Peculiarities of determining propriety of a party in public legal disputes on appealing decisions of medical and social expert commissions and military physician boards by the Ministry of defence of Ukraine

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In the process of developing a legal democratic state on the way to European integration, the Ukrainian society and the state as a subject of law face the next tasks related to the implementation in national legislation, the state policy of standards and principles of international law, embodied, in particular, in the provisions of international agreements between Ukraine and the European community.

One of the significant agreements that contributed to the revision of the conceptional approaches to law-making and enforcement activities in Ukraine is "The Agreement on Association between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand", ratified Verkhovna Rada of Ukraine and the European Parliament on September 16, 2014. Under this Agreement, Ukraine undertook a number of commitments, in particular to increase the level of social protection of the population (Article 420 of the Agreement). In order to achieve this goal, among others an effective system of organizational and legal guarantees (means and measures) for ensuring social rights of citizens should be functioning in the state, which in turn should be based on the close cooperation of Ukraine with the European community in the field of justice, freedom and security with to ensure the rule of law and respect for human rights and fundamental freedoms of states (Article 1 of the Agreement).

Cooperation should be aimed, in particular, at strengthening the judiciary, improving its effectiveness, ensuring its independence and impartiality and fight against corruption, and should be based on the principle of respect for human rights and fundamental freedoms.

Key words: public legal disputes; decisions of medical and social expert commissions; Ministry of defence of Ukraine.
Introduction

Ukraine and its people have been and still remain active participants in peacekeeping missions in the world, contributing to peace and law and order in countries with armed conflicts. Unfortunately, participation in such missions for many Ukrainian servicemen and officers of the law has a negative impact on their health and life. In particular, it is getting wounds (shell shocks, traumas or maiming injuries), disability and death. In addition, an increase in the number of such injured persons is caused by the military conflict that is taking place in Ukraine in Donetsk and Lugansk regions. Citizens who participated in military developments in other countries (e.g. the Republic of Afghanistan) during the Soviet period also belong to the same category. The largest category (especially in recent years) of injured persons is made up of persons who, during or after dismissal from the military service and law enforcement service, get disability groups.

Results & Discussion

Obviously, each of these people, having given a part of their health, having lost the opportunity of full life for weal of the Ukrainian people, now needs state support. Part 5 of Article 17 of the Constitution of Ukraine stipulates that the state ensures social protection of Ukrainian citizens serving in the Armed Forces of Ukraine and other military formations, as well as members of their families. The fulfillment of the State's function of social protection of servicemen is aimed at establishing a system of legal and social guarantees that ensure the implementation of constitutional rights and freedoms, satisfaction of material and spiritual needs of servicemen in accordance with the special type of their official activities, status in society, maintenance of social stability in the military environment, as well as the implementation of the right to support them in the case of full, partial or temporary disability, loss of breadwinner, unemployment because of circumstances beyond their control, in old age is now guaranteed by a special legal regime, formed from special regulations and institutions.

At the same time, the experience of recent years shows the imbalance of interests and opportunities of citizens and the state in the ensuring of this social right. The violation of the balance is primarily caused by the financial component, because the implementation of this right on a nationwide scale requires significant financial costs of the state, which in recent years are disastrously lacking. The acuteness of the problem adds lack of an effective control mechanism of activities of institutions responsible for conducting medical and social assessments in determination the state of health and conformation of disability groups for dismissed servicemen and officers of the law, which contributes to the spread of numerous facts of "corruption" medical decisions.

Under such conditions, the Ministry of Defence of Ukraine, as the only state body authorized to make decisions on one-time payment in the case of death (loss of life), disability or loss of ability to work without disability conformation of servicemen, subjects to military service and reservists who are called for training (or testing) and special meetings or for service in the military reserve (hereinafter - one-time payment) appropriate persons, in order to ensure the target budget funds usage for specified social purposes tries to counteract abuse of unreasonable and unjustified providing relevant medical decisions by appealing to court.

In practice, the current situation is so that the Ministry of Defence of Ukraine became a "normative hostage" of legal uncertainty. On the one hand, this body is obliged to act within the limits of the law by making one-time payment in case of death (loss of life), wounds (shell shocks, traumas or maiming injuries), or disability of servicemen, subjects to military service and reservists who are called for training (or testing) and special meetings or for service in the military reserve, on the other hand, having doubts concerning the legality of the drawn conclusions of the MSEC and the MPhB (the Military Physician Board), which give the citizens the right to receive the mentioned payments, this power entity is confronted with difficulties of complaining "dubious" decisions of medical subjects in court. Appropriate attempts by the Ministry to appeal in court the decisions of the medical subject on the confirmation of a disability group or percentage of disability with an indication of the cause effect of disability or disablement, as a rule, end with a refusal to satisfy claims on the recognition as unlawful and rescission of such judgements (e.g. the legal decision made by Kherson Regional Administrative Court on October 27, 2017 in the case No 821/284/17).

On the basis of the foregoing, we consider it urgent to investigate this social and legal situation in order to identify regularities, factors that negatively affect the development of the investigated relations, as well as the identification of perspective areas and methods for solving existing legal conflicts.

To achieve this goal within the framework of this paper we propose to solve several main tasks, namely: 1) to find out the procedural and legal nature of decisions made by the MSEC and the Central MPhB (the Regional MPhB) and the status of these subjects in controversial legal relations; 2) to establish the presence (absence) of the powers of the Ministry of Defence for complaining decisions made by the MSEC and the Central MPhB (the Regional MPhB); 3) to determine if the Ministry of Defence is a proper plaintiff in disputes under investigation. The solution of these tasks is of practical significance and will help to determine the in rem jurisdiction for bringing disputes in this area to the courts of administrative jurisdiction. In addition, the revealed peculiarities will help to verify the existing practice of Ukrainian courts in resolving such category of disputes in accordance with the principles of the ECHR.

The main methodological tools for solving the listed tasks were: the method of empirical analysis of judicial practice, the method of legal analysis of Ukrainian legislation, methods of contrast and comparison, methods of systematization, classification, etc.

1. Jurisdictional nature of Medical and social expert commissions, Military medical commissions and their decisions.

1.1. Jurisdictional nature of Medical and social expert commissions and their decisions

Part 1 of Article 2 of the Code of Administrative Proceedings of Ukraine provides that the task of administrative legal proceedings is just, impartial and on
time resolution of disputes in the field of public legal relations by the court in order to protect effectively the rights, freedoms and interests of individuals, the rights and interests of legal entities from violations by power entities (The Code of Administrative Proceedings, 2005).

In accordance with the definition in item 1, part 1, Article 4 of the CAP of Ukraine, an administrative case is explained as a public legal dispute transferred to the administrative court. In its turn, a public dispute is a dispute in which: 1) at least one party carries out governmental and administrative functions, including functions of delegated authorities, and the dispute arose in connection with the execution or non-execution of the mentioned functions by such party; or 2) at least one party provides administrative services on the basis of legislation that authorizes or obliges to provide such services exclusively by power entities, and the dispute arose in connection with the provision or non-provision by such party of the mentioned services; or 3) at least one party is the subject of the election process or the referendum process and the dispute arose in connection with the violation of its rights in such a proceeding by power entities or other individual (item 2).

As is known under the rules of part 1 of Art. 19 of the CAP of Ukraine, the jurisdiction of administrative courts extends to cases in public disputes, in particular: "1) in disputes of physical or legal entities with power entities concerning appealing their legal decisions (legal and regulatory acts or individual acts), actions or inactivity, except for cases when another court proceedings are established by law for consideration of such disputes;" "3) in disputes between power entities concerning the implementation of their competence in the field of administration, including delegated authorities;" "5) at the request of a power entity in cases, when the right to apply to a court for the resolution of a public dispute is provided to such power entity by law;" "9) in disputes concerning the appeal of decisions of certification, competition, Medical and Social Expert Commissions and other similar bodies, whose decisions are obligatory for public authorities, local government authorities, other persons, etc".

The above-mentioned directs to resolve the issue of the existence of public disputes between the parties and the jurisdiction of the case to the courts of administrative jurisdiction.

It should be noted, that the investigated controversial legal relations are regulated by a wide range of normative acts, the main of which are: the Constitution of Ukraine, The Code of Administrative Proceedings of Ukraine, the Fundamentals of the Legislation of Ukraine on Public Health of November 19, 1992 No 2801-XII (hereinafter Law No 2801- XII), the Law of Ukraine "On the Rehabilitation of the Disabled in Ukraine" of October 6, 2005 No 2961-IV (which, in accordance with the Constitution of Ukraine, defines the basic principles for the creation of legal, social and economic, organizational conditions for the removal or indemnification of the consequences caused by the persistent health problems, functioning of the system of support for people with physical, psychological, social disabilities, social welfare, assistance in achieving social and material independence), the Law of Ukraine "About bases of social security of persons with disability in Ukraine" of March 21, 1991, No 875-XII (determines bases of social security of persons with disability in Ukraine and guarantees them opportunities for participation in economic, political and social spheres of life of society, creation of the necessary conditions allowing persons with disability effectively to exercise rights and freedoms of man and citizen and to lead full-fledged life according to individual opportunities to capabilities, and interests), the Regulations on a Medical and Social Assessment and the Regulation on the procedure, conditions and criteria for disability confirmation, approved by the Resolution of the Cabinet of Ministers of Ukraine "Issues on a Medical and Social Assessment" of December 03, 2009 No 1317, the Regulation on a military physician expertise in the Armed Forces of Ukraine, approved by the Decree of the Ministry of Defence of Ukraine of August 14, 2008 No 402 (hereinafter the Regulation No 402).

Thus, the Framework Law No 2801-XII defines the legal, organizational, economic and social principles of health care in Ukraine, regulates social relations in this area in order to ensure harmonious development of physical and spiritual strength, high ability to work and long active life of citizens, removal of factors, which have a detrimental effect on their health, prevention and reduction of morbidity, disability and mortality, and the improvement of heredity in controversial legal relationships. In addition, this legal act within the limits of a medical assessment distinguishes: 1) a medical and social disablement assessment (Article 69); 2) a medical and social assessment of persistent organism dysfunction (Article 69); 3) a military physician expertise (Article 70); 4) a forensic medical expertise (Article 71); 5) a forensic psychiatric expertise (Article 71); 6) a postmortem examination (Article 72); 7) an alternative expertise (Article 73).

1.2. Peculiarities of organization and implementation of a medical and social assessment.

In accordance with part 2 of Art. 69 of Law No 2801-XII, the procedure for conducting a medical and social disablement assessment of citizens is determined by the central executive body, which ensures the formation of state policy in the field of health care (e.g. the Ministry of Health of Ukraine); part 6 of the Article stipulates, that the procedure for organizing and conducting a medical and social assessment is established by the Cabinet of Ministers of Ukraine.

In Article 1 of the Law of Ukraine "On the Rehabilitation of the Disabled in Ukraine" of October 6, 2005 No 2961-IV, a medical and social assessment is a determination based on a complete examination of all the systems of an organism of a particular person, the degree of health loss, the degree of physical dysfunction, caused by persistent health problems, disability group, cause and time of its occurrence, as well as recommendations on possible types of work and working conditions for a person according to his/her health status, needs for nursing care, appropriate types of health resort treatment and social protection for the most complete restoration of all functions of a person’s life.

Article 3 of the Law of Ukraine of March 21, 1991 No. 875-XII About bases of social security of persons with disability in Ukraine stipulates that disability as measure of loss of health is determined by expert inspection in bodies of a medical and social assessment of the central executive body providing forming of state policy in health sector.
According to para. 35 and 40 sub-item B, item 4 of the Regulations on the Ministry of Health of Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine of March 25, 2015 No 267, the Ministry of Health of Ukraine, in accordance with the tasks entrusted to it, conducts a medical and social assessment in order to determine degree of physical dysfunction and controls legal compliance on a medical and social assessment.

In item 4 of the Regulations on a medical and social assessment, approved by the Decree of the Cabinet of Ministers of Ukraine of December 03, 2009 No 1317 (hereinafter the Regulations No 1317) is determined that a medical and social assessment is carried out by Medical and Social Expert Commissions, which form centers in the established order (bureau) belonging to health care institutions under the Ministry of Health of the Autonomous Republic of Crimea, regional health administration, Kyiv and Sevastopol municipal government.

Commissions are at the Ministry of Health of Ukraine disposal and are formed under the following territorial principle: Crimean Republican; regional; central municipal in Kyiv and Sevastopol; municipal, interdistrict, regional commissions (paragraph 3 of item 4 of the above-mentioned Regulation).

Paragraph 4 of item 10 of this Regulation specifies that the commission consists of representatives of the Ministry of Health of Ukraine, the Ministry of Social Policy of Ukraine, the Ministry of Defence of Ukraine, healthcare institutions of the Ministry of Internal Affairs of Ukraine, the Fund of social insurance against industrial accidents and occupational diseases of Ukraine, Social insurance fund on temporary disability, and military medical service of the Security Service of Ukraine and the military medical division of the Foreign Intelligence Service of Ukraine in the case of consideration of medical cases in respect of workers injured in the workplace or retired servicemen from the SSU or Foreign Intelligence Service of Ukraine. Representatives of the Pension Fund of Ukraine, the State Employment Service and, if necessary, the employees of the scientific and pedagogical and social sphere participate in a medical and social assessment.

It should be noted, that responsibility for the quality of the medical examination, opportuneness and reasonableness of the referral of citizens to a medical and social assessment is entrusted to the head of the health care institution. In turn, the chairman of the commission or the head of the health care institution in case of revealing facts of abuse of official position, official forgery or official negligence during the sending patients by medical consultive bords to the commissions for disability confirmation should inform the law enforcement authorities within three days (item 18 of the Regulation No 1317).

In accordance with item 19 of the Regulation No 1317, the Commission holds a meeting with a full complement and takes a joint decision. Information about results of the expert examination and taken decisions should be enregistered in the examination report and the minutes of the commission meeting, signed by the chairman of the commission and its members and certified by seal. In the presence of objections of representatives of the funds of social insurance, the commission sends the person applying for disability confirmation to an additional medical examination, which is conducted without taking into account the conclusion of the previous medical consulting commissions. The final decision is taken by the commission on the results of an additional medical examination, the extent of which is determined by the commission, taking into account the nature and severity of the disease.

The decision of the Central MSEC of the Ministry of Health of Ukraine, Crimean Republican; regional; central municipal commissions (also in the case of an examination in complicated cases) is adopted by a majority of the members of the commissions. In the case of equal division of votes, the vote of the chair of the commission is decisive. A member of the commission, who does not agree with the decision, expresses his opinion in writing, which will be attached to the examination report. At the request of such a member of the commission, the examination report will be sent to the Ministry of Health of Ukraine.

The Commission for disability confirmation is governed by the Instruction on Disability Groups Confirmation, approved by the Ministry of Health of Ukraine of September 05, 2011 No 561 (On Approval of the Instruction, 2011).

In the case of recognition a person with a disability or in relation to this person the disablement is determined, the commission gives a certificate and an individual program of rehabilitation and within three days sends an extract from the commission’s examination report to the body in which the person with a disability is registered as the recipient of a pension or government social assistance (monthly perpetual maintenance), which is granted instead of a pension, and within an individual rehabilitation program – the body that carries out obligatory government social insurance, extract from commission’s examination report on the results of determining the disablement degree in percentage and the need to provide additional assistance.

It should be mentioned that a medical and social assessment is carried out in order to determine disability for sick people who have reached legal age, injured in the workplace and occupational diseases, disabled with an appointment card of the appropriate health care institution after diagnostic, treatment and rehabilitation measures if there are documents that confirm persistent organism dysfunction caused by diseases, traumas effect or congenital malformations, which cause physical dysfunction of a person (item 3 of the Regulation on the procedure, conditions and criteria for disability confirmation).

According to the item 7 of the Regulation on the procedure, conditions and criteria for disability confirmation, the commission conducts an examination of a temporarily disabled person who applied for a medical and social assessment within five working days from the date of receipt of the referral of the medical consultive board and make a decision on presence or absence of disablement.

The causal connection between disablement of ex-servicemen because of being at the front or performing other duties of military service is established on the basis of documents issued by military medical institutions, as well as other documents confirming the fact of getting wounds (disease) (item 12 of the Regulation on the procedure, conditions and criteria for disability confirmation).

In accordance with the item 26 of the Regulation on the procedure, conditions and criteria for disability confirmation, a person recognized as disabled, depending on
the degree of organs and systems of the body dysfunction and physical dysfunction the 1st, 2nd or 3rd disability group is confirmed. The 1st group of disability is divided into subgroups A and B depending on the degree of health loss and the need for constant nursing care, assistance or watch.

According to part 3 of Article 8 of the Law No 2961-IV the decisions of Medical and Social Expert Commission should be obligatory carried out by executive authorities, local self-government authorities, enterprises, institutions, organizations, rehabilitation institutions apart from type and form of ownership. This legal regulation is duplicated also in item 6 of the Regulation No 1317, namely: the commission’s conclusions, rehabilitation measures, defined in the individual program of rehabilitation of a disabled person, should be obligatory carried out by executive authorities, local self-government authorities, rehabilitation enterprises, institutions and organizations, in which a person with a disability works or resides in, apart from departmental affiliation, type and form of ownership.

On the grounds of the item 25 of the Regulation No 1317 it follows that the decision of the commission may be appealed to the court in accordance with the procedure established by law.

Having analyzed the Regulation No 1317, we can conclude that since the legal fact of the disability group conformation of an individual or the fact of loss of ability to work made by the MSEC is drawn by an examination report, a protocol of the MSEC meeting, etc., which essentially is a decision (resolution), determines certain rights and duties for an individual and can be appealed, then it obviously follows that the subject who made it, within the meaning of the Regulations of the CAP of Ukraine, is a power entity.

Thus, a systematic analysis of the specified norms of legislation regulating the activities of medical and social commissions, in conjunction with item 9, part 1, Article 19 of the CAP of Ukraine allows for the conclusion that the decisions of Medical and Social Expert Commissions are aimed at ensuring the implementation of the state policy in the field of rehabilitation of disabled, the creation of legal, economic, political, social and social-psychological conditions for meeting their needs in recovery of health, material security, feasible labour and social activity, and therefore they are of a public nature and subject to appeal according to administrative legal proceedings.

1.3. Legal basis of the organization and implementation of a military physician expertise.

In accordance with part 1 of Art. 70 of the Law No 2801-XII it is envisaged that a military physician expertise determines fitness for military service of conscripts, servicemen and persons in military service, establishes the causal link of diseases, injuries and traumas with military service and determine necessity and conditions and conditions of usage of medical and social rehabilitation and assistance to servicemen. The procedure for organizing and conducting a military physician expertise is established by the Cabinet of Ministers of Ukraine (part 3 of Article 70 of the Law No 2801-XII). By the Resolution of the CMU “On the Procedure for Organizing and Conducting a Military Physician Expertise” of September 07, 1993 No 708 in accordance with Art. 70 Fundamentals of the Legislation of Ukraine on Health Care, the following provisions to the Ministry of Defence are issued: a) to develop the Regulation on a military physician expertise and a medical examination in the Armed Forces; b) by agreement with the Ministry of Health of Ukraine, other interested ministries and departments to approve the said Provision by the 1st of December, 1993. In pursuance of this instruction, the Ministry of Defence of Ukraine issued an order of the 4th of January 1994 No 2 “On Approval of the Regulations on a Military Physician Expertise and a Medical Examination in the Armed Forces of Ukraine”, registered with the Ministry of Justice of Ukraine on July 29, 1994 No 177/386 (invalid).

According to the current Regulation on a Military Physician Expertise in the Armed Forces of Ukraine, approved by the Order of the Ministry of Defence of Ukraine of August 14, 2008 No 402, for conducting a military physician expertise, full-time and part-time (permanent and temporary) Military Physician Boards (hereinafter – MPhBs) are established.

The decisions of full-time and part-time (permanent and temporary) MPhBs (The Flight Medical Board (hereinafter - the FMB)) are adopted in the form of regulations. The regulations of MPhBs (FMBs) are issued by the certificate of disease, the certificate of the Military Physician Board, the minutes of the Military Physician Board meeting with determining the causal connection of diseases, injuries, shell shocks, traumas or maiming injuries of the of ex-serviceman. The Regulations of full-time and part-time MPhBs are obligatory for implementation.

It is worth mentioning that the decisions of the Central Military Physician Board can be appealed in court (2.3.5 of the Regulation No 402), and decisions of the Regional Military Physician Boards may be appealed according to the administrative procedure (in the Central MPhB) and in court (2.4.10 of the Regulation No 402).

As a result of the analysis of the Regulation No 402, it follows that since determination of causal connection of diseases, injuries, shell shocks, traumas or maiming injuries of ex-servicemen by the Central MPhB (the MPhB) is issued in the minutes of the Military Physician Board meeting, which is essentially a decision (resolution), determines certain rights and duties for an individual and can be appealed, then the subject who made it (the Central MPhB) within the meaning of the Regulations of the CAP of Ukraine is a power entity.

System analysis of the given norms of the Regulation No402 and item 9 of the part 1 Article 17 of the CAP of Ukraine gives grounds to conclude that the controversial legal relations with the participation of the MPhB (the Central MPhB) are of a public nature, the decisions of the MPhB (including the Central MPhB) are subject to appeal according to the administrative legal proceedings.

2. The Authority of the Ministry of Defence of Ukraine to appeal against the decisions of the MSEC and the Central MPhB (the Regional MPhB) in administrative courts.

It should be noted that the CAP of Ukraine regulates the procedure for consideration not all public legal disputes. The Regulations of Article 17 of this Code do not extend their validity to legal situations requiring other forms of protection against mentioned violations of rights or interests.
According to part 4 of Article 5 of the CAP of Ukraine, power entities have the right to apply to the administrative court in cases designated by the Constitution and Laws of Ukraine.

Such a restrictive principle of the possibility of a power entity to go to the administrative court with a lawsuit is duplicated in item 5, part 1, Article 19 of the CAP of Ukraine. This norm provides that the jurisdiction of administrative courts extends to cases in public legal disputes at the request of a power entity in cases when such right to appeal was granted to him exclusively by law.

In accordance with part 2 of Article 19 of the Constitution of Ukraine public authorities and local government authorities, their public individuals are obliged to act only on the basis and within the limits of authority and in the manner provided by the Constitution and Laws of Ukraine.

The normative notion “a power entity” is contained in item 7 of Article 4 of the CAP of Ukraine and is defined as “public authorities, local government authorities, their public individuals, officials or other subject in the exercise of power administrative functions on the basis of legislation, including carrying out delegated authorities, or the provision of administrative services”.

That is, the necessary and only peculiarity of a power entity is the exercise of power administrative functions, herewith these functions should be exercised by a power entity in the legal relations in which the dispute arose. In case if a subject (including public authorities and local government authorities, their officials) in the controversial legal relationships does not perform specified power administrative functions (with respect to another entity that is a party in the dispute), such entity is not “in the performance of administrative functions”, but does not have the necessary power entity peculiarities established by norms of the CAP of Ukraine.

Consequently, the possibility of a power entity (the Ministry of Defence of Ukraine) to apply to the court of administrative jurisdiction should be related to the fulfillment of its administrative functions, in this case, in the field of administration of a military physician expertise and a medical and sanitary assessment, within the limits of authority and under the condition that the right to such appeal is expressly provided by law.

In determining accordance of the Ministry of Defence of Ukraine to the first part of mentioned conventionalities, it should be noted that the main principles of activity organization, the list of tasks, functions and powers of the Ministry of Defence of Ukraine in the field of administration of a military physician expertise and a medical and sanitary assessment are regulated in the Laws of Ukraine “On Central Bodies of Executive Power” of March 17, 2011 No 3166-VI, “On the Armed Forces of Ukraine” December 6, 1991 No 1934-XII (hereinafter the Law No 1934-XII), “Fundamentals of the Legislation of Ukraine on Public Health of November 19, 1992 No 2801-XII”, Decree of the Cabinet of Ministers of Ukraine “On Approval of the Regulation on the Ministry of Defence of Ukraine” November 26, 2014 No 671 (hereinafter the Regulation No 671), as well as “On Approval of the Procedure for the Assignment of One-Time Payment in Case of Death (Loss of Life), Disability or Partial Disablement without Disability Confirmation of Servicemen, Subjects to Military Service, and Reservists Called for Training (or Testing) and Special Meetings or for Service in the Military Reserve”, the Resolution of the Cabinet of Ministers of Ukraine of 25 December, 2013 No 975, approved by the Regulation of the Cabinet of Ministers of Ukraine from December 25, 2013 No 975 (hereinafter “Procedure” No 975), On Approval of the Regulation on the Commission of the Ministry of Defence of Ukraine for Consideration of Issues Related to the Assignment and One-Time Payment and One-Time Payment and Compensatory Amounts, approved by the Order of the Ministry of Defence of Ukraine October 26, 2016 No 564 (hereinafter the Regulation No 564).

According to Article 3 of the Law No 1934-XII the Ministry of Defence of Ukraine is the central body of executive power and military administration under the jurisdiction of the Armed Forces of Ukraine.

In accordance with item 1 of the Regulation on the Ministry of Defence of Ukraine, approved by the Cabinet of Ministers of Ukraine of November 26, 2014 No 671, the Ministry of Defence of Ukraine is a central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine. The Ministry of Defence of Ukraine is the main body in the system of central bodies of executive power, which ensures the formation and implementation of state policy in the national security and military sphere, in the sphere of Defence and military construction in peacetime and during a special period. The Ministry of Defence of Ukraine is the body of military administration under the jurisdiction of the Armed Forces of Ukraine.

The Ministry of Defence of Ukraine is a legal entity of public law, has a State Seal with its name, its own forms, accounts in the State Treasury Service of Ukraine (item 15 of the Regulation No 671).

Thus, the legal and regulatory support of the activities of the Ministry of Defence of Ukraine, its legal status as a central authority, as well as having all necessary powers (in particular, envisaged by item 4 of the Regulation No 671), allows to state that this body is a subject of public law, created for the purpose of fulfilling public interests of the state in the national security and military sphere, in the sphere of Defence and military construction in peacetime and during a special period, accordingly it has the governmental and administrative functions and is a power entity in terms of the CAP of Ukraine.

At the same time, analyzing the functions of the Ministry of Defence of Ukraine in the field of administration of a military physician expertise and medical and sanitary assessment, we must note two important norms of the Regulation No 671: first, item 88, which states that this power entity “defines within the envisaged powers by the law, priority line and forecasts of development and improvement of the health care system of servicemen of the Armed Forces of Ukraine, designs developmental programs of the system of medical support of the Armed Forces of Ukraine, implements the implementation and exercises state control and supervision in the field of health care in the Ministry of Defence and the Armed Forces of Ukraine”, and secondly, item 91, which stipulates that this power entity “approves the procedure of a medical physician examination, organises and controls its conducting, gives proposals to the Cabinet of Ministers of Ukraine on organizing and conducting a medical physician.
According to everything mentioned above, it can be stated that firstly, in accordance with the current legislation, the Ministry of Defence of Ukraine does not have the authority to file lawsuits in court in administrative jurisdiction during the exercise of its powers. and, consequently, the appealed decisions of the MSEC may not be subject matter of the administrative court for the appeal of the Ministry of Defence of Ukraine; secondly, current legislation does not contain provisions in which the authority of the Ministry of Defence of Ukraine in the field of management of medical and sanitary assessment is established, which gives grounds to assert that the Ministry of Defence of Ukraine is not a power entity in the sense of item 7, part 1, Article 3 of The Code of Administrative Proceedings of Ukraine in controversial legal relations and filing lawsuits with a claim on the recognition and rescission of the decision of the MSEC acts not as a body of state power in the exercise of its administrative functions and, accordingly, not as a power entity.

Regarding the powers of the Ministry of Defence of Ukraine to appeal against the decisions of the Central Military Physician Board (the Regional MPhB), the following is to be noted.

According to Article 3 of the Law No 1934-XII, the Ministry of Defence of Ukraine is the central body of executive power and military administration, and the Armed Forces of Ukraine are under its jurisdiction.

In turn, the Armed Forces of Ukraine consist of bodies of military administration, unions, military units, military educational establishments, institutions and organizations.

According to the Order of the Ministry of Defence of Ukraine of August 14, 2008 No 402 “On Approval of the Regulation on a Military Physician Expertise in the Armed Forces of Ukraine”, Military Physician Boards (hereinafter – MPhBs), full-time and part-time (permanent and temporary) are established to conduct a military physician expertise.

Full-time MPhBs are military medical institutions. They have an official stamp, a corner stamp and are held by a separate staff. Full-time MPhBs include the Central Military Physician Board; Regional the MPhB; the MPhB of an evacuation point; the MPhB of a mobile hospital center.

According to sub-item 2.6.1 of the Regulation No 402, part-time permanent MPhBs (FMBs) include hospital MPhBs, garrison MPhBs, FMPhBs; MPhBs of high-mobility assault forces; MPhBs of military commissariats; MPhBs of a territorial center of staffing (hereinafter – the MPhB of TCS); MPhBs of a civilian medical institution with the rights of the hospital MPhB.

The list of military medical institutions, military units, health-care centers, where part-time permanent MPhBs (FMBs) are organized, along with a list of heads and deputy chairmen of these MPhBs (FMBs) for the next calendar year, shall be approved by the chairman of the Central MPhB on the submission of the Chiefs of full-time Regional MPhBs. On the basis of the approved list, the Chief of the Regional Medical Clinical Center, by his order, appoints part-time permanent MPhBs, their staff and determines the order of their work.

Full-time and part-time (permanent and temporary) MPhBs (FMBs) for military physician and medical-flight expertise are subordinate to higher regular MPhBs (sub-item 2.6.4 of the Regulation No 402).
Item 2.3. of the Regulation No 402 stipulates that the Central Military Physician Board is the body of military administration that manages Regional MPhBs in the Armed Forces of Ukraine and is the governing body for a military physician expertise in the Armed Forces of Ukraine.

The head of the Central MPhB is directly subordinate to the Director of the Military Medical Department (hereinafter – the MMD) of the Ministry of Defence of Ukraine. All full-time MPhBs of the Armed Forces of Ukraine are directly subordinate to the Chief of the Central MPhB.

According to sub-item 2.3.3. of the Regulation No 402, the Central MPhB is responsible for the organization of a military physician expertise in the Armed Forces of Ukraine.

According to sub-item 2.3.4. of the Regulation No 402, the Central MPhB is entitled to:
- inspect the servicemen and other persons specified in item 1.2 of part I of this Regulation;
- check the work of the subordinate MPhBs on the issues of a military physician expertise;
- demand the documents in the part describing the circumstances of receiving the disease, wound, trauma, maiming injury, necessary for the adoption of a resolution on their causal relationship;
- involve chief medical specialists of the Ministry of Defence of Ukraine, medical specialists of the National Military Medical Clinical Center and other military medical institutions, specialists of other specialties, heads of medical service and representatives of the command (administration) of military units, where the service of the military serviceman under the examination takes place in order to resolve issues on military physician and flight medical expertise;
- review, revise, cancel, approve, not approve, monitor, in accordance with this Regulation, the decisions of any MPhB (the Flight Medical Board (hereinafter – the FMB)) of the Armed Forces of Ukraine, etc.

According to sub-item 2.4.2. of the Regulation No 402, the head of the Regional MPhB is directly subordinate to the head of the Central MPhB. All part-time Regional MPhBs, where servicemen are examined, treated and undergone medical survey, are subordinate to the Regional MPhB on a military physician expertise issues.

According to the decision of the Central MPhB, the Regional MPhB becomes responsible for the consideration, control, and approval of the decisions of part-time permanent MPhBs organized in the military units located in the region, regardless of subdivision (sub-item 2.3.3. of the Regulation No 402). So, according to sub-item 2.4.4. of this Regulation, the Regional MPhB is entrusted with the organization of a military physician expertise, the administration of subordinate MPhBs, control over their work and providing them with methodological and practical assistance in the area of responsibility.

The Order of the Ministry of Defence of Ukraine “The Issues of the Ministry of Defence of Ukraine” of April 09, 2016 No 190 approved the Structure of the apparatus of the Ministry of Defence of Ukraine, which includes the Military Medical Department. In accordance with the Distribution of the main tasks and functions of the structural units of the Ministry of Defence of Ukraine, defined by the Regulation on the Ministry of Defence of Ukraine, approved by the Cabinet of Ministers of Ukraine of November 26, 2014, No 671, the scope of such tasks is assigned to the MMD, firstly as an executor of the determination of the order, priority directions and programs for the development of the medical support of the Armed Forces of Ukraine in peacetime and during a special period (paragraph 87); secondly, as a co-executor of implementation in accordance with the legislation of legal and social protection of servicemen, reservists of the Armed Forces of Ukraine, subjects to military service, called for meetings, members of their families and employees of the Armed Forces of Ukraine, elaboration of the program of social development of the Armed Forces of Ukraine (item 81).

At the same time, in accordance with the joint Directive of the Ministry of Defence of Ukraine and the General Staff of the Armed Forces of Ukraine, a single body of medical support administration is the Chief Military Medical Directorate. The main objective of creating a new structure is to establish an effective system of medical support in accordance with the needs of the Armed Forces of Ukraine and NATO standards. The Central Military Medical Directorate of the Armed Forces of Ukraine was dissolved, and the Military Medical Department of the Ministry of Defence of Ukraine is in the process of dissolution. The Main Military Medical Department is a military administration body that is designed to provide medical support to the Armed Forces of Ukraine, to administrate the medical service of the Armed Forces of Ukraine, and to participate in ensuring the implementation of state policy in the field of health care of servicemen, members of their families, war veterans and other categories of citizens defined by the legislation of Ukraine (Government Portal).

The Chief Military Medical Directorate is established for the organization of medical support of the Armed Forces of Ukraine and the administration of the medical service, as well as for the implementation of the state policy in the field of health care of servicemen, their families and other categories of citizens defined by the legislation of Ukraine.

The main tasks entrusted to the Chief Military Medical Directorate are (The Ministry of Defence, 2017; Medical Service, 2018):
- ensuring the implementation of the state policy on health protection of staff of the Armed Forces of Ukraine, medical support for servicemen, members of their families, subjects to military service and reservists called for training (or testing) and special meetings, military veterans, war veterans, and other categories of citizens, who under the legislation of Ukraine have the right to use health care institutions in the system of the Ministry of Defence of Ukraine;
- specification within the limits of the powers envisaged by the law of priority directions and forecasts for the development and improvement of the health care system of servicemen of the Armed Forces of Ukraine, creation of programs for the development of the system of medical support of the Armed Forces of Ukraine in peacetime and during a special period, organization of their fulfillment and the implementation of state control and supervision in the field of health care in the Ministry of Defence and the Armed Forces of Ukraine;
- organization of observance of the standards of medical care (medical standards) in health care institutions of the
Ministry of Defence of Ukraine, clinical protocols and other industry standards in the field of health care;
- organization of medical support of the Armed Forces of Ukraine in peacetime and during a special period, development and implementation of a complex of preventive, medical, sanatorium-resort and rehabilitation measures aimed at preserving the health of servicemen of the Armed Forces of Ukraine;
- organization of administration, planning and use of forces and means of medical service of the Armed Forces of Ukraine;
- development of the procedure for a medical examination of military personnel, its organization and control, submission of proposals for the organization and conduct of a military physician expertise in the Armed Forces of Ukraine, in accordance with the established procedure, for consideration by the administration of the Ministry of Defence of Ukraine;
- implementation of the administration of health care institutions in the system of the Ministry of Defence of Ukraine, development of provisions on such institutions and ensuring their high combat and mobilization readiness, as well as readiness to perform assigned tasks;
- organization of health resort treatment for servicemen and military veterans, members of their families, war veterans, employees of the Armed Forces of Ukraine, and other categories of citizens who have been granted the right to use health care institutions in the system of the Ministry of Defence of Ukraine;
- organization of providing of sanitary and epidemiological well-being of servicemen in the Armed Forces of Ukraine and carrying out state sanitary and epidemiological supervision on subordinated territories, objects, in military units and divisions;
- organization of the provision of development of the prophylactic direction in the system of medical support of servicemen of the Armed Forces of Ukraine, formation of a healthy way of life;
- ensuring the accumulation of medical equipment and property, organizing the supply of such equipment and property to the Armed Forces of Ukraine, as well as to other military formations created, in accordance with the laws of Ukraine, during a special period;
- coordination and control of the interaction of medical services of military administration bodies of the Armed Forces of Ukraine and health care institutions in the system of the Ministry of Defence of Ukraine for the issues of medical support of the Armed Forces of Ukraine;
- organization of scientific and educational activities of the Ukrainian Military Medical Academy, Departments of Emergency and Military Medicine of the designated higher medical educational institutions of the Ministry of Health of Ukraine and military medical training in the Armed Forces of Ukraine;
- organization of assignment (confirmation) of qualification categories of staff of medical and pharmaceutical specialties;
- organizing and conducting scientific and innovative work, implementing the results of their work and NATO standards while performing tasks on medical support of the Armed Forces of Ukraine;
- organization of the provision of the Armed Forces of Ukraine with military property of medical purpose.

The Chief Directorate is subordinate to the Minister of Defence of Ukraine and is supported by means of numerical strength of the Armed Forces of Ukraine. Regarding the planning, application, administration, and resources of the medical service of the Armed Forces of Ukraine, their preparation the Chief Directorate is subordinate to the Chief of the General Staff – the Commander-in-Chief of the Armed Forces of Ukraine.

According to the Order of the Ministry of Defence of Ukraine of March 23, 2017 No 168, which approved the “The List of Health Care Institutions in the System of the Ministry of Defence of Ukraine”, such institutions include, in particular: “1. hospitals: Military Medical Center (of all denominations); military hospital, hospital branch (of all denominations); a separate medical battalion, a medical sanitary battalion; military infirmary (of all denominations); a separate hospital company (medical company); medical platoon; medical point (with a bed fund); 7. Medical and Social Expert Commissions: the Military Physician Board (of all denominations); Aviation Medicine Laboratory”. In accordance with the Regulation on the Ministry of Defence of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of November 26, 2014 No 671, and with the purpose of qualitative organization of the structural units of the apparatus of the Ministry of Defence of Ukraine, the creation of organizational principles for the effective implementation of certain tasks of the Ministry of Defence of Ukraine, Order of April 09, 2016 No 191 approved the “Standard Regulation on the Structural Unit of the Apparatus of the Ministry of Defence of Ukraine”. In accordance with item 1 of this Regulation, the structural unit of the apparatus of the Ministry of Defence of Ukraine is intended to support the activities of the Minister of Defence of Ukraine, as well as the fulfillment of tasks and functions entrusted to the Ministry of Defence of Ukraine (item 2 of the Regulation No 191). The Regulation on the structural unit and its structure is approved by the Minister of Defence of Ukraine. The structural unit has a seal of the established form with its name, as well as other seals and stamps necessary for the operation of the subdivision (item 13 of the Regulation No 191). Consequently, a systematic analysis of the above-mentioned legal acts makes it possible to conclude that full-time MPhBs are a part of the Armed Forces of Ukraine and, accordingly, are subordinate to the Ministry of Defence of Ukraine, act on the basis of the Laws of Ukraine and regulations, including those adopted by the Ministry of Defence of Ukraine. Therefore, subordinate relations – organizational subordination and administration based on the principle of unity of command exist between the Ministry of Defence and full-time MPhBs, and accordingly the dispute between a legal entity and its subordinate unit is not subject to consideration in the procedure of administrative legal proceedings.

Concerning part-time MPhBs, these institutions, although are not a part of the Armed Forces of Ukraine, however, along with full-time MPhBs, they also operate on the basis of the Laws of Ukraine and regulations, including those adopted by the Ministry of Defence of Ukraine.
Between the Ministry of Defence of Ukraine and part-time MPhBs there are relations of functional subordination and implementation of a military physician expertise, considering that the governing body for a military physician expertise in the Armed Forces of Ukraine is the Central MPhB, which is a part of the Armed Forces of Ukraine and is subordinate to the Ministry of Defence of Ukraine.

Thus, both full-time (those directly affiliated to the Armed Forces of Ukraine) and part-time MPhBs perform certain functions of the Ministry of Defence of Ukraine within the framework of the implementation of a single state policy determined for this department and are directly or indirectly governed by it. Accordingly, the resolution of disputes between the Ministry of Defence of Ukraine as a central executive body and its subordinate units may be carried out in an extrajudicial manner, including through the use of measures of state coercion.

Propriety of the Ministry of Defence of Ukraine as a plaintiff in controversial legal relations.

Part 1 of Article 5 of the Code of Administrative Proceedings of Ukraine provides that each person has the right, in accordance with the procedure established by this Code, to apply to the administrative court if he considers that the decision, action or inaction of a power entity has violated his rights, freedoms or interests and request their protection by:

1) recognizing a regulatory legal act or its separate provisions unlawful and ineffective; 2) recognizing a regulatory legal act or its separate provisions unlawful and their abolition; 3) recognising the actions of a power entity unlawful and obligating to refrain from committing certain actions; 4) recognizing the inaction of a power entity illegal and obligating to perform certain actions; 5) establishing the presence or absence of competence (authority) of a power entity; 6) making one of the decisions specified in items 1 to 4 of this part by court and collecting of and the recovery from a defendant – a power entity to recover damages caused by his unlawful decisions, actions or inactivity.

Thus, administrative justice is aimed at protecting violated rights of persons in the field of public legal relations, so to restore the violated right in connection with the decision by a power entity, the person must prove how the violation of his rights has occurred.

The right to judicial protection, guaranteed by Article 55 of the Constitution of Ukraine and specified in other laws, provides for the possibility of applying to a court for the protection of an infringed right, but requires justification of the alleged violation.

The administrative court must verify the identity of a person applying for judicial protection, the relevant right or interest protected by law (whether such person is a proper plaintiff in a case – the right to sue in a material sense), as well as to establish whether the relevant right or interest has been violated (establish the fact of violation), and whether such right or interest belongs to public legal relations (sphere of judicial protection).

Consequently, the protection of an administrative court can be applied to the actual violations of the rights of a person in public legal relations with a defendant, and precisely in the exercise of administrative functions that are clearly defined by the current legislation. A violation must be real, involve (affect) usually individually expressed rights or interests of the person who alleges their violation.

At the same time, we note that in accordance with item 8, part 1 of Art. 4 of the Code of Administrative Proceedings of Ukraine, a plaintiff is a person in the protection of rights, freedoms and interests of whom a lawsuit is filed to the administrative court, as a power entity, against whose authority the lawsuit was filed in an administrative court, according to part 2 of Art. 46, plaintiffs in an administrative case may be citizens of Ukraine, foreigners or stateless persons, enterprises, institutions, organizations (legal entities), power entities.

At the same time, in the investigated case, the plaintiff (the Ministry of Defence of Ukraine) actually challenges the decisions of the MPhB and the MSEC, which are not related to interests and do not violate its rights, but have a direct impact only on the person in respect of whom they are adopted, that is, they are acts of an individual action.

An individual act is an act (decision) of a power entity, issued (adopted) to perform administrative functions or in the provision of administrative services that relates to the rights or interests of an individual or persons specified in the act and whose action is exhausted in its execution or has a definite period of validity (item 19, part 1, Art. 4, of The Code of Administrative Proceedings of Ukraine).

The system analysis of the above norms gives grounds for the conclusion that the right to appeal the decision (individual act) of a power entity is granted to a person in respect of whom it was adopted or whose rights, freedoms and interests it is directly concerned with.

Thus, the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine", Art. 6 states that protection of the rights, freedoms and legitimate interests of persons with disabilities is ensured in court or other procedure established by the law; a citizen has the right to appeal against decisions of medical and social expertise bodies on his recognition or non-recognition as a person with a disability.

Consequently, the Ministry of Defence of Ukraine is not a proper plaintiff in administrative cases in its suit against the Central MPhB (the Regional MPhB) on the recognition of their decisions (as individual acts) unlawful and cancellation, since the latter do not directly violate its rights and interests.

Conclusions

1. The medical and social commission in controversial legal relations in terms of the provisions of the Code of Administrative Proceedings of Ukraine is the power entity, and its decisions are of a public nature and subject to appeal in the procedure of administrative legal proceedings.

2. The Central MPhB (the Regional MPhB) in controversial legal relations in terms of the provisions of the Code of Administrative Proceedings of Ukraine is the power entity, and its decisions (resolutions) are of a public nature and subject to appeal in the procedure of administrative legal proceedings.

3. The current legislation does not contain provisions in which the Ministry of Defence's authority in the field of administration of medical and sanitary expertise would be secured. Accordingly, the Ministry of Defence of Ukraine is
not a power entity in the sense of item 7, part 1 of Article 3 of the Code of Administrative Proceedings on controversial legal relations, and therefore, applying to court with a claim on the recognition of illegal and abolition of the decision of the MSEC, does not have the status of a state authority exercising power administration functions in the specified area.

4. The Ministry of Defence of Ukraine is the authorized body in the field of administration of a military physician expertise. At the same time, the controversial public legal relations in this area between the Ministry of Defence of Ukraine and the Central MPhB (the Regional MPhB) are of an extrajudicial nature and develop on the principle of unity of command as subordination and functional subordination, and therefore their solution should be carried out in extrajudicial administrative order, including by means of state coercion.

5. The Ministry of Defence of Ukraine is not a proper plaintiff in administrative cases in its suit against the Central MPhB (the Regional MPhB) and the MSEC on the recognition of their decisions (as individual acts) unlawful and cancellation, since the latter do not directly violate its rights and interests.

The conclusions formulated are the result of the systematic analysis of current legislation and judicial practice in Ukraine and can serve as benchmarks for practicing lawyers, judges in resolving disputes of this category of cases, and may also become a platform for scientists and lawmakers to carry out further research, develop normative acts in order to improve the unified mechanism of protection of social rights of citizens, including resolving public legal disputes in this sphere. At the same time, in the framework of the implementation of the Association Agreement, when developing further proposals, researchers and practitioners should take into account basic European principles for the implementation and observance of social standards and the administration of justice, while taking into account the broad practice of the European Court of Human Rights.

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