

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.40

N° 72

Enero

Junio

2022

Administrative and legal principles for the application of State policy in the field of economic security

DOI: <https://doi.org/10.46398/cuestpol.4072.28>

Mykhailo Tsymbaliuk *

Olha Tylchyk **

Yevhenii Hutnyk ***

Ulyana Parpan ****

Olena Lomakina *****

Nazarii Sumalo *****

Abstract

The objective of the research was to determine the scope and meaning of “administrative and legal regulation” and its components. The main purpose of the administrative and legal regulation of the economic security of the state is to ensure the implementation and protection of the economic rights, freedoms, and legitimate interests of natural and legal persons. The methodology was based on the analysis of documentary materials for the regulation of the economic security of the state. They emphasize in the conclusions that, in its essence, the administrative and legal regulation of economic security must be considered in two aspects: 1) as a set of rules that regulate public and administrative relations in the field of economic security; 2) as a systemic organizing influence of state bodies specially authorized in economic and social relations through norms “objective and subjective” and other legal means, mainly of an administrative nature, for the purpose

* Doctor of Law, Professor, People's Deputy of Ukraine, First Deputy Head of the Committee on Social Policy and Protection of Veterans' Rights of Verkhovna Rada of Ukraine, 5 Mykhailo Hrushevskyi Street, Kyiv, 01008, Ukraine. ORCID ID: <https://orcid.org/0000-0002-4379-0685>

** Professor, Doctor of Science in Law, Department of Administrative Law and Process and Customs Security, University of State Fiscal Service of Ukraine, Ukraine. ORCID ID: <https://orcid.org/0000-0002-7604-7660>

*** Head of section, Kyiv Custom, The state customs service of Ukraine, State Tax University, 31 University Street, Irpin, 08201, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8507-3377>

**** Doctor of Law, Professor, Professor of the Department of Administrative and Informational Law of the Educational-Scientific Institute of Jurisprudence, Psychology and Innovative Education, Lviv Polytechnic National University, 1/3 Kniazia Romana Street, Lviv, 79005, Ukraine. ORCID ID: <https://orcid.org/0000-0003-1424-050X>

***** Candidate of Law, Associate Professor, Head of the Department of Administrative and Constitutional Law, Faculty of Maritime Law, Admiral Makarov National University of Shipbuilding, 9 Heroiv Ukrainy Ave., Mykolaiv, 54025, Ukraine. ORCID ID: <https://orcid.org/0000-0003-4397-5978>

***** Postgraduate student at Scientific Institute of Public Law, Deputy of the Lviv Regional Council, 18 Vynnychenko Street, Lviv, 79008, Ukraine. ORCID ID: <https://orcid.org/0000-0003-1501-8484>

of their protection, improvement and creation of the appropriate conditions for further development in the context of ensuring national security.

Keywords: national security; economic security; legal regulation; economic rights; social welfare.

Principios administrativos y legales de aplicación de la política estatal en el ámbito de la seguridad económica

Resumen

El objetivo de la investigación fue determinar el alcance y significado de la “regulación administrativa y legal” y sus componentes. El propósito principal de la regulación administrativa y legal de la seguridad económica del estado es garantizar la implementación y protección de los derechos económicos, las libertades y los intereses legítimos de las personas naturales y jurídicas. En la metodología se trabajó con base al análisis de materiales documentales para la regulación de la seguridad económica del estado. Destacan en las conclusiones que, en su esencia, la regulación administrativa y legal de la seguridad económica debe ser considerada en dos aspectos: 1) como un conjunto de normas que regulan las relaciones públicas y administrativas en el ámbito de la seguridad económica; 2) como una influencia organizadora sistémica de los órganos estatales especialmente autorizados en las relaciones económicas y sociales a través de normas “objetivas y subjetivas” y otros medios legales, principalmente de carácter administrativo, con el propósito de su protección, mejora y creación de las condiciones adecuadas para un mayor desarrollo en el contexto de garantizar la seguridad nacional.

Palabras clave: seguridad nacional; seguridad económica; regulación legal; derechos económicos; bienestar social.

Introduction

Importance of economic security of the state for its development and existence in the modern world is difficult to be overestimated. A sustainable economy (able to meet the needs of the population and create conditions for realization of basic human rights and freedoms enshrined in the Constitution of Ukraine) is a kind of an “engine” of development in any country, which increases its international and regional prestige and guarantees protection from internal threats of socio-political, economic, and military nature.

At the same time, it should be noted that economic relations, being the basis of economic security, require proper regulation, as well as clear and coordinated activities of authorized public authorities, which can improve and develop such public relations by means of exercising their powers.

The above-mentioned activity of the authorized state authorities responsible for formation and realization of state policy in the sphere of economy mostly lies in the administrative and legal sphere, as it is closely related to public administration and implementation of governmental and administrative powers aimed at stability and predictability of economic relations. Despite existence of objective economic laws, the state is that very institution responsible for the proper regulation of social relations in the economic sphere, their monitoring and adjustment, which leads to the application of certain legal norms, forms and methods of management which have administrative and legal nature. Based on the proposed theses, we can conclude that the scientific study of the problems of administrative and legal regulation of economic security of the state becomes relevant and timely in modern conditions of development of the state and national legal science.

1. Literature review

The issue of administrative and legal regulation cannot be considered completely without detailed analysis of contents of such general category as “legal regulation” and its components. In this regard, it should be noted that this term has been the subject of research by many scholars in various fields of law: theories of state and law, constitutional law, administrative and civil law, etc. In the most general form, legal regulation can be defined as regulation of social relations through the rules of law and other legal means (Cherdantsev, 1993); impact of law on public relations through legal means: norms of law, legal relations, acts of law realization (Bobylev, 2002). According to A.T. Komzyuk, legal regulation is a specific influence exerted by law as a special normative institutional regulator. At the same time, legal regulation has a purposeful, organizational, effective nature and it is carried out with the help of an integral system of tools that really express the very matter of law as a normative institution of formation - the regulator (Komzyuk, 2002).

I.M. Shopina studied the concept of legal regulation from several positions, and namely: in the instrumental aspect, legal regulation is a part (element) of the state’s legal influence on public relations through specific legal means (norms of law, legal relations, acts of law enforcement) in order to streamline, consolidate, protect and develop public relations; in the activity-oriented (pragmatic) aspect, legal regulation is the activity of

the state, its bodies (authorities) and officials, as well as authorized public organizations aimed at establishing binding legal norms (rules) of conduct for subjects of the right, implementing these norms in specific relations and applying state coercion to offenders in order to achieve a stable law and order in the society (Shopina, 2011).

V.I. Teremetsky performed his research in the context of the activity-based (pragmatic) approach. In his opinion, legal regulation covers 1) specific activities of the state (its rule-making bodies), related to development of legal guidelines and determination of legal means for ensuring their effectiveness; 2) activities of direct participants in public relations, aimed at finding and attracting means of legal regulation to coordinate their behavior with the law (its principles, ideas, purposes) (Teremetsky, 2012). R.Y. Demkiv, like previous scholars, emphasizes that legal regulation as a legal phenomenon (normative-legal regulation) is a system of actions and operations carried out by public authorities in established procedural forms with the help of certain methods and legal means aimed at establishing and implementing certain models of social development (Demkiv, 2015).

Approaches to the components of legal regulation also vary in scientific works. There are two main approaches: the broad one and the narrow one. According to the first approach legal regulation includes all forms of state influence on the behavior of public relations (law, acts of law, legal agreements, ensuring implementation of law, including by means coercion, legitimacy, and order). In turn, the narrow approach says that legal regulation cannot be understood as all forms and means used by the state for regulation of public relations (Demkiv, 2015).

At the same time, it should be noted that today the problem of administrative and legal regulation of state economic security is beyond the scope of systematic scientific study, and therefore there is a need to update this issue and its coverage in the specialized literature.

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of the economic security of the state. The dialectical method of cognition of the facts of social reality is the foundation where formal-legal and, rather, legal approaches are based in many respects. The formal-dogmatic method contributed to development of the author's explanation of the current state, problems, and practical role of legal technologies for further development and improvement of economic security of the state. The officially legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of economic security of the state.

3. Results and discussion

O.I. Bezpalova, notes that two separate components can be separated in the mechanism of legal regulation of police authorities. They are the static component and the dynamic component. The static component includes legal norms that regulate the specifics of police management. Other elements of the legal mechanism of police management (institutional component, principles, forms and methods, legal relations, and resource component) are a dynamic component. Legal support (i.e., the static component) is an integral part of the police management mechanism (Bezpalova, 2017).

Based on the above-mentioned positions, we will try to define the specifics of the term “administrative and legal regulation”. There is no doubt that this concept is related to the sphere of social relations, which are included in the subject of administrative law. If we analyze the scientific position of such well-known scientists-administrators, as R.S. Melnyk, we can conclude that since administrative law regulates public relations that arise in connection with the public administration’s assuring human and civil rights and freedoms, it is characterized by certain limits of legal regulation - the sphere of activity of executive and administrative bodies and public relations of managerial nature, which are formed in this sphere (Melnyk, 2014).

Therefore, if we talk about the sphere of economic security and economic relations that form its basis, it should be noted in advance that it is economic relations of an administrative nature should belong to the object of administrative and legal regulation. The comparative analysis of scientific works on the problems of administrative and legal regulation of various spheres of social and political life shows the following results:

- In the sphere of environmental security of the state the object of administrative and legal regulation is presented as public relations in the form of behavior and actions of people which take place in connection with the fact that public authorities, primarily public administration, provide environmental rights and freedoms of humans and citizens as well as interests of the society and the state in this area (Yemets, 2019).
- Administrative and legal regulation of the judicial branch of power is presented as purposeful influence of the norms of constitutional and administrative law on public relations in this sphere.
- Electoral relations, as an object of administrative and legal regulation, characterize a special type of social relations that are regulated by the purposeful influence of administrative and legal norms (Oliylyk, 2017).

- Oil and gas complex as an object of administrative and legal regulation is a system of public relations in this area, regulated by the rules of administrative law.
- Administrative and legal regulation of land relations is aimed at ensuring implementation and protection of rights, freedoms and legitimate interests of the state, individuals, and legal entities regarding the possibility of possession, use and disposal of land (Leheza *et al.*, 2018).

Based on the above legal positions, we can conclude that the administrative and legal regulation of economic security can be formulated as a complex concept that includes two components:

- A set of administrative and legal norms governing administrative social relations which are formed concerning production, distribution, exchange and consumption of material goods and services, ensuring security and stability of economic system to external and internal threats and which guarantee protection of national economic interests socio-economic rights and freedoms of citizens, as well as create conditions for further development and growth of the national economy and ensure competitiveness of the state in the global economic environment;
- A systemic organizing influence of specially authorized state bodies on economic and social relations through administrative and legal norms and other legal means, primarily of an administrative nature, with the purpose of their protection, improvement, and creation of appropriate conditions for further development in the context of ensuring national security of Ukraine (Leheza *et al.*, 2021).

The definition we have formulated makes it possible to confidently declare that Ukraine's economic security is a full-valued object of administrative and legal regulation on the following grounds:

1. Social relations formed in the sphere of economy are the subject of practical activity of the executive bodies authorized for realization of tasks and functions of the state in various spheres of public life, in the sphere of national security.
2. A specially authorized body of the state, which has an object competence and a territorial competence defined by the law, is one of the parties of public relations in the sphere of economic security as an object of administrative and legal regulation. As stated in the normative acts of our country, the main components of economic security include financial security, macroeconomic security, industrial security, energy security, foreign economic security, investment, and innovative security. The components of financial

security include: banking security, security of the non-banking financial sector, debt security, budget security, currency security, monetary security (Leheza *et al.*, 2020).

3. A specific feature of public relations in the sphere of economic security as an object of administrative and legal regulation is that the above executive authorities and other authorized entities have the right to demand certain behavior from relevant participants in certain relations by means of establishing administrative and legal norms. For example, the Ministry of Energy and Environmental Protection develops and approves safety regulations for electricity supply and monitors safety of electricity and natural gas supply, in particular it monitors balance of demand and supply of natural gas in Ukraine, sectoral technical regulations and regulatory characteristics of the technological costs of electric energy.
4. The Ministry of Finance of Ukraine provides fiscal risk management, it prepares the Budget Declaration together with the main managers of the state budget, it develops instructions on preparing proposals for the Budget Declaration and indicative limits of state budget expenditures and communicates them to the main managers of the state budget [20]. The National Security and Defense Council of Ukraine makes decisions on: determination of strategic national interests of Ukraine, conceptual approaches and directions of ensuring national security and defense in the economic sphere; draft state programs, doctrines, laws of Ukraine, decrees of the President of Ukraine, international treaties, other regulations and documents on national security and defense; measures of political, economic, social and other nature in accordance with the scale of potential and real threats to the national interests of Ukraine;
5. Relations in the sphere of economic security may arise on the initiative of the authorized entity, on the initiative of the Cabinet of Ministers of Ukraine, the central executive body, other authorized officials, while the consent of the other party involved is not required for their occurrence, in contrast to civil law relations.
6. Administrative sanctions (penalties) have been established for illegal actions in the sphere of economic security. These penalties are regulated by the Code of Administrative Offenses and other regulations, which include administrative and economic sanctions (Leheza *et al.*, 2021).

According to Article 238 of the Commercial Code of Ukraine, administrative and economic sanctions (i.e., measures of organizational, legal, or proprietary nature aimed at stopping offenses performed by a business entity and elimination of their consequences) may be applied to

business entities for violation of the rules of economic activity established through legislative acts (Leheza *et al.*, 2021).

The state (public) authorities and local self-government bodies, in accordance with their powers and in accordance with the procedure established by the law, may apply to business entities the following administrative and economic sanctions: withdrawal of profit (income), administrative and economic fine, collection of fees (mandatory payments), revocation of license (patent) for performance of certain economic activities, restriction or suspension of the business entity's activities, liquidation of the business entity (Law of Ukraine, 2003).

In addition, in accordance with the provisions of the Budget Code of Ukraine (Article 117), the following measures of influence may be applied to the participants of the budget process for violation of the budget legislation:

- Warning about improper implementation of budget legislation with the requirement to eliminate violations of budget legislation - such warnings are used in all cases of violated budget legislation.
 - Suspension of operations with budget funds - it is applied for violation of budget legislation in accordance with the procedure established by Article 120 of the Budget Code.
 - Suspension of budget allocations - it is used for violations of budget legislation, defined by Article 116 of the Budget Code.
 - Reduction of budget allocations - it is applied for violation of budget legislation, defined by Article 116 of the Budget Code (Law of Ukraine, 2010).
1. For the violations described above in the economic sphere, the guilty party is liable to the state and not to the other party, as it is in case with civil and legal relations;
 2. In case of disputes between relevant subjects of economic security relations these disputes can be resolved both administratively and in court. According to Article 214 of the Budget Code of Ukraine, the decision to apply a measure of influence for violation of budget legislation may be appealed to the issuing authority or in court within 10 days of its issuance, unless otherwise provided by the law (Law of Ukraine, 2010).

The Commercial Code of Ukraine states that a business entity has the right to appeal to a court against a decision of any public authority or any local government body to impose administrative and economic sanctions on it. If a public authority or a local government body adopts an act that does not comply with the law and violates the rights or legitimate interests of a business entity, the latter has the right to appeal to the court to declare such an act invalid (Law of Ukraine, 2003).

At the same time, according to Article 5 of the Code of Administrative Proceedings of Ukraine each person has the right to appeal to the administrative court if he/she considers that a certain decision, action or inaction of a subject of power has violated its rights, freedoms or legitimate interests and he/she has the right to ask for protection of his/her rights by means of: recognition of the respective normative legal act or its separate provisions illegal and invalid; recognition of the respective act or its separate provisions unlawful and their cancellation; recognition of the respective actions performed by the subject of power unlawful and the obligation to refrain from these certain actions; establishing the presence or absence of competence (authority) of the subject of power (Law of Ukraine, 2005).

Conclusion

The conducted research gives an opportunity to formulate the following conclusions and generalizations:

1. Economic security is an integral part of national security of Ukraine, which presents a status of social relations formed concerning production, distribution, exchange and consumption of material goods and services, which characterizes their protectability (security) and resistance to external and internal threats, guarantees protection of national economic interests, promotes implementation of social and economic rights and freedoms of citizens, and in addition to that it creates conditions for further development and growth of the national economy and ensures competitiveness of the state in the world economic environment.
2. Economic security of the state as an object of administrative and legal regulation is a set of relations in the sphere of public administration concerning production, distribution, exchange and consumption of material goods and services; stable and protected status of these relations guarantees protection of national economic interests, promotes social-economic rights and freedoms of citizens and also it creates conditions for further development and growth of the national economy and ensures competitiveness of the state in the world economic environment.
3. In its essence, the administrative and legal regulation of economic security should be considered in two aspects: 1) as a set of administrative and legal norms regulating administrative public relations in the sphere of economic security; 2) as a systemic organizing influence of specially authorized state bodies on economic and social relations through administrative and legal norms and other legal means, primarily of an administrative nature,

with the purpose of their protection, improvement and creation of appropriate conditions for further development in the context of ensuring national security of Ukraine.

4. The main purpose of administrative and legal regulation of economic security of the state is to ensure implementation and protection of economic rights, freedoms and legitimate interests of individuals and legal entities.

Bibliographic References

- BEZPALOVA Olga. 2017. "Legal support of the management of the police of Ukraine" In: Administrative law and process. Vol. 09, No. 259, pp. 111-115.
- BOBYLEV Alexander Ivanovich. 2002. "Theoretical problems of legal regulation" In: Law and politics. No. 08, pp. 155-200.
- CHERDANTSEV Alexander Fyodorovich. 1993. Logical-linguistic phenomena in law, jurisprudence and practice. Science. Ekaterinburg, Russia. 189 p.
- DEMKIV Roman. 2015. "Legal regulation as a legal phenomenon: some aspects of understanding" In: Scientific Bulletin of Uzhhorod National University. Series: Right. Vol. 34, No.1, pp. 19-23.
- KOMZYUK Anatoliy. 2002. Trokhimovich Measures of administrative coercion in law enforcement activities of the police: concepts, types and organizational and legal issues of implementation: a monograph / for general. ed. OHM. Bandurki. Kharkiv: Nat. un-tu vnutr. Sprav, 336 p.
- LAW OF UKRAINE. 2003. Economic Code of Ukraine: Law of Ukraine of 16.01.2003 N^o 436-M.
- LAW OF UKRAINE. 2005. Code of Administrative Procedure of Ukraine: Law of Ukraine of 06.07.2005 N^o 2747-M.
- LAW OF UKRAINE. 2010. Budget Code of Ukraine: Law of Ukraine of 08.07.2010 N^o 2456-71.
- LEHEZA, Yevhen. TIUTCHENKO, Svitlana, STANINA, Olha, SHATRAVA, Serhii, REZANOV Serhii. 2021. "Land use and protection: legal regulation and foreign experience" In: Revista de la Universidad Del Zulia. Vol. 12, No. 33, pp. 70-81.
- LEHEZA, Yevhen; DOROKHINA, Yuliia; SHAMARA, Oleksandr; MIROSHNYCHENKO, Serhii; MOROZ, Vita. 2021. "Citizens

- ‘participation in the fight against criminal offences: political and legal aspects’ In: *Cuestiones Políticas*. Vol. 39, No. 69, pp. 212-224. Available online. In: <https://doi.org/10.46398/cuestpol.3969.12>. Data of consultation: 12/11/2021.
- LEHEZA, Yevhen; FILIPENKO, Tatiana; SOKOLENKO, Olha; DARAHAN, Valerii; KUCHERENKO, Oleksii. 2020. “Ensuring human rights in Ukraine: problematic issues and ways of their solution in the social and legal sphere” In: *Cuestiones políticas*. Vol. 37, No. 64, pp. 123-136. Available online. In: <https://doi.org/10.46398/cuestpol.3764.10>. Data of consultation: 12/11/2021.
- LEHEZA, Yevhen; ODYNTSOVA, Iryna; DMYTRENKO, Natalia. 2021. “Teoría y regulación legal del apoyo informativo de los procedimientos administrativos en Ucrania” In: *Ratio Juris UNAULA*. Vol. 16, No. 32, pp. 291-306. Available online. In: <https://doi.org/10.24142/raju.v16n32a12>. Data of consultation: 28/11/2021.
- LEHEZA, Yevhen; SAVIELIEVA, Maryna; DZHAFAROVA, Olena. 2018. “Structural and legal analysis of scientific activity regulation in developed countries” In: *Baltic journal of economic studies*. Vol. 4, No. 3, pp. 147-157.
- MELNYK Roman. 2014. *General administrative law: a textbook*. Waite. Kyiv, Ukraine.
- OLIYNYK Oksana. 2017. “The concept of electoral relations as an object of administrative and legal regulation” In: *Law and society*. No. 03, pp. 153-158.
- SHOPINA Irina. 2011. “On conceptual approaches to defining the concept of legal regulation” In: *Law Forum*. No. 2, pp. 134-143.
- TEREMETSKY Vladislav Ivanovich. 2012. *Tax relations in Ukraine: a monograph*. Disa Plus. Kharkiv, Ukraine, 648 p.
- YEMETS Leonid. 2019. *Administrative and legal principles of management in the field of environmental security of the state: dis. ... Dr. Jurid. Science: 12.00.07*; Kharkiv National University of Internal Affairs. Kharkiv, Ukraine, 544 p.



UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 N° 72

*Esta revista fue editada en formato digital y publicada en enero de 2022, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

www.luz.edu.ve
www.serbi.luz.edu.ve
www.produccioncientificaluz.org