

IMPLEMENTATION OF THE ADMINISTRATIVE LAW NORMS IN UKRAINE

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Abstract: The article evaluates modern approaches to understanding the essence of administrative law norms and their essential characteristics. The peculiarities of the formation of administrative-legal relations in Ukraine and practical approaches to the implementation of the norms of administrative law are determined. The modern specifics of the justification of the essence of the categories of administrative law that have appeared recently have been studied. Approaches to the modernization of certain traditional provisions regarding the characteristic features of administrative and legal norms are proposed. The specifics of modern approaches to the implementation of the norms of administrative law and the consolidation of various legal possibilities based on them have been determined.

Keywords: administrative law; legal norms; implementation of legal norms; legal mechanism.

1 Introduction

The study of the peculiarities of the implementation of administrative and legal norms makes it possible to assess their practical effectiveness both for the state in general and for specific subjects of the direct implementation of the relevant norms. Thus, there is an objective need for a reliable definition of the principles of assessment of administrative and legal norms, which represent a constituent element of a broader concept – "legislation assessment". At the same time, this understanding can also be based on its "broad" interpretation, which involves the use of scientific methods for forecasting and calculating the impact of administrative law norms, the cost of laws, their maximum effectiveness, and compliance of laws with specific economic rationality. At the same time, a "narrow" understanding of the essence presupposes a direct analysis of the impact of legislation on the norms of administrative law. In addition, the practical aspects of the implementation of these norms become important, which implies the need to analyze approaches to the formation of an organizational mechanism for their implementation. Also, at present, one of the most urgent theoretical and legal tasks is the search for ways, methods, and means of improving the implementation of administrative and legal norms, increasing its effectiveness, since the measures taken in this direction in practice often turn out to be insufficiently effective, and their implementation in many cases causes an even greater inconsistency in the general law enforcement system, and in the end – significant shortcomings in the work of executive authorities as a whole.

In general, a proper evaluation of the norms of the implementation of administrative law can be carried out thanks to the study of criteria and indicators of the general effectiveness of the implementation of administrative and legal norms. It should be noted that a detailed analysis of the criteria and performance indicators of administrative law norms is important in terms of a fundamental revision of normative, in particular procedural, principles of resource use of one or another legal category, ensuring their practical implementation and maximum full application. It should be noted that the key problem of researching the effectiveness of the implementation of administrative and legal norms at present is the determination of the effectiveness of law-making or legal regulation in general. Accordingly, the study of the criteria and indicators of the effectiveness of the implementation of the norms of

administrative law acquires special relevance in the process of forming an effective legal system in Ukraine.

2 Literature Review

The study of issues of implementation of the norms of administrative law is important for modern legal science. At the same time, it should be noted that, mainly, research on this issue is aimed at establishing the basic concepts and categories of administrative law, ensuring a reliable classification of its norms, researching questions of the practical effectiveness of the implementation of administrative law norms, etc. In this aspect, it is necessary to especially note the work of such researchers as I. Bolokan [3], V. Bondarenko [4], E. Doiar [5], M. Dziemulych [7], V. Hrosul [9], R. Melnyk [12], G. Metzger [13], P. Rabinovych [15], D. Rosenbloom [17], S. Shakhov [18] and others.

In addition, it is necessary to note the important contribution made to the study of the theoretical and legal aspects of the effectiveness of the norms of administrative law, including the definition of their specific features, which was made in the works of such scientists and practitioners as V. Averianov [1], M. Barr [2], V. Dykan [6], C. Harlow [8], B. Kingsbury [10], M. Kravchuk [11], N. Onyshchenko [14], V. Reshota [16], and T. Shmatkovska [19].

At the same time, there is an objective need to improve existing approaches to the implementation of administrative law norms, to determine their unique features as a specific form of implementation of industry norms. This requires further research in the field of effectiveness of the practical implementation of administrative law in Ukraine.

3 Materials and Methods

To ensure the effectiveness of the study of principles and approaches to the implementation of the norms of administrative law, appropriate general scientific and special methods of scientific knowledge were used. Among the most important of them, the following methods should be highlighted:

- Dialectical, with the help of which administrative-legal relations were studied as an integral part of social relations, the existing order of regulation of relations by the norms of administrative law, structural features of administrative-legal relations
- Functional, which made it possible to consider the types of administrative-legal relations from the appropriate angle, to find out the peculiarities and functional purpose of regulatory administrative-legal relations, as well as their functional and systemic connections with protective administrative-legal relations;
- Comparative legal, which was used to compare different approaches to defining and characterizing administrative-legal relations in different legal systems;
- The historical method, since the administrative-legal relations themselves must be considered from a historical perspective, as a result of the long-term development of the general theory of law and the science of administrative law;
- Logical analysis when forming research conclusions, taking into account administrative and legal structures and using the conceptual apparatus of legal science.

4 Results and Discussion

The problem of implementation of legal norms is deeply studied in the general theory of law. The specifics of the implementation of labor and criminal law norms have been analyzed in detail in legal science. Recently, there have been serious studies of the application of the norms of constitutional law. But to a much lesser extent, the forms, order, and features of the application of the most diverse, with pronounced specificity, norms of administrative law have been investigated. In particular, a

special theoretical analysis of the implementation of the norms of administrative law is observed infrequently in the legal literature and mainly indicates a fundamentally different approach to understanding the essence of the application of this type of legal norms. In particular, there is no unified view on the content of legal policy in the sphere of application of administrative law norms, on the stages of the process of application of administrative law norms, and on the functions and content of law-enforcement acts.

At the same time, the need for a comprehensive study of the conceptual issues of defining the concept, essence, and features of certain types of administrative and legal norms is gaining special relevance. Based on this, there is a need to formulate the practical characteristics of administrative-legal relations, distinguishing several of their levels, in particular, as categories of the general theory of law, categories of public law, and categories of administrative law. At the same time, there is also an objective need to justify the essence of some new categories of administrative law that have appeared recently. In turn, such a need requires simultaneous clarification of the definitions of a number of categories and concepts of administrative-legal relations and the implementation of the norms of administrative law.

In the doctrine of both the general theory of law and administrative law, there is no unity of views regarding the identification of specific criteria for the effectiveness of any legal category in general, as well as criteria for the effectiveness of the implementation of the norms of (administrative) law in particular. Thus, P. M. Rabinovych considers the goal of the law to be the most important initial criterion (standard) of efficiency. However, he notes, this is not the only criterion [15]. Other criteria suggest considering all possible performance outcomes: both planned and side effects. It is based on the analysis of various results that the mentioned author proposes to introduce as a distinction between the concepts of "efficiency in a broad sense" ("general (general social) efficiency") and "efficiency in a narrow sense" ("management efficiency"), which will be important for determining the scope and methods of detection of each of them.

However, in modern conditions in Ukraine, the order of implementation of the norms of administrative law is influenced by many determining factors, among which it is reasonable to include:

- Extremely intensive growth of the population's business activity and rapid obsolescence of administrative legislation;
- The need to carry out effective work on the development and improvement of administrative legislation, the organization of its correct and accurate application in all spheres of activity of state and executive authorities, local self-government bodies;
- Compliance with all procedures for the implementation of administrative legal norms with the constitutional principles of respect for the rights and freedoms of a person and a citizen, which is especially relevant in connection with reforms in the field of public administration with the aim of creating conditions for high-quality and effective protection of subjective rights and freedoms;
- Dynamism and multifaceted objects of administrative and legal regulation, which ensure the priority of public interests, applying imperative methods;
- The feasibility of implementing: regulatory public administration, public administrative activity for the provision of services, directed public administration, and public administration related to planning;
- The introduction of information technologies, which determines the development of information and administrative law, that consists of four elements: administrative and communication law, concerning information relations between the state and the citizen; information law; administrative and organizational law, concerning the internal structure of the public

administration system; regulatory law for the private informal sector of the economy, and data circulation law, which permeate all three other components;

- The implementation of the administrative law of the European Union, which requires legal formalization, procedural guarantees, and criteria of proportionality and equality in the application of the law, that becomes especially relevant in the aspect of Ukraine's acquiring the status of a candidate country for joining the European Union;
- Disagreements caused by language features (from the standpoint of mathematical linguistics, which is determined by the theory of language, or psycholinguistics in terms of cybernetic physiology of higher nervous activity and engineering linguistics) in the process of implementing the administrative legislation of the European Union [4].

At the same time, it is necessary to remember that the most important criterion for the classification of legal relations is the sphere of law in which they arise and are implemented. In particular, it is meant that for administrative-legal relations such a field is the field of public law. In this aspect, it is necessary to make a clear distinction between administrative-legal material relations (including the rules of the procedure for their implementation) and administrative procedural-legal relations, which are considered independent categories of administrative law as public rights. At the same time, procedural legal relations should be interpreted as a form of implementation of the norms of administrative law and not violated subjective administrative rights or performance of administrative duty. Instead, procedural legal relations should be considered as a form of the administrative process – a special type of judicial activity that takes place within the framework of the relevant administrative-procedural legislation.

In addition, from a practical point of view, it is quite possible to differentiate the criteria for the effectiveness of the implementation of administrative and legal norms in relation to the goal, because the goal of implementation may differ depending on the importance of the result of implementing the norm into life:

- 1) for a specific subject of implementation of an administrative-legal norm;
- 2) for the subject, the establishment of a corresponding provision in the form of a rule of law.

At the same time, if the goal of implementation is achieved, then, accordingly, the effectiveness of the implementation of legal norms and the effectiveness of legal regulation in general increases. Also, as a criterion for the effectiveness of the implementation of the norm for the subject of norm-making, it is possible to recognize the justification of the costs of implementation and obtaining the result that was expected to be achieved. Due to its specificity, the effectiveness of the implementation of the norms of individual institutions of administrative law always requires the definition of additional to the general own criteria for verifying such effectiveness. Taking this into account, it is necessary to define "criteria for the effectiveness of the implementation of administrative and legal norms" as the measure of the optimal ratio of "goal-result-costs" chosen for evaluating the result of implementing the norm into life [3].

At the same time, it is necessary to pay attention to the opinion of V. B. Averianov, who noted that administrative and legal norms are rules of behavior of participants established, sanctioned, or ratified by the state, formally defined, legally binding, protected by means of state coercion social relations in the sphere of the implementation of executive power and management activities of state bodies and local self-government bodies, which ensure the conditions for these participants to exercise their rights and fulfill the duties assigned to them [1]. At the same time, it is worth noting that along with the general features, there is an objective need to determine the features inherent only in the norms of administrative law, namely:

- The subject of their regulation is social relations in the sphere of functioning of management institutes of public power, and accordingly, the purpose of these norms is to ensure both the organization and orderliness of the actions of the subjects of executive power, local self-government, some other subjects of management activity, and the conditions for the implementation and protection of the rights and freedoms of citizens in respect of whom this activity is carried out;
- The vast majority of the norms of administrative law have an imperative character, while the other part of the norms of administrative law have signs of dispositiveness, which consists in granting the subject who is not endowed with state-powerful powers, the right to act as he chooses, although within general limits, defined by the norm;
- The norms of administrative law in many cases are characterized by the direct application of administrative sanctions for offenses because administrative responsibility most often arises out of court;
- Administrative and legal norms are often established in the process of exercising the powers of the executive power and directly by its subjects [1].

At the same time, it is necessary to cite the opinion expressed in the research of S. V. Shakhov, who examines the raised issue through the prism of the modern idea of administrative law and makes an attempt to modernize some traditional provisions about the characteristic features of administrative and legal norms. In particular, he describes the following features of the norms of administrative law:

- They are initial, primary elements of the system of administrative law;
- Aimed at the legal regulation of those social relations that constitute the subject of administrative law (for example, those that arise in various spheres of public administration regarding the realization and provision of the rights and freedoms of individuals, as well as those that arise within the internal activities of public administration bodies);
- The purpose of these norms is to ensure the conditions for the realization and protection of the rights and freedoms of a person in the public sphere, as well as to ensure the organization and orderliness of the actions of public administration subjects;
- The vast majority of administrative law norms are imperative, however, along with this, a significant number of administrative-legal norms have a dispositive nature, which consists in giving the subject, who is not endowed with power and management powers, the right to act as he chooses;
- The mandatory nature of the norms of administrative law comes from the level of perception of the norms by the subjects of the law or their majority (psychological-mental attitude of the addressees and bearers of the administrative-legal norm), while the implementation of the norms is guaranteed using a system of certain means (including state-coercive) [18].

Therefore, it can be argued that the implementation of the norms of administrative law is possible only under the condition of a correct understanding of the nature of the latter, as well as its place and role in the legal regulation of social relations. Analysis of the content, and functional specificity of the implementation of administrative and legal norms, as well as the nature of its relationship with various elements of the mechanism of legal regulation, indicate that implementation is not a special form, but a form of individual legal regulation based on the imperative method. The implementation of administrative and legal norms has both a social and legal nature, and by its social nature it is close to individual contractual legal regulation, and the legal nature is fundamentally peculiar. Accordingly, in certain cases, the mere existence of an administrative-legal norm, which serves as the basis for the emergence of so-called general administrative-legal relations, may be sufficient for the emergence of administrative-legal relations, while for the emergence of specific administrative-legal relations only the

prescription of the administrative-legal norm may not be enough, and the presence of the circumstances specified in this norm is also necessary.

5 Conclusion

Thus, we can see that the generally recognized criteria for the effectiveness of the norms of administrative law are the purpose of establishing the norm and the result obtained after the implementation of the norm in life, while regarding other criteria, the opinions of legal scholars differ. At the same time, it is necessary to distinguish between criteria for the effectiveness of the implementation of administrative and legal norms in general and such criteria for individual administrative and legal institutions. In addition to quantitative ones, it is possible to single out general (characterize the effectiveness of the implementation of the norms of administrative law in general regarding any subject of the norms) and special (take into account separate areas of administrative and legal regulation or special subjects of implementation), as well as qualitative indicators of effectiveness.

In general, it can be stated that modern approaches to the implementation of the norms of administrative law establish various legal possibilities: subjective rights, legal freedoms, legitimate interests, legal capacity, and branch legal principles that have a permissive focus. At the same time, the implementation of norms has a social and legal nature, and in its social essence, it is close to individual contractual legal regulation. The content and functional specificity of the implementation of the norms of administrative law, as well as the nature of the relationship with various elements of the mechanism of legal regulation, indicate that law enforcement is not a special form of implementation of the norms of law, but a form of individual legal regulation based on the imperative method.

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