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QUASI COURTS IN THE ADMINISTRATIVE JUSTICE SYSTEM OF UKRAINE

Summary. *This article presents the legal framework of quasi courts in the administrative justice system of Ukraine. Particular attention is given to the types of quasi-judicial bodies with a view to their powers. The author emphasizes the necessity of expansion of Ukrainian administrative justice legal doctrine. It further discusses the essence and peculiarities of national commissions and Ombudsman in the field of administrative justice, highlighting their benefits and drawbacks. In conclusion the author summarizes that the concept of the administrative justice system in Ukraine is too narrow and does not correspond to reality.*

Key words: *administrative justice, quasi courts, public administration, independent commissions, ombudsman.*

Statement of the problem. Administrative justice is a crucial instrument in dealing with the public administration's malpractice. Current societal processes in Europe demonstrate a significant expansion of the administrative justice authorities and quasi courts are confidently occupying their privileged niche in the administrative justice system. Quasi courts are actively functioning in the domestic administrative justice system, however, usually they are not considered to be a part of it. Such a narrow approach is not consistent with the modern realities; therefore, complex research is needed.

Analysis of recent researches and publications. The vast majority of Ukrainian scholars interprets administrative justice in a very narrow sense, which covers only judicial organs under its system. M. Zhushman [22], O. Sokurenko [10], R. Kuybida [6] are supporters of such position. This approach excludes the existence of quasi courts in the administrative justice system, which is not correct in our view due to the current demands of a democratic society. Some authors were analyzing the essence of particular bodies, which after further analysis may be considered as quasi courts in the administrative justice system of Ukraine. For example, Y. Vashchenko [13] was analyzing the place of the independent regulatory authorities in the Ukrainian legal system, whilst A. Khal'ota studied a mechanism of applying to the Ombudsman [3]. Therefore, there is no complex research regarding the place of quasi courts in the administrative justice system of Ukraine.

Formulation purposes of article (problem). The aim of the article is to define the place of quasi courts in the administrative justice system of Ukraine. The main objectives of the work are to identify the authorities, which may be considered as quasi courts in Ukrainian administrative justice system, to assess the strengths and weaknesses of quasi courts in the field of administrative justice.

The main material. Ukrainian legal doctrine sticks to a narrow approach of the administrative justice system, consequently, quasi courts generally are not considered to be a part of it. Due to the mentioned lack of scientific knowledge, we will define which bodies of Ukrainian public administration may be a part of the administrative justice system as quasi courts.

To begin with, it is necessary to provide a notion of the quasi courts. They may be defined as bodies, other than courts and tribunals, exercising judicial review concerning administrative law disputes between private persons and administrative authorities. They may exercise administrative justice on specific thematic issues – for example, social welfare or the environment. The

proceedings of such bodies should comply with international fair trial standards if these bodies can be regarded as a court or tribunal for the purposes of the right to a fair trial under international law. Monitoring staff should also consider whether these quasi-judicial bodies are the only ones exercising administrative justice on the matter. In general, limited judicial review may be available against the decisions of such quasi-judicial bodies [2, c. 30,31].

Having analyzed the relevant Ukrainian legislation, we have made a conclusion that such bodies may be considered as *quasi courts in the administrative justice system of Ukraine*:

- Independent regulatory authorities, i.e. national commissions;
- Ombudsman;
- Antitrust Committee;
- Ministry of Justice etc.

The main feature which unites these bodies into one system is powers to consider the appeals of individuals and legal entities in the sphere of public administration. For example, according to article 21 of the Law on National Energy and Utilities Regulatory Commission, regulator examines consumer complaints about violations of their rights and interests by economic entities operating in the energy and utilities sectors [18]. In this case, economic entities may be considered as state agents and therefore fall under the scope of administrative relations. Article 17 of the Law on Ukrainian Parliament Commissioner for Human Rights empowers Ombudsman to accept and consider appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the Law of Ukraine "On appeals of citizens" [20]. With regard to the Antitrust Committee, article 7 of its enabling law prescribes that it may consider appeals and cases of violation of the legislation on protection of economic competition and to investigate these appeals and cases [16]. Finally, Ministry of Justice of Ukraine is entrusted with considering the appeals against decisions, actions or omissions of state registrars, subjects of

state registration, territorial bodies of the Ministry of Justice of Ukraine, as is enshrined by Article 5 of the Law on the state registration of legal entities, natural persons - entrepreneurs and public entities [17].

Types of the bodies we have mentioned are not exhaustive, although they are prominent examples, a deeper analysis of the domestic legislation may show other authorities which also have quasi-judicial features. As we can see, administrative justice is one of the daily activities of the aforementioned bodies, therefore, they should form a part of Ukrainian administrative justice system and be considered as quasi courts. It would be too broad to make an in-depth analysis of each authority provided above, hence, we will further concentrate on national commissions and Ombudsman's essence, benefits and drawbacks in the administrative justice context.

During the administrative reform in Ukraine, new bodies were created – independent regulatory authorities. It was a response on privatization and liberalization processes in many areas of the economy, accompanied by a change in the nature of state influence, namely the transition from direct state intervention to state regulation [14]. Current legislation does not contain a definition of independent regulatory authorities and their types, but traditionally they include national commissions which carry out state regulation in certain spheres. Namely, such are: National Energy and Utilities Regulatory Commission, National Connection and Informatization Regulatory Commission, National Financial Services Markets Regulatory Commission, National Securities and Stock Market Commission. According to enabling laws, national regulatory commissions have a status of state collegial bodies. Commissions play an essential role in the Ukrainian economy and therefore, should be analysed with exceptional scrutiny.

The reason why we consider national regulators to be a quasi courts under the administrative justice system is their powers to examine appeals of private persons. For example, the National Connection and Informatization Regulatory

Commission examines consumer appeals and decides on matters within its competence [7]. National Financial Services Markets Regulatory Commission carries out thematic inspections of the activity of the insurer in cases where it is necessary to verify the facts stated in the complaints, statements, appeals of the insures [19]. Finally, National Securities and Stock Market Commission may consider complaints on decisions of its officials based on the Law of Ukraine "On appeals of citizens".

The great advantage of the national commissions being a part of the administrative justice system is that they are specialized in the specific sectors of the economy, and as a result, their decisions may be of better quality. National regulators are independent in their activities, which implies their impartiality in the decision-making process. What is more, they are subject to the principle of publicity, and it makes the procedure more transparent. Article 14 of the Law on National Energy and Utilities Regulatory Commission enshrines that regulatory meetings are held in the form of open hearings. Article 16 stipulates that draft decisions of the Regulator are subject to open discussion [18]. All in all, existence of commissions reduces the workload of ordinary courts, which seems to be a plus.

At the same time, state regulators in Ukraine as a part of administrative justice have certain drawbacks. Commissions above were established by the decrees of the President, however article 106 of the Constitution of Ukraine [5] does not contain the powers of the head of state to create such entities. Consequently, independent regulatory authorities at this point have a problematic legal status. The Constitutional Court of Ukraine in its recent decision concluded that the formation and functioning of the National Energy and Utilities Regulatory Commission in the status of a permanent independent state collegial body, which was conferred on it by Law «On the National Energy and Utilities Regulatory Commission», contravenes the Constitution of Ukraine [9]. It is necessary to bring the existing legislation in line with the requirements

of the basic law. Such problematic legal status of the national commissions challenges the legitimacy of their decisions as quasi courts under the system of administrative justice. The way to resolve this problem is to prescribe the special status of the commissions in the Constitution of Ukraine. For example, German experience shows the empowerment of the members of the Federal Court of Audit – supreme federal agency, with judicial independence by the Basic Law [1].

The Ombudsman plays an important role in each democratic society since his function is to safeguard the interests of citizens by ensuring administration according to law, discovering instances of maladministration, and eliminating defects in administration [12].

The Ombudsman in Ukraine exercises parliamentary control over the observance of the constitutional rights and freedoms of man and citizen and the protection of the rights of everyone within the territory of Ukraine and within its jurisdiction on an ongoing basis [20]. As it was already mentioned, the Law on Ukrainian Parliament Commissioner for Human Rights empowers Ombudsman to consider the appeals of natural persons. By doing this, it conducts the administrative justice and therefore may be defined as a quasi court for this purpose. We would like to admit that Ukrainian Commissioner has extensive powers to act on its initiative even without citizen's appeal, which allows him to conduct the activities even more effectively. For example, Ombudsman is unobstructed to attend the meetings of state authorities, local self-government bodies, enterprises, institutions, organizations, regardless of ownership [20].

Ukrainian legislation grants the Ombudsman with the power to issue an order (request) – a mandatory written request of the Commissioner to eliminate violations of the requirements of the legislation on personal data protection, which is submitted (sent) to the subject of verification. Such order is an essential instrument of human rights protection since it can be enforced. For example, in 201 the Commissioner ordered "Lifecell", one of the biggest mobile operator in

Ukraine, to terminate the storage and deletion of personal data of subscribers of Lifecell, which are stored beyond the limitation period (3 years) from the moment of termination of contractual relations between the data subject and the owner. In response to the order, Lifecell reported on the fulfilment of the requirements, namely: taking measures to identify, collect and destroy documents containing personal data of Lifecell subscribers, contractual relations with which were terminated, which persist beyond the limitation period and are subject to destruction. The company destroyed 880761 contracts and documents to them during the specified period, containing personal information of subscribers of Lifecell [15]. Such orders may be issued to public administration authorities as well.

The main disadvantage of the Ombudsman in the administrative justice system is lack of coercive powers (except for issuing orders). His decisions have only recommendatory character and may be ignored or inappropriately enforced by the public administration. Moreover, much of the decision-making process is conducted out of view of the complainant [4]. Also, sometimes in Ukraine we may face the problem when decisions of Ombudsman have rather a political character and are not objective enough. In our view, society should develop further to eliminate such obstacle.

Insights from this study and perspectives for further research in this direction. After theoretical and empirical analysis, it can be stated that the concept of the administrative justice system in Ukraine is too narrow and does not correspond to reality. Taking into consideration the powers of the national commissions, Ombudsman, Antitrust Committee, Ministry of Justice to consider the appeals of natural persons, they should form a part of the administrative justice system of Ukraine. National commissions play an important role in the field of administrative justice since they possess a certain degree of independence and issue more quality decisions due to their specialization in the specific sectors of the economy. The main weakness of the national regulators is

their problematic legal status, which should be dealt with by the legislator in order to consider the decisions of commissions to have a licit nature. Ombudsman forms an integral part of the administrative justice system. Its main strength is the possibility to act on his own even without an appeal and to issue orders. The phenomenon of the Ombudsman is not flawless, and it still lacks coercive powers and may issue politically influenced decisions.

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