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Lack of general law on administrative procedure in Ukraine and administrative justice

Ukraine remains one of a few European countries that have not enacted general law (code) on administrative procedure yet, despite of several attempts in the parliament (Verkhovna Rada). It means that current rules and procedures for national administrative authorities are scattered across different sector specific laws and regulations. Meanwhile administrative courts which were established in 2005 can examine any decisions, actions or inaction of administrative authorities. The paragraph 3 of the article 2 of the Ukrainian Code of Administrative Proceedings (Justice) foresees ten criteria, by which administrative courts shall examine appealed decisions or actions of administrative authorities. These criteria mostly correspond to the principles of good administration that are envisaged in numeral soft law documents of the Council of Europe and the European Union.

The Recommendation of the Committee of Ministers of the Council of Europe to member states on good administration adopted on 20 June 2007 can be seen as the guideline for law on administrative procedure in any European country including Ukraine that joined the Statute of the Council of Europe in 1995. The ideas and principles of law of administrative procedure were significantly elaborated by prominent European scholars that united in the Research Network on EU Administrative Law (ReNEUAL) and prepared the Model Rules on European Union Administrative Procedure (2014). Moreover, public bodies of the European Union declared an expediency of the Union`s law in the analyzed sphere. At least two European Parliament resolutions strive to such a law, namely of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union and of 9 June 2016 for an open, efficient and independent European administration.

Taking into consideration that Ukraine joined the Statute of the Council of Europe and obliged to adapt its legislation to acquis communautaire, we are convinced that administrative authorities of Ukraine should be guided not only by administrative procedural rules that one can find in national legislation but also by soft law documents of above mentioned European institutions.

Moreover, the situation when such rules are contained mostly in sector specific laws and regulations and supplemented by the only article in the Code of Administrative Proceedings (Justice) must be changed. In spite of this assertion, the very expediency of adopting a new law on administrative procedure is still being discussed by scholars and some politicians.

To our view, lack of general law (code) on administrative procedure in Ukraine is one of the main reasons that do not allow complying with the rule of law in the country. In another branches of procedural law, especially dealing with the work of the judiciary, Ukraine experienced quite a long term history of codification and adopted at least four codified acts: Civil Process Code, Criminal Process Code, already mentioned Code of Administrative Proceedings (Justice) and Economic Process Code. Besides, the Code on Administrative Transgression of Ukraine partly regulates proceedings not only in courts, but mainly in public administration`s bodies. However, this is an example of partly codification. Even relating to administrative transgressions only, the last Code does not regulate proceedings in all areas and various sector specific laws and by-laws are also in force. Very rarely these sector specific acts of Ukrainian legislation fully correspond to the contemporary European standards of administrative procedure and to the principles of good administration. Some exceptions exist, mainly in recent legislation, for example in the Law of Ukraine “On administrative services” (2012) which provided regulation of one stop shops in public administration. But it definitely is not enough for relevant legal regulation of administrative procedure as a whole.

To sum up, a future final draft of general law (code) of Ukraine on administrative procedure should use provisions laid down in above mentioned soft law documents of the Council of Europe and the European Union and be enacted by the Ukrainian parliament in the nearest future. Otherwise the Ukrainian legislators shall adhere numeral scattered sector specific laws and by-laws to the contemporary standards of administrative procedure but such the way can not considered as efficient.