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THE CONCEPT AND CLASSIFICATION OF AUTHORISATION PROCEDURES IN THE TELECOMMUNICATIONS SECTOR

Abstract. Purpose. The purpose of the article is to formulate the concept and classification of authorisation procedures in the telecommunications sector. **Results.** Authorisation is considered to be an integrating basis for regulating the relevant types of activities. Administrative authorisation directly determines the essence and content of the legal regime for the relevant activities. The specific purpose of certain regimes shall be defined by law, while it is important that the authorisation procedure does not repeat the rest of the regulatory procedures for the activities of entities. Authorisation is required only if the state establishes special administrative legal regimes for certain activities or the use of relevant facilities. The essence of authorisation is not to grant a person the right to perform actions that are prohibited, but to ensure that the activities are qualified and safe. From the legal perspective, authorisation has all the characteristic features of an administrative act. It is an individual legal act of the authorised executive body on recognition or state confirmation of the initiation, transfer, restriction or termination of rights to the objects of the authorisation system or to perform certain activities. Authorisation is a specific legal act of state recognition and consolidation of the rights to perform activities and use objects that shall be under state supervision. Authorisation procedures in the field of telecommunications by the nature of the actors can be classified into: general, the actors thereof may be any natural persons and legal entities (for example, TV and audio broadcasting); special, the actors thereof may be a limited list of persons. **Conclusions.** Permits as legal means regulating the telecommunications sector are links that ensure interaction and integration of all levels and elements of the regulatory system. The introduction of permits as a legal method regulating the telecommunications sector ensures the integrity of the information sphere, which is being improved in accordance with certain laws. If the laws of development of the telecommunications and information sectors are ignored, the efficiency of telecommunications systems in all sectors of society's life is reduced.

Key words: authorisation, legal and regulatory framework, law, legal act, actor, full powers.

1. Introduction

The authorisation system is one of the most important legal institutions. The current administrative legislation does not provide a legitimate definition of a permitting authority, administrative authorisation, administrative authorisation system, administrative authorising activities, authorising administrative and legal regime, administrative authorisation procedures, etc. Therefore, it is necessary to refer to scientific works to understand the issue of the authorisation system, authorisation and authorisation procedures.

As noted above, there is no single definition of the term "authorisation system" in Ukraine. The legislation defines the authorisation system within the scope of economic activities as a set of relations regulated by law that arise between

permitting authorities, administrators and business entities through the issuance of permits (Law of Ukraine "On the authorisation system in the field of economic activities," Article 1, para. 2 (Law of Ukraine On the authorisation system in the field of Economic activities, 2005)). According to the Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulations on the authorisation system (1992), the concept of "authorisation system" is a special procedure for the manufacture, acquisition, storage, transportation, accounting and use of specific items, materials and substances, as well as the opening and operation of certain enterprises, workshops and laboratories for the protection of public interests and public safety.

Before the 1990s, the legal literature defined the authorisation system as a set of rules that

regulated the procedure for the manufacture, acquisition, use, sale, transportation of certain items and substances, and the opening and operation of individual enterprises. The authorisation system is undergoing intensive development in the telecommunications industry due to the transition to market-based regulating.

2. Specificities of development and establishment of the authorisation system

The history of the development of the authorisation system shows that the scope, types and forms, as well as nature, of permits have changed depending on the characteristics of social relations and other factors.

Scholars of administrative law theory have repeatedly tried to formulate a unified doctrine of authorisation procedures within a particular industry. The characteristic features of the authorising and licencing system in various fields have been studied, and the categories of the authorisation system, its characteristic features and attributes have been considered.

O. Kharytonov, with regards to the content of the authorisation system, argues that it is the State's effective regulatory instrument used by public authorities to guarantee stability, welfare and security of the State and individual citizens, which are achieved through systematic solution of economic, social, administrative, political and legal issues (Kharytonov, 2004).

D. Denysiuk studied the licensing and authorisation system with regards to functioning of the police (internal affairs bodies) as a type of activities carried out by certain bodies within the framework of the procedure for the acquisition, transportation, storage, use and sale of strictly defined items and substances, as well as the opening and operation of certain enterprises and organisations in order to ensure personal public safety and public order (Denysiuk, 2010).

According to Yu. Sahaidak, the authorisation system is, on the one hand, a set of social relations, regulated by legal provisions, between actors vested with public authority, and on the other hand, legal entities and natural persons to grant permits for activities and control compliance with the rules to ensure personal, public and state security (Sahaidak, 2016).

The authorisation system in administrative law is a type of State administrative relations, the essence thereof is permission, recognition of an official type of admission of entities to activities where professional implementation of various qualification and administrative requirements is necessary to avoid negative consequences.

The authorisation system is a form of preliminary control over the legality of acquiring special legal capacity, the legal status of the actor

of the authorisation system, the current monitoring of meeting the requirements for the permitted activities, and the subsequent legal termination of the permitted activities.

The authorisation system should be considered as a system that is in the process of being formed on the basis of legal relations of actors regarding the legalisation of a particular type of activities. The authorisation system is the relationship of several entities that are characterised by different public legal status in terms of regulating and control at the time of implementing activities within a particular sector.

The authorisation system as activities of public authorities cannot be recognised as complete because such consideration reduces the authorisation system to performing only one control function. The authorisation system is a set of legal relations that covers not only the control function, but also the function of legal provision, termination of legal violations, etc.

The analysis of these opinions on the nature of the authorisation system enables to formulate the concept of the authorisation system, which is understood as a set of activities of public authorities aimed at granting actors which are not vested with public authority with a prolonged permit to perform the relevant activities requiring special legal authorisation, control over compliance with special legislation by these actors, termination of legal violations, and deprivation of legal entities of carrying out certain activities.

According to Ya. Voronin, the elements of the authorisation system are:

1. Permission, that is, a specific procedure of actions or behaviour of citizens, legal entities, state bodies and their authorised officials in the field of the authorisation system, for the purpose of the applicants' realisation of their subjective rights.
2. The purpose of the authorisation system.
3. The object and subject matter.
4. Actors.
5. Legal regulations on which the authorisation system is based.
6. Control over compliance with the established rules of the authorisation system by authorised entities.
7. Bringing persons who violate the rules of the authorisation system to the liability established by law (Voronin, 2014, p. 81).

Therefore, the main component in terms of terminology and legal use is authorisation.

Authorisation is considered to be an integrating basis for regulating the relevant types of activities. Administrative authorisation directly determines the essence and content

of the legal regime for the relevant activities. The specific purpose of certain regimes shall be defined by law, while it is important that the authorisation procedure does not repeat the rest of the regulatory procedures for the activities of entities. Authorisation is required only if the state establishes special administrative legal regimes for certain activities or the use of relevant facilities. The essence of authorisation is not to grant a person the right to perform actions that are prohibited, but to ensure that the activities are qualified and safe.

From the legal perspective, authorisation has all the characteristic features of an administrative act. It is an individual legal act of the authorised executive body on recognition or state confirmation of the advent, transfer, restriction or termination of rights to the objects of the authorisation system or to perform certain activities. Authorisation is a specific legal act of state recognition and consolidation of the rights to perform activities and use objects that shall be under state supervision.

Authorisation as an independent regulatory means has been first distinguished by Kh.P. Yarmaki, who notes that authorisation is between law and prohibition in terms of the degree of legal influence, but, unlike prohibition, it does not prevent the engagement in business or other activities (Yarmaki, 2006, p. 200). The essence of authorisation is not to grant an individual or legal entity the right to perform actions that are prohibited, but to ensure qualified, technically and technologically sound implementation of the relevant activities.

Authorisation can be independent elements of the legal and regulatory mechanism. In addition, it is not advisable to reduce authorisation as administrative legal acts to supervisory acts. They are independent administrative and legal acts that vest legal entities with relevant powers.

Authorisation as an administrative and legal act, by providing a legal entity with the authority to perform a particular type of activities, becomes a means of controlling and monitoring the quality and quantity of entities in a certain social sector, enabling to apply certain administrative methods of coercion in case of violations of the law, and to prevent the unlawful actions of entities.

Authorisation as a regulatory means has a sectoral colouring. Subjective rights do not arise from a law addressed to an indefinite number of persons, but from a legal act addressed to a specific actor. An authorising regulatory means can be used only if special organisational structures are created that are vested with authority, i.e. it combines a regulatory and individual legal mechanism.

From a formal perspective, permits are required only if the state establishes special administrative and legal regimes for the relevant activities. However, it is incorrect to assert that the essence of these regimes is a relative prohibition.

Certain authorising regimes for the relevant activities have been formalised in law, but have existed for decades. Modern legal theory, with regards to authorisation as an administrative category, has various approaches to understanding its essence.

Moreover, authorisation in administrative law is, on the one hand, the implementation of a system of measures to grant business entities a permit for a certain type of business activities; on the other hand, authorisation is aimed at the implementation by authorised bodies of supervisory activities over compliance with the requirements established by the current legislation by economic entities.

The definition of the term "authorisation procedures" stems from the broader term "legal procedures", the definition thereof is based on the etymology of the term "procedure".

A.V. Basov provides the following definition of the term "legal procedure": officially established procedure for performing the relevant activities (Basov, 2011, p. 3). N.V. Halitsyna argues that from the legal perspective, a procedure is a procedure of actions, regulated by a legal provision, or regulatory mechanism for certain social relations within the scope of legal application (Halitsyna, 2010, p. 166).

V.P. Tymoshchuk argues that an administrative procedure can be recognised as a legally established procedure for consideration and resolution of individual administrative cases by administrative bodies (Tymoshchuk, 2013, p. 147).

N.V. Halitsyna defines this concept a little more deeply. She believes that an administrative procedure is a legally established procedure, rules and conditions for procedural actions regarding the consideration, resolution and resolution of a certain administrative case within the scope of public administration (Halitsyna, 2010, p. 167).

The use of the category "administrative procedure" to refer to the functioning of public administration bodies is a rather new category for the national science of administrative law. However, the correctness of using the category of "administrative procedure" directly is due to the following: first of all, the definition of the concept of "procedure". According to the explanatory dictionary of the Ukrainian language, a procedure is an officially established sequence of actions for the realisation or implementation of something (Hrynchyshyn, 1999, p. 204).

An administrative procedure can be defined as a procedure established by law for consistent procedural actions of the participants in relevant administrative and legal relations and the adoption of regulations to exercise their rights and obligations.

The procedures for authorising activities, as compared to the general concept of administrative procedures, are determined by the subject matter of the regulatory mechanism and its specifics. Therefore, authorisation procedures are a group of homogeneous administrative and procedural provisions and the resulting procedural actions consistently performed by the authorised bodies (their duly authorised persons) to consider an individual administrative case at the request of an individual or legal entity and to adopt an individual administrative act as a permit or a decision to refuse to issue it and its execution (Voronin, 2014, p. 82).

According to the Law of Ukraine On the Authorisation system in the field of Economic Activities, Article 1, part 1 (Law of Ukraine On the Authorisation system in the field of Economic Activities, 2005), the authorisation system in the field of economic activities is a set of relations regulated by law that arise between the permitting authority, administrator and business entity through the issuance of permits, reissuance, and revocation of permits.

According to the Law of Ukraine "On the Authorisation system in the Field of Economic Activities", Article 41, part 1, the procedure for authorisation procedure, reissuance and revocation of permits by central executive bodies and their territorial bodies is established by the CMU upon submission of a separate permitting authority, which has been agreed with the authorised body.

According to the above law, Article 41, Part 1, subpar. 4, the term for issuing permits is up to ten business days, unless otherwise provided by law. Permits are issued free of charge for an unlimited period of time, unless otherwise provided by law.

Authorisation as a means of legal regulation in the field of telecommunications is the links that ensure the interaction and integration of all levels and elements of the legal and regulatory system. Legal and regulatory systems in the telecommunications sector have administrative and organisational, administrative and legal, and information and communication components. The specificity of the administrative and legal component of the legal and regulatory mechanism is that permits are used on the grounds of the relevant administrative and legal regimes. The introduction of permits as a legal method regulating the telecommunications sector ensures the integrity of the infor-

mation sphere, which is being improved in accordance with certain laws. If the laws of development of the telecommunications and information sectors are ignored, the efficiency of telecommunications systems in all sectors of society's life is reduced (Bondarenko, Pustova, 2017, pp. 79-80).

In order to provide the relevant services and, if necessary, use the radio frequency spectrum, business entities (legal entities and individuals) shall apply to the relevant state authorities for permits. In addition, a number of documents required by the applicable law, which contain relevant information confirming the ability and opportunity to perform work and provide services, shall be submitted to the relevant authorities for consideration. In accordance with Ukrainian law, in order to obtain various permits, entities shall submit applications, the forms thereof have been specially developed and approved by authorised officials of State bodies.

In the telecommunications sector, a permit is an authorisation act that grants the right to perform certain activities, acting as a "filter" for legal entities in the telecommunications industry. Allowing for the legal nature, authorisation determines the essence and content of the legal regime for certain activities, which covers: the specifics of territories, objects, actors; special status of the actor; special requirements and conditions for activities or use of the object; constant control (supervision) of meeting the requirements of the regimes (Bondarenko, Pustova, 2017, p. 76).

The authorisation system in the telecommunications industry, which is of an administrative and legal nature, is aimed at regulating legal relations arising from the exercise of information rights and freedoms, adjusts the scope of permitted and prohibited economic and business activities in the industry and protects Ukrainian foreign economic interests.

The authorisation system in the field of telecommunications, in accordance with the current legislation of Ukraine, covers the following: issuance of permits for ship radio stations; issuance of permits for the construction, reconstruction, and operation of land-based telecommunication lines when crossing the border of Ukraine and in the border area; assignment of radio frequencies or radio frequency channels for civilian radio electronic equipment; registration of radio electronic equipment for the formation of femtocells in IMT-2000/UMTS, 3G, 4G, etc. land-based mobile radio telecommunication networks; licensing; registration; allocation of radio frequency spectrum; allocation and use of numbering resources; State registration of ownership of space-type communication

facilities (communication satellites, including dual-purpose ones); registration of transfer of certain rights to space facilities; allocation of telecommunication lines and their registration.

Therefore, the authorisation procedure is the activities of public administration bodies regulated by the rules of administrative procedure to resolve issues related to guaranteeing the exercise of the rights of legal entities and individuals to perform and implement relevant actions or engage in relevant types of activities by issuing certain permits.

3. Classification of authorisation procedures

Allowing for the specificities of legal relations of a permitting nature, the types of authorisation procedures can be classified according to the following criteria:

- 1) objectives;
- 2) actors responsible for the issuance of certain permits;
- 3) the subject matter of legal relations.

For example, depending on the objectives, the types of authorisation procedures are as follows:

- Guaranteeing interested parties' ability to exercise subjective rights (for example, to engage in a particular type of activities);
- Obtaining permits (licenses) relevant activities by business entities.

Depending on the actors responsible for issuing certain permits, the authorisation procedures are classified as follows:

- 1) those implemented by the National Police;
- 2) those implemented by other State authorities (e.g., the Ministry of Education of Ukraine, the Ministry of Health of Ukraine, etc. and their structural subdivisions).

Depending on the subject matter of legal relations, we can distinguish the following authorisation procedures:

- for obtaining a permit to purchase, carry and store firearms;
- for obtaining a permit to make and use explosives and materials;
- for licensing in the educational sector;
- for issuing permits – licenses to make and trade tobacco products, ethyl alcohol, alcoholic beverages, etc. (Minka, 2017, p. 252).

V. Tkachenko generally classifies administrative permits, distinguishing between permits and licenses (Tkachenko, 2006, pp. 10-11). The legal literature identifies the following types of authorisation: licenses, permits, special permits, admissions, approvals, passes, special passes, credentials, inspections, examinations, attestations, accreditations, diplomas, certificates, quotas, special rights, passports, mandates.

According to the studies by some scholars, authorisation should be classified by criteria:

- validity period
- sectoral focus;
- the degree of mandatory nature;
- the nature and scope of rights and obligations arising from authorisation;
- the actor and nature of its competence;
- the object (Iesimov, 2013).

According to these criteria, authorisation can be grouped into: registration; licensing, which includes permits, special permits; confirmation of the status of a person (accreditation, warranty); confirmation of the status of an item, device, service (passport, certificate).

The reviews of existing classifications of authorisation in administrative law enable to assert that all classifications have a similar structure, with the only difference being the presence of intermediate versions of permitting acts. These classifications are common to administrative law.

According to clause 34 of the List of permits in the field of economic activities (Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulations on the authorisation system, 1992), permits include authorisation to use the numbering resource in accordance with the Law of Ukraine "On Telecommunications".

With regard to the classification of authorisation procedures in the telecommunications sector, its crudity should be noted, so it is advisable to develop a classification of authorisation purposely for the telecommunications sector, since this sector has specific characteristics.

The provisions of the Laws of Ukraine "On telecommunications", "On the authorisation system in the field of economic activities" and "On licensing of economic activities" make it clear that relations in the telecommunications industry include those related to:

- creation and operation of telecommunication infrastructure (design and construction of telecommunication networks have their own specifics and are only partially regulated by the construction legislation);
- the use of telecommunication resources of the radio frequency spectrum (numbering, addressing, radio frequencies), technological facilities of the telecommunication infrastructure;
- operation of the Internet;
- provision of telecommunication services on the territory of Ukraine.

In accordance with the provisions of the laws, the classification of authorisation procedures in the telecommunications sector should cover: the creation and operation of all

telecommunications networks and telecommunications facilities; the use of radio frequency spectrum; and telecommunications services. The classification is based on the division of the telecommunications sector into certain subgroups, depending on the field of technological activities (Bondarenko, Pustova, 2017, p. 78).

The classification of authorisation procedures in the telecommunications sector by the nature of regulated technological processes includes:

- Registration of the use of specific equipment and radio frequencies;
- Authorisation of the right to perform special works.

The first category of authorisation procedures includes: issuance of permits for shipboard radio stations; assignment of radio frequencies or radio frequency channels for civilian electronic equipment, etc.

The second category includes issuance of permits for construction, reconstruction, and search work for the design of telecommunications lines; allocation of radio frequency spectrum; allocation and use of numbering resources, etc.

Authorisation procedures in the field of telecommunications by the nature of the actors can be classified into:

- a) general, the actors thereof may be any natural persons and legal entities (for example, TV and audio broadcasting);
- b) special, the actors thereof may be a limited list of persons.

In addition, authorisation procedures in the telecommunications sector can be classified by their validity period:

- one-time, for construction and search works, other actions that are limited in time;
- long-term, which entitle the holder to perform activities in the telecommunications industry for a certain period and may be revoked only in case of violation of the rules of conducting activities.

Authorisation in the field of telecommunications can be classified according to the criterion of territorial effect on the territory of: a) the state; b) a separate administrative-territorial unit.

The above grouping of authorisation procedures enables to systematise the existing types of administrative authorisation procedures in the field of telecommunications, dividing them according to the essential characteristics of the permitting act (Bondarenko, Pustova, 2017, p. 79).

4. Conclusions

Permits as legal means regulating the telecommunications sector are links that ensure interaction and integration of all levels and elements of the regulatory system.

The introduction of permits as a legal method regulating the telecommunications sector ensures the integrity of the information sphere, which is being improved in accordance with certain laws. If the laws of development of the telecommunications and information sectors are ignored, the efficiency of telecommunications systems in all sectors of society's life is reduced.

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ПОНЯТТЯ ТА КЛАСИФІКАЦІЯ ДОЗВІЛЬНИХ ПРОЦЕДУР У СФЕРІ ТЕЛЕКОМУНІКАЦІЙ

Анотація. Мета. Метою статті є формулювання поняття та класифікації дозвільних процедур у сфері телекомунікацій. **Результати.** Дозвіл розглядається як інтегруюча основа в регламентації відповідних різновидів діяльності. Безпосередньо адміністративним дозволом визначається сутність та зміст юридичного режиму реалізації відповідної діяльності. Мета певних режимів має бути визначена нормативно, водночас важливо, аби порядок дозвільного типу не повторював решту регулюючих процедур діяльності суб'єктів. Дозволи необхідні лише у випадку державного встановлення особливих адміністративних правових режимів реалізації певної діяльності чи застосування відповідних об'єктів. Сутність дозволу у наданні особі не права реалізувати дії, що заборонено, а у забезпеченні здійснення діяльності кваліфікованої й безпечної природи. З юридичного боку дозволу притаманні всі характерні риси адміністративного акту. Ним постає індивідуальний правовий акт уповноваженого виконавчого органу щодо визнання чи державного підтвердження виникнення, переходу, обмеження чи припинення прав на об'єкти системи дозвільного характеру чи на реалізацію певної діяльності. Дозволом є специфічний правовий акт державного визнання і закріплення прав на реалізацію діяльності, застосування об'єктів, котрі мають перебувати під державним наглядом. Класифікація дозвільних процедур у сфері телекомунікацій за характером суб'єктів: загальні, суб'єктами яких можуть бути будь-які фізичні й юридичні особи (наприклад, здійснення теле- і аудіотрансляції); спеціальні, суб'єктами яких може бути обмежений перелік осіб. **Висновки.** Дозволи як способи правового регулювання у телекомунікаційній сфері є сполучними ланками, що забезпечують взаємодію й інтеграцію всіх рівнів і елементів системи правового регулювання. Упровадження дозволів як способу правового регулювання у телекомунікаційній сфері забезпечує цілісність інформаційної сфери, що вдосконалюється відповідно до певних закономірностей. У разі ігнорування закономірностей розвитку телекомунікаційної та інформаційної сфери зменшується ефективність впровадження телекомунікаційних систем у всі сфери життєдіяльності суспільства.

Ключові слова: дозвіл, юридичне регулювання, закон, правовий акт, суб'єкт, повноваження.

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