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THE ESSENCE OF ADMINISTRATIVE AND LEGAL PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES OF THE FINANCIAL SECTOR OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to reveal the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine. ***Results.*** The article reveals the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine. It is determined that administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a system of security and protective measures implemented by authorised actors of the national critical infrastructure protection system to ensure the stability and security of the financial services market segments which form the financial sector of critical infrastructure of Ukraine. ***Conclusions.*** To characterise its essence, it is proposed to focus on the following aspects: 1) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is an element of the mechanism of the national security system; 2) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine originated as a response to the need to ensure the safety of critical financial transactions and administrative actions, the violation of which causes significant damage to economic processes or the course of social relations that are directly dependent on the stable functioning of the distribution of cash flows or the proper exercise of financial and administrative functions of the authorised authorities; 3) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is implemented on the basis of legislative and departmental regulatory and legal framework; 4) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is comprehensive, enabling (if necessary) a transitional transformation of actions taken from purely security to directly protective ones without changing the institutional or procedural component of its implementation; 5) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine as a set of relevant measures is a representation of the existence of specialised activities in the law application context, which has its own purpose, tasks and functions; 6) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a continuous ongoing process, the intensity of which (activity, readiness) depends on the state of the internal and external security environment.

Key words: administrative and legal protection, banking sector, security and protection measures, critical infrastructure, national system of critical infrastructure protection, financial sector, financial services.

1. Introduction

It will not be news that meeting the general needs of society, including both individual needs and especially collective needs, is fundamentally conditioned by the existence of institutions that provide the financial resources necessary to purchase all those goods and services that represent what experts define as public needs (Onet, 2018). The process by which money is produced, accumulated, consumed or spent drives the economy and contributes to social development. From this perspective, it can be said that: 'in a modern economy, the financial sector plays an important role through financial intermediation, where funds flow from savers to investors' (European Commission, 2015).

In the context of market restructuring of the national economy, the financial sector not only performs the functions of monetary support, but also mobilises and transforms free savings into investment resources for expanded economic reproduction, meets the needs of entities in financial services and thereby ensures economic growth (Shkolnyk, Semenoh, 2013). In other words, it is logical to assume that certain elements of the financial sector of Ukraine's economy can be naturally defined from the perspective of critical infrastructure,

which, accordingly, requires protection and defence.

This is confirmed by the provisions of the Law of Ukraine 'On Critical Infrastructure', which recognises banks and other entities operating in the financial services markets as critical infrastructure. These objects form the relevant sector for the purpose of organising the effective provision of its security and resilience (Law of Ukraine On Critical Infrastructure, 2021). In addition, this Law provides that the specifics of the implementation of public policy on critical infrastructure protection are determined for the critical infrastructure sectors (Law of Ukraine On Critical Infrastructure, 2021) m, and therefore it is justified to state that critical infrastructure facilities of the financial sector of Ukraine are under the administrative and legal protection.

Therefore, the purpose of the article is to reveal the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine.

The issues being analysed have not been covered in scientific literature, but scholars such as S. Bulavina, T. Davydova, T. Zhuk, L. Kozhura, V. Krykun, N. Petryna, V. Pitatelev, A. Semenoh, N. Trotiuk, V. Tsvih, I. Shkolnyk and others have established the foundation for the development of scientific thought in the discourse of the issues raised.

2. Definition of the terms 'security' and 'protection'

In the general context, the categories of 'security' and 'protection' are used as synonyms or similar concepts in terms of purpose, tasks, and methods. At the same time, scholars also sometimes do not distinguish between these terms (Bulavina, Davydova, 2017). In addition, Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection contains a provision that defines 'security and protection' as a single concept covering all activities aimed at ensuring the functionality, continuity and integrity of critical infrastructures in order to prevent, mitigate and neutralise a threat, risk or vulnerability (Council Directive on the identification and determination of European critical infrastructures and assessment of the need to improve their protection, 2008; Zhuk, 2021).

A more comprehensive analysis of the understanding of the essence of the categories 'protection' and 'security' and their correlation reveals that in most cases the former is perceived as a component of the latter. For example, D. Horbas argues that the latter is defined as a set of measures aimed at preventing violations of certain socially important objects and values, as well as at protecting them. In conclusion, the scientist points out that in this case the concept of 'protection' is absorbed by the concept of 'security' (Horbas, 2008). A similar approach is taken by the authors of the textbook on Administrative Law under the general editorship of V. Halunko (2005), who argue that 'security' is a broader concept that includes prevention of violations of rights and freedoms, while 'protection' is its component and consists in taking measures after a violation of rights. Security involves methods of persuasion, while protection involves methods of coercion.

We support the opinion of V. Krykun that this approach is not true, because the analysis of the provisions of the current national legislation reveals the opposite situation. It follows that regardless of the type of social relations subject to security, in all cases, as well as in most other legislative definitions of the category 'security', its essence is revealed through the prevention or avoidance of the relevant undesirable consequences. If we analyse the approaches of the legislator to understanding the essence of the category 'protection', we will see that in addition to prevention, a number of its components of this phenomenon will be listed. For example, according to Article 4 of the Code of Civil Protection of the Population of Ukraine of 2 October 2012, civil protection is a function of the state aimed at protecting the population, territories, environment and property from emergencies by preventing such situations, eliminating their effects and assisting victims in peacetime and in a peacetime and special period (Code of Civil Protection of the Population of Ukraine, 2012; Krykun, 2021).

We agree that security involves the application of preventive measures and the use of persuasion to avoid violations of the established rules. Protection, on the other hand, is more focused on responding to existing violations using coercive methods, but at the same time, there is a certain interconnectedness between protection and security measures.

According to S. Bulavina and T. Davydova, security of rights is aimed at preventing violations of rights and obligations, and protection is aimed at restoring violated rights and obligations or compensation for lost rights as a result of a violated right. They differ in terms of the timeframe for application. Security is permanent, as prevention, and protection is applied as a result of a breach of rights and obligations. They also differ in the tools used. Security is characterised by a wider

range of measures – ideological, economic, legal, etc., while protection is the use of purely legal methods. The solution to the problem of effective protection and defence of rights is directly dependent on the development of legal regulations governing the relations of security and protection, and on the ability of scholars to find the boundaries of their non-identity (Bulavina, Davydova, 2017).

Accordingly, scientific approaches to defining the concepts of human rights protection and security emphasise their difference in content, methods and structure, while recognising their interdependence in the context of more general processes.

However, we do not deny that protection can be interpreted more broadly, including the processes of emergence, formation, development, stabilisation and extinction of needs, interests and rights. This implies that protection should be provided not after (Tsvykh, 2002) the unlawful acts have been committed, but before they are committed. In this regard, it is more correct to define protection as actions aimed at stopping or preventing violations (Tsvykh, 2002), as well as eliminating the consequences in case of their commission.

3. Definitions of 'administrative and legal protection' and 'administrative and legal security'

In the context of the study, this interpretation is also applicable, since in accordance with the provisions of the current legislation, the protection of critical infrastructure involves all activities carried out before or during the creation, operation, restoration and reorganisation of a critical infrastructure facility, aimed at timely detection, prevention and neutralisation of threats to the safety of critical infrastructure facilities, as well as minimisation and elimination of effects in case of their implementation (Law of Ukraine On Critical Infrastructure, 2021).

Thus, the legislator has decided to consider this issue from the perspective of including security in the protection system, which is not unreasonable, since the field under study is characterised by the existence of a national system of critical infrastructure protection (in the institutional aspect), which is quite objectively able to combine the implementation of both preventive measures and response to deviations from the norm.

It should be noted that the term 'legal protection' in administrative law is mostly limited to the activities of competent public authorities, administration and local self-government bodies (Trotsiuk, Petryna, 2015), which objectify the implementation of relevant measures. Specialised activities are referred to as administrative and legal protection.

In regards to the essence of administrative and legal protection, it is important to note that it is associated with the appropriate branch of law. Ukrainian legislation and scientific works do not present a single perspective on how to understand this legal category. This concept is frequently associated with the words 'administrative and legal protection' or 'administrative and legal support.' It is also used in different ways, with different scope of content. (Kozhura, 2015).

In the general context, it is important to recognise that the term applies to the legal relationship of protecting the rights, freedoms, and legitimate interests of a person. For example, the authors of the textbook on Administrative Law under the general editorship of V. Halunko understand administrative and legal protection as dynamic (active) actions of public administration aimed at restoring violated rights, freedoms and legitimate interests of individuals and legal entities, removing obstacles to their implementation by means of administrative law with the possibility of applying administrative coercion measures and bringing perpetrators to administrative liability (Halunko, 2005). Alternatively, scholar L. Kozhura defines it as the organisational and legal activities of public administration bodies, which are performed on the basis of administrative and legal provisions, supported by a system of legal guarantees; the essence of which is to ensure and protect, through legal remedies, the rights of individuals from unlawful acts with the prosecution of offenders to legal liability (Kozhura, 2015).

In general, in their interpretations of the essence of this category, scholars rather clearly and correctly emphasise the totality of legal relations which are subject to protection through the established regulatory guidance to this effect and the developed procedural aspect of the implementation of relevant measures by administrative law, but by disobjectifying this category, they make the mistake of automatically revealing its essence through legal relations associated with human and civil rights, although they are the main, but not the only object of unlawful encroachment. It would be more appropriate to refer to legally protected values and interests that may either belong to a particular person, their group or the state in general. In other words, two main objects of unlawful encroachment exist: a single or public interest (value, benefit) protected by law. With regard to the latter, the resolution of the Grand Chamber of the Supreme Court states that the needs of a significant number of individuals and legal entities, which are

important for a significant number of individuals and legal entities and are provided by public administration entities in accordance with the legally established competence (Resolution of the Grand Chamber of the Supreme Court, 2019), form the category of 'public interests'.

This statement enables to argue that administrative and legal protection, as well as administrative and legal security or administrative and legal support, should be considered more logically from the perspective of independent regulatory processes with different tasks and mechanisms of implementation. Generally and schematically, their correlation can be represented as follows: support is focused on security and protection, and security and protection are implemented in close interaction. Moreover, the very definition of administrative and legal protection should be considered from the dual interpretation of the objective component. This means that in addition to the legal relationship of a person to a particular interest (usually the right to something), its immediate state should be regarded from the perspective of ensuring protection against changes in properties or characteristics, damage or destruction in general.

For example, V. Pitatelev's opinion that administrative and legal protection of agricultural land is a dynamic action of the public administration aimed at restoring the violated right to agricultural land in Ukraine, minimising obstacles to its legal possession, by means of administrative law with the possibility of applying administrative coercion measures and bringing the perpetrators to administrative liability seems controversial (Pitatieliev, 2017). The author has limited its content to legal relations of a person to such a good, while it would be more appropriate to refer to agricultural land itself as a value requiring comprehensive protection and preservation. In this context, administrative and legal protection is not limited to aspects of land ownership and use, but also includes environmental, economic and social factors affecting the condition and quality of land resources.

Therefore, the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine. It is determined that administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a system of security and protective measures implemented by authorised actors of the national critical infrastructure protection system to ensure the stability and security of the financial services market segments which form the financial sector of critical infrastructure of Ukraine.

4. Conclusions

To sum up, in the absence of administrative and legal protection of critical infrastructure in Ukraine's financial sector, it is unlikely that the financial services market in Ukraine will be able to ensure an adequate level of security and stability.

To characterise its essence, we suggest to focus on the following aspects:

1) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is an element of the mechanism of the national security system;

2) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine originated as a response to the need to ensure the safety of critical financial transactions and administrative actions, the violation of which causes significant damage to economic processes or the course of social relations that are directly dependent on the stable functioning of the distribution of cash flows or the proper exercise of financial and administrative functions of the authorised authorities;

3) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is implemented on the basis of legislative and departmental regulatory and legal framework;

4) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is comprehensive, enabling (if necessary) a transitional transformation of actions taken from purely security to directly protective ones without changing the institutional or procedural component of its implementation;

5) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine as a set of relevant measures is a representation of the existence of specialised activities in the law application context, which has its own purpose, tasks and functions;

6) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a continuous ongoing process, the intensity of which (activity, readiness) depends on the state of the internal and external security environment.

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СУТНІСТЬ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ ОБ'ЄКТІВ КРИТИЧНОЇ ІНФРАСТРУКТУРИ ФІНАНСОВОГО СЕКТОРУ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є розкриття сутності адміністративно-правового захисту критичної інфраструктури фінансового сектору України. ***Результати.*** Стаття присвячена розкриттю сутності адміністративно-правового захисту критичної інфраструктури фінансового сектору України. Визначено, що адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України є системою заходів охоронного та захисного спрямування, реалізованою уповноваженими суб'єктами національної системи захисту критичної інфраструктури задля забезпечення стійкості та безпеки сегментів ринку фінансових послуг, що формують фінансовий сектор критичної інфраструктури України. ***Висновки.*** Характеризуючи його сутність запропоновано

обмежитись такими положеннями: 1) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України є елементом механізму системи забезпечення національної безпеки; 2) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України виник як реакція на необхідність забезпечення схоронності критично важливих фінансових операцій та адміністративних дій, порушення яких завдає значної шкоди економічним процесам або перебігу кола суспільних відносин, що є прямо залежними від стабільного функціонування розподілу грошових потоків чи належного здійснення фінансово-адміністративних функцій уповноважених органів влади; 3) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України реалізується на основі наявності законодавчого та відомчого нормативно-правового забезпечення; 4) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України має комплексний характер, що об'єктивує можливість (при необхідності) без зміни інституційної чи процедурної складової його здійснення виникнення перехідної трансформації вчинюваних дій з суто охоронних до безпосередньо захисних; 5) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України як сукупність відповідних заходів є репрезентацією існування у правореалізаційній площині спеціалізованої діяльності, що має власну мету, завдання та функції; 6) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України є безперервним постійно здійснюваним процесом, інтенсивність якого (активність, готовність) залежить від стану внутрішнього та зовнішнього безпекового середовища.

Ключові слова: адміністративно-правовий захист, банківський сектор, заходи охорони та захисту, критична інфраструктура, національна система захисту критичної інфраструктури, фінансовий сектор, фінансові послуги.