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CONCEPT AND FEATURES OF ADMINISTRATIVE COERCION MEASURES IN ADMINISTRATIVE AND DELICT RELATIONS IN THE SPHERE OF NATURAL RESOURCES USE AND CONSERVATION

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SUMMARY

Concept and features of administrative coercion that are used in administrative and delict relations for violations in the sphere of natural resources use and conservation by understanding it as a special form of state coercion has been analysed in the article. Due to the study of characteristic features in administrative coercion in administrative and delict relations, the definition of this notion has been given. In addition, the general theoretical concept of administrative and state coercion has been analysed.

Key words: administrative coercion, administrative and delict relations, state coercion, natural resources use and conservation.

ПОНЯТТЯ ТА ОСОБЛИВОСТІ ЗАХОДІВ АДМІНІСТРАТИВНОГО ПРИМУСУ В АДМІНІСТРАТИВНО-ДЕЛІКТНИХ ВІДНОСИНАХ У СФЕРІ ВИКОРИСТАННЯ ТА ОХОРОНИ ПРИРОДНИХ РЕСУРСІВ

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АНОТАЦІЯ

У статті здійснюється аналіз поняття та особливостей адміністративного примусу, що застосовується в адміністративно-деліктних відносинах за правопорушення у сфері охорони та використання природних ресурсів через призму розуміння його як особливого виду державного примусу. Через дослідження ознак, притаманних адміністративному примусу в адміністративно-деліктних відносинах, надається визначення його дефініції. Окрім того, аналізується загально-теоретичне поняття адміністративного та державного примусу.

Ключові слова: адміністративний примус, адміністративно-деліктні відносини, державний примус, використання та охорона природних ресурсів.

REZUMAT

Acest articol analizează conceptul și caracteristicile constrângerii administrative aplicate în relațiile administrative și delictuale pentru încălcări în sfera protecției și utilizării resurselor naturale prin prisma înțelegerii acesteia ca o formă specială de constrângere de stat. Prin cercetarea semnelor inerente coerciției administrative în relațiile administrative-tort, este dată o definiție a definiției sale. În plus, se analizează conceptul teoretic de constrângere administrativă și de stat.

Cuvinte cheie: constrângere administrativă, relații administrativ-tort, constrângere de stat, utilizarea și protecția resurselor naturale.

Statement of a problem. Administrative coercion is an important legal category that ensures adherence to the law and order in society and manifests itself in the use of coercive measures to stop administrative offense committing, as well as to bring perpetrators to justice. Considering that the natural resources targeted by the unlawful encroachments are either difficult to renew or unrenewable at all, measures of administrative coercion in administrative relations are an extremely important phenomenon that will preserve the natural environment from illegal anthropological encroachments.

Relevance of a topic. Investigating the specifics of administrative coercion use in administrative and delict relations arising from the rules violation in natural resources use and conservation will allow better understanding their nature, and thus help improve them in future.

The state of a research. A lot of scientists-administrators such as: O. Bandurka, Yu. Bytiak, I. Holisnichenko, V. Kovalenko, T. Kolomoets, V. Kolpakov, O. Kuzmenko, V. Kurilo, E. Moiseev, V. Olefir, I. Pastukh, Yu. Rymarenko, L. Sopilnik,

V. Sushchenko, O. Shevchuk, V. Shkarupa, E. Shulga and others devoted their research to the study of general theoretical aspects of administrative coercion. However, in spite of a wide range of scientific works, the attention to the study of administrative coercion features used in administrative and delict relations arising from misconduct in the sphere of natural resources use and conservation hasn't been sufficiently paid.

The aim of the article is concept and features of administrative coercion that are used in administrative and delict relations for violations in the sphere of natural resources use and conservation by understanding it as a special form of state coercion has been analysed in the article.

The basic material. It is well-known that legal coercion has an external expression of various forms of liability, namely: criminal; property; disciplinary and administrative, carried by citizens and officials – offenders, that is, persons who voluntarily fail to comply with the requirements of legal norms. The specified liability is a form of compulsory measures, which is used by the competent authorities or their officials. That is, the state imposes sanctions in accordance with the norm of what law branch is violated, which depends on the use of one or another form of state coercion [1, p. 90].

Despite the fact that within the scope of this study, the administrative coercion, as a kind of state, is of direct interest to the state, one should emphasize the presence of a wide range of its types, since the administrative delict in the field of natural resources use and conservation is regulated by a wide range of legal norms in other law branches.

V. Kolpakov emphasizes on the obligatoriness and necessity of coercion as an indispensable feature of any organized community of people, the main of which is a state. Public administration and coercion are so interconnected that, according to general theoretical representations, these categories are considered exclusively in an indivisible union. Moreover, any definition of law rule as the main regulatory and protective means of influencing people's behavior indicates their state coercion support [2]. This point of view is confirmed in classical administrative and legal studies. Thus, by definition of administrative law expert S. Alekseyev, the actual expression of coercion as a public-law category is defined as the application of coercive measures by competent authorities [3, p. 107].

Continuing the previous thesis V. Kolpakov points out that state coercion is a psychological or physical influence of public administration on individuals in order to encourage, coerce to comply with legal norms to achieve compliance of their behavior with normative regulations. It is used when other means of influence are not enough for those who do not adhere or violate the requirements of laws and other regulations [2].

Some scholars emphasize the use of coercive measures not only by the state, but also non-governmental organizations. So, according to V. Seriohina, coercion is a «physical, psychological or other influence of the authorized legal bodies, officials, public representatives on the subjects' consciousness and behavior by applying the compulsory measures in the prescribed procedure, specified in the sanctions (dispositions) of legal norms and associated with the onset of negative consequences of personal, property or organizational character in order to combat offenses, protect public safety and order» [4, c. 47]. In our opinion, it is worth agreeing with this thesis, since the state delegates coercion to certain public organizations, therefore, both the public authorities and public organizations can simultaneously act as coerced subject. For example, public inspectors can stop or prevent misconduct in the sphere of natural resources use and conservation by, for example, preventing the illegal behavior commission, offender arresting, and forwarding him to law enforcement bodies.

Thus, «coercion» can be characterized as one of the extreme ways to influence the inadequate behavior of the participant in administrative and delict relations in the sphere of natural resources use and conservation, which is aimed at bringing to the perpetrator its negative impact and correction of the consequences.

Considering that natural resources use and conservation rules violation is mainly administrative in nature, a study of this type of state coercion as an administrative one is of great relevance. The theory of administrative law predominantly determines administrative coercion, as applied by executive authorities and their authorized representatives, and only in some cases, courts (judges), bodies of public associations, but in all cases, under conditions and in manner prescribed by the rules of administrative law. Administrative coercion as a whole carries out tasks of protection, development and strengthening of normal administrative relations and eradication of offenses, elimination of their consequences which can harm the public or its interests. It is a legal means for protecting public relations from unlawful actions, restoring the lawful state, ensuring the possibility of practical protection of public order, as well as punishing those who committed administrative offenses [5, p. 91]. This indicates that the category of «administrative coercion», in contrast to «state coercion», is more specific and real, while the latter is purely abstract.

It is well known that the clarification of the essence and content of any concept is best possible by distinguishing its characteristic features. S. Radzhivon, for example, indicates the presence of a wide range of opinions in legal literature on the features and nature of administrative or as it is also called administrative and legal coercion. In particular, some authors either absolute certain features of administrative and legal coercive or actually identify it with other legal categories, in particular, with administrative activities, administrative sanctions, administrative liability, etc. [6, p. 39].

The features of administrative coercion, according to Professor T. Kolomoets, are:

1) it is objectively necessary method, purposeful way of behavior, a set of certain actions and means that are repeated and contribute to solving the tasks of social and public administration, is used on the basis of belief in the implementation of executive and regulatory activities of the state;

2) official, state power, its application is carried out only on behalf of the state by the authorized state bodies and their officials in the process of realization of their state authority, hence the corresponding nature of compulsory activity. The subjects of administrative and enforcement measures are, as a rule, the executive bodies. In order to involve citizens in the protection of public order, the state may provide certain public formations (for example, on the protection of public order and the state border) the right to apply administrative and coercive measures on individuals and legal entities on behalf of the state in cases established by law and, as a rule, under state control;

3) the plurality and diversity of subjects of administrative and coercive measures use, in contrast to the monosubjective nature of measure application of all other types of state legal coercion. The number of relevant subjects is constantly changing;

4) the number of persons in respect of which the use of administrative and coercive measures is carried out. They are not only physical but also legal entities of various forms of ownership and organizational and legal forms, including the bodies of state executive power, local self-government;

5) the lack of official subordination between the subjects of administrative and compulsory measures application (active participants) and persons to whom mentioned measures are applied (they can be called passive participants in the relevant legal relations, since their behavior is a subject of certain influence);

6) the specifics of legal and factual grounds of application. The presence of this feature of administrative coercion should

be highlighted, since it is typical only for this type of state legal coercion. Namely, for any other types of state compulsory activity, the only legal and factual basis is an unlawful act and, in its absence, has no legal basis for state coercion use. Administrative and enforcement measures can be used both in unlawful acts commission and in special conditions provided in the legislation (epidemics, epizootics, natural disasters, technological catastrophes and other extraordinary circumstances), when the appropriate measures are used to prevent the occurrence of harmful (dangerous) consequences, their localization, as well as for the prevention of unlawful acts;

7) the multidisciplinary purpose of administrative coercion. It involves not only reaction to the offenses, but also their prevention, termination and fight against extreme events. The purpose of administrative coercion is complex, it includes several components, namely: preventive and educational, stopping and punitive, which are detailed in the prevention, termination of unlawful acts and extraordinary conditions, localization of their consequences, creation of necessary situations for possible bringing the perpetrators to justice in future, proceedings support in cases of offense, punishment, re-education of offenders;

8) multivariate external forms of manifestation of administrative coercion – mental or physical influence in the form of personal, organizational, property restrictions that are unfavorable for the person consequences, which are quite diverse, due to the diversity of relations, which are protected by their help, purpose, grounds, application of subjects competence, etc.;

9) compulsory character, as indicated by name itself, that is, «to force» a person to deliberately commit one or another action, or refrain from them, obeyed in spite of his will [7].

According to the textbook authors «Administrative Law» Z. Kisil and R. Kisil the following measures are characteristic for administrative coercion: extrajudicial enforcement of the statutory or subordinate administrative and legal norms of coercive measures by the authorized state body (official); administrative coercion is related to the sphere of non-governmental administrative relations (the imposition of a charge by the head of his subordinate employee is regulated by the legal institute of civil service, and is not a form of administrative coercion); application of compulsory means by an executive body to persons who are not in state service relations with this body; the application of measures of administrative coercion is the prerogative of only those authorities and officials who are empowered by representatives of administrative authorities; administrative coercion can be applied only in case of violation of legal norms in the field of public administration; administrative coercion is manifested, first of all, as the legal responsibility of the persons who committed the offense before the state in the person of the authorities authorized by it (officials); the practical use of administrative and compulsory measures to prevent offenses, and the provision of public safety, not connected with the commission of an offense (for example, the introduction of a quarantine in epidemics) compliance with the principle of legality in the application of administrative coercion; administrative coercion is a special kind of state coercion. It is intended to protect public relations that are formed mainly in the sphere of public administration [8].

That is why one should agree with the opinion of O. Kopylenko, however, this type of legal coercion is characterized by a number of specific properties that determine its essence and features, relative independence in the system of state coercion [9].

According to T. Kolomoets, «administrative coercion» is a special type of state legal coercion, that is, determined methods of official physical or psychological influence of the authorized state bodies, and in some cases also public organizations, on individuals and legal entities in the form of personal, property, organizational limitations of their rights, freedoms and interests in cases when these persons commit unlawful acts (in public relations) or in extraordinary circumstances within a separate administrative proceedings for the prevention, termination of unlawful acts, proceedings support in cases of offenses, bringing the perpetrators to justice, prevention and localization of the consequences of emergencies [7].

Z. Kisil and R. Kisil define administrative coercion as a «form of state coercion, carried out on behalf and in the interests of the state by its official representatives, has the legal form of an external expression. This special type of legal coercion is applied when ignoring certain mandatory regulations issued by the state through its authorized representatives. In certain cases, there is a need for enforced implementation support of such orders. Regarding the sphere of public administration, it is a means to ensure the implementation of administrative law regulation» [8].

According to N. Hrishina, administrative coercion should be understood as the application of measures provided for by the administrative and legal norms of influence measures on the subjects of legal obligations subjected to the action of their negative consequences of moral, personal, property, organizational or other nature with the purpose of punishment for the committed offense in the interests of illegal actions termination or prevention, overcoming their harmful consequences, as well as in order to ensure public safety and the protection of law and order [5, p. 91].

Finding the general features of the category «administrative coercion» it will be logically to see the transition to specific, characteristic for administrative coercion, which takes place in the administrative and delict relations in the sphere of natural resources use and conservation. The last ones include the following:

1) special grounds, conditions and procedure for the administrative coercion measures application, which is determined by a special legal framework, the main place among which is Chapter 7 of the Code of Ukraine on Administrative Offenses [10];

2) applied by specially authorized bodies, officials and representatives of the public;

3) applied to offenders directly committed administrative offence that violates the established procedure for the use and conservation of existing depleting and difficult renewable components of the environment the main purpose of which from the material point of view is to provide the necessary benefits to society through the direct mental and physical activity of specific people involved in their use;

4) a special procedure for its implementation, through the application of measures of moral, personal, property, organizational or other nature;

5) is intended to punish the offender for the committed offense and report the need for consequences correction.

Conclusion. Given the preliminary analysis, it should be noted that the administrative coercion that takes place in the course of administrative and delict relations for misconducting in the sphere natural resources use and conservation is without doubt a form of state legal coercion, moreover, it is its special form with specific features, a special regulatory framework aimed at counteracting the encroachment on the established order of use and conservation of all existing depleting environmental components, the main purpose of which from the material point of view is the provision of the necessary goods through the direct mental and physical activity of the concrete people involved in their use, as well as in order to avoid condoning the technogenic changes of the environment and eliminating any barriers to obtaining the necessary goods through the measure application of moral, personal, property, organizational or other nature in order to punish for the committed offense and report the need for consequences correction.

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