

THE MECHANISM OF ADMINISTRATIVE REGULATION OF ENVIRONMENTAL SAFETY IN THE REPUBLIC OF IRAQ

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Abstract: The current socio-economic and socio-political situation in the Republic of Iraq necessitates the use of a comprehensive and systematic solution to the problems of administrative and legal regulation of environmental safety, the past 2018 in Iraq was declared the "year of ecology", Drawbacks and omissions in the regulatory framework governing this area, as well as in the methods and forms of administrative and legal support for environmental safety are noteworthy; the presence of a number of problems that reduce the effectiveness of environmental safety, and the lack of scientifically based indicators to determine such effectiveness and directions for its improvement.

Keywords: Environmental security, local government, law-making, The Iraqi constitution, administrative mechanism.

1 Introduction

One of the rights of citizens of Iraq is the right of citizens to a favorable environment (Article 33 of the Constitution of the Republic of Iraq) and the Law on the Protection and Improvement of the Environment No. (27) Of 2009. The current state of the environment of the Iraqi Republic is characterized by the presence of large-scale pollution of atmospheric air, soil, surface and groundwater.

Recognition of environmental safety as the most important type of safety made it possible to attribute environmental safety to the priority direction of the state and society. The legal framework of the mechanism of administrative, legal regulation of environmental safety is a system (a set of interconnected and internally agreed) fundamental legal acts containing legal principles and norms aimed at administrative, legal regulation of public relations in the field of environmental safety with a view to their streamlining, safeguarding, protecting and developing in accordance with the needs of man, society and the state.

2 Methods

The methodological basis of the research is constituted by the general scientific dialectic methods of cognition, scientific methods of analysis and scientific forecasting synthesis and deduction, systemic methods, as well as special methods of studying legal phenomena - historical-legal, comparative-legal, structural-functional, etc.

3 Results and Discussion

The concept of efficiency is defined as the effectiveness of the process, operation, project, also defined as the ratio of the effect, the result to the costs that determined its receipt (Khalil Ali, 2017).

As. jaafar Ali notes, "The effectiveness of legal norms is defined as the adequacy of the means of legal regulation and the methods of applying the law to those social relations, the regulation of which it is aimed at, in accordance with a goal that meets the objective conditions of the development of society" (Hade Camil, 2018).

Such a judgment is consonant with our chosen area of research since the mechanism of administrative and legal regulation of ensuring environmental safety is precisely a system of legal

means (law-making, law enforcement, and law enforcement) used to achieve the goals of legal regulation in the environmental sphere.

In this regard, it seems appropriate to characterize the approaches that have developed both in general and in the theory of administrative law with respect to the definition of the concept of "effectiveness" and the criteria for its establishment, as well as the criteria, parameters and conditions for its implementation. One of the first definitions of efficiency, which later became known as the "target concept", was proposed in the writings of Mohammad Kamal Abas, Jaavar Hassin and Khalil Ipragim Almysawe, where effectiveness was considered through the "correlation of the actual result of the legal regulation of environmental safety, its effectiveness, we believe it should be determined by the following conditions: quality, systematicity, adequacy to the current conditions of the rule of law, it is (mechanism) fixing; to the functioning of public authorities implementing it - state authorities and local self-government, as well as to the specifics of legal awareness, legal culture and lawful behavior of entities that exercise their rights and legitimate interests in the framework of the legal mechanism or violate the requirements established by them.

In turn, representatives of a "useful" concept suggest the effectiveness of law to mean efficiency, effectiveness, and the ability to exert a positive influence on regulated relations (Alum Sami, 2007). In modern conditions, pluralistic (integrative) approaches to determining the effectiveness of legal norms are becoming relevant. Observe, execute, use or apply."

In our opinion, we can agree with the aspects of the effectiveness of the norms of legislation highlighted by this author. However, it does not apply to the requirements that this or that norm must comply with, but as certain guidelines for state policy and law-making activity of the state in the direction of improving legal regulation as a whole and increasing its effectiveness.

Characterizing administrative-legal norms implies the correlation of the rule of behaviour, expressed in its disposition, to the goals of legal regulation in certain socio-economic conditions. In fact, these goals act as social needs identified in the process of standard-setting activities and determine the legal impact. Objective character and a concrete law enforcement form of the goal acquires as a result of law enforcement (Kadim Jaafar, 2007). Indeed, this position focuses on the recognition of the equal role of both law-making and law-enforcement aspects (without undergoing the Law Enforcement Process, Ali Kadar Almysafe offers in determining the effectiveness, take into account the following aspects of the organizational and legal character: the effectiveness of the application of legal norms, the efficient organization of the activities of state bodies, the development of effective acts and the speed of their bringing to the addressees, the effectiveness of the educational impact on managed entities. We believe that we can agree with this opinion since it expresses the complexity of assessing the effectiveness of the law, since only one criterion (the ratio between the goal and the result) cannot be the main one in assessing the effectiveness of legal impact and state activity.

So, for example, Selman Jabber Hashed on the effectiveness of law is expressed as follows: "the effectiveness of law is its feasibility, which is predetermined by the general knowledge, comprehensibility and consistency of legal norms, their systematic nature, and the proportionality of social norms (Hshim Salvan, 2009). For our part, we consider Selman Jabber Hasher's point of view that "efficiency is a specific system state of public administration, the activities of bodies and public administration officials, justified and fair. This state characterizes the goals, general principles, content, organization, forms, methods, means, personal style and results of this activity, their compliance with the needs of society in self-

preservation and development, the unhindered exercise of the rights, freedoms and legitimate interests of physical and legal entities, recognition, respect, observance and strengthening of human dignity” (Hadi Jemil, 2006).

An analysis of the scientific literature on the problems of the effectiveness of legal norms (legal regulation, enforcement, legal activity, etc.) and our own point of view on this aspect of the study allows us to talk about the main directions of increasing the effectiveness of administration. Then its effectiveness is evaluated by such criteria as fame for the recipients; the consistency and comprehensibility of the legal norms that make up its legal basis; proportionality of social goals and legal means to achieve these goals; ensuring its functioning with the effective work of law enforcement bodies and courts. In turn, the parameters of assessing the effectiveness of the functioning of the mechanism of administrative and legal regulation of ensuring environmental safety in the Republic of Iraq can be considered: a) the absence (or reduction) of appeals of regulatory legal acts (cancellation thereof); b) a decrease in the number of offences; c) a high degree of realization of the rights, freedoms and legitimate interests of subjects of law (citizens and legal entities); d) the correct understanding and perception of the meaning, the content of legal norms by subjects of environmental safety, as well as their correct use and others.

At the same time, the main criterion for assessing the effectiveness of legal mechanisms remains the degree to which their goals are realized, which can be very diverse due to the conditionality of sectorial legal regulation, their objects, subjects, types of activities, etc., that is, effectiveness.

At the same time, the single (complex) goal of the mechanism of administrative and legal regulation of ensuring environmental safety, stemming from its essence and purpose, is the optimal (most effective) streamlining of public relations associated with overcoming obstacles that stand in the way of satisfying entities (legal means and methods) their interests in the environmental sphere - the protection, restoration and protection of the environment and the vital interests of man, society, the state from the possible negative impact of economic and other activities, emergency situations of a natural and technogenic nature, their consequences, forecasting, prevention, localization and elimination of conditions and factors of external and internal threats to such.

The purpose of the mechanism of administrative and legal regulation in the sphere under consideration also determines the substantive and formal aspects of legal regulation: spatial and temporal characteristics of the action, objects of legal influence, the ratio of prescriptions, prohibitions and permissions in legal regulation, legal liability for violation of regulatory requirements, etc. In this regard, the correct setting (formal definition) of environmental safety goals in regulatory legal acts constituting the legal basis (and, accordingly, the mechanism for ensuring it) of this activity is of particular importance, which, we hope, will be implemented when the special Federal Law “On environmental safety in the Republic of Iraq.”

It seems that our formulation of the goals of the mechanism of administrative and legal regulation of environmental safety is socially determined; namely, it corresponds to the level of modern socio-economic and political development of society, is adequate to its legal consciousness and legal culture, the most important social values and ideals. On the other hand, they are real, achievable, and accurate and clear (unambiguous). We emphasize that the consolidation of the goals of legal regulation in a legal action is important. The absence in the text of laws of the wording of target guidelines necessitates the use of teleological interpretation tools in law enforcement.

Furthermore, we should consider the fact that in some cases, the need to formulate goals, which should not be set for a particular mechanism, acquires the same meaning. The reason is that they should not be achieved through this. So, for example, in Part 2 of Art. Personnel Act in Iraq. A rule has been formulated

stating that “administrative punishment cannot be aimed at degrading the human dignity of a person who has committed an administrative offence, or causing him physical suffering, or prejudices the commercial reputation of a legal entity”. This provision fully applies to the implementation of the administrative-legal regulatory mechanism to ensure environmental safety.

The problem of ensuring goals in relation to legal regulation. In our opinion, in modern legislation, this looks no less ambitious than technical errors and deficiencies in legislation when working on the text of future regulatory law. Also, a serious problem in improving the effectiveness of the mechanism of administrative and legal regulation of environmental safety is the lack of a formal formulation of the goals of due to the uncertainty of the guidelines for strategic legal regulation and the development directions of law and the state for the long-term perspective in one direction or another.

We believe that in some cases this gap can be eliminated by subordinate normative legal acts of a conceptual and strategic nature, for example, the Decisions of the Cabinet of Ministers (Decrees by the Government of the Republic of Iraq), which enshrine the State Policy Strategies (development of the state and law, ensuring any processes) in a certain area of public relations.

For example, the following main Strategies extend to the environmental sphere - the Environmental Doctrine of the Republic of Iraq (approved by the Government of August 31, 2010), the Fundamentals of State Environmental Policy and the National Report on Biological Diversity in Iraq.

In general, we believe that performance criteria should be subsidiary concerning legal criteria, since they allow a systematic and comprehensive assessment of the effectiveness of a particular mechanism, including the subject of our study.

Directions for increasing the effectiveness of the mechanism of administrative regulation of environmental safety.

According to the analysis of the regulatory framework of the mechanism of administrative and legal regulation of environmental safety, regarding its state, we can say that it is characterized by the following: the lack of a clear conceptual and categorical apparatus in the field of environmental safety and its consolidation at the legislative level; the unsystematic, fragmented nature of the legal regulation of environmental safety in Iraq; the lack of system-forming, conceptual laws of direct and indirect action in the field of environmental safety; the declarative and conflict nature of a number of provisions that reduce the quality of their implementation in practice; redundancy and repeated duplication of both legal and regulatory and technical requirements for ensuring industry-specific aspects of environmental safety. As already noted, in the environmental sphere, there are three main types of state activity - environmental protection, rational nature management and environmental safety. And if the first two types of state activity have their own sources of legal regulation in the form of the Federal Law “On Environmental Protection” and codified acts on environmental sectors (Water Code of the Republic of Iraq, Forest Code of the Republic of Iraq, etc.), then The state’s sustainability associated with environmental safety, we believe, is unfairly ignored by lawmaking.

The instrumental basis should contain regulation of forms and methods for ensuring environmental safety in the Republic of Iraq (with reference mechanisms to the relevant regulatory legal acts or branches of legislation) (Muhammad Fidel, 2005).

Let us also pay attention to the fact that so far at the legislative level relations on licensing in the field of environmental protection, environmental audit, environmental certification, environmentally disadvantaged territories, payments for negative environmental impact and some other gees. Therefore, we

believe that, on these issues, the adoption of special federal laws is necessary.

Besides, it is advisable, from our perspective, to first consolidate and gradually (in the longer term, relying on scientific developments in this field) codify those legal acts (and documents) that, one way or another, fall within the scope of mechanism for ensuring environmental safety, consideration of the second direction, improving the institutional basis of the mechanism of administrative and also legal regulation of ecological security. In that regard, the following circumstance is noteworthy. In the current legislation, there is a lack of a clear distribution of competencies of both the federal government bodies and the federal center and government bodies of the subjects of the Republic of Iraq on environmental safety, which in practice leads to disputes about their competence. So, in the Federal Law "On Environmental Protection", the powers of public authorities in the environmental sphere are differentiated only by the levels of their implementation - federal, regional and municipal. The logic of the legislator, in this case, is quite understandable - the functions are regulated by law; therefore, when changing the structure of public administration (reorganization of state bodies, the emergence of new ones), there will be no need to amend this regulatory action. However, it seems that the functions and powers of the highest bodies of state power (the President of the Republic of Iraq, the Government of the Republic of Iraq, the federal executive bodies) should nevertheless be delineated, specifically designated and clearly (Aside, 2008). It should be noted that in recent years, positive trends have been observed in environmental safety activities. So, according to the results of the activity, the report for 2019 as a result of introducing a risk-based approach to the implementation of control and supervisory activities, this service reduced the number of supervised entities from 70 thousand to 14 thousand. Now 55% of planned inspections are carried out in relation to objects potentially high risk.

At the same time, we note that at present, the application of administrative responsibility in the field of environmental safety does not fully contribute to strengthening environmental law and order.

Among the conditions conducive to this situation, we name the following:

- high latency of environmental offences, the reason for which is the shortcomings in the activities of law enforcement agencies, expressed in the dishonest attitude of officials of authorized state bodies to the obligation to identify and register illegal acts. According to some experts, on average only, every twenty environmental offences are subject to accounting (Sami Khasen, 2011).
- the absence of the concept of "administrative environmental violation" in Iraqi administrative legislation, which cannot cause difficulties both in determining the object of the violation and in the grounds of administrative, legal responsibility for its commission;
- list of administrative penalties for environmental
- offences contain such types as a warning, administrative fine, confiscation of the instrument or subject of an administrative offence, an administrative suspension of activity (Dali Ahmad, 2017).

At the same time, administrative fines (despite the tendency to increase them) are the most common (but by no means the most effective) administrative penalties in the environmental sphere but do not compensate for the damage that the perpetrators inflict on the environment and vital interests of the individual, society states in the environmental sphere (Ahmad Hadi, 2005).

So, in the case when a case of holding a legal person administratively liable is instituted in court, the burden of proof lies with the administrative body, which is obliged to submit to the court a sufficiently large volume of documents (protocol on the application of measures to ensure the proceedings in an

administrative case (Muhammad Ali, 2007) , a protocol on an administrative offence or a decision made by a prosecutor to institute proceedings on an administrative offence; a decision on instituting proceedings on an administrative offence if an administrative investigation is necessary, a written warning, etc.).

4 Summary

The effectiveness of the mechanism of administrative regulation, it is evaluated according to criteria such as fame for the addressees; the consistency and comprehensibility of the legal norms that make up its legal basis; proportionality of social goals and legal means to achieve these goals; provision of its functioning with effective work, the right of conciliation bodies, including law enforcement bodies and courts.

The parameters for assessing the effectiveness of the functioning of the mechanism of administrative and legal regulation of environmental safety in the Republic of Iraq can be considered:

- a) absence (or reduction) of appeals of regulatory legal acts (cancellation thereof);
- b) a decrease in the number of offences;
- c) a high degree of realization of the rights, freedoms and legitimate interests of subjects of law (citizens and legal entities);
- d) the correct understanding and perception of the meaning, the content of legal norms by subjects of environmental safety, as well as their correct use and others.

5 Conclusions

Based on the results of the consideration of issues regarding problems and prospects for increasing the effectiveness of the mechanism of administrative and legal regulation of environmental safety in the Republic of Iraq, the following conclusions can be drawn:

1. The effectiveness of the mechanism of administrative and legal regulation of environmental safety can be represented in the form of a certain model that meets the relevant criteria and requirements and includes the relationship between the objectives of its establishment, as enshrined in the text of regulatory legal acts, and real parameters its functioning (organization, forms, methods, means, etc.) in specific socio-political conditions, including an assessment of its compliance with social values and interests (needs).
2. It is proposed to single out three main directions of increasing the efficiency of administrative and legal support for environmental safety, which is correlated, first of all, with the substantive elements of this comprehensive education, namely: improving the regulatory framework (filling in gaps, conflicts, timely updating, etc.) the mechanism of administrative and legal regulation of environmental safety in the Republic of Iraq; development of the institutional foundations of this mechanism; optimization of its instrumental base (methods and forms of administrative and legal support for environmental safety).

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