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LEGAL NATURE OF ADMINISTRATIVE LAW MEANS SHAPING THE STRUCTURE OF ADMINISTRATIVE LAW MECHANISM FOR INTERACTION OF THE SECURITY AND DEFENCE SECTOR ENTITIES TO ENSURE NATIONAL SECURITY

Abstract. Purpose. The purpose of the article is to reveal the categories and content of administrative law means shaping the structure of the administrative law mechanism for interaction of the security and defence sector entities with regard to ensuring national security since this issue has not been systematically and comprehensively disclosed within the administrative law branch of scientific knowledge yet. **Results.** It is determined that the administrative and legal means shaping the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security can be considered in two aspects: as a set of administrative and legal provisions or as instruments for implementing administrative decisions in this field. In the first case, the administrative and legal mechanism for interaction between the security and defence sector actors to ensure national security is identified with the regulatory mechanism for this process, and in the second case, its content is reduced to the instrumental component. The latter approach is used in the general definition of the concept of administrative and legal mechanism, including the one under study, i.e., the emphasis is placed on its instrumental component, since it reflects its most significant features. However, the literature review also reveals other components of the mechanism, which are often identified as the category of administrative and legal means. **Conclusions.** It is concluded that administrative and legal means as a basic element of the mechanism under study are used in its conceptual and categorical definition to represent its essence and highlight the instruments for achieving the purpose of its functioning, since these are the legal phenomena which ensure that the established rules, procedures and standards of joint activities of such entities are put into practice.

Key words: administrative and legal means, administrative and legal mechanism, interaction, security, national security, mechanism, national interests, security and defence sector.

1. Introduction

In recent years, as never before in its modern history, Ukraine has faced a pressing task of ensuring national security effectively and efficiently (Aleksandrov, 2020, p. 78). Moreover, the theoretical and practical aspects related to national security require a systematic and comprehensive approach that includes both general theoretical research and the achievements of sectoral sciences, as well as the needs of practice in the interests of security of the individual, society and the state. They are gaining additional relevance due to the increase and change in the types of security in general, the emergence of new threats and challenges, and dynamic changes in the global geopolitical space (Bilyi,

Mykhalchuk, 2021, pp. 93-94). In this regard, it is relevant to consider the issue of determining the essence and content of the administrative and legal mechanism for interaction between security and defence actors to ensure national security, since, according to strategic planning documents, interaction is a key element in achieving the efficiency of a particular system in the context of the study.

Our other scientific studies define that: "the administrative and legal mechanism for interaction between the security and defence sector entities to ensure national security is a set of administrative and legal means". This study is directly aimed at revealing the content of the above thesis.

The theoretical and practical issues of solving the problems presented for analysis are generally considered in the works by: V. Aleksandrov, O. Bandurka, V. Bilyi, O. Holovko, N. Zaiats, V. Komziuk, O. Kutsyi, V. Mykhalchuk, S. Salmanova, D. Slynko. Relying on the opinions of these authors, we consider it necessary to reveal the categorical and substantive content of administrative and legal means shaping the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security since this issue has not been systematically and comprehensively disclosed within the administrative and legal branch of scientific knowledge yet.

2. Structure of the administrative law mechanism

In general, means, as a legal category, are instruments for ensuring any activity and are of a general scientific, interdisciplinary nature (Oliinyk, 2015, p. 66).

In this context, the correlation of this category with the category of "instrument" is quite interesting. For example, the scholar A. Zamryga argues that in the generally accepted meaning, an instrument means a technique, some special action that enables to do something, to achieve something; a method; something that serves as a tool in any action, business (Zamryga, 2018, p. 307). A "technique" is a method of performing or carrying out something; a certain measure for carrying out something, achieving a certain goal; a means of expression. A "method" is a certain action, technique or system of techniques that makes it possible to do something, to accomplish something, to achieve something; something that serves as a tool, means, etc. in any business or action. A "measure" is a set of actions or means to achieve or implement something. Accordingly, schematically, an instrument is a means; a means is a technique; a technique is a method or measure; a method is a certain action; a measure is a set of actions (Bilodid, 1972).

Therefore, it can be argued that the administrative and legal shaping the structure of the administrative and legal mechanism for interaction between the security and defence sector actors to ensure national security are actually instruments for achieving its goal.

It should also be noted that, according to A. Malko, legal means are legal phenomena that are manifested in the instruments for establishing subjective rights, duties, benefits, prohibitions, encouragement, rewards and actions related to the technology of exercising rights and duties (Malko, 1999, p. 326).

3. Definition of the concept of administrative law mechanism

According to N. Zaiats, as an independent category, the concept of "legal means" began to be studied in the early 80s of the twentieth century at the sectoral level. The issue of legal means was first raised to the level of the gen-

eral theory of law by S. Aleksieiev in 1987. It is with his name that the emergence of instrumental theory in the law study can be associated. It should be emphasised that "instrumentalism" in law cannot and should not be opposed to existing theoretical and legal concepts. It is considered only as one of the methodological approaches to the study of law. Legal means do not create phenomena of reality that are fundamentally different from the traditional ones, which are fixed in the generally accepted conceptual apparatus and are formulated mainly in terms of the needs of analytical jurisprudence. This is the whole spectrum of legal phenomena of different levels but they have a rather significant difference, namely, they are distinguished and considered not from the perspective of the needs of legal practice, but from the perspective of their functional purpose, while providing their necessary characteristics as instruments for solving economic and other social problems (Zaiats, 2016, p. 203).

O. Bandurka considers this concept in the context of concepts "legal influence" and "regulatory framework" and argues that the relevant means form a holistic, systemic legal mechanism that regulates the entirety of social relations which are the target of the regulatory mechanism. According to O. Bandurka's perspective on the system of legal means, it is a legal regulatory mechanism the main structural elements thereof which are legal provisions, legal relations and acts of exercising legal rights and duties (Hnatiuk, Krakovska, 2022). According to N. Zaiats, legal means are objective substantive legal phenomena that have a number of features that contribute to the realisation of the potential of law (Zaiats, 2016, p. 202). Expanding on her own opinion, the author clarifies that legal means are a multifaceted theoretical and legal phenomenon that can be considered from the legal (as a set of legal instruments and a formalised result of the activity of performers) and social (enshrining the values of law, reflecting certain interests and contributing to the achievement of the relevant result) aspects. Legal means are substantive phenomena of legal reality of different levels, they have a certain functional focus on solving social problems. They are different in nature institutional formations through which the potential of law is implemented. They constitute a certain system but are not tied to one sector of social relations; they are intended to ensure social freedom and activity of actors' behaviour (permissions) or, on the contrary, to impose on persons a passive obligation to refrain from committing actions that interfere with the interests of a person (prohibitions), to provide for a certain kind of behaviour, to guarantee the use of subjective rights by other actors (obligations); they should contain positive incentives for actors to exercise their subjective rights and fulfil their obligations and be aimed at achieving a certain result,

that is, ensuring the effectiveness of regulatory framework; they have a certain connection with the subjective rights of the person concerned (permissions) or other persons (obligations, prohibitions). To sum up, the scholar argues that legal means is a multidimensional phenomenon; this category is used in relation to law in general, in the process of analysing legal regulation, in relation to human rights, legal regimes, etc. That is why it is necessary to focus on analysing this category from the perspective of the instrumental theory of law (Zaiats, 2016, p. 205).

In 2004, O. Kutsyi noted that: "legal means as legal instruments are divided into constitutional, administrative, financial, etc. depending on the sectoral affiliation. Administrative and legal means are, first of all, the provisions contained in the managerial acts in a particular field of activity" (Kutsyi, 2004, p. 11).

For example, in the course of the study of the essence of administrative and legal means of customs administration, V. Komziuk determines that these are organisational means, such as: a) means of determining the types and structure of executive authorities acting in the field of customs administration; b) means of determining the legal status of these bodies; c) means of organising the civil service in the customs authorities. The second block, in the author's opinion, is formed by administrative and legal methods of managerial activities of customs authorities. The most important thing in this regard is the division of managerial methods into persuasion and coercion, allowing for the nature of the managerial impact of a particular measure (Komziuk, 2003, p. 8). With regard to ensuring the rights of individuals in tax relations, such means are a set of all measures used to ensure the exercise of the rights of actors and protect their interests. In particular, these are: a) preventive, which proactively create conditions that prevent unlawful actions; b) protection of rights, i.e. state guarantees that ensure the restoration of taxpayers' rights (Kutsyi, 2004, p. 12).

O. Salmanova advocates a similar perspective and argues that administrative and legal means aimed at ensuring road safety are, first of all, mandatory rules relating to road safety, the leading place of which in this system is due to the fact that all other means are aimed at ensuring their implementation, prevention and deterrence of their violations, and bringing those responsible to administrative liability. In addition, as a separate part of this system, it identifies incentives and other persuasive measures that promote the creative activity of participants in these legal relations and reflect the state's positive assessment of their lawful activities. Furthermore, despite the fact that in the course of the development of social relations, increase of culture and legal awareness of citizens, the crucial role of persuasion is growing, coercive measures used by the police to ensure road safety also

have a major place in this system (Salmanova, 2020, p. 8).

Moreover, according to N. Hnatiuk and A. Krakovska, despite the lack of a single scientific perspective on the essence and content of this concept, V. Nehodchenko's point of view should be noted, and administrative and legal means should be understood as the set of administrative and legal provisions from the perspectives of their functional purpose for solving a certain range of tasks, regulating relevant social relations (Nehodchenko, 2015, pp. 149-151). This position is consistent with both the perspectives of representatives of the general theory of law and the vast majority of modern sectoral studies directly related to the issue of administrative and legal means (Hnatiuk, Krakovska, 2022).

To sum up, according to the above-mentioned perspectives of scholars, the administrative and legal means shaping the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security can be considered in two aspects: as a set of administrative and legal provisions or as instruments for implementing administrative decisions in this field.

In the first case, the administrative and legal mechanism for interaction between the security and defence sector actors to ensure national security is identified with the regulatory mechanism for this process, and in the second case, its content is reduced to the instrumental component.

The latter approach is used in the general definition of the concept of administrative and legal mechanism, including the one under study, i.e., the emphasis is placed on its instrumental component, since it reflects its most significant features. However, the literature review also reveals: 1) its institutional element, which implies the existence of a set of actors of interaction, which, in turn, are endowed with the appropriate administrative and legal status; 2) a set of managerial decisions made and implemented by competent actors; 3) legal fact; 4) organisational elements (Rusetskyi, 2018, p. 154). Regarding this perspective, S. Naumenko argues that the distinction of such an element as a legal fact is not entirely correct since it contributes to the rise of legal relations but not to their regulatory mechanism (Naumenko, 2018, pp. 121-122).

4. Conclusions

Relying on the analysis of the scholars' perspectives, it can be concluded that administrative and legal means as a basic element of the mechanism under study are used in its conceptual and categorical definition to represent its essence and highlight the instruments for achieving the purpose of its functioning, since these are the legal phenomena which ensure that the established rules, procedures and standards of joint activities of such entities are put into practice.

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ЮРИДИЧНА ПРИРОДА АДМІНІСТРАТИВНО-ПРАВОВИХ ЗАСОБІВ, ЯКІ ФОРМУЮТЬ СТРУКТУРУ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ВЗАЄМОДІЇ СУБ'ЄКТІВ СЕКТОРУ БЕЗПЕКИ Й ОБОРОНИ ЩОДО ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ

Анотація. Мета. Метою статті є розкриття категорійно-сутнісного змісту адміністративно-правових засобів, які формують структуру адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки, адже системного та комплексного

сного розкриття в межах адміністративно-правової галузі наукових знань ця проблематика досі не отримала. **Результати.** Визначено, що адміністративно-правові засоби, які формують структуру адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки, можна розглядати у двох аспектах: як сукупність адміністративно-правових норм або як інструменти виконання адміністративних рішень у цій сфері. Причому в першому випадку здійснюється ототожнення адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки з механізмом нормативного забезпечення цього процесу, а у другому випадку відбувається звуження його змісту інструментальним складником. Саме останній підхід застосовується у процесі загального визначення поняття адміністративно-правового механізму, зокрема досліджуваного, тобто акцентується на його інструментальному складнику, адже він віддзеркалює найбільш істотні його особливості. Однак у науковій літературі виділяються також інші його складники, нерідко ототоженні приналежністю до категорії адміністративно-правових засобів. **Висновки.** Зроблено висновок про те, що адміністративно-правові засоби як базовий елемент досліджуваного механізму використовуються в разі його поняттєво-категорійної визначеності задля репрезентації його сутності, висвітлення інструментів досягнення мети його функціонування, адже це ті юридичні феномени, які забезпечують утілення на практиці встановлених правил, процедур і стандартів спільної діяльності таких суб'єктів.

Ключові слова: адміністративно-правові засоби, адміністративно-правовий механізм, взаємодія, забезпечення безпеки, забезпечення національної безпеки, механізм, національні інтереси, сектор безпеки й оборони.

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