The concept of administrative and legal means of ensuring the formation and implementation of state policy in the field of defence of Ukraine

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Abstract. *The article proves that legal means are an instrumental category of law, which consists of normatively defined practical actions, methods, operations and measures of law enforcement, which are applied in an established, formalised manner by subjects of social and legal relations in order to achieve legitimate interests and fulfil certain and guaranteed rights and obligations imposed on them. The essence of administrative and legal means of ensuring the formation and implementation of state policy in the field of defence of Ukraine and their features are clarified. Methodology. The scientific research is based on both general and special methods of scientific knowledge. In particular, the method of documentary analysis, formal legal and analytical methods have been used in the process of analysing the provisions of individual regulatory legal acts, in particular the laws of Ukraine, as well as the works of domestic scientists, in which individual provisions of regulatory legal acts are critically analysed. Structural-logical and system-functional methods have been used to analyse the features of administrative and legal means of ensuring the formation and implementation of state policy in the field of defence of Ukraine. Results. The article clarifies that administrative and legal means of ensuring the formation and implementation of state policy in the field of defence of Ukraine are a system of practical actions, methods, operations and measures of an administrative nature regulated by law, which are used by the relevant entities in order to exercise the public-law powers entrusted to them regarding the organisation of conditions and direct implementation of the state defence policy. It is substantiated that the features of such administrative and legal means are the following: they are used exclusively by entities of power within the framework of their implementation of management functions in the field of defense and are of an imperative nature; are based on the norms of administrative law and are implemented through clearly defined legal forms, procedures and administrative regulations; ensure the consistency of actions of state authorities, military administration and other authorised entities in the process of forming and implementing defense policy; cover a set of legal instruments (administrative acts, management procedures, permits, prohibitions, regulations, control and supervisory measures) that are used in conjunction; the use of such means is subordinated to ensuring defense capability, national security and the implementation of strategic decisions in the field of defense; are implemented within the framework of a system of vertically built management relations, which is characteristic of the defense sphere; a significant part of these means is aimed at preventing violations, ensuring discipline and proper law and order in the field of defense; provides for a special regime of control, supervision and responsibility on the part of the state.*

Key words: *defence of Ukraine, legal means, administrative-legal means, state defence sphere.*

INTRODUCTION

Ensuring the formation and implementation of state policy in the field of defence of Ukraine is a dynamic and multifaceted category of public and legal relations, within which the functional activity of a holistic system of subjects of power, endowed with different scopes of competence and located at different levels of state administration, is integrated. The coordinated functioning of such subjects is aimed at achieving strategic goals in the field of national security and defence and provides for the implementation of their legally defined managerial, organisational and control powers. The activities of these subjects are purposeful, systematic and consistent in nature and are carried out in conditions of strict legal regulation, which necessitates the use of special administrative and legal means. It is such means that act as the main instrument of state influence on relevant public relations, ensuring regulatory certainty of management procedures, coordination of actions of public authorities, as well as the efficiency and effectiveness of the formation and implementation of state policy in the field of defence of Ukraine.

RESEARCH METHODOLOGY

The scientific research is based on both general and special methods of scientific knowledge. In particular, the method of documentary analysis, formal-legal and analytical methods have been used in the process of analysing the provisions of individual regulatory legal acts, in particular the laws of Ukraine, as well as the works of domestic scientists, in which individual provisions of regulatory legal acts are critically analysed. Structural-logical and system-functional methods have been used to analyse the features of administrative-legal means of ensuring the formation and implementation of state policy in the field of defence of Ukraine.

Based on the comparative-legal method and the generalisation method, it has been stated that administrative-legal means of ensuring the formation and implementation of state policy in the field of defence of Ukraine are a system of practical actions, methods, operations and measures of an administrative nature regulated by law, which are used by relevant entities in order to exercise the public-legal powers assigned to them

regarding the organisation of conditions and direct implementation of state defence policy.

The validity and reliability of the study are ensured by using a system of sources: regulatory legal acts of various legal forces, scientific commentaries, etc. The risks of regulatory ambiguity and unsystematic application are reduced by using categories established in legal science.

Methodological limitations of the study are associated with the informational closure of certain aspects of the activities of entities implementing state policy in the field of defence of Ukraine. These factors are compensated by using data from various sources, their verification, comparison with generally accepted approaches in the theory of administrative law, and critical analysis of the information presented in them.

RESULTS

Etymologically, the word "means" describes: action, method, technique; an instrument that makes it possible to do something, achieve something; an instrument of some business, activity, etc. [1, p.326]. "This category connects the ideal (goal) with the real (result), including at the same time both fragments of the ideal – tools (means-institutions), and fragments of the real – technology (means-actions)," describes "means" in her thesis by Yu. E. Atamanova [2, p.343]. So, "means" is a technique, method, tool or action, by means of which the practical goals of someone's activity or the functioning of something are realised. In legal science, approaches to the definition of legal means are different. For example, V. O. Negodchenko emphasises the connection of the latter with the concepts of "legal influence" and "legal regulation". The scientist believes that the latter form a holistic, systemic legal mechanism that ensures the regulation of the entire set of social relations that are the subject of legal regulation [3, p. 149]. In the study of S. V. Glibko, legal means are revealed as objective substantial legal phenomena that have fixed features that allow the potential of law, its force, to be realised. Depending on the level of application: first, primary legal means – legal norms, subjective legal rights and legal obligations; second, the level of established legal forms and institutions – separate formations and legal regimes; third, the operational level – specific legal means, for example, agreements [4, pp. 154-155].

The following interpretation is proposed by A.M. Perepelyuk: "Legal means in the instrumental approach to law constitute its essence, in different planes of socio-legal reality, they form corresponding connections, complexes, peculiar legal mechanisms. That is, legal means are combined into blocks, which, in turn, create relatively independent legal mechanisms in the mechanism of legal regulation, the so-called "connections", "couplings", determining the features of the "work" of law in individual areas of legal regulation. In the plane of normative regulation, legal means are separated into legal institutions, sub-institutions, legal formations, and categories, each of which is characterised by its own set of legal means. During the implementation of law, these means form a mechanism adequate to it. This mechanism also requires the use of specific legal means in various situations, which can subsequently be separated into the corresponding categories of legal cases (the institution of private property, the institution of guardianship and trusteeship). Therefore, legal means are institutional formations of legal reality, the use of which in the special legal sphere leads to the achievement of appropriate results in solving socio-economic and political tasks and problems that arise before society and the state" [5;6, p. 276].

According to another concept, legal means are instruments of activity of subjects of law. Thus, O.O. Ganzenko notes that this is a key category of instrumental theory of law, and in the most general definition, "legal means" is a system of methods, ways and techniques provided by the norms of law for achieving a private or public goal by subjects of legal relations [7, pp. 39-40]. "Legal means is a system of substantial and active legal phenomena, with the help of which specific subjects of legal relations, which gradually acquire the character of an instrumental game, achieve private and public goals," writes O. V. Onufrienko [8, p.15]. V. G. Chorna interprets legal means as legal instruments that are used during their activities by state authorities and local self-government bodies on legal grounds in order to fulfil the tasks set by the state (social, economic, legal, organisational, political, etc.). In her opinion, the features of legal means are the following: 1) they are a legal unitary category that, having acquired a certain form, affects social relations; 2) they have functional content, that is, each legal means should be used exclusively when necessary and in accordance with its purpose; 3) they cannot function separately from each other; 4) their systemic combination finds expression in the mechanism of legal regulation; 5) they are used exclusively by authorised subjects of state authorities and local self-government bodies [9, pp. 72–75; 10, p. 120]. V.T. Komzyuk approaches the problem of understanding the content of legal means in the following way: "Legal means are not just tools for solving certain social problems that exist alongside others and allow for various alternatives. The socio-political meaning of posing the problem of legal means is that they are not only a social necessity, a kind of objective regularity, but also an optimal, adequate-to-the-conditions-of-civilisation way of solving the tasks facing society, a way that expresses the social value of law as a regulator of social relations. What is meant by the use of legal means in practical life? This means applying legal tools to solve various social tasks in such a way as to achieve an effect that realises the social value, the power of law, its mission to be a stabilising factor, a factor that tames and pacifies and, as a result, ensures: a) reliability and stability of the developing relations; b) correlation of regulation with subjective rights; c) strict regulation and at the same time guarantee, protection of subjective rights; d) a set of methods that guarantee the real, actual fulfilment of legal obligations; e) the necessary procedure for carrying out legal actions, procedural forms and mechanisms aimed at the implementation of subjective rights and achieving truth in conflict situations. Legal means may or may not coincide with the phenomena traditionally distinguished in legal science. But be that as it may, in all cases we have before us fragments of legal reality, considered from the point of view of their functions, their role as instruments of legal

influence" [11, pp. 43-44].

DISCUSSION

In our opinion, legal means are an instrumental category of law, which consists of normatively defined practical actions, methods, operations and measures of law enforcement, which are applied in an established, formalised manner by subjects of social and legal relations in order to achieve legitimate interests and fulfil certain and guaranteed rights and obligations imposed on them. Depending on the norms of which branch the relevant means are regulated, as well as in the sphere of what type of relations they are used, there are varieties of the category, in particular, administrative and legal.

Thus, O. O. Nebrat emphasises that "administrative and legal means in the complex act as one of the effective structural elements of the protective activity of state bodies, which is aimed at the formation and development of social relations" [12, p. 61]. O.A. Kutsy reveals administrative and legal means as norms that are found in management acts in a specific field of activity [13, p. 9]. However, most often the category is analysed with regard to a certain sphere of social relations where the latter finds practical implementation.

Thus, by administrative-legal means of combating violations of customs rules, O. V. Konstanta defines the administrative-legal mechanism for ensuring customs legal relations, an array of administrative-legal law enforcement norms in the field of customs affairs, and special jurisdictional actions carried out on their basis, which are formed and function in the state interests of preventing violations of customs legislation. The law enforcement block of the specified administrative-legal mechanism is measures to combat violations of customs rules. This means that administrative-legal measures to combat violations of customs rules are an active part of the above-mentioned administrative-legal means. They are normatively prescribed methods of practical implementation by the relevant subjects of legal protection of the tasks of counteracting this type of customs offence. In addition to the above, the scholar proves that administrative and legal measures to combat violations of customs rules consist of psychological and/or physical influence by representatives of customs authorities on officials of entities of foreign economic activity and citizens who move goods and vehicles across the customs border of Ukraine, and knowingly, intentionally or through negligence, do not comply with the current customs rules and procedures. First of all, psychological measures are subject to application, which do not allow restrictions on freedom of action, movement, disposal of property, personal integrity of the object of management. However, if a participant in customs operations does not independently make efforts to return to the state of legal order, after a lawful demand from a customs official not to violate customs law and order, the application of more stringent, intensive power measures of physical coercion to him is justified as a reaction to continued illegal behaviour [14, pp. 59-60].

Under administrative-legal means of ensuring the legality of the application of administrative coercive measures by the police, V. R. Bulachek and A.Ya. Kruk propose to understand the special legal guarantees provided for by the norms of administrative and administrative-procedural law, aimed at achieving compliance of police actions with the provisions of the legislation that establishes the grounds, goals, procedure and conditions for implementing the method of coercive influence, which characterises the content of a specific measure of administrative coercion, procedural deadlines and requirements for documenting the application [15, p. 91].

Yu. V. Demyanchuk, analysing the content and features of administrative-legal means of combating corruption, noted that these are special actions and operations, the main purpose of which is to prevent the development of a corruption offence into an act that will pose a great public danger and be considered a corruption crime. The scientist directly includes the following means: 1) administrative prohibitions related to the state secret regime; 2) means of resolving conflicts of interest in the civil service; 3) clear job regulations of a civil servant; 4) competitive filling of civil service positions; 5) establishment and mandatory use of a personnel reserve in the civil service system; 6) testing during entry into the civil service; 7) certification of civil servants; 8) qualification exam; 9) mandatory establishment of an alternative in the process of appointment to a civil service position, etc. [16, pp. 139-140]. Evaluating the content of administrative and legal means in the same vein, V. A. Pryima proves that the latter are an integral part of legal regulation in the specified area. Their use is determined by the goals of preventing corruption, which are divided into strategic and tactical. At the same time, the author emphasises the need to analyse the essence of administrative and legal means of preventing corruption from several positions, namely: regulatory, institutional, instrumental, normative, managerial, activity and state-centric. According to the regulatory aspect, administrative and legal means of preventing corruption are understood as a means of regulating social relations and a way for subjects of anti-corruption activity to exercise their powers; in the institutional aspect, a set of bodies and their officials defined by legislative and subordinate legal acts, whose powers include preventing corruption, as well as the competence of these subjects; in the instrumental aspect, technological and legal techniques and methods of implementing administrative and legal regulation in the studied area, as well as algorithms for applying these techniques and methods; in the normative aspect, a hierarchically constructed set of legislative and subordinate legal acts, including ratified, approved or adopted in accordance with the established procedure international legal acts; in the managerial aspect – a set of managerial actions and decisions of a nationwide, sectoral and intra-departmental nature, aimed at creating organisational, personnel, financial, material and other conditions for effective prevention of corruption by the subjects of this activity; in the operational aspect – a set of legal and extra-legal actions of the subjects of corruption prevention, aimed at achieving the goals and objectives set in the anti-corruption program documents in accordance with the

established deadlines and stages; state-centric aspect – a set of ways to preserve the interests of the state, which includes the prevention of corruption, compared to the interests of a number of officials to preserve their right to privacy of information about their property, income and expenses, to combine certain positions and professions, etc. [17;18, p. 268].

CONCLUSIONS

Thus, the analysis allows to conclude that administrative and legal means of ensuring the formation and implementation of state policy in the field of defence of Ukraine are a system of practical actions, methods, operations and measures of an administrative nature regulated by law, which are used by the relevant entities in order to exercise the public law powers entrusted to them regarding the organisation of conditions and direct implementation of state defence policy.

The characteristics of such administrative and legal means are the following:

- are used exclusively by entities of power within the framework of their implementation of management functions in the field of defence and are of an imperative nature;
- are based on the norms of administrative law and are implemented through clearly defined legal forms, procedures and administrative regulations;
- ensure the consistency of actions of state authorities, military administration and other authorised entities in the process of forming and implementing defence policy;
- cover a set of legal instruments (administrative acts, management procedures, permits, prohibitions, regulations, control and supervisory measures) that are applied in conjunction;
- the use of such means is subordinated to ensuring defence capability, national security and the implementation of strategic decisions in the field of defence;
- are implemented within the framework of a system of vertically built management relations, which is characteristic of the defence sector;
- a significant part of these means is aimed at preventing violations, ensuring discipline and proper law and order in the field of defence;
- provides for a special regime of control, supervision and responsibility on the part of the state.

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