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Case Study

REGARDING THE IMPLEMENTATION OF THE EU'S PRIORITY RECOMMENDATIONS ON THE IMPLEMENTATION OF THE LAW OF UKRAINE "ON ADMINISTRATIVE PROCEDURE"

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ABSTRACT

Background: *This publication examines several recommendations of the European Commission (EC) as set out in the 2023 and 2024 Enlargement Reports concerning Ukraine. Specifically, these recommendations relate to the implementation of the Law of Ukraine "On the Administrative Procedure" (LAP) and the EC recommendations: to prevent the introduction of new exemptions from its scope, the need to harmonise the Tax Code, the land sector, and digital procedures with the LAP, as well as the adoption of a new law on appeals.*

The publication explains why the European Union is paying special attention to these issues. Ukraine faces a genuine challenge in protecting the LAP from "new exceptions" (i.e. additional excluded sectors of public administration from the LAP area). For example, rather than aligning tax legislation with the LAP, at least one new legal conflict has already emerged. The land sector also presents difficulties, as the often suboptimal quality of "special provisions" may unjustifiably restrict the application of the LAP.

Methods: *The study employed analytical, normative and comparative methods. The analytical method was used to examine the practice of implementing individual provisions of legislation that were in force before the adoption of the LAP, as well as the underlying reasons for the formation of relevant recommendations of the European Union. The normative method enabled a review of individual norms regulating tax administration, land administration, the digital sphere, and legislation on citizens' appeals. The comparative method was applied to assess the impact of implementing the LAP and to anticipate the changes required to fulfil the EU's recommendations.*

Results and Conclusions: *The article identifies the problems created by the introduction of "new exceptions" to the scope of the LAP and outlines the steps the Ukrainian government should take to implement the EC's recommendations. It also justifies the need for a new law on appeals, particularly in terms of clearly distinguishing its scope from that of the LAP and optimising the system of appeals more broadly. The study concludes that the process of Ukraine's European integration is, above all, an opportunity for Ukrainians to secure the right to good administration. In turn, this will reduce the need for private individuals to seek protection through the courts.*

1 INTRODUCTION

The country's focus on membership in the European Union (hereinafter, the EU) is both a goal and a means that drives the modernisation of all areas of the state's organisation and functioning, as well as public life. Ukraine's public administration, specifically in terms of its rules for interaction with private individuals (citizens and business entities), also requires change and is undergoing such change. The current guide for these changes is the annual assessment of Ukraine conducted by the European Commission. In this publication, the focus will be on one issue—the introduction of a general administrative procedure in Ukraine.

In the 2023 Enlargement Report, the European Commission described the Law of Ukraine "On the Administrative Procedure"[1] as a key law for ensuring the right to good administration and called on Ukraine to refrain from introducing new exemptions from the LAP. The tax sphere was emphasised in particular.[2]

The 2024 Enlargement Report, essentially confirming and expanding upon these points, stated: "The Law 'On the Administrative Procedure', which entered into force in December 2023, unified administrative procedures with the aim of further aligning them with EU practice and strengthening the right to good administration. <...> In October 2024, the law

1 Law of Ukraine No 2073-IX 'On the Administrative Procedure' (17 February 2022) [2022] Official Gazette of Ukraine 49/2675 <https://zakon.rada.gov.ua/laws/show/2073-20#Text> accessed 25 June 2025.

2 European Commission, 'Ukraine 2023 Report' SWD(2023) 699 final (8 November 2023) <https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2023_en> accessed 25 June 2025.

was adopted that harmonised around 200 laws with the Law "On the Administrative Procedure" and brought existing exemptions back under its scope of application. Further harmonisation is still needed regarding the Tax Code, the land relations sector, and digital procedures. <…> The adoption of the Law "On Citizens' Appeals" should help distinguish cases of administrative procedure from other forms of public appeals."[3]

Despite the conciseness of the EU's evaluations and recommendations on the functioning of public administration, from the perspective of the state's relationship with citizens and businesses, it is worth analysing and clarifying the following: why exactly these issues are now among the priorities; what is the status of the development of this topic in theoretical and practical terms, and what are the prospects for the development of the relevant legislation.

At the same time, it is worth noting that without robust support from the academic community, particularly administrative law scholars, and without appropriate theoretical elaboration of these issues, it will be extremely challenging to achieve high-quality legislation and ensure its effective and impactful implementation. Moreover, relevant judicial practice and discourse on the impact of the Law of Ukraine "On the Administrative Procedure" (hereinafter, the LAP) are already being formed.[4] Let us consider each of these tasks in detail.

2 HARMONISING THE TAX CODE WITH THE LAW OF UKRAINE "ON THE ADMINISTRATIVE PROCEDURE"

The first issue, therefore, concerns the proper implementation of the LAP and the prevention of exemptions from its scope of application. Each new exemption diminishes the regulatory value of the LAP as a general law on the administrative procedure that applies to all sectors of public administration. Despite significant efforts undertaken by the Ukrainian Government and Parliament to harmonise sectoral legislation with the LAP—culminating in the adoption on 10 October 2024 of the Law No. 4017[5]—the tax sector remains problematic.

3 European Commission, 'Ukraine 2024 Report' SWD(2024) 699 final (30 October 2024) <https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2024_en> accessed 25 June 2025.

4 Dmytro V Luchenko, Iryna V Boiko and Olha M Soloviova (eds), *Application of the Law of Ukraine "On Administrative Procedure" in the Resolution of Public-Law Disputes by Administrative Courts: Conceptual Approaches and Practical Problems: Collection of Abstracts Based on the Materials of the All-Ukrainian Round Table, December 12, 2024* (Yaroslav Mudryi National Law University 2024).

5 Law of Ukraine No 4017-IX 'On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine "On the Administrative Procedure"' (10 October 2024) [2024] Official Gazette of Ukraine 104/6632 <https://zakon.rada.gov.ua/laws/show/4017-20#Text> accessed 25 June 2025.

In 2023, the State Tax Service of Ukraine (hereinafter, the STS), at the initiative of the business community (including through the Business Ombudsman Council) and with the support of Ukrainian and international experts, participated in drafting amendments to the Tax Code of Ukraine.[6] By the end of that year, a working draft had been prepared; however, it was never submitted to Parliament. Instead, in the summer of 2024, the Ministry of Finance of Ukraine articulated a new position following the adoption of Law No. 3813.[7] In interdepartmental communications, the Ministry of Finance asserted that there was no necessity to align the provisions of the Tax Code of Ukraine (hereinafter, the TCU) with the LAP, on the grounds that the latter does not regulate the administration of taxes, fees, or other payments. This position rests upon Law No. 3813, which amended Article 3 of the TCU by introducing Paragraph 3.3, stipulating that "the procedure for the administration of taxes, fees, and other payments <…> shall be determined exclusively by tax legislation" (all emphases are made by the author).

Thus, the provision introduced into Paragraph 3.3 of Article 3 of the Tax Code of Ukraine (TCU) by Law No. 3813 directly contradicts the European Commission's recommendation. As noted above, the European Commission, in its latest Enlargement Report of 30 October 2024 (Ukraine Report 2024), once again highlighted—specifically in response to the current situation—the need to harmonise the TCU with the LAP.

From the perspective of European integration, the current situation implies that, in order to comply with the EU's recommendation, Paragraph 3.3 of Article 3 of the TCU must be reviewed (amended), and broader amendments to tax legislation must be introduced.

From a purely legal standpoint, Paragraph 3.3 of Article 3 of the TCU also carries a high level of risk and legal inconsistency. It poses a direct risk of conflict in situations where tax authorities may refuse to apply the LAP in their activities, while taxpayers and administrative courts may insist on its application. There are at least two reasons why taxpayers and administrative courts might reasonably adopt this position:

1) Part 2 of Article 1 of the LAP contains no explicit exemption for tax relations (including tax administration). Accordingly, any private individual could legitimately demand the application of the LAP in tax matters;

6 Tax Code of Ukraine No 2755-VI (2 December 2010) [2010] Official Gazette of Ukraine 92-1/3248 <https://zakon.rada.gov.ua/laws/show/2755-17#top> accessed 25 June 2025.

7 Law of Ukraine No 3813-IX 'On Amendments to the Tax Code of Ukraine Regarding the Specifics of Tax Administration during Martial Law for Taxpayers with a High Level of Voluntary Tax Compliance' (18 June 2024) [2024] Official Gazette of Ukraine 70/4200 <https://zakon.rada.gov.ua/laws/show/3813-IX#Text> accessed 25 June 2025.

2) Part 2 of Article 2 of the Code of Administrative Court Proceeding of Ukraine (CACPU)[8] obliges administrative courts to apply the LAP when resolving tax disputes. Since 2005, the CACPU has set out criteria for evaluating decisions, actions, and omissions of public authorities, which have subsequently been substantiated in the principles of the LAP (Article 4 and Articles. 5–18). Administrative courts are therefore required to assess compliance with these principles by all public authorities, including tax authorities. Accordingly, tax authorities must properly observe these principles.

This is an extensive sphere in which the consideration and resolution of cases often culminate in the issuance of administrative acts unfavourable to the individual. Therefore, the principles and rules of the LAP must apply in this sphere to protect taxpayers' rights and to ensure the objective and fair resolution of relevant cases.

By harmonising the TCU with the LAP, compliance could be ensured within the tax sector with Article 41 of the Charter of Fundamental Rights of the European Union, which defines the right to good administration as "the right of every person to have their affairs <…> handled impartially, fairly and within a reasonable time. This right includes: the right to be heard before any individual measure which would affect them adversely is taken; the right of access to their file <…> and the obligation of the administration to give reasons for its decisions."[9]

It is important to recall that, while the LAP establishes the general administrative procedure, it also permits the establishment of specific rules for certain categories of cases (Part 2 of Article 3 of the LAP).

Preliminary expert analyses indicate that relatively few actual conflicts exist between the TCU and the LAP. Accordingly, what is required at this stage is not a comprehensive revision, but rather a targeted harmonisation of the Tax Code and the LAP.

Foremost, it is necessary to emphasise the importance of the subsidiary application of the LAP's principles to relationships involving the adoption of administrative acts in the tax sphere, as well as to other administrative activities of the State Tax Service. As already noted, this has been a requirement of the CACPU since 2005 (formerly Part 3, now Part 2 of Article 2). The added value of the LAP lies in the fact that, whereas the CACPU merely enumerates these principles, the LAP elaborates upon them in detail.

One of the most frequently cited mechanisms with significant potential for improvement through the LAP is administrative appeals. According to reports from the STS—for

8 Code of Administrative Court Proceedings of Ukraine No 2747-IV (6 July 2005) [2005] Official Gazette of Ukraine 32/1918 <https://zakon.rada.gov.ua/laws/show/2747-15#Text> accessed 25 June 2025.

9 Charter of Fundamental Rights of the European Union (2000/C 364/01) [2000] Official Journal of the European Communities 43/1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2000_364_R_TOC> accessed 25 June 2025.

example, for 2021—only about 7% of appeals[10] were upheld in terms of "monetary obligations". In contrast, the percentage of successful claims increases substantially when cases are brought before the courts. One of the underlying reasons for this discrepancy is the current structure of the existing administrative appeals mechanism, under which complaints are reviewed exclusively by STS staff. Under such an arrangement, it is difficult to ensure impartiality and objectivity in the consideration of complaints.

The LAP provides an opportunity to improve this mechanism, primarily through the introduction of collegial review of complaints and by involving representatives of civil society organisations in appeals committees. Applying LAP approaches to bodies considering administrative appeals—and involving representatives from business associations, academia, and independent experts—could significantly enhance the impartiality, objectivity, and fairness of complaint reviews within the STS system.

The Tax Code must also be refined in terms of mechanisms and terminology relating to the termination of tax notices, decisions, and other individual decisions of the State Tax Service. Certain procedures under the TCU may further require alignment with the LAP—for example, the procedure for "returning documents for correction" when registering for tax accounting (Article 63 of the TCU) and "refusal to consider documents" for self-employed persons (Article 65 of the TCU).

In sum, the TCU, as a specialised regulatory act, is generally well-developed and unlikely to require extensive amendments. However, it unequivocally requires harmonisation with the LAP.

The Ministry of Finance and the STS must therefore renew their efforts to draft amendments to the TCU to ensure alignment with the LAP, and Parliament must act swiftly to correct the error introduced by the conflicting provision in Paragraph 3.3 of Article 3 of the TCU.

3 HARMONISING THE LAND SECTOR WITH THE LAP

The next area specifically highlighted in the EU Report concerns land relations (the land sector). This is a particularly pressing matter for Ukraine. The land sector encompasses a vast range of relationships, including the acquisition of land plots for ownership and use, the large-scale market for agricultural land leases, and the complexities of obtaining land plots for construction, among other aspects. Instead of addressing land issues comprehensively in the general harmonisation law (enacted as Law No. 4017), the Ukrainian Parliament dealt with this matter separately and, unfortunately, did so with

10 State Tax Service of Ukraine, 'Report on the Fulfilment of the Action Plan of the State Tax Service of Ukraine for 2021' (7 February 2022) <https://tax.gov.ua/diyalnist-/plani-ta-zviti-roboti-/396505.html> accessed 25 June 2025.

significantly poorer communication. Work proceeded instead on another draft law—No. 11150—which ultimately became Law No. 3993.[11]

Its initial version contained an unacceptable number of "special provisions" on the application of the LAP. Following the President's veto, the text of the new Article 17-2 of the Land Code of Ukraine (hereinafter, LCU), introduced by Law No. 3993, was significantly revised. Nevertheless, at least three provisions continue to raise significant concerns.

Part 2 of Article 17-2 of LCU provides that "appeals against decisions of state authorities, the Verkhovna Rada [Parliament] of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, local self-government bodies, and their officials in the field of land relations shall be carried out *exclusively in court proceedings*, unless otherwise provided for by this Code, *the Law of Ukraine* "*On the Administrative Procedure*", or other regulatory legal acts in the said sphere."

This provision only partially resolves the issue of administrative appeals in the land sector. The reference to the LAP does not sufficiently remedy the situation, since the LAP does not list specific sectors of public administration. As a result, the appeal of administrative acts in the land sector may be hindered. At the very least, such a negative (bad-faith) interpretation cannot be ruled out. To resolve this issue, Part 2 of Article 17-2 LCU should either be deleted entirely or substantially revised.

Part 3 of Article 17-2 of LCU provides that "decisions <...> in the field of land relations <...> *may be declared invalid or unlawful exclusively by a court decision*, except where *the annulment of unlawful decisions* in an extrajudicial procedure is provided for by legislative acts in the field of land relations, as well as by the Law of Ukraine "On the Administrative Procedure."

This provision likewise fails to achieve the intended application of the LAP due to its flawed wording. Even in cases of manifest unlawfulness, administrative bodies would be unable to correct their own errors, being compelled instead to resolve such issues solely through court proceedings. Therefore, Part 3 of Article 17-2 LCU should also either be deleted or significantly redrafted.

Part 10 of Article 17-2 of the Land Code of Ukraine (LCU) stipulates that "an administrative act in the field of land relations *shall enter into force from the moment of its adoption*, unless otherwise provided for by this Code, the Law of Ukraine "On the Administrative Procedure", or other legislative acts in the field of land relations, and must be communicated to those to whom it pertains".

11 Law of Ukraine No 3993-IX 'On Amendments to Certain Legislative Acts of Ukraine Regarding the Protection of the Interests of Land Share Owners and the Application of Administrative Procedure in the Field of Land Relations' (8 October 2024) [2024] Official Gazette of Ukraine 102/6501 <https://zakon.rada.gov.ua/laws/show/3993-20#Text> accessed 25 June 2025.

This provision does not align with the LAP, which establishes the general rule that an administrative act enters into force from the moment it is communicated to the individual concerned (taking into account the relevant presumptions and notification rules), or from a *later date* specified in the act itself. An individual cannot comply with or challenge an administrative act if they are unaware of its existence and have no opportunity to examine its text. Therefore, Part 10 of Article 17-2 LCU should likewise be deleted or reworded to clearly link its entry into force to the procedure established by the LAP.

The sensitivity of land issues in Ukraine is such that, in 2024, yet another draft law on land matters emerged (registration No. 12089 of 3 October 2024). By 12 March 2025, this was enacted as Law No. 4292-IX.[12] This Law introduced a maximum ten-year limitation period for the state or a local government body to file a lawsuit to reclaim unlawfully allocated land. It also imposed a condition: the relevant state or local body must compensate the bona fide purchaser for the value of the property. Statutes of limitations do not apply only to certain lands, such as "land for defence facilities; land or territories of the nature reserve fund; hydrotechnical structures…; cultural heritage monuments that were not subject to privatisation".

This entire mechanism warrants critical scrutiny. The requirement that the state or community reimburse the value of the property makes the restoration of legality nearly unfeasible in these cases. A key concern from the perspective of the LAP is that, in effect, the mechanism for recognising unlawful administrative acts as invalid—that is, the mechanism for restoring legality by the public administration itself—is further blocked in the sphere of land relations.

Accordingly, in this area, the Ukrainian Government and Parliament must undertake further work to ensure the alignment of land legislation with the LAP.

4 ADOPTION OF THE NEW LAW ON APPEALS

The adoption and entry into force of the Law "On the Administrative Procedure" (LAP) necessitated a substantial revision of numerous other legislative acts. One of the priority laws requiring amendment is the Law of Ukraine *"On Citizens' Appeals"* of 1996,[13] since both laws govern relations concerning the consideration of applications and complaints.

12 Law of Ukraine No 4292-IX 'On the Introduction of Amendments to the Civil Code of Ukraine to strengthen the protection of bona fide purchasers' (12 March 2025) [2025] Official Gazette of Ukraine 36/2370 <https://zakon.rada.gov.ua/laws/show/4292-20#Text> accessed 25 June 2025.

13 Law of Ukraine No 393/96-BP 'On Citizens' Appeals' (2 October 1996) [1996] Official Bulletin of the Verkhovna Rada of Ukraine 47/256 <https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80#Text> accessed 25 June 2025.

To date, the Law of Ukraine *"On Citizens' Appeals"* of 1996 has been amended only once—by introducing a change to Article 12, which formally and generally delineates the respective scopes of the LAP and this Law. However, from a practical standpoint, a clearer demarcation of the subject matter governed by these two laws is required.

Furthermore, the mechanism for handling appeals submitted by private individuals to public authorities requires optimisation in light of the extensive experience accumulated through the long-term application of the Law of Ukraine *"On Citizens' Appeals"*. Well-known problematic issues include: the excessive volume of appeals, which imposes a significant burden on public authorities; the frequent submission of appeals to higher-level authorities without regard to jurisdiction; the obligation of heads of public bodies to conduct in-person meetings with citizens; and the requirement that the head of an authority personally sign all responses to appeals. These factors considerably affect the efficiency of public administration, consuming substantial resources.

In 2023, the Ministry of Justice intensified its efforts to prepare a new version of the law under a new title—the draft Law *"On Appeals"*. The corresponding draft was submitted to Parliament[14] (registration number 11082, dated 13 March 2024) and adopted at first reading on 24 April 2024. However, further progress has effectively stalled, despite the fact that, in the context of European integration, there is a clear need to expedite this work. It is worth reiterating that this task is included in the Ukraine Report 2024.

Several issues demand reconsideration in light of the need to optimise the appeal mechanism. One such issue is the necessity, on the one hand, to extend the right of appeal not only to citizens (natural persons) but also to business entities and all civil society associations. On the other hand, it is imperative to align the regulation of the range of entities obliged to consider appeals and provide responses with the Constitution. In particular, the imposition of such an obligation on all enterprises, institutions, and organisations—regardless of their form of ownership, including civil society associations and the media—represents a post-Soviet relic. Private entities should not bear the same public-law obligations as state authorities, particularly if they do not perform any public functions or tasks. Regarding the media and non-governmental organisations, such an obligation constitutes undue interference in their activities.

Accordingly, in revising the legislation, it is essential to take into account Article 40 of the Constitution of Ukraine, which stipulates that "everyone has the right to submit individual or collective written appeals or to personally address *state authorities, local self-government bodies*, and officials and officers of these bodies, who are obliged to consider the petitions and provide a substantiated response within the time frame established by law." The Constitution clearly provides that what must be given is a *response* (rather than a decision), and that such a response must be *substantiated*.

14 Draft Law No 11082 'On Appeals' (13 March 2024) <https://itd.rada.gov.ua/billInfo/Bills/pubFile/2254977> accessed 25 June 2025.

Article 3 of the Law of Ukraine *"On Citizens' Appeals" of* 1996 provides that "appeals submitted by citizens shall be understood as *proposals (comments), applications (requests), and complaints* set out in written or oral form". A closer analysis of these distinct types of appeals, particularly in the context of the LAP, yields the following observations.

The definition of an application requires a different emphasis: it should not merely be framed as "*a request for assistance* in exercising … rights and interests". Through an application, an individual exercises a *subjective public right*, i.e., the legal right to make a *claim* against a public authority grounded in law. On this basis, applications fall within the scope of the LAP and are excluded from the scope of the Law of Ukraine *"On Citizens' Appeals"*.

Under the Law of Ukraine *"On Citizens' Appeals" of* 1996, a "complaint" is defined as "an appeal containing a *demand to restore rights* and protect the legitimate interests of citizens violated by acts (or omissions) or decisions of state bodies, local self-government bodies…" (Part 4 of Article 3). This definition is largely acceptable. The LAP, in Part 1 of Article 78, places particular emphasis on the fact that the right to administrative appeal under this Law is vested in a person who considers that an *administrative act* or its implementation has violated or may violate their right, freedom, or legitimate interest. This is a more precise definition, which also structures the hierarchy of review.

Since 15 December 2023, all applications and complaints that fall under the LAP have been expressly excluded from the scope of the Law of Ukraine *"On Citizens' Appeals"*.

From this, several conclusions follow. Under the Law of Ukraine "*On Citizens' Appeals" of* 1996 and under the forthcoming Law "*On Appeals*"—the scope should remain limited to proposals, recommendations, comments, and petitions.

At the same time, during the preparation of the draft Law *"On Appeals",* some resistance was voiced by certain experts who argued that the draft narrows the circle of entities obliged to consider petitions and provide responses, reduces the range of petition types that may be submitted to such entities, and contains provisions that limit the mandatory in-person reception of citizens by the heads of state bodies, as well as the personal signing of responses by these officials.

Before addressing these concerns in greater detail, it is worth reiterating that, since its entry into force, the LAP has provided private individuals with broad rights in their interactions with the state, specifically for the encashment and protection of their rights. In other words, the LAP should serve as a far more effective instrument than the Law of Ukraine "*On Citizens' Appeals*". By contrast, the Law "*On Appeals*" is primarily an instrument of participation—a democratic mechanism for interaction between the state and the individual—rather than an administrative tool for resolving an individual's specific legal matter.

In terms of the range of obligated entities, the Law of Ukraine "*On Citizens' Appeals*" of 1996 substantially expanded the scope of addressees compared to the constitutional framework. As previously noted, such an expansion is not well-founded. It is not justifiable to impose identical legal regimes and obligations on public authorities and private individuals alike. Any imposition of such obligations must be duly substantiated. Specifically, this may be warranted in relation to enterprises, institutions, and organisations that are state- or municipally owned, as they operate to perform certain public tasks. In exceptional cases, it may also apply to certain private entities which, on the basis of the law—i.e., through legitimate authorisation—perform public functions (this may include the provision of "services of general economic interest").

With respect to procedural differences, under the LAP, the response to an application or complaint entails a procedure that guarantees the individual the right to participate—to be heard and to present evidence. By contrast, under the Law "*On Citizens' Appeals*" (and the future Law "*On Appeals*"), the individual is not guaranteed the right to participate in the consideration of their submission. This approach aligns with the principles of efficient governance and the prudent use of public resources.

This brings us to another desirable change. When considering petitions under the Law *"On Appeals",* an individual should not have the right to demand an in-person meeting with specific officials, especially senior officials. For the purpose of recording oral petitions during in-person meetings, designated staff members appointed by the relevant body should suffice. Heads of bodies should retain the right—but not the obligation—to conduct such personal receptions.

Another flaw of the Law of Ukraine "*On Citizens' Appeals" of* 1996 should also be addressed. It currently requires that the response must "without fail be given *under the signature of the head* or a person acting on their behalf" (Part 3 of Article 15). It should be sufficient for the response to bear the signature of a duly authorised person of the competent entity, ideally the person who actually handled the petition.

It is also clear that a response itself should not be subject to administrative or judicial appeal. What may be challenged is only the failure to provide a response—that is, inaction. The information that a proposal or comment has or has not been taken into account cannot be challenged.

This issue should be viewed in conjunction with other problems that have rendered the petition mechanism an often inefficient and resource-intensive aspect of public administration. This includes the abuse of the right to petition—for example, when an individual submits numerous appeals to the same authority within a short period of time, or when a single appeal is excessive in volume and raises an unreasonably large number of questions. There should be a mechanism to counter such abuses.

In any event, the Ukrainian Parliament must accelerate the adoption of the new Law "*On Appeals,*" namely, its consideration in the second reading. It is, however, fundamentally important to preserve the sound conceptual framework of the draft law and its innovative elements.

5 HARMONISATION OF DIGITAL PROCEDURES

In this sector, developments are currently moving in a direction that aligns with the values of the LAP and are, overall, constructive. Immediately after the adoption of the LAP, however, not all leaders of Ukraine's digital transformation perceived it as a positive and useful development. When properly grounded, both the LAP and digitalisation share more commonalities than differences. Both are citizen-centred— that is, they embrace a human-centred approach; they uphold the principle of officiality (expressed as "data should move, not people"); and they also share the principle of efficiency, among others.

In the sphere of digital procedures, it is vital to ensure digital non-discrimination; to guarantee the right to participate in cases involving negative decision; to provide advisory support to private individuals when using digital services; and, critically, to ensure that negative administrative acts (such as refusals or obligations) are properly reasoned and that the procedure for their appeal is clearly indicated.

It is equally important to take into account the experience of countries with longer-standing practice. For instance, Estonian scholar and administrative justice judge Ivo Pilving outlines a vision for the rational and lawful integration of administrative procedure and digitalisation, emphasising the need for legislative adjustments in Estonia. Among his key positions is the view that "the right to be heard, to reflect, and to communicate with an official must be guaranteed — without such guarantees, automation will not be permitted, except in narrowly defined cases".[15]

the right to be heard, the right to communication between an individual and an authority and the right to have reasons given for automated decisions must be guaranteed, save for some limited exceptions;

In Ukraine, harmonisation with the LAP has not yet been achieved for a law of fundamental importance to the digital sector: the Law of Ukraine "On the Specifics of Providing Public (Electronic Public) Services" No. 1689-IX, dated 15 July 2021.[16] This may help explain why the European Union's 2024 Enlargement Report and the SIGMA Programme have attached

15 Ivo Pilving, 'The Effect of Automated Decision-Making Systems on Basic Principles of EU Public Law: An Estonian Perspective' (2023) 1 Fascicolo 60. doi:10.13130/2723-9195/2023-1-105.

16 Law of Ukraine No 1689-IX 'On the Specifics of Providing Public (Electronic Public) Services' '(15 July 2021) [2021] Official Gazette of Ukraine 64/4012 <https://zakon.rada.gov.ua/laws/show/1689-20#Text> accessed 25 June 2025.

priority in their recommendations to the need to combine digitalisation with the implementation of the LAP. The most recent SIGMA Monitoring Report on Ukraine (December 2023) makes the following recommendation: "[to] maintain the trend towards increased digitalisation, quality, and accessibility of services, *while simultaneously ensuring the proper implementation of the Law of Ukraine "On the Administrative Procedure"* for the effective upholding of the rule of law and the protection of parties' rights in administrative procedures <…>"[17].

Due to a lag in the full harmonisation of digital procedures with the LAP, the latter in practice sometimes functions in a limited manner—particularly in contexts where activities occur exclusively within state or other public registers (for example, information systems in the field of social protection, among others). In such areas, public officials often lack the technical means to apply mechanisms envisaged by the LAP, since the relevant functions have not yet been implemented at the technical level—for instance, the basic ability to "leave an application without action" to allow for the correction of deficiencies. This technical dimension—the modernisation of the information systems themselves—must therefore remain at the centre of policymakers' attention. Otherwise, the LAP will function only partially or even generate normative conflicts, which is unacceptable and will inevitably lead to disputes.

At present, it is known that Ukraine's Ministry of Digital Transformation is finalising the drafting of an appropriate bill outlining its vision for aligning the country's digital transformation policy, relevant legislation, and practice with the LAP.

6 CONCLUSIONS

To become a full-fledged member of the European Union, Ukraine must establish an effective system of public administration. The recommendations of the European Commission, set out in its enlargement reports, serve as an invaluable guide in this process. Among the most recent recommendations concerning the implementation of the general administrative procedure are: the harmonisation of the Tax Code, the land sector, and digital procedures with the Law of Ukraine "On the Administrative Procedure"; the prevention of new exceptions from the scope of the LAP; and the adoption of a new law on appeals and petitions. Collectively, these measures are intended to ensure the effective operation of the LAP—that is, to create the appropriate legal conditions for individuals to exercise their rights in relations with public administration, and better protection for these individuals against possible arbitrariness on the part of public authorities. This is crucial for realising the overall regulatory value of the LAP, and for ensuring the sound design of Ukraine's digital transformation of public administration. Within this same context,

17 OECD, *Public Administration in Ukraine: Assessment against the Principles of Public Administration* (SIGMA Monitoring Reports, OECD Publishing 2024). doi.org/10.1787/078d08d4-en.

legislation on petitions also requires amendment, primarily to eliminate inconsistencies with the LAP and to ensure the rational use of limited public resources for the consideration of proposals and similar submissions.

Finally, it must be stressed that the effectiveness of Ukraine's European integration process lies not only in its ultimate goals of accession to the European Union. Its deeper value rests in enabling the state to provide its citizens and businesses with standards of living that guarantee democracy, the rule of law, and good governance. In other words, these changes and reforms are needed first and foremost by Ukrainians themselves, making it vital to adopt appropriate legislation and ensure its effective implementation.

Legal scholarship—including administrative law—must continue to provide the theoretical support necessary to support these processes.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Тематичне дослідження

ЩОДО ВИКОНАННЯ ПРІОРИТЕТНИХ РЕКОМЕНДАЦІЙ ЄС ІЗ ВПРОВАДЖЕННЯ ЗАКОНУ УКРАЇНИ "ПРО АДМІНІСТРАТИВНУ ПРОЦЕДУРУ"

Віктор Тимощук

АНОТАЦІЯ

Вступ: *У цій публікації розглядається кілька рекомендацій Європейської Комісії (ЄК), викладених у Звітах про розширення за 2023 та 2024 роки щодо України. Зокрема, ці рекомендації стосуються впровадження Закону України «Про адміністративну процедуру» (ЗАП) та рекомендацій ЄК: запобігання введенню нових виняткiв зі сфери його дії, необхідності гармонізації Податкового кодексу, земельного сектору та цифрових процедур із ЗАП, а також прийняття нового закону про звернення.*

У публікації пояснюється, чому Європейський Союз приділяє особливу увагу цим питанням. Адже Україна стикається з реальним викликом у захисті ЗАП від «нових виняткiв» (тобто додаткових виключених окремих секторів публічного адміністрування зі сфери дії ЗАП). Наприклад, замість узгодження податкового законодавства з ЗАП, вже виникла щонайменше одна нова правова колізія. Земельний сектор також має труднощі, оскільки часто неоптимальна якість «особливостей» може невиправдано обмежувати застосування ЗАП.

Методи: *У дослідженні використовувалися аналітичний, нормативний та порівняльний методи. Аналітичний метод було застосовано для вивчення практики реалізації окремих положень законодавства, що діяло до прийняття ЗАП, а також до аналізу причин формування відповідних рекомендацій Європейського Союзу. Нормативний метод дозволив розтлумачити окремі норми, що регулюють податкове адміністрування, адміністрування земельними ресурсами, цифрову сферу та законодавство про звернення громадян. Порівняльний метод було застосовано для оцінки впливу впровадження ЗАП та прогнозування змін, необхідних для виконання рекомендацій ЄС.*

Результати та висновки: *У статті визначено проблеми, спричинені запровадженням «нових виняткiв» зі сфери дії ЗАП, та окреслено кроки, які уряд України має вжити для*

виконання рекомендацій ЄК. Також обґрунтовано необхідність прийняття нового закону про звернення, зокрема з погляду чіткого розмежування його сфери застосування від предмета ЗАП та оптимізації системи звернень у ширшому сенсі. У дослідженні зроблено висновок, що процес європейської інтеграції України – це, перш за все, можливість для українців забезпечити право на належне адміністрування. У свою чергу, це зменшить потребу приватних осіб звертатися за захистом до суду.

Ключові слова: *Адміністративна Процедура, Європейська Інтеграція, Податковий сектор, Податковий кодекс України, Земельний сектор, Земельне право, Цифрова трансформація, Звернення громадян.*