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INHOMOGENEITY OF ANTI-CORRUPTION SUBJECTIVITY OF EVALUATORS AND EXPERTS

Assessors and experts are defined by the Law of Ukraine "On Prevention of Corruption" (hereinafter - the Law) as providers of public services [1].

The legal status of *appraisers* is determined by the Law of Ukraine "On Valuation of Property, Property Rights and Professional Appraisal Activity in Ukraine" (hereinafter - the Law № 2658-III).

According to Part 1 of Art. 6 of Law № 2658-III, assessors may be citizens of Ukraine, **foreigners** and **stateless persons** who have passed the qualifying examination and received a qualification certificate of the assessor in accordance with the requirements of this Law. In accordance with Part 4 of Art. 6 of Law № 2658-III, the appraiser is prohibited from using his powers in order to obtain an improper benefit or to accept a promise or offer of such a benefit for himself or others. Other anti-corruption restrictions are not defined by the mentioned legislative act regarding appraisers [2].

Property valuation is carried out on a contractual basis. Peculiarities of concluding a contract for property valuation, its essential conditions are defined in Art. 11 of the Law № 2658-III. The parties to the contract have the right to freely choose the subject of appraisal activity, if the conditions set out in Art. 8 and 9 of the Law № 2658-III [2].

The presence of anti-corruption subjectivity of appraisers follows from the provision of Part 2 of Art. 6 of the Law № 2658-III, according to which an appraiser may not be a person who has an outstanding or not removed conviction for committing a criminal offense or who during the last year was imposed an administrative penalty for committing an offense related to corruption [2].

It is also worth noting the following feature of the legal status of appraisers. According to Part 1 of Art. 5 of the Law № 2658-III, the subjects of valuation activities are:

business entities - registered in the manner prescribed by law, individuals - business entities, as well as legal entities, regardless of their organizational and legal form and form of ownership, which carry out economic activity, which includes at least one appraiser, and who have received a certificate of the subject of appraisal activity in accordance with this Law;

public authorities and local governments that have been authorized to carry out appraisal activities in the process of performing the functions of management and disposal of state property and (or) property in communal ownership, and which include appraisers [2].

If the appraiser is a business entity, he can either hold a position in a legal entity or be a self-employed person (individual entrepreneur).

In both cases, such an evaluator belongs to the group of entities subject to anti-corruption restrictions, defined in paragraphs "B" item 2 h. 1 Art. 3 of the Law.

In the case when the appraiser works in the bodies of state power and local self-government bodies, which have received the authority to carry out appraisal activities in the process of performing functions of management and disposal of state property and (or) property in communal ownership, he may be:

either state an official or local government official who has the right to assess property (in which case he is a public sector official (paragraph "c", paragraph 1, part 1 of Article 3 of the Law)),

or have the status of an official or official of other state bodies (in which case he is a public sector official) (paragraph "i", paragraph 1, part 1 of Article 3 of the Law)), or have the status of employees of these bodies (in this case he is a quasi-official of the public sector (paragraph "b") paragraph 2 part 1 of Article 3 of the Law)).

It can be seen from the above that, depending on the position of the appraiser in a public or local government body, appraisers have different amounts of anti-corruption restrictions that apply to them, although they perform homogeneous property appraisal functions.

The legal status of experts is determined simultaneously by several legislative acts. Depending on the types of expertise, experts may belong to different groups of entities (public sector functionaries or quasi-functionaries).

For example, according to Part 1 of Art. 10 of the Law of Ukraine "On Scientific and Scientific and Technical Expertise" (hereinafter - the Law № 51/95-VR), state scientific and scientific and technical expertise is conducted by:

executive authorities;
state enterprises,
institutions and organizations [3].

Accordingly, experts conducting scientific and scientific-technical expertise have either the status of a civil servant (and fall under paragraph "c" of paragraph 1 of Part 1 of Article 3 of the Law), or an official of a legal entity under public law (and fall under under the action of paragraphs "a" of paragraph 2 of Part 1 of Article 3 of the Law).

According to Part 2 of Art. 7 of the Law of Ukraine "On State Examination of Land Management Documentation" (hereinafter - the Law № 1808-IV), executors of state examination are experts who work in a specially authorized body of executive power in the field of state examination and have high qualifications and special knowledge, as well as highly qualified specialists or scientists involved in these bodies in accordance with the law (hereinafter - experts of the state examination) [4].

Accordingly, experts conducting state examination of land management documentation have either the status of a civil servant (and fall under paragraph "c" of paragraph 1, part 1 of Article 3 of the Law), or the status of public service providers (and fall under paragraph "b" item 2 h. 1 item 3 of the Law).

According to Part 1 of Art. 7 of the Law of Ukraine "On Forensic Examination" (hereinafter - Law № 4038-XII), forensic activities are carried out by state specialized institutions, their territorial branches, expert institutions of communal ownership, as well as forensic experts who are not employees of these institutions, and other specialists (experts) in the relevant fields of knowledge in the manner and under the conditions specified by this Law [5].

Accordingly, forensic experts have either the status:

of an official of a legal entity under public law (and fall under paragraph "a" of paragraph 2 of Part 1 of Article 3 of the Law),
or the status of public service providers (and fall under action of item "b" item 2 h. 1 item 3 of the Law).

According to Part 1 of Art. 10 of the Law of Ukraine "On Environmental Impact Assessment" (hereinafter - the Law № 2059-VIII), in order to exercise its powers under Articles 5, 9 and 14 of this Law, the authorized central body and the authorized territorial body may establish expert commissions for impact assessment to the environment, the members of which are appointed for a term of three years.

The authorized central body shall maintain a register of experts from which members of the expert commission for environmental impact assessment may be appointed [6].

In Part 2 of Art. 10 of the Law № 2059-VIII explicitly states that the members of the expert commissions for environmental impact assessment are subject to the requirements of the Law [6].

Although the nature of the environmental impact assessment procedure is difficult to classify as a service, based on the above legislation, experts who are members of such commissions are subject to paragraphs. "B" item 2 h. 1 Art. 3 of the Law. Thus, depending on the nature of the activities carried out by the experts and the entity with which the expert has an employment relationship, the entity may have anti-corruption personality as both a public sector official and a quasi-public sector functionary.

References:

1. On the prevention of corruption: Law of Ukraine of 14.10.2014 № 1700-VII. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text> (access date: 10.02.2021).
2. On the valuation of property, property rights and professional valuation activities in Ukraine: Law of Ukraine of 12.07.2001 № 2658-III. URL: <https://zakon.rada.gov.ua/laws/show/2658-14#Text> (access date: 13.01.2021).
3. On scientific and scientific-technical examination: Law of Ukraine of 10.02.1995 № 51/95-VR. URL: <https://zakon.rada.gov.ua/laws/show/51/95-%D0%B2%D1%80#Text> (access date: 13.01.2021).
4. On state examination of land management documentation: Law of Ukraine of June 17, 2004 № 1808-IV. URL: <https://zakon.rada.gov.ua/laws/show/1808-15#Text> (access date: 13.01.2021).
5. On forensic examination: Law of Ukraine of 25.02.1994 № 4038-XII. URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (access date: 13.01.2021).
6. On environmental impact assessment: Law of Ukraine of 23.05.2017 № 2059-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2059-19#Text> (access date: 13.01.2021).