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PROBLEMATIC ASPECTS OF ADMINISTRATIVE PROCEEDINGS CONCERNING THE TEMPORARY RESTRICTION OF THE RIGHT TO DRIVE DURING MILITARY MOBILISATION

On 24 February 2022, Ukraine faced an existential challenge as the Russian Federation launched a full-scale invasion aimed at undermining Ukrainian statehood. In response, thousands of Ukrainians mobilised in the Armed Forces of Ukraine to defend their homeland. By 2024, it became evident that Ukraine required new legislation to address the evolving challenges on the ground. The Armed Forces of Ukraine were severely exhausted due to a shortage of personnel, with many soldiers having fought continuously for two years without leave. On 11 April 2024, the Ukrainian government adopted new legislation, Law No. 10449 [1], to strengthen military mobilisation. Following its adoption, Ukraine's legislative framework governing military mobilisation incorporates specific penalties for non-

compliance, such as the temporary restriction of certain rights.

The law added Article 283-2 to the Code of Administrative Procedure of Ukraine: “Peculiarities of proceedings in cases concerning claims by the territorial recruitment and social support centre on the temporary restriction of individuals’ right to drive a vehicle during mobilisation.” [2]. In Ukraine, the territorial recruitment and social support centre is a military administration body responsible for ensuring the implementation of legislation on military duty, military service and conscription.

In accordance with Article 283-2 § 1 to the Code of Administrative Procedure of Ukraine if a citizen fails to fulfil the request of the territorial recruitment and social support centre within the time limits established by the Law of Ukraine “On mobilisation training and mobilisation” to carry out the duties of a conscript or reservist, the territorial recruitment and social support centre shall file a claim with the court requesting the temporary restriction of that person's right to drive a vehicle during mobilisation.

Pursuant to Article 283-2 § 2 of the Code of Administrative Procedure of Ukraine, the claim shall be filed with the court within 30 days of the circumstances that permit the territorial recruitment and social support centre the right to file a claim in accordance with the law of Ukraine “On mobilisation training and mobilisation”.

Under Article 283-2 § 7 of the Code of Administrative Procedure of Ukraine, the court shall consider the claim in written proceedings within 30 days of the commencement of the proceedings and, at the initiative of the court or upon the request of a party, may hold a court hearing. The hearing will still take place even if the party who was properly notified doesn't show up.

In accordance with Article 283-2 § 8 and 9 to the Code of Administrative Procedure of Ukraine the court shall dismiss the claim of the territorial recruitment and social support centre if the claimant shall not prove that (i) person fails to fulfil the obligations under Article 22 § 3 of the law of Ukraine “On mobilisation training and mobilisation” and commits an administrative offence under Article 210-1 of the code of Ukraine on administrative offences; (ii) that administrative detention followed by delivery of the person to the territorial recruitment and social support centre are not possible; (iii) handing a person the request from territorial recruitment and social support centre via postal service; (iv) person fails to fulfil the obligations under the request.

If the restriction of individual's' right to drive a vehicle deprives their main legal source of livelihood, or the individual uses the vehicle in connection with a disability or dependency of a person with a disability of group I, II, or a child with a disability, the court shall also dismiss the claim of the territorial recruitment and social support centre.

Under Article 283-2 § 11, 12, 13 and 16 of the Code of Administrative Procedure of Ukraine, the temporary restriction is set for the period until the request of the territorial recruitment and social support centre is fulfilled or withdrawn. The court decision must be executed immediately. It can be contested in an appeal court or the Supreme Court.

The legal framework governing the temporary restriction of individuals’ right to drive a vehicle during military mobilisation, as well as its application by national courts, may raise questions regarding its compliance with the European Convention on Human Rights [3].

The European Court of Human Rights considers: “The Court has previously held that proceedings leading to the withdrawal of points from a driving licence were “criminal” within the meaning of Article 6 of the Convention” [4; 5].

Considering the above, I believe that Article 6 of the European Convention on Human Rights applies in its criminal limb to cases concerning the temporary restriction of individuals’ right to drive a vehicle during military mobilisation, as stipulated in Article 283-2 of the Code of Administrative Procedure of Ukraine.

Under Article 9 § 4 Code of Administrative Procedure of Ukraine, the court shall take all measures prescribed by law that are necessary to clarify the circumstances of the case, including the identification and discovery of evidence on its own motion. In accordance with Article 77 § 4 Code of Administrative Procedure of Ukraine, the court may invite the parties to provide evidence and collect evidence on its own motion, except in cases specified in this Code. The code does not contain any exceptions to collect evidence on the initiative of the court in the cases where Article 6 of the European Convention on Human Rights applies in its criminal limb, including the cases concerning the temporary restriction of individuals’ right to drive a vehicle during military mobilisation. Under Article 80 § 3 Code of Administrative Procedure of Ukraine, the court shall issue a decision on the demand for evidence either on its own motion or upon the request of a party to the case.

The above provisions reflect the principle of officiality (often referred to as the *ex officio* principle). The Code of Administrative Procedure of Ukraine does not prohibit a judge from collecting evidence of its own motion in cases to which the criminal limb of Article 6 of the European Convention on Human Rights applies.

The application of the above-mentioned legal framework by national courts may raise concerns regarding compliance with Article 6 of the European Convention on Human Rights, as illustrated in the case-law of the European Court of Human Rights, where the judge, on its own motion, was changing the body of evidence to the applicant’s disadvantage, introducing new incriminating evidence [6; 7].

In my opinion, if the judge, on its own motion, requests the information and it serves as evidence to the applicant’s disadvantage and leads the court to impose a temporary restriction on the individual’s right to drive a vehicle during military mobilisation, this could constitute a violation of Article 6 § 1 of the European Convention on Human Rights.

The operation of the principle of officiality is determined by the specific nature of public-law relations, in which the parties, as a rule, possess unequal capacities. In administrative proceedings, an individual is confronted with a powerful administrative apparatus, which results in an inherent imbalance in the parties’ initial positions. In order to mitigate this imbalance, the administrative court must assume an active role in the proceedings, ensuring effective protection of the individual’s rights. Accordingly, the court is required to take all measures provided for by law to guarantee that rights violated by public authorities are duly protected [8, p. 122].

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ГАРМОНІЗАЦІЯ ПРАВОВОГО РЕГУЛЮВАННЯ ДІЯЛЬНОСТІ ФІНАНСОВИХ ПОСЕРЕДНИКІВ В УКРАЇНІ ВІДПОВІДНО ДО СТАНДАРТІВ ЄВРОПЕЙСЬКОГО СОЮЗУ

Правове регулювання суспільних відносин у сфері фінансових послуг є однією з визначальних функцій держави та наднаціональних утворень, зокрема Європейського Союзу. Правові норми, що встановлюють приписи, заборони чи надають повноваження суб'єктам ринку, слугують головним інструментом впорядкування фінансових відносин. Ключовою метою такого регулювання на рівні ЄС є формування єдиного фінансового простору, у якому забезпечується вільний рух капіталу, товарів, послуг і робочої сили, а вся територія Союзу функціонує як інтегрована економічна система [1, с. 23].

Досягнення зазначеної мети потребує вирішення кількох взаємопов'язаних завдань. По-перше, необхідне запровадження єдиних стандартів для учасників ринку фінансових послуг. По-друге, слід виробити загальні правила провадження їхньої діяльності. По-третє, доцільно встановити вимоги до фінансової стійкості та ліквідності надавачів послуг. Для реалізації цих