Offices of Inspectors General (OIGs) in the United States offers a distinctive model that merges internal access with external accountability.

Importantly, IG reports in the United States serve as catalysts for concrete enforcement and policy reforms. Congressional committees, particularly the House Oversight and Accountability Committee, routinely hold hearings on significant IG findings, compel testimony from agency heads, and initiate budgetary sanctions or legislative actions based on IG recommendations. For example, following a 2021 DHS OIG report on immigration detention abuses, the House Judiciary Committee conducted immediate hearings and mandated agency-wide corrective measures, demonstrating how IG oversight is directly embedded into the broader system of democratic accountability.[220]

Although housed within executive agencies, Inspectors General operate with statutorily guaranteed autonomy in matters of staffing, investigative priorities, and reporting protocols.[221] Their dual-reporting structure—to both the agency head and congressional oversight committees—serves as a structural safeguard against executive interference and ensures transparency of findings.[222] Functional independence is further bolstered by dedicated budgetary lines, statutory protection from arbitrary dismissal, and the oversight role of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), which sets uniform investigative and ethical standards.[223]

This institutional design is explicitly codified in the Inspector General Act of 1978, which in § 4(a)(2) grants Inspectors General the authority to conduct audits, evaluations, and investigations independently of agency leadership, with unrestricted access to all necessary records and personnel. Additionally, § 3(b) mandates that Inspectors General are appointed without regard to political affiliation and may be removed only by the President, who must notify

[219] State Audit Service of Ukraine, Regulations on the State Audit Service, Cabinet of Ministers Resolution No. 43, adopted January 28, 2015, https://zakon.rada.gov.ua/laws/show/43-2015-п.
[220] U.S. Department of Homeland Security, Office of Inspector General, ICE's Oversight of Detention Facilities Needs Improvement, OIG-24-59, September 2024, https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf
[221] U.S. Congress, Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101.
[222] Paul C. Light, Monitoring Government: Inspectors General and the Search for Accountability (Washington, D.C.: Brookings Institution Press, 1993), 23–26.
[223] Council of the Inspectors General on Integrity and Efficiency (CIGIE), Annual Report to the President: Fiscal Year 2023 (Washington, D.C.: CIGIE, 2023), https://www.ignet.gov/sites/default/files/files/CIGIEAnnualReporttothePresidentFY2023_FINAL.pdf.

both Houses of Congress of the reasons for removal, providing a statutory shield against arbitrary dismissal.[224] Also, explicitly codifies Inspectors General's independence, allowing them to conduct audits, investigations, and evaluations without agency leadership interference, while granting direct access to all necessary agency records and personnel duties.[225] The Act also mandates dual reporting obligations—requiring IGs to submit semi-annual reports simultaneously to the agency head and to Congress, ensuring that critical findings reach both executive and legislative oversight bodies.[226] This institutional configuration, supported by dedicated funding lines and protection against arbitrary dismissal (only removable by the President with notification to both Houses of Congress),[227] creates a structurally insulated oversight mechanism that is unparalleled in Ukraine, where internal control units remain subordinated to agency leadership. Moreover, the role of CIGIE has evolved beyond coordination, establishing cross-agency integrity standards, conducting peer reviews of audit quality, and serving as a collective voice for the IG community in defending their independence and budgetary needs.[228] According to the CIGIE Annual Report 2023, Inspectors General across federal agencies collectively completed over 2,217 audits and investigations during fiscal year 2023, resulting in more than $98 billion in potential recoveries and savings. The report also emphasizes the peer review system coordinated by CIGIE to ensure audit quality and adherence to professional standards across the IG community.[229]

For example, the 2024 report of the Office of Inspector General of the Department of Health and Human Services (OIG-24-59-Sep24) revealed extensive violations in Medicare Advantage billing practices, It identified over $1.4 billion in improper payments and recommended immediate corrective actions, including sanctions against several healthcare providers. These findings triggered follow-up actions from both the Centers for Medicare & Medicaid Services (CMS) and congressional oversight hearings, illustrating the concrete enforcement leverage of IG reports when combined with congressional scrutiny and public disclosure.[230]

By contrast, Ukrainian internal control units continue to suffer from deep institutional dependence. Heads of internal audit divisions are often subordinate to the very ministers or agency chiefs whose conduct they are tasked with reviewing. Recent reports by the Accounting Chamber

[224] U.S. Congress, "Inspector General Act of 1978," 5 U.S.C. App., §§ 3(b), 4(a)(2), https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title5-chapter4&edition=prelim.
[225] United States Code, Title 5, Appendix—Inspector General Act of 1978, § 4, accessed May 20, 2025, https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title5-chapter4&saved=%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGU1LXNlY3Rpb240MDE%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim
[226] Ibid., § 5.
[227] Ibid., § 3(b).
[228] Council of the Inspectors General on Integrity and Efficiency, Annual Report 2024 (Washington, D.C.: CIGIE, March 2025), 14–16.
[229] CIGIE, Annual Report to the President and Congress: Fiscal Year 2023 (Washington, D.C.: CIGIE, 2025), 6–8.
[230] U.S. Department of Health and Human Services, Office of Inspector General, OIG Report No. OIG-24-59-Sep24 (Washington, D.C.: HHS OIG, 2024), 3–5.

confirm the persistence of these systemic deficiencies. According to its 2023 report, Ukrainian public authorities demonstrated significant shortcomings in internal audit credibility and enforcement capacity, with total violations and deficiencies in public finance management amounting to almost UAH 60.8 billion. Despite identifying grave irregularities, such as violations in procurement law and inefficient budget execution, only 64.4% of the Chamber's recommendations were fully implemented or in progress by early 2024, while 35.6% remained unaddressed. Furthermore, the Chamber referred 20 reports to law enforcement bodies for suspected criminal offenses. Only 9 pre-trial investigations occurred, underscoring the limited effectiveness of internal oversight mechanisms and the minimal role of audit units within ministries in Ukraine agencies.[231]

Unlike Ukraine, where whistleblower protections remain underdeveloped and internal auditors lack statutory safeguards. Still, a significant advancement in Ukraine's anti-corruption efforts has been the operational launch of the Unified Whistleblower Reporting Portal. According to Order No. 190/23 of the National Agency on Corruption Prevention (NACP) dated August 31, 2023, titled "On the Launch of the Unified Whistleblower Reporting Portal", the system was placed into permanent (industrial) operation as of 00:00 on September 6, 2023.[232]

The Unified Whistleblower Reporting Portal is an information and communication system with a certified comprehensive information security system compliant with the Law of Ukraine on the Protection of Information in Information and Telecommunication Systems. It enables secure Internet-based communication between whistleblowers and authorities, as well as the collection, storage, use, protection, and processing of whistleblower reports. The system also handles metadata such as whistleblower status and the procedural outcomes of submitted reports.

The portal processes personal data provided by whistleblowers as well as that of authorized system users. This processing is carried out under national law and does not require the consent of data subjects, as it serves the purpose of whistleblower protection, proper case verification, and administrative oversight.

The system guarantees confidentiality and anonymity for whistleblowers and ensures that they can access real-time updates regarding the status and results of their submissions. As an officially recognized internal channel, the portal also serves as an authoritative database on individuals holding whistleblower status. It forms part of Ukraine's broader anti-corruption infrastructure and was mandated under the State Anti-Corruption Program of Ukraine for 2023–

[231] Accounting Chamber of Ukraine, Report of the Accounting Chamber for 2023 (Main Results), 4–7, https://rp.gov.ua/upload-files/Activity/Reports/2023/Report-2023_eng.pdf.
[232] National Agency on Corruption Prevention (NACP), Order No. 190/23 "On the Launch of the Unified Whistleblower Reporting Portal", adopted August 31, 2023, effective September 6, 2023, https://wiki.nazk.gov.ua/wp-content/uploads/2023/09/NAKAZ-190_23-vid-31.01.2023.pdf

2025. The NACP has emphasized that creating secure, trusted reporting channels for whistleblowers remains one of its strategic priorities.[233]

In contrast, the United States provides a comprehensive legal framework with the Whistleblower Protection Act of 1989, which protects federal employees, including internal audit staff, from retaliation when reporting violations of law, gross mismanagement, or abuse of authority.[234] This legal shield not only empowers auditors to act independently but also institutionalizes secure reporting channels, including the Office of Special Counsel and protected disclosures directly to Inspectors General or Congress.[235] Such protections have been pivotal in ensuring that internal oversight mechanisms function as credible conduits for identifying and correcting administrative misconduct, fostering an accountability culture absent in Ukraine.[236] Unlike the U.S. framework, Ukraine does not offer whistleblower protections specifically for internal audit staff, nor does it require that internal audit findings be made available to parliament or the public.

In contrast, the U.S. Whistleblower Protection Act of 1989 offers robust protections for federal employees, including internal auditors, safeguarding them from retaliation when reporting violations of law, gross mismanagement, or abuse of authority. These protections extend to filing complaints with the Office of Special Counsel, enabling direct disclosures to Inspectors General or Congress, and providing avenues for compensatory remedies in cases of proven retaliation.[3] This institutionalized protection framework significantly enhances the independence and proactivity of internal oversight mechanisms in the United States.[237]

Ukraine has attempted to introduce elements of modern internal control, particularly in the context of EU-aligned reforms and donor-supported administrative modernization programs. In the U.S., many federal agencies, such as the Environmental Protection Agency (EPA), maintain compliance divisions that ensure legal adherence and contribute to administrative learning and innovation, a practice largely absent in Ukraine.

According to the OECD's 2025 review of Ukraine's public administration, although the legal and operational framework for internal control is formally in place, its implementation remains inconsistent and highly fragmented across ministries and regions. The Central Harmonisation Unit

[233] Unified Whistleblower Reporting Portal, National Agency on Corruption Prevention, accessed May 17, 2025, https://whistleblowers.nazk.gov.ua/#/.
[234] U.S. Office of Special Counsel, Whistleblower Protection Act Fact Sheet, accessed May 20, 2025, https://whistleblower.house.gov/sites/evo-subsites/whistleblower-evo.house.gov/files/Whistleblower_Protection_Act_Fact_Sheet.pdf
[235] Ibid.
[236] Council of the Inspectors General on Integrity and Efficiency, Annual Report 2024, 27.
[237] U.S. Office of Special Counsel, Whistleblower Protection Act Fact Sheet, accessed May 20, 2025, https://whistleblower.house.gov/sites/evo-subsites/whistleblower-evo.house.gov/files/Whistleblower_Protection_Act_Fact_Sheet.pdf

(CHU) reports wide disparities in audit staffing, capacity, and adherence to internal control standards, particularly among newly decentralised administrations, highlighting the absence of a unified national methodology and the persistence of institutional gaps.[238]

This gap is not merely administrative but conceptual. The comparative analysis demonstrates that Ukraine and the United States operate under fundamentally different understandings of internal control in public administration. In the U.S., internal oversight is not a supplemental formality, but a core governance function anchored in statutory duties and institutional independence. Internal audits are routinely escalated to Congress, published online, and incorporated into budget planning and staff evaluations, turning oversight into a feedback mechanism for democratic accountability.[239] In Ukraine, despite the presence of enabling norms and the pressure of EU conditionality, internal audits are often perceived as technical rituals with limited strategic value. They rarely spark public debate or catalyse policy reform.

Addressing these deficiencies would require Ukraine to adopt a unified national framework for internal control, drawing on standards such as those articulated in the U.S. GAO Green Book, which provides a comprehensive model for federal internal control systems, emphasizing risk-based auditing, management accountability, and transparent reporting practices.[240]

A major structural impediment to Ukraine's internal oversight evolution is the lack of a central coordinating authority or doctrinal coherence. The State Audit Service of Ukraine (SASU) performs external audits and issues financial control recommendations, but does not directly supervise the internal audit units of ministries.[241] While some ministries, such as the Ministry of Finance or the Ministry of Infrastructure, have attempted to adopt performance-oriented audit models in line with EU standards, internal audit functions in most Ukrainian central government bodies remain formally present but functionally limited. As shown in a 2022 empirical study based on interviews with internal auditors, these units often exist to comply with formal requirements rather than to meaningfully enhance governance or risk management. The auditors themselves describe persistent confusion about their evolving roles and report that institutional leadership often pressures them to act as traditional financial inspectors, rather than performance evaluators or strategic advisors.[242]

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[238] OECD and SIGMA, Mapping Ukraine's Financial Markets and Corporate Governance Framework for a Sustainable Recovery (Paris: OECD Publishing, 2025), 28–29, https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/01/mapping-ukraine-s-financial-markets-and-corporate-governance-framework-for-a-sustainable-recovery_ba6fc369/866c5c44-en.pdf.

[239] U.S. Government Accountability Office, Standards for Internal Control in the Federal Government (Green Book), GAO-14-704G (Washington, D.C., 2014), https://www.gao.gov/assets/gao-14-704g.pdf.

[240] U.S. Government Accountability Office (GAO), Standards for Internal Control in the Federal Government (Washington, D.C.: GAO-14-704G, 2014), 11–14.

[241] State Audit Service of Ukraine, 2022 Annual Report, https://dasu.gov.ua/ua/plugins/userPages/866

[242] Tamara Volodina, Giuseppe Grossi, and Veronika Vakulenko, "The Changing Roles of Internal Auditors in the Ukrainian Central Government," Journal of Accounting & Organizational Change 18, no. 4 (2022), paras. 4.3–4.4

Equally problematic is the professional insecurity of internal auditors in Ukraine. Unlike their U.S. counterparts—who operate under the Inspector General Act of 1978 and benefit from protections formalised through the Council of the Inspectors General on Integrity and Efficiency (CIGIE)—Ukrainian internal auditors lack clear statutory safeguards against dismissal or political interference.[243] There are no unified professional qualification requirements or codified ethics standards across ministries. Appointments are often made ad hoc, based on administrative convenience or political discretion, rather than merit or competence.

Audit findings, even when revealing serious violations such as unlawful procurement schemes or misuse of state funds, are rarely made public or referred to external enforcement bodies like the National Anti-Corruption Bureau of Ukraine (NABU) or the Prosecutor General's Office. Instead, internal reports are filtered through ministry leadership, and politically sensitive information is often removed or downplayed before reaching senior review This undermines the value of audits as tools for correction and accountability, as internal auditors often face implicit or explicit pressure from agency leadership to moderate or suppress critical findings.[244]

In practice, such conditions have produced a phenomenon that may be termed fragmented proceduralism: a system in which audit regulations exist on paper but are inconsistently applied, selectively enforced, and frequently circumvented through informal practices.[245] For instance, procurement procedures subject to mandatory audit thresholds are often delayed or rerouted under the pretext of budgetary constraints, or the auditing personnel are reassigned prior to review. There is no general legal obligation to publish audit results or to refer major violations externally, which results in a closed-loop accountability system dominated by internal discretion rather than rule-of-law mechanisms.

This contrasts with the U.S. model, where internal audits are directly linked to external oversight mechanisms. The DHS Office of Inspector General's Strategic Plan 2022–2026 outlines the expectation that audit results should lead to congressional engagement and measurable reforms, particularly in high-risk domains such as immigration enforcement. While not referencing specific cases, the plan emphasizes collaboration with Congress and timely dissemination of findings to trigger legislative or administrative action.[246]

Attempts have been made in Ukraine to address these structural deficiencies. The 2017 Public Administration Reform Strategy included internal audit as a key reform priority, and

[243] U.S. Congress, "Inspector General Act of 1978," 5 U.S.C. https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title5-chapter4&edition=prelim.
[244] Tamara Volodina, Giuseppe Grossi, and Veronika Vakulenko, "The Changing Roles of Internal Auditors in the Ukrainian Central Government," Journal of Accounting & Organizational Change 18, no. 4 (2022), paras. 4.3–4.4.
[245] Centre of Policy and Legal Reform, Analytical Report on Public Administration Reform in Ukraine, 2023, https://pravo.org.ua.
[246] U.S. Department of Homeland Security, DHS OIG Strategic Plan 2022–2026, June 2021, 8–10, https://www.oig.dhs.gov/sites/default/files/DHS-OIG-Strategic-Plan-2022-2026.pdf.

projects supported by SIGMA, the EU, and other donors have developed methodological guidelines, audit manuals, and training sessions for internal auditors.[247] However, implementation has been partial and uneven, hampered by resistance from entrenched bureaucracies, frequent political turnover, and reform fatigue. Moreover, decentralisation reforms since 2020 have devolved public service responsibilities to regional and local levels without adequately equipping these bodies with internal control mechanisms or qualified audit staff.

Taken together, these findings confirm that the divergence between Ukraine and the U.S. in this domain is not purely normative but deeply institutional and cultural. In the United States, internal oversight enjoys functional autonomy, political insulation, and an operative mandate within a broader web of checks and balances. In Ukraine, by contrast, internal audits often remain siloed, underfunded, and perceived as bureaucratic obligations rather than engines of legality, performance improvement, or trust-building.

The Ukrainian internal oversight framework reflects a persistent tension between formalisation and functionality. Although audit procedures, risk registers, and departmental integrity standards are formally in place across most ministries, their practical effectiveness remains uneven and frequently undermined by political interference, institutional inertia, and the absence of meaningful enforcement leverage. In some instances—particularly where ministries operate under donor pressure or international monitoring—internal control systems exhibit a higher level of procedural sophistication. However, across the executive branch as a whole, audit units are often structurally marginalised and procedurally disconnected from real decision-making processes. Their findings, while sometimes substantive, are routinely ignored, deprioritised, or addressed through symbolic rather than corrective measure.[248]

More critically, the potential of internal audit as a preventive governance tool remains unrealised. Instead of functioning as early warning systems capable of identifying systemic inefficiencies, legal irregularities, or ethical lapses, Ukrainian internal audits are still too often reactive, mechanistic, and retrospective. The broader administrative culture remains oriented toward damage control rather than anticipatory correction. The absence of structured benchmarking, inter-agency knowledge exchange, or policy feedback loops limits the transformative value of oversight findings. This situation risks converting internal audits into isolated compliance rituals, rather than instruments of organisational learning and strategic reform.

[247] Cabinet of Ministers of Ukraine, Strategy for Public Finance Management System Reform in 2022–2025, Ordinance No. 1805-p, 29 December 2021, 27–28. https://www.mof.gov.ua/storage/files/PFM_Strategy_210x2973mm_text_eng.pdf.
[248] Olha Kupets, "Institutional Challenges of Public Administration Reform in Ukraine," Kyiv-Mohyla Law and Politics Journal 6 (2020): 53–71.

In comparative perspective, the U.S. model offers several actionable insights. First, legal and institutional guarantees for the independence of internal control must be codified and enforced—not merely declared in secondary legislation. Second, there must be a binding linkage between audit findings and external oversight actors—such as parliament, prosecution services, or watchdog organisations. Third, Ukraine must invest in building a long-term administrative culture in which internal control is seen not as punitive supervision, but as a core management function and expression of lawful, effective governance.

Institutionally, Ukraine stands at a crossroads. The integration process with the European Union provides both the normative direction and external momentum for strengthening internal control systems, but implementation requires more than formal transposition of EU principles. It demands political will, professional investment, and constitutional-level guarantees of independence, transparency, and enforceability. Functionally robust internal oversight is not a luxury of mature democracies—it is a precondition for rebuilding legitimacy in transitional ones. As a measure of constitutional integrity, it signals whether public power is subject to rational, lawful constraints from within. Moreover, while both Ukraine and the U.S. formally guarantee parliamentary and presidential oversight, the U.S. model is grounded in a more institutionalized framework combining legal, procedural, and fiscal controls, including the Congressional Review Act (CRA) and permanent investigative staff within oversight committees. Ukraine's mechanisms, although enshrined in the Constitution and Rules of Procedure of the Verkhovna Rada, remain predominantly declarative due to the absence of procedural autonomy, financial resources, and sanctions for non-compliance

In conclusion, Section 3.2 has shown that internal administrative oversight in Ukraine, while formally mandated and institutionally present, still suffers from weak implementation, minimal insulation from political hierarchies, and lack of cultural acceptance as a mechanism for forward-looking reform. The U.S. experience illustrates how internal legality and managerial accountability can be synergistically embedded within administrative routines, provided there are proper safeguards and enforcement structures.

The next chapter shifts focus from internal state mechanisms to society at large. Section 3.3 examines how civil society organisations, investigative journalists, and public watchdogs have begun to fill the gaps in formal oversight by asserting pressure from below. As the boundaries between state and citizen oversight blur, it becomes essential to understand how media and civic action operate as complementary layers of administrative accountability—particularly in environments where internal or judicial mechanisms remain deficient.

3.3 Civil Society and Media Oversight of Administrative Activity in Ukraine and the USA

To begin with, while Ukrainian administrative legislation does not provide a codified definition of "civil society oversight," the mechanism clearly exists in practice. Oversight functions are embedded in various legislative acts regulating transparency, public consultation, and anti-corruption enforcement. For example, the Law of Ukraine "On Access to Public Information" guarantees public oversight of information administrators, including through engagement by NGOs such as the Anti-Corruption Action Center, CHESNO Movement, and Bihus.Info, public councils, and individual citizens.[249] Similarly, the Law "On the Prevention of Corruption" in Article 21 allows civil society organisations to conduct anti-corruption assessments of draft regulations, participate in public consultations, and monitor the implementation of anti-corruption policy.[250] These instruments confirm that civil society oversight is operational, actively practiced even in the absence of a unified legal definition.

Unlike U.S. NGOs, which may obtain formal standing in rulemaking or judicial review, Ukrainian CSOs are structurally excluded from these phases of administrative procedure. Administrative bodies are not legally required to respond to CSO feedback, nor are CSOs granted procedural standing to challenge agency inaction or regulatory omissions in court. This lack of codified access impedes their ability to shape or contest public policy decisions beyond advisory formats. This is due to the absence of enabling provisions in The Code of Administrative Proceedings of Ukraine (No. 2747-IV), which only grants standing to individuals and legal entities whose rights are directly violated, without recognising CSOs as independent stakeholders unless they represent specific interests under civil mandate.[251]

A prominent example is DOZORRO's COVID-19 procurement monitoring, which revealed widespread price manipulation and procedural abuses without leading to systematic sanctions. Similarly, in 2025 Ukraine was reported to have lost over $770 million on advance payments for undelivered arms, with enforcement proceedings stalled despite international arbitration victories. These cases highlight the limited leverage of investigative findings in the absence of codified follow-up mechanisms or mandatory governmental accountability.[252]

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[249] Law of Ukraine "On Access to Public Information," No. 2939-VI, adopted January 13, 2011, arts. 3, 17. Accessed May 14, 2025. https://zakon.rada.gov.ua/laws/show/en/2939-17#Text.

[250] Law of Ukraine "On the Prevention of Corruption," No. 1700-VII, adopted October 14, 2014, art. 21. Accessed May 14, 2025. https://zakon.rada.gov.ua/laws/show/en/1700-18#Text.

[251] The Code of Administrative Proceedings of Ukraine, No. 2747-IV, adopted July 6, 2005, art. 55; Supreme Court of Ukraine, Case No. 826/13821/18 (2020). https://zakon.rada.gov.ua/laws/show/2747-15?lang=en#Text

[252] "Ukraine Lost $770 Million in Advance Payments for Undelivered Arms – FT Investigation," Forbes Ukraine, May 16, 2025, https://forbes.ua/news/ukraina-vtratila-770-mln-na-peredoplatakh-za-zbroyu-shcho-tak-i-ne-nadiyshla-rozsliduvannya-ft-16052025-29791.

In contrast, the United States has developed a considerably more structured and enforceable model of civil society oversight. Freedom of information is guaranteed by the Freedom of Information Act (FOIA), codified at 5 U.S.C. § 552, which obliges federal agencies to disclose records to the public unless explicitly exempted,[253] with procedural advantages for media and educational institutions, such as reduced fees and expedited processing, and establishes the Office of Government Information Services (OGIS) to mediate disputes.[254] This directly contrasts with the Ukrainian model, where similar access rights are formally provided. Still, their implementation remains inconsistent and often subject to political or security-based limitations, particularly during the full-scale war launched by the Russian Federation. Even in regions where no active hostilities are taking place and institutions continue to operate routinely, such as Rivne, officials have denied journalists access to public information, citing martial law without demonstrating concrete security risks.[255] Requests concerning judicial case schedules, public housing distribution, and local infrastructure were refused under vague references to wartime secrecy. This illustrates how broad exemptions may weaken access rights, even without ongoing hostilities.

A closer comparison of the legal frameworks further underscores these differences. While the Ukrainian Law "On Access to Public Information" sets out clear deadlines for response and guarantees judicial review, it does not differentiate the procedural status of civil society actors from that of other requesters.[256] Moreover, it lacks tailored mechanisms that would facilitate structured participation by NGOs or journalists in policy formation and regulatory oversight. Although Cabinet of Ministers Resolution No. 996 (as amended in 2025) formally institutionalises public consultations and assigns public councils the function of civic monitoring, this function is narrow and strictly advisory. According to Clause 3(2) of the annexed Typical Regulation on Public Councils, these bodies are permitted to carry out monitoring (громадський моніторинг) within the boundaries of applicable law.[257] However, such monitoring does not entail the authority to demand sanctions or binding decisions. It is not equivalent to inspection, prosecutorial oversight, or judicial control. Instead, it involves gathering, analysing, and publishing information and submitting proposals for consideration.

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[253] U.S. Code. Freedom of Information Act, 5 U.S.C. § 552(a)(3)(A), (4)(A)(ii), (4)(B), (h) (2018). Accessed May 15, 2025. https://www.justice.gov/oip/freedom-information-act-5-usc-552.

[254] Freedom of Information Act, 5 U.S.C. § 552(a)(3)(A) (as amended by the FOIA Improvement Act of 2016), https://www.justice.gov/oip/freedom-information-act-5-usc-552.

[255] "In Rivne, Officials Deny Journalists Information, Citing War," Institute of Mass Information (IMI), August 9, 2022. Accessed May 14, 2025. https://imi.org.ua/news/u-rivnomu-posadovtsi-ne-nadayut-informatsiyu-zhurnalistam-prykryvayuchys-vijnoyu-i47139.

[256] Law of Ukraine "On Access to Public Information," No. 2939-VI, adopted January 13, 2011, arts. 20, 23. Accessed May 14, 2025. https://zakon.rada.gov.ua/laws/show/en/2939-17#Text.

[257] Ukraine, Cabinet of Ministers, Resolution No. 996 "On Ensuring Public Participation in the Formation and Implementation of State Policy," adopted November 3, 2010, as amended March 25, 2025, Annex 1, Clause 3(2). Accessed May 15, 2025. https://zakon.rada.gov.ua/laws/show/996-2010-п#Text.

In contrast, FOIA explicitly recognises categories such as media and educational institutions, granting them procedural advantages such as reduced fees and expedited processing.[258] Ukrainian law provides no such procedural privileges, treating all applicants identically, regardless of social function or institutional role.

Implementing enforceable safeguards, such as a legal requirement to address verified media reports or evaluations by civil experts, could greatly improve their influence in shaping and supervising public administration. In contrast to Ukraine's non-binding oversight, the United States offers a more integrated and enforceable model grounded in legislation and judicial remedies.

This participation mechanism is anchored as a legal guarantee, as the Administrative Procedure Act of 1946 codifies it across several provisions. Under Section 4(a), agencies are required to publish Notices of Proposed Rules in the Federal Register; Section 4(b) ensures the right of interested parties to submit comments; and Section 4(c) obliges agencies to review this input and provide a concise statement of the rule's basis and purpose. Moreover, Section 10(e) provides that courts must set aside any agency action deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"—a standard that directly applies when relevant public feedback is disregarded.[259] Together, these provisions confirm that public participation functions as a structured and enforceable mechanism of administrative oversight.

As McCubbins and Schwartz conceptualised, this model exemplifies "fire-alarm oversight": a decentralised system in which civil society actors—rather than relying on constant top-down surveillance—activate institutional responses through complaints, litigation, or public disclosures.[260] A concept where journalists or civil groups act as whistleblowers, prompting actions by Congress, courts, or oversight bodies. As already mentioned above, tools such as FOIA provide precisely this activation function, enabling access to information, judicial remedies, and procedural advantages for public interest requesters.[261] In this framework, civil society actors are not passive observers but legal agents capable of compelling administrative accountability. Ukraine, by contrast, has yet to institutionalise such bottom-up triggers, and most civic involvement remains confined to consultations without binding legal effect.

Despite the relative institutionalisation of participation rights, not all mechanisms of civic input in the United States have delivered on their democratic promise. Notably, the experiment

[258] Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(ii), (a)(6)(E) as amended by the FOIA Improvement Act of 2016), https://www.justice.gov/oip/freedom-information-act-5-usc-552.
[259] U.S. Public Law 404, Administrative Procedure Act, Sections 4(a)–(c), 10(e), approved June 11, 1946. Accessed May 15, 2025. https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf.
[260] Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," American Journal of Political Science 28, no. 1 (February 1984): 173-175.
[261] Freedom of Information Act, 5 U.S.C. § 552(a)(3)(A), (4)(A)(ii), (4)(B), (h) (2018). Accessed May 15, 2025. https://www.justice.gov/oip/freedom-information-act-5-usc-552.

with negotiated rulemaking—a process by which agencies and stakeholders attempt to draft proposed rules jointly—has largely failed to improve rule quality or legitimacy. As Cary Coglianese argues, "formal negotiation of rules makes little difference, or certainly fails to accomplish anything like what proponents had promised."[262] Such procedures often reproduce existing power imbalances, allowing better-resourced actors to dominate informal consensus while offering no judicial remedies to excluded voices.

Digital innovations in participation have similarly underperformed. E-rulemaking platforms were expected to reduce barriers to access and stimulate broader citizen involvement in policymaking. Yet evidence shows that "even future e-rulemaking efforts appear unlikely to lead to a participatory revolution… they can be expected generally to deliver much the same level of citizen involvement."[263] The core impediments are not technological but motivational and cognitive: individuals lack the time, interest, or expertise to contribute meaningfully, even when the interface is simplified.

Even graduate-level students at Harvard's Kennedy School struggled to locate rulemaking information, revealing the high informational threshold required for genuine participation.[264]

These findings challenge the assumption that formal or digital inclusion mechanisms automatically empower civil society. As Ukraine expands its civic tech and consultation platforms, it should learn from these limitations and prioritise procedural enforceability, follow-up obligations, and representative legitimacy over the mere appearance of openness.

In contrast to the United States, Ukraine's civil society evolved in a fundamentally different legal and political context. As already noted, civic participation was shaped by an "anti-state" mindset in result, civic activity took the form of private solidarity and resistance.[265] Despite changes in history, this oppositional mindset remains, leaving deep cognitive and motivational traces that influence civic engagement. Unlike the United States, where citizen participation suffers from apathy, Ukraine faces the opposite: a mobilised civic culture with resistance as a reflexive response to authority. This legacy has delayed civil society's institutional recognition as a legitimate governance partner. Consequently, civic activity often stayed informal, ad hoc, or donor-driven.

The Orange Revolution and Euromaidan transformed this landscape, creating what Volovchuk calls a "partnership model," based on mutual mobilization and grassroots

[262] Cary Coglianese, "Citizen Participation in Rulemaking: Past, Present, and Future," Duke Law Journal 55, no. 5 (2006): 944, 965–966.
[263] Ibid.
[264] Ibid.
[265] Olga Volovchuk, "Ukrainian Civil Society: Past Lessons and Future Possibilities," Scientific Notes of NaUKMA. Political Science 3, no. 1 (2019): 176–177.

monitoring.[266] Volunteer movements, open data activists, and watchdog groups gained momentum, but improvements remain partial, and the shift toward institutional partnership isn't irreversible. Civil society may risk acting like a state, leading to co-optation by political actors and a loss of independence. The absence of a strong middle class and the dominance of oligarchic structures limit independent civic participation. NGOs and public councils, especially those dependent on donor funding or political interests, may use participatory language while lacking genuine accountability or grassroots ties. This co-optation undermines civil society's legitimacy as an autonomous oversight actor, especially without mechanisms for transparency, legality, and accountability. An active civic sector may represent participation but lack real influence over governance processes. Consequently, public consultations or anti-corruption monitoring may serve as formalistic covers for predetermined decisions, not as channels for meaningful influence.

These historical dynamics explain why civic oversight in Ukraine is uneven. While vibrant during crises, it lacks the consistent procedures of more mature systems. For participation to shift from opposition to co-governance, Ukraine must adopt formal procedures and develop safeguards to preserve civil society's autonomy within the legal framework.

Media oversight, while often treated as an extension of civil society, functions in the United States as a distinct and structurally embedded layer of accountability. As McCubbins and Schwartz argued, modern administrative control does not rely solely on constant institutional surveillance ("police patrols") but increasingly on indirect triggers—"fire alarms"—activated by third parties such as the press, NGOs, or affected citizens.[267] Under this model, the role of investigative journalism is not merely to inform the public but to catalyse institutional response by exposing administrative failures, misconduct, or opacity.

Congressional mechanisms have been designed precisely to respond to such fire alarms: public hearings, inspector general investigations, and even legislative amendments may follow major media revelations.[268]

In December 2005, the New York Times revealed the illegal surveillance methods employed by the Bush administration, provoking congressional inquiries and legislative changes, including the USA Freedom Act. The Bush administration had particularly empowered the National Security Agency (NSA) to carry out warrantless surveillance on individuals in the United States, circumventing the Foreign Intelligence Surveillance Act (FISA).[269] This revelation incited

[266] Ibid., 182–183.
[267] Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," American Journal of Political Science 28, no. 1 (February 1984): 166–179, esp. 168–171.
[268] Ibid., 173–174.
[269] Eric Lichtblau and James Risen, "Bush Lets U.S. Spy on Callers Without Courts," New York Times, December 16, 2005, https://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html;

considerable public outcry and initiated congressional hearings to examine the legality and extent of these surveillance operations.

Congress passed the FISA Amendments Act of 2008 to address the fallout, designed to establish a legal framework for certain surveillance practices while providing retroactive immunity to telecommunications companies that assisted the NSA.[270] Additional reforms followed with the enactment of the USA Freedom Act in 2015, which halted the NSA's mass collection of telephone metadata and introduced measures for greater transparency and oversight of surveillance initiatives.[271] These legislative actions illustrate how investigative journalism can catalyze institutional reform, resulting in legal changes and increased accountability within government practices.

The United States thus integrates media oversight into the broader administrative accountability system as a functional enforcement tool, not a peripheral actor. In contrast, Ukraine lacks comparable procedural linkages. While investigative journalism is active and often high-impact, its findings rarely trigger automatic institutional responses, revealing a critical gap between exposure and enforcement.

Another key element is procedural institutionalisation, meaning the legal integration of civil society into formal decision-making structures. Ukraine has implemented various frameworks for this purpose, including the Law "On the Basics of State Anti-Corruption Policy" for 2021–2025" identifies CSOs as official stakeholders in anti-corruption monitoring,[272] while Cabinet of Ministers Regulation outlines mechanisms for public consultations and civil engagement in policymaking.[273] Nevertheless, civil participation in Ukraine frequently takes the form of ad hoc advocacy rather than structured co-governance. Public councils under executive bodies are often criticised for lacking impact, transparency, and representativeness in selecting members. In contrast, U.S. administrative law explicitly integrates civil society and media oversight into regulatory procedures. As previously noted, under APA, the right of notice-and-comment rulemaking is guaranteed, which allows any interested party—including NGOs, businesses, and individuals—to submit feedback on proposed federal regulations. Courts may later use this feedback as part of judicial review when evaluating whether an agency's action was "arbitrary or capricious."[274] Furthermore, CSOs may file amicus curiae briefs in administrative litigation or

[270] U.S. Congress, FISA Amendments Act of 2008, H.R. 6304, 110th Cong., 2nd sess. (2008), https://www.congress.gov/bill/110th-congress/house-bill/6304.
[271] U.S. Congress. USA Freedom Act of 2015, Public Law 114–23, § 103, 129 Stat. 272 (June 2, 2015). https://www.congress.gov/bill/114th-congress/house-bill/2048/text.
[272] Law of Ukraine "On the Basics of State Anti-Corruption Policy for 2021–2025", No. 413-IX (20 October 2019).
[273] Cabinet of Ministers of Ukraine, Resolution No. 996 "On Ensuring the Participation of the Public in the Formation and Implementation of State Policy" (3 November 2010).
[274] Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1946).

directly challenge agency decisions in court under the standing doctrine, provided they can demonstrate concrete injury.[275]

Media oversight, while conceptually overlapping with civil society, deserves separate consideration due to its dual nature: both a communicative platform and an investigative entity. In the United States, protections for press freedom are deeply entrenched in constitutional jurisprudence. Landmark cases such as New York Times Co. v. United States and Branzburg v. Hayes affirm the press's role as a counterbalance to administrative secrecy. Investigative outlets, including The Washington Post and The New York Times, have exposed administrative abuses ranging from the Pentagon Papers to the Watergate scandal—each triggering legal and institutional consequences.[276]

In Ukraine, the role of independent journalism has grown exponentially since the Euromaidan revolution. Investigative units such as Slidstvo.Info, Ukrainian Pravda, and Detector Media have consistently scrutinised public procurement, municipal governance, and the conduct of regulatory agencies. Nevertheless, challenges persist. In Ukraine, the role of journalism remains crucial in holding authorities accountable during wartime. However, journalists continue to face substantial obstacles. According to a 2023 sociological study by ZMINA, over 60% of journalists reported problems accessing information under martial law, while one in five experienced attempts by authorities to influence the content of their reporting. Key concerns include institutional pressure, legal uncertainty, the broad application of national security as a justification for refusals, and fears of persecution. These challenges persist despite the independent media's vital role in ensuring transparency and public oversight in times of crisis.[277]

Despite these institutional constraints, Ukraine has been commended by international monitors for notable improvements in civil society involvement—particularly in procurement transparency, digital oversight, and anti-corruption monitoring. According to the 2023 OECD/SIGMA Monitoring Report, Ukrainian CSOs have become increasingly active in the monitoring of public procurement through platforms like Prozorro and play a visible role in policy dialogue around integrity and fiscal accountability. However, this progress remains structurally fragile: as the report notes, civic participation often depends on external donor support and lacks procedural entrenchment in administrative law.[278] Practically, this means that many oversight

[275] Cass R. Sunstein, After the Rights Revolution: Reconceiving the Regulatory State (Cambridge, MA: Harvard University Press, 1990), 35–37.
[276] Carl Bernstein and Bob Woodward, All the President's Men (New York: Simon & Schuster, 1974).
[277] T. Pechonchyk, A. Sukharyna, and V. Yavorskyi, Challenges to Freedom of Speech and Journalists in Wartime: Sociological Research (Kyiv: Human Rights Centre ZMINA, 2023), 5–7, https://zmina.ua/wp-content/uploads/sites/2/2024/03/freedomofspeechandjournalistsatwar_socialresearchen-web.pdf
[278] OECD/SIGMA, Public Administration in Ukraine – Assessment against the Principles of Public Administration (Paris: OECD, 2023), pp. 152–154. https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/02/public-administration-in-ukraine_27a46a58/078d08d4-en.pdf.

initiatives are sustained by funding from international actors such as the EU, UNDP, and USAID (as it existed at the time of the report). At the same time, domestic legal frameworks do not impose binding obligations on administrative bodies to engage with civil society actors. Mechanisms such as mandatory consultations, participation in rulemaking, or standing rights in administrative disputes are either underdeveloped or absent, leaving civic involvement largely dependent on political goodwill or temporary project-based arrangements.

The war has escalated these challenges, prompting the state to abandon ordinary fiscal rules in favor of extraordinary measures. However, instead of stalling reform, these circumstances have highlighted its urgency. Ukraine has been forced to respond swiftly, balancing the defense of national sovereignty with ongoing governance improvements that were planned long before. While the report carefully portrays wartime deviations as temporary and looks forward to recovery-driven institutional strengthening, this thesis argues that the commitment to transparency should not be delayed. After three years of full-scale war, accountability and civic oversight are even more essential—indeed, they are more critical than ever. Reforms should not be deferred until after the conflict but should proceed now, wherever possible, as part of a strategy to protect both statehood and democratic legitimacy.

A significant development is the growth of public interest litigation (PIL) in the U.S., where civil society organizations (CSOs) can pursue judicial review to contest agency inaction or inadequate enforcement. While PIL is still limited in Ukraine, new precedents indicate its promise. Investigative journalism in Ukraine highlights systemic abuses, but these revelations seldom result in institutional accountability. Many journalists are forced to seek recourse beyond the national legal framework to access information. In Leshchenko v. Ukraine (2021), the European Court of Human Rights determined that the government's refusal to release land sale documents related to former President Yanukovych violated Article 10 of the European Convention on Human Rights. [279]In a similar vein, the Court ruled in Sedletska v. Ukraine (2021) that the surveillance of a journalist's communications by Ukrainian authorities breached source confidentiality and press freedom.[280] Despite these decisions, no fundamental reforms have taken place, and domestic authorities continue to evade accountability. In contrast to the United States, where investigative journalism frequently leads to official resignations or legislative changes, Ukraine's media oversight lacks mechanisms for enforceable action. These cases underscore the disconnect between revealing injustices and achieving repercussions, indicating that without a legal mandate for domestic responses to verified media investigations, journalistic oversight remains crucial in principle but ineffective in practice.

[279] Serhiy Leshchenko v. Ukraine, no. 62023/14, European Court of Human Rights, Judgment of January 21, 2021.
[280] Sedletska v. Ukraine, no. 42634/18, European Court of Human Rights, Judgment of April 1, 2021.

A 2025 Financial Times investigation revealed Ukraine lost about $770 million in prepayments for undelivered weapons from U.S. intermediaries. Despite arbitration victories and reports, enforcement is limited, illustrating that severe procurement failures can evade effective government action response.[281]

Furthermore, institutionalizing open data initiatives has added a new and increasingly strategic layer of administrative oversight. In Ukraine, platforms such as ProZorro and E-Data facilitate real-time public access to information on public procurement and budget spending, enabling civil society groups and investigative journalists to track contract allocation and identify anomalies, particularly in health, defence, and infrastructure sectors. However, usability remains an issue, as data presentation often lacks standardisation and intuitive search features.

In the United States, open data oversight operates through a mature digital infrastructure. The federal Data.gov platform, coupled with statutory obligations under the DATA Act of 2014, mandates the publication of standardised datasets by all federal agencies. These datasets are machine-readable and subject to quarterly validation, thus enabling civic tech actors and watchdog organisations, such as the Sunlight Foundation or Data Coalition, to conduct performance and financial integrity audits.

Despite the progress on both sides, differences remain. U.S. data platforms benefit from higher completeness, structured interoperability, and legal guarantees of continuous disclosure. In contrast, access to public information in Ukraine continues to face structural challenges. According to a 2025 monitoring report by the Human Rights Platform, based on an analysis of 1,882 court decisions from 2022–2024, access was most frequently denied for financial data, land records, and personnel documentation. In 68% of cases, courts ruled in favor of the applicants, finding the restrictions unlawful. Most refusals were linked to broad references to personal data protection and wartime limitations, often used by local councils and national bodies such as the Ministry of Defence and the State Tax Service.[282] Although judicial practice has reinforced the public nature of such information, the persistence of blanket denials suggests that institutional resistance remains, especially under martial law.

In comparative terms, Ukraine's evolving model of civil oversight contrasts not only with the United States but also with civil law Europe. Anglo-Saxon systems pragmatically view civil

[281] "Ukraine Lost $770 Million in Advance Payments for Undelivered Arms – FT Investigation," Forbes Ukraine, May 16, 2025, https://forbes.ua/news/ukraina-vtratila-770-mln-na-peredoplatakh-za-zbroyu-shcho-tak-i-ne-nadiyshla-rozsliduvannya-ft-16052025-29791.

[282] ZMINA. "Right to Access to Public Information: Which Requests Are Most Often Refused by Authorities." *ZMINA: Human Rights Center,* May 6, 2025. https://zmina.info/news/pravo-na-dostup-do-publichnoyi-informacziyi-z-yakyh-pytan-najchastishe-vidmovlyayut-na-zapyty/.

society as instrumental to governance, whereas continental traditions draw sharper legal-administrative boundaries between state and society.[283]

While these elements are entrenched in the U.S. system through an interlocking framework of legislation, jurisprudence, and agency rulebooks, in Ukraine they are still evolving. Participation is frequently channelled through formalistic consultations or donor-driven forums rather than institutionalised feedback loops. This limits the impact of civil monitoring initiatives, which expose abuses but lack the procedural tools to compel follow-up action or policy change.

Nevertheless, Ukraine's civil society has increasingly demonstrated its capacity to serve as an informal accountability mechanism, particularly in contexts of institutional fragility. While lacking coercive powers, these initiatives reflect a growing infrastructure of civic engagement oriented toward rule-of-law enforcement through transparency.

The expansion of digital tools and professional NGOs has enabled civil society to assume a semi-institutionalised oversight role. Yet for this role to evolve into a consistent feature of administrative governance, it must be grounded in enforceable legal guarantees, sustainable funding, and procedural integration with state institutions—particularly in alignment with EU administrative standards.

Viewed comparatively, civil society and media oversight form the most agile layer of administrative control, offering immediate response capacity and normative framing that complements more formal mechanisms. Unlike judicial or parliamentary review—which are reactive and structurally constrained—societal oversight engages a broader public, enabling democratic responsiveness in real time. As Ukraine deepens its European integration, institutionalising civil and media oversight must become a central pillar of administrative reform, not a residual tool of last resort.

This concludes Chapter Three. After examining external and internal forms of administrative oversight in Ukraine and the U.S., the next chapter will synthesize these findings into actionable insights, assessing structural differences, legal doctrines, and the functioning of these systems in political contexts to provide lessons for Ukraine's transformation based on transatlantic models. Both countries empower their legislatures and presidents for oversight, but the U.S. has stronger procedural institutionalization. The U.S. Congress controls through hearings, appropriations, and subpoenas, while the President directs policy via executive orders and OIRA oversight. In contrast, Ukraine's Verkhovna Rada and President encounter legal formalism, limited administrative capacity, and a fragmented oversight culture.

[283] The Oxford Handbook of Public Management, ed. Ewan Ferlie, Laurence E. Lynn Jr., and Christopher Pollitt (Oxford: Oxford University Press, 2005), 696–697.

Internal control in the U.S. depends on Inspectors General, linking oversight with congressional accountability. Ukraine's internal audit structures, despite a legal framework, face inconsistent implementation and lack standardization, diminishing their effectiveness. Civil society and media oversight are vital. In the U.S., CSOs work in a legally protected environment backed by FOIA and litigation rights. Ukraine's CSOs fill gaps in formal mechanisms but struggle with power, legal protections, and stable access for systemic influence. However, civic tech, investigative journalism, and open data activism indicate a developing accountability ecosystem. Overall, the analysis reveals that Ukraine's accountability architecture is fragmented and fragile, with varying reform progress across oversight layers. The U.S. experience underscores the importance of legal enforceability, cross-institutional linkages, and normalizing civic participation in governance.

To advance, Ukraine must strengthen each control layer by formalizing internal audits, enhancing parliamentary inquiries, and embedding civil society oversight into rulemaking. These efforts will align with EU accession criteria and improve the efficiency and responsiveness of Ukrainian public administration.

CONCLUSIONS

This thesis reexamined the legal and institutional framework of control over administrative activities in Ukraine, comparing it to the system in the United States. It moved beyond just formal criteria to explore how judicial, parliamentary, and civil oversight actually work in practice—examining how they're applied, interpreted, and contested. Also, the analysis was not limited to static categories of law; instead, it focuses on how oversight operates dynamically under pressure, whether during ordinary circumstances or exceptional times.

First, The research shows Ukraine's control over administrative activity, though based on democratic principles like legality and accountability, is fragmented and poorly enforced. Courts, parliament, and civil society often operate in isolation, lacking coordination. This fragmentation leads to selective judicial implementation, politicized oversight, and minimal responsiveness. Unlike the integrated oversight model in the U.S., where judicial review and whistleblower protection interact, Ukraine lacks institutional coherence. Consequently, legal guarantees remain weak and inconsistently enforced in the administrative judiciary.

Secondly, tension exists between reform and resilience. Since 2014, Ukraine has pursued ambitious reforms, such as establishing the NACP, implementing asset declaration systems, and creating digital tools like the whistleblower portal. However, under martial law, many mechanisms are paused or compromised. The temporary suspension of elections, restricted public register access, and concentrated executive power highlight the fragility of these reforms. U.S. experience shows that democratic oversight can continue even in crises through enforceable legal standards and institutional checks. Ukraine's future depends not just on stronger laws but also on a reinforced operational and political culture. The U.S. experience suggests procedural safeguards succeed only with strong political will and civic pressure.

Third, the thesis urges Ukraine to tailor its oversight architecture instead of imitating external models, incorporating useful U.S. practices such as mandatory enforcement of court decisions, whistleblower protections, independent audits, and legal public participation. At the same time, European procedural safeguards—particularly proportionality and the right to an effective remedy—must remain central to ensure human rights compatibility. This thesis, therefore, proposes a reform roadmap based on legal integration rather than imitation, and focused on bridging the gaps between written law and its practical enforcement.

Research shows that comparative legal analysis indicates enforcement, participation, and institutional balance are effective in transitional democracies. Although Ukraine's administrative system has improved, its democratic future depends on shifting oversight from a formal structure to a resilient public power control culture. The comparative method emphasized institutional

asymmetries and the need for context-sensitive legal reform. Instead of transplanting foreign models, the hybrid approach focuses on legal compatibility, functional coherence, and local capacity. This thesis contributes to transitional administrative law discourse and proposes a reform roadmap that aligns with Ukrainian realities and global trends.

RECOMMENDATIONS

In light of the findings presented in this thesis, Ukraine should prioritize the following reforms to strengthen the control over administrative activity in both peacetime and emergency conditions.

First, it is essential to ensure that emergency governance remains anchored in constitutional principles. Even during martial law, legislative reforms must uphold the rule of law and fundamental rights. Ukraine's reliance on derogations under Article 15 of the European Convention on Human Rights must not justify the erosion of democratic oversight. All emergency regulations should undergo constitutional review and public scrutiny.

Second, restoring the enforceability of judicial decisions must become a national priority. The creation of a centralized system to monitor the execution of administrative court rulings would significantly improve accountability. Automatic transmission of judgments for enforcement, tracking tools, and fines for non-compliance would address systemic failures highlighted in cases such as Burmych v. Ukraine.

Third, public control must be safeguarded and institutionalized. Ukraine should guarantee civil society's access to oversight tools, particularly in wartime. Restoring open access to asset declarations, strengthening protections for whistleblowers, and legally formalizing the role of investigative journalism are essential steps in fighting administrative corruption and promoting transparency.

Finally, Ukraine should audit and streamline administrative legislation. After a decade of reforms, inconsistencies and overlaps remain. A structured legislative review involving both state bodies and civil society would help eliminate legal ambiguity and improve the quality of administrative governance.

These recommendations aim to reinforce legality, accountability, and resilience within Ukraine's system of administrative control—both during the war and in its long-term democratic consolidation.

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