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APPLICATION OF ADMINISTRATIVE COERCION MEASURES IN ELECTORAL RELATIONS

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Summary

The article analyzes the application of administrative coercion in electoral relations in Ukraine; describes theoretical and practical aspects; distinguishes the most common types of administrative coercion in this type of relations, namely: administrative warning, administrative suspension and administrative responsibility.

Key words: electoral relations, administrative and legal regulation; measures of administrative coercion, administrative warning, administrative suspension, administrative responsibility.

ПРИМЕНЕНИЕ МЕР АДМИНИСТРАТИВНОГО ПРИНУЖДЕНИЯ В ИЗБИРАТЕЛЬНЫХ ОТНОШЕНИЯХ

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Аннотация

В статье проанализировано применение мер административного принуждения в избирательных отношениях в Украине; раскрыты теоретические и практические аспекты; обосновано, что наиболее распространенными видами административного принуждения в сфере отношений указанного вида является административное предупреждение, административное пресечение и административная ответственность.

Ключевые слова: избирательные отношения, административно-правовое регулирование, меры административного принуждения, административное предупреждение, административное прекращения, административная ответственность.

Target setting. On gaining the independence, Ukraine began a long and thorny path of building a democratic and legal state, which is the main indicator of the availability of free, fair and transparent elections of state and local authorities. On capturing the democratic political system in the Constitutional Law, the state recognized people as the only source of power and assumed the obligations before the citizens as to the creation of an electoral system that will meet international standards.

Respect for human rights and freedoms and their guarantees qualitatively characterize the degree of democratic development of the country. The state as guarantor of the rights, including electoral rights of man, is accountable to citizens and the international community for the results of their activities. Realizing its rightful functions and powers, the state determines the limits of permissible behavior or prohibits, requires all actors refrain from actions (inaction) which violate the statutory rules, established by them, which are implemented by means of organizational-and-legal measures and oversight activities. The administrative coercion measures play a crucial role in providing electoral rights and freedoms because the process of right enforcement is both voluntary and forced.

Topicality of the research. Analysis of administrative-and-legal regulation of electoral relations is important, because declarative electoral rights of the citizens become real when they are provided with proper behavior on the part of the state, which, being a public authority, legislatively establishes both its own duty to protect the rights and freedoms of its citizens and obligations of other participants in order to prevent violations.

The situation currently prevailing in the electoral relations allows us to talk about full or partial violation of electoral laws by means of: falsification of election results, direct or indirect bribery to members of election commissions, voters, illegal campaigning, use of administrative resources and the like. This course updates the efficacy of administrative coercion, on the one hand, statistics indicates the poor state of efficiency of administrative coercion, indirectly alluding to the need for its strengthening and ensuring the dominant role of the state in matters of coercion, on the other hand, Ukraine having proclaimed pro-European direction of development and intentions of obtaining the status of the EU member, should go through liberalization, thus, minimize government interference in oversight and coercion activities, including electoral relations.

Theoretical and legal research of the legal category of state coercion was covered in research works of domestic and foreign administrative studies scientists, among which are: V. Averyanov, A. Bandurka, D. Bachrach, Yu. Bytyak, A. Bondarenko, A. Vasiliev, I. Holosnychenko, M. Yeropkin, V. Zuy, S. Kivalov, A. Komziuk,

A. Lunev, L. Rozin, M. Zwick, O. Yakub et al. However, despite rather substantial theoretical development, the application of coercion in the realm of electoral relations still remains controversial and requires further investigation.

The purpose of the research is to analyze the application of administrative coercion in electoral relations.

Presentation of basic material of the research. Analysis of the effectiveness of administrative coercion in electoral relations should start with establishing clear boundaries of conceptual and categorical apparatus of this legal category. Administrative coercion is a type of public influence [1, p. 169], so, this method of state coercion is characterized by all the features of the latter one, namely, it finds its expression in the application of appropriate measures (penalties and a number of sanctions); such measures produce organizational, physical, disciplinary and other effects on the behavior of individuals; it is the reason a person has committed the offense or threat to commit unlawful acts; it is based on applicable law; carried out against the will of individuals or entities to whom it applies; accompanied by the use of physical, organizational and legal restrictions which imply deprivation of rights, imposition of additional duties or obstruction of the right; it has a clearly defined performers composition. A performer is an entity that practices coercion in the person of government bodies and their officials and performers according to whom the appropriate sanctions are applied.

In addition, we should agree with A. Treschova, who points out, that such a feature as administrative coercion is applicable not only to individuals but also legal entities (events of civil, administrative or administrative-procedural coercion) [2, p. 97].

Obviously, all above-mentioned features are inherent in administrative coercion; however, in the theory of administrative law specific features of administrative coercion are distinguished. These include: administrative coercion applied in the state administration to protect public relations arising in this sphere of state activity; the mechanism of legal regulation of administrative coercion establishes the grounds and the application of appropriate coercion measures; the order of coercive measures is regulated, as a rule, by administrative law, which includes the rules of administrative law or administrative regulations of executive or regulatory authorities acts; the application of administrative coercion is the result of implementing public authority of the government, and only in exceptional cases, prescribed by law, such measures may be applied by the court (judges); administrative coercion is used for: a) crime prevention; b) termination of administrative offenses; c) institution of administrative actions; it is based on administrative and procedural rules [3, p. 169].

Analyzing the notion of administrative coercion through a set of inherent characteristics, one should understand it as a variety of state coercion, a method of law enforcement, which is used to protect the private, public and state interests (preventing and stopping offenses, prosecution), the content of which manifests itself in the legally defined governmental influence on the behavior of entities; implemented by the authorized government body avolitional of these entities by applying in compliance with the established administrative procedure order of appropriate measures, defined by real law, that establishes negative effects of personal, real, organizational and other measures.

Various administrative coercion entities have their own, stipulated by the administrative law lists of measures of administrative coercion. Therefore, the types of administrative coercion in the realm of electoral relations can be analyzed through the prism of entities intended to apply it. Given the fact that the main bodies, capable of applying the measures of administrative coercion in electoral relations are the Ministry of Internal Affairs of Ukraine (National Police); courts; officials of the National Council of Ukraine on Television and Radio Broadcasting; in some cases the chairman, deputy chairman, secretary and other members of the election commission, candidates, authorized persons and official observers, then legally prescribed to them measures of administrative coercion shall constitute the system of administrative coercion in the electoral relations. Thus, under Article 255 of the Code of Ukraine "On Administrative Offenses" [4], the above-mentioned individuals have the right to draw up protocols on administrative violations. Powers of the National Police, in particular, on the use of administrative coercion, are stipulated by the Law of Ukraine "On the National Police" [5].

The main measure of administrative coercion on behalf of the courts of general jurisdiction is the court decision. Thus, under Part 2 of Article 13 of the Law "On judicial system and status of judges" № 1402-VIII [6] "Judicial decisions that have come into force, are mandatory for all state authorities, local governments, public individuals and officials, individuals and legal entities and their associations across Ukraine".

Scientists at different stages of social development could not come to a common view on the list of administrative coercion measures. Thus, representatives of the Soviet school of administrative law, defining the aim of the administrative coercion as a division criterion, differentiated measures: – to prevent various anti-social manifestations, exclude the formation of certain illegal situations; – to stop the commenced or committed offense; – to punish the perpetrators of misconduct [7], which, in our opinion, laid the foundation for further understanding and improvement of administrative coercion. Further works were carried out within the framework of this approach and underwent only partial changes or improvements.

I. Veremeienko expressed an interesting point on the measures of administrative coercion, he divided them into measures of administrative coercion which are applied due to an offense (administrative and legal, legal and procedural sanctions) and measures of administrative coercion and administrative and preventive measures that are not sanctions that are applied due to a committed offense [8, p. 63]. However, nowadays administrative studies scientists usually point out the following groups of administrative coercion; – administrative and preventive measures applied to prevent conditions that threaten public safety; – administrative suspension measures applied to stop illegal activities and prevent the consequences that can threaten public safety; – measures of administrative responsibility (administrative penalties) [9, p. 133].

Y. Bytiak, in his interesting thesis, refers demand to suspend individual actions etc. to the most common measures

of administrative prevention [10, p. 165], which we think to be not appropriate because it means that the action is being held and an official does not warn but suspend it. So we offer to include the suspension demand to the administrative suspension.

Administrative suspension and instituting administrative action are already the consequence of administrative misconduct in the sphere of electoral relations. Moreover, they occur only in the given order. First, offenses are detected directly or by an individual application, after that, it must be suspended in order not to cause any harm to public relations in the sphere of holding the elections. Thus, "OPORA" NGO initiated an appeal to the police with the claim to suspend illegal actions related to illegal campaigning that was held by candidates of election district No 206 in Chernihiv during June 2016 mid-term elections to the Verkhovna Rada of Ukraine [11].

The administrative suspension can be determined by the more general definition of "suspension". It means to suspend or interrupt the action, process, ongoing state by the means determined by the law. A. Komziuk believes that, in accordance with the law, the suspension is the availability of appropriate actions, the active behavior of suspension subjects [12, p. 121]. The administrative suspension in the sphere of electoral relations has such distinctive features as suspension activity, suspension of illegal practices that can occur in the electoral relations between relevant public authorities within the power assigned to them by the law of Ukraine and aimed at offenders; as a result, to restore the proper state of public relations where suspension actions can suspend the commitment of the delict.

Talking about administrative suspe-nsion measures in the sphere of electoral relations, one shall understand the activity of authorized government bodies which are competent in suspension and interruption of illegal activity that takes place during electoral relations as provided for in the law of Ukraine on the power towards those offenders to restore the proper state of public relations of this type.

The next measure of administrative coercion after the suspension is an institution of administrative actions that may be considered as an important instrument of the rule-of-law state because thanks to it the state has a mobile and efficient possibility to realize its demands to private individuals and legal bodies [13].

The representatives of the Soviet administrative school prompted to understand the term "administrative responsibility" as an application, in the given order, by authorized bodies and officials of administrative penalties set out in sanctions of administrative and legal norms to perpetrators of administrative offenses which contain state and public denouncement, denouncement of an individual and illegal actions manifested in negative consequences offenders are required to do and those who need to have them punished, rehabilitated and to protect public order in the sphere of public administration [14, p. 41]. In addition, other works provide the following definition of the analyzed term: "one of the forms of the state denouncement expressed by the influence of relevant government bodies and officials on the offender in accordance with administrative norm sanctions" [15, p. 10]. I. Matianov demonstrates slightly different positions, considering administrative responsibility as offender's obligation to report to the state for the illegal behavior and experience negative consequences as provided for in the law [16, p. 10].

Some representatives of the Ukrainian administrative and legal school determine the administrative responsibility as a specific form of negative state respond through its authorized bodies to the relevant category of illegal manifestation (primarily administrative offenses) according to which a person who committed these offenses must answer for the illegal action before the authorized government bodies and pay administrative penalties in the form and order provided for in the law [17, p. 19]. Others see administrative responsibility as an action applied to individuals who have committed administrative offenses, administrative penalties involving onerous property, moral, personal or other consequences imposed by authorized bodies or officials on the basis and in the order as provided for in the norms of administrative law [18, p. 7].

I. Holisnichenko's opinion is quite interesting. He considers administrative responsibility in a quite narrow sense, he believes that it is an application, the realization of an administrative penalty, the responsibility of an individual to respond before the state, represented by the bodies, for the committed illegal activity within provided by the law penalty. The scientist indicates that administrative responsibility is to express a negative reaction of the state to the illegal actions of certain private individuals through by establishing appropriate rules, restrictions and application of comparable sanctions to the perpetrators' offenses [19, p. 7], V. Kolpakov sees the administrative responsibility as coercive application of measures according to a relevant procedure provided in for in the law for committing an administrative offense and must be applied to an offender by an official [20].

R. Pavlovskyi suggested understanding the application of set out, generally binding rules that are applied in governance and other spheres, administrative penalties that have material consequences as the reaction of the state to illegal activity [21, p. 189].

The problem of grounds for administrative responsibility is one of the leading ones in the administrative law theory because it is directly related to the establishment of the amount of the application of administrative penalties measures and ensuring the legality of prosecution, respect to the rights and freedoms of citizens[22, p. 115]. Traditionally recognized in this issue is D. Bakhrakha's view who identifies three grounds for administrative responsibility: 1) regulatory – the system of rules that regulates it; 2) factual – specific actions of a certain subject which violate legal norms being protected (administrative offense); 3) procedural – the act of a competent entity to impose specific penalties for specific administrative offense [23, p. 281].

Conclusions. On analyzing administrative coercion measures and their importance for ensuring the legality and compliance with electoral rights, it should be noted that the most common types in the realm of the mentioned relations are administrative warning, administrative suspension and administrative responsibility.

As a part of the study, we managed to identify the following features that qualitatively characterize the measures of administrative coercion in the electoral relations. These include: it is used in

the form of warnings, penalties and sanctions; they produce organizational, physical, disciplinary or other effects on the behavior of individuals; they serve as a cause of committing an offense or threat to commit misconduct in electoral relations; it shall be applied under the administrative regulations; carried out against the will of individuals or entities in respect of which it applies; it is characterized by well-defined performers composition; the mechanism of legal regulation of administrative coercion establishes the grounds and the application of appropriate coercion measures; the order of coercive measures is regulated, as a rule, by administrative law, which includes the rules of administrative law or administrative regulations of executive or regulatory authorities acts; the application of administrative coercion is the result of implementing public authority of government, and only in exceptional cases, prescribed by law, such measures may be applied by the court (judges); administrative coercion is used for: a) crime prevention; b) termination of administrative offenses; c) institution of administrative actions; it is based on administrative and procedural rules, etc.

It should be noted that this list is not exhaustive, as it may envisage other features inherent to administrative coercion. However, the above-stated characteristics, in our opinion, more fully reflect the administrative and coercive activities of government authorities as regards the relations in the electoral field.

Defining grounds for administrative responsibility for committing the offense in the sphere of electoral relations, one should distinguish three following items: regulatory, stipulated by the norms of the Code of Ukraine "On Administrative Offenses", which forms a system and regulates administrative and delict relations in the electoral sphere; factual – illegal actions of an individual who offends public relations in the electoral sphere and violates legal requirements they are regulated with; procedural – an authorized subject act (especially law enforcement authorities and courts) of the imposition of a specific administrative penalty for a separate administrative offense in the electoral sphere.

Within the outlined research we are inclined to define the following measures of administrative coercion:

1) preventive or prophylactic means of administrative coercion consist in establishing restrictions or prohibitions for potential offenders using physical or psychological means of influence by authorized government bodies in the form of the verification of documents, examination of property or personal inspections, a temporary ban for citizens from access to certain polling stations, restrictions of actions aimed at averting and preventing unlawful behavior on the part of administrative offenses in the sphere of electoral relations. Having applied preventive measures of administrative influence, government bodies affect the prevention of delict manifestations in the electoral relations, thus, protecting and providing electoral rights of citizens;

2) measures of administrative suspension in the sphere electoral relations are the activities of authorized government bodies aimed to terminate, suspend illegal manifestations that take place during electoral relations within powers, provided for in the law of Ukraine, applied to offenders to restore the proper state of public relations of this type;

3) administrative responsibility is the measure of administrative coercion which means a certain reaction of the state to committing certain administrative offenses in the sphere of electoral relations aimed to punish the offender, restore the violated law, educate the offender and prevent this type of offenses in the future.

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ВОЙСКОВОЕ ФОРМИРОВАНИЕ В СОСТАВЕ ПРЕСТУПЛЕНИЯ, ПРЕДУСМОТРЕННОГО СТАТЬЕЙ 114-1 УГОЛОВНОГО КОДЕКСА УКРАИНЫ: ПРОБЛЕМЫ КВАЛИФИКАЦИИ

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Аннотация

Статья посвящена рассмотрению вопросов о содержании понятия «войсковое формирование» и его признаков. Проанализированы понятия «Военная организация государства», «сектор безопасности и оборони», «войсковое формирование». Выделена совокупность обязательных признаков войсковых формирований (общие, родовые и видовые).

Ключевые слова: национальная безопасность, войсковое формирование, препятствование законной деятельности войсковых формирований.

MILITARY FORMATION AS A PART OF THE CRIME PROVIDED FOR IN ARTICLE 114-1 OF THE CRIMINAL CODE OF UKRAINE: QUALIFICATION PROBLEMS

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Summary

The article is devoted to questions about the meaning of «military formation» and its characteristics. Analyzes the concept of «Military organization of the state», «security sector and defense», «military formation». Selected a set of mandatory attributes of military units (General, generic and species).

Key words: national security, military formation, impeding the legitimate activities of military formation.

Постановка проблемы. Законом Украины «О внесении изменений в Уголовный кодекс Украины» от 8 апреля 2014 г. введена уголовная ответственность за препятствование законной деятельности Вооруженных Сил Украины и других войсковых формирований в особый период (ст. 114–1 УК). Для соблюдения законных прав и свобод лиц, подозреваемых или обвиняемых в совершении такого преступления, необходимо правильно квалифицировать совершенное лицом деяние, при этом точно и однозначно толковать обязательные признаки состава преступления, предусмотренного указанной статьей [1].

Актуальность темы исследования подтверждается степенью нераскрытости содержания такого признака как «войсковое формирование» в указанном преступлении. В настоящее время практически отсутствуют научные разработки относительно родовых и видовых признаков таких формирований.

Состояние исследования. Понятие «войсковое формирование» является междисциплинарным и его изучением занимались такие исследователи как А.В. Кривенко, И.И. Качан, Е.В. Пилипенко, С.Ю. Поляков и др. Их научные работы служат теоретической базой для продолжения исследования рассматриваемых вопросов.

Целью и задачей статьи является изучение понятия «войсковое формирование» и выявление его типичных признаков.

Методы исследования. Методологическую основу исследования состав-