ECONOMIC SPHERE AS A SUBJECT OF ADMINISTRATIVE LEGAL PROTECTION AND DEFENCE

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Annotation
This article describes the economic sphere as a subject of administrative legal protection, analyses different scientific studies on this issue and considers ways of its further improvement. The notion of "economic sphere", "subject of administrative legal protection and defence" was defined in it. Current national legislation was analysed and possible changes which can be brought to it were proposed. The economic legal concept of different periods and its legal regulation were studied.

Keywords: economic sphere, administrative legal protection, legal protection, legal protection of the administrative legal relations.

1. Relevance of research
Reforms in the field of policy, economics and social relations may lead to the re-organization of the social relations in all possible spheres of the social life. These processes are reflected through various areas of legal regulation of social relations, including those in the field of legal protection and defense of social values. Economic reforms that take place in Ukraine, the development of enterprises of different types of ownership, legal and organizational support for their activities are becoming increasingly important and require adequate economic and legal impact and legal protection and in economic management.

Nowadays, the problem of legal regulation and protection of the economic sphere is not highly developed and considered controversial. Its roots go back to the conflict between the representatives of the economic concept and the civil concept which were discussed much in the USSR in the 50-ies of the XXth century.

The main idea of the economic legal concept is in the legal regulation of relations of economic activity (the so-called "horizontal" relations between legally equal producers) and management of such relationships (the so-called "vertical" relations between the producers and public authorities vested with the relevant state-authoritative competence) as the only field of economic rights. That is, according to the "commercial", the combination of the elements of civil and administrative legal methods of regulation of the social relations in the economic sphere creates a qualitatively new area - the field of commercial law.

I.S. Pereterskyy, V.A. Krasnokutskiy, I.B. Nowicki, M.M. Agarkov, A.V. Karasso, V.P. Gribanov and others are considered the main supporters of the theory of economic law in times of the USSR. Among the critics of the abovementioned theory should be mentioned O.C. Ioffe, who was a consistent supporter of the civil concept and private law character of the civil law.

O.C. Ioffe and other supporters of the civil concept (the so-called "civilists") believed that the "horizontal" commercial relations should be regulated by civil law as private legal relationships, and "vertical" economic and legal relationships should be governed by the administrative law as a public legal relationships, and there is no necessity to combine these types of legal regulation and create a new filed of law [1,p.48–62].

Nowadays, the problem of dividing the commercial law in a separate sphere of law acquired a special importance due to the adoption of the new Civil Code and the Commercial Code of Ukraine. The representatives of the administrative legal concept had stayed this discussion. However, when the problem of administrative courts and the separation of jurisdictions appeared, they adopted the civilistic concept, proving the necessity and feasibility of establishing such vessels and the introduction of justice in administrative issues.

Today, the problem of correlation between the civil and economic rights is not solved completely. On the contrary, the issue has gained urgency in connection with the adoption of the Commercial Code, whose numerous provisions duplicate those of the Civil Code, or vice versa don’t coincide with the latter.

Displayed ambiguity regarding the legal regulation of economic relations raises also the problem of understanding the nature of legal protection of the economic sphere. In particular, let’s define the notion of the economic sphere or the sphere of economic relations.

Article 1 of the Commercial Code of Ukraine determines the subject of legal regulation as the economic relations which appear in the process of the organization and the application of economic activities between legal entities and between these entities and other participants of economic relations [2].

Under Part 4 of Article 3 of the Commercial Code of Ukraine, the scope of economic relations constitute the economic and industrial, organizational, economic, and internal relations [2].

The legislator defines the specified types of relationships the next part of this article. In particular, the economic and industrial relations refer to the property and other matters between business entities in the economic activities. Organizational and economic relations in the Commercial Code refer to the relations between business entities and business organizational and economic powers in the process of management of business activities. And the inner economic relations are defined as the relations between the structural units of the entity and the entity's relationship with its structural units.

The legislators distinguish between relations in the management of other types of relationships to clarify the definition of the scope of economic relations in Article 4 of the Commercial Code of Ukraine. This distinction allows to add more details to the definition of the subject of legal regulation and, thereby, the subject of legal defense and protection in the sphere of economic relations provided by the Article 1 of the Commercial Code of Ukraine.
Considering all abovementioned, the subject of legal protection and defense in the sphere of economic relations can be defined as social relations in the process of organizing and carrying out economic activities between legal entities and between these entities and other participants of economic relations, including household and industrial, organizational, economic, and internal relations.

The economic sphere is protected through a variety of legal methods. For instance, these methods include the civil legal means of defense that are mentioned in the Chapter I of the First Part of the Civil Code of Ukraine and the commercial legal and the administrative legal means of protection.

**What is the nature of the administrative legal protection and defense?**

The main social functions of law are the regulatory and protective, which are used by law to affect public relations in order to manage them and to protect them. The protective function of law is implemented through: 1) formally distinguished prohibition to perform certain unlawful actions under the threat to suffer sanctions for their commission; 2) the application of abovementioned sanctions against the offender.

It is necessary to carry out the distinction between the concept of legal protection and the concept of legal defense. Although, both concepts are elements of the defense function of law, but their purpose differs a lot: the protective norms are aimed at the perseverance of the public relations in their current state, while the defense norms are aimed at the defense of the violated rights of the participants of the legal relations and their re-establishment. Thereby, the protection can be transformed into defense in case of the violation of the existing legal relations.

To sum up, the administrative legal protection can be understood as positive state of social relations that are ordered under the administrative law, which is protected by the statutory administrative legal sanctions which are applied for administrative violations. When the administrative legal protection is insufficient and there was a violation of the rights of the participants of the administrative legal relations, measures of administrative remedies are applied to the person who committed the administrative offense in form of administrative and legal sanctions under the administrative law.

That is why, the positive state of social relations in the process of organizing and carrying out economic activities between legal entities and between these entities and other participants of economic relations, ordered by the administrative legal norms, and protected by the statutory administrative legal sanctions for administrative violations should be understood as the administrative legal protection by the participants of the legal relations in the sphere of economic relations.

The participants of the economic relations should follow the established legal rules while performing their economic activities. If these rules are violated, the business entities are responsible for their actions and the economic sanctions are applied against them. It should be noted that the drafters of the Commercial Code of Ukraine had a meticulous approach to the classification of the latter. Under the Part I of Article 217 of the Commercial Code, the economic sanctions against the violator of the economic legal norms are defined as the actions of the state influence which may cause economic and legal consequences. The Commercial Code of Ukraine distinguishes several types of sanctions, which differ only in the legal and economic grounds, but also in the order and the reasoning of the offence [2].

Among the sanctions we can allocate administrative legal sanctions established by Article 239 of the Commercial Code of Ukraine [2]. This article established the following administrative and economic sanctions: the withdrawal of profit (income), administrative fines, penalty duties (mandatory payments), the application of anti-dumping measures, cessation of export and import operations, the application of individual licensing regime; the suspension of license for the certain types of businesses; the cancellation of licenses (patents) for the entity which enable it to perform certain types of economic activity; restriction or termination of the entity; the cancellation of state registration and the liquidation of the entity; other housekeeping sanctions established by this Code and other Laws of Ukraine.

In addition to the list of administrative legal sanctions, the Commercial Code also provides the grounds for their application. In particular, under Part I of Art. 238, such sanctions are applied for the breach of the legislation, particularly in case of breach of the rules of the economic activity. Also, the legislator clearly defines the list of entities against which administrative and economic sanctions can be imposed. Under the Part I of Art. 55 of the Code, these entities include those which are participants of the economic relations, operate by implementing economic competence (that is a set of economic rights and obligations), possess separate property and are responsible for their obligations within the property, excluding the exceptions provided by law [2].

Also, in Art. 239 of the Commercial Code, the bodies eligible to impose administrative and economic sanctions are clearly defined. They include the governmental agencies and local governments in terms of their powers. It should be noted that the administrative and economic sanctions and other sanctions are clearly defined by the body responsible for their application. In particular, as described in Part 4 of Article 217 of the Commercial Code of Ukraine, the economic sanctions are imposed in accordance with the law and based on the initiative of the participants of economic relations, while the administrative and economic sanctions are imposed according to the will of the authorized state bodies or local authorities [2].

Abovementioned makes it possible to assert that the administrative and economic sanctions form a particular type of administrative sanctions, because they contain almost all the features of administrative sanctions, including the grounds of their application, the bodies responsible for the application and their substantive content. As for administrative and economic sanctions, they include not only the sanctions of material nature (fine, profit, charging), but also organizational ones (revocation of license, restriction of activities, etc.) comparing to the economic ones. The latter are aimed at preventing and suppressing offenses in the area of management, and, if necessary, the application of certain penalties that may cause negative consequences for the offender.

Moreover, the confirmation of the essential quality of the administrative sanctions to the measures of administrative responsibility is that administrative and economic sanctions, as well as administrative sanctions, are not compensatory, while the other economic sanctions do. As well as administrative fines, administrative and economic sanctions are paid to budgets or extra-budgetary funds. With a few exceptions, the procedural order of application of the administrative economic and administrative sanctions is almost the same.

In addition to the Commercial Code of Ukraine, administrative and economic sanctions have are provided by a number of enactments including the Tax Code of Ukraine, the Law of Ukraine "On the Principles of Social Protection of the Disabled in Ukraine" dated March 21, 1991 № 875-XII, or the Law of Ukraine "On the Antimonopoly Committee of Ukraine" dated November 26, 1993 № 3659-XII and others.
Although, despite the provisions provided by the Article 239 of the Commercial Code of Ukraine, we can conclude that the administrative and economic sanctions are established only by law, but today there is a number of regulatory legal acts adopted before the validation of the Commercial Code of Ukraine, which define administrative and economic sanctions. As an example, it refers to the Regulation on the State Inspection of Price Control, approved by the Cabinet of Ministers of Ukraine on December, 13th 2000 № 1819, and so on [3].

Several authors offer to consolidate into all the administrative and economic sanctions, provided by various enactments by the adoption of the corresponding laws. [4, p. 28]. Others propose to exclude those administrative sanctions from the subordinate legal acts and define them only in the relevant laws, as it is defined in the provisions of the Civil Code of Ukraine, and while making appropriate changes - to suspend the relevant rules of all enactments considering the application of the administrative sanctions.

However, these propositions are aimed only at the formal harmonization of existing legislation on administrative sanctions in accordance with Part 2 of Art. 239 of the Commercial Code [2]. Implementation of these propositions will lead to the presence of a large number of legislative acts containing administrative and economic sanctions, but not to the solution to the problem of providing the logical systematization of administrative sanctions [5, p. 998-1007].

This problem can be solved in a different way. Sanctions provided by the abovementioned enactments can be confidently attributed to administrative sanctions. This is the basis for the systematization and legal assignment of all administrative and economic sanctions stipulated by the Commercial Code of Ukraine, as well as those, which can be found in other legal acts into one whole document. Taking into consideration that the Commercial Code of Ukraine determines the legal basis of economic activity, the fact of presence of the "administrative sanctions" is at least counterintuitive. This approach, considering the presence of the valid Code on Administrative Offences of Ukraine, does not meet the legislative logic and introduces confusion into the classification of administrative enforcement measures and means of economic responsibility, contributes to the emergence of problematic issues in the practice of application of sanctions.

It should be noted that the necessity of the systematization of administrative sanctions and their assignment in the Code of Administrative Offences is a logical process, influenced by the current understanding of the role and value of commercial and administrative law. Paying attention to the abovementioned issue of the expediency of the separation of the commercial law as an independent field of law, it is necessary to say that while attempting to resolve this problem we should consider the rule of golden mean. Of course, if we take into account only the intrinsic characteristics of the subject and the method of the legal regulation, the supporters of the civilistic approach are right that the commercial law is essentially a comprehensive synthesis of the elements of civil and administrative law. This synthesis has emerged according to the background of the historical and social conditions when an opened conflict against all forms of private and personal life existed, and it was necessary to justify theoretically the so-called new type of social relations that cannot be divided into the private and administratively-authoritative ones.

However, the views of the "economists" were under the impact of the social-historical study. The separation of commercial law as an independent branch of law was held according to the numerous historical and social factors, so we cannot completely deny the theory of the independence of the commercial law. Commercial law must adapt to the day-to-day realities and needs. At the present state of its development, it should get rid of the elements of administrative regulation and acquire more peculiarities of the private law, otherwise, to become more "commercial". Therefore, administrative and economic sanctions embodied in the Commercial Code and other enactments and as the means of administrative legal protection of economic areas should be excluded from the separated enactments and assigned in the whole Code on Administrative Offences of Ukraine. Thereby, the administrative law is a classic branch of law that has a verified amount of means legal protection which should not be sprayed among so-called "complex" fields of law. There is no need to fix administrative sanctions in the Commercial Code, as well as other enactments. This fragmentation of administrative sanctions does not improve their practical application. Considering the modern practice, a number of problems are connected with the application of sanctions, particularly with the bodies enabled to perform the economic application of administrative sanctions, the timing and method of their application.

The presence of such sanctions in the Code of Administrative Offences will be enough for the proper legal protection and defense of the relations in the sphere of economic relations. According to such an approach, the ways of the application of the administrative sanctions can be standardized and brought into a system that will contribute to their effective and correct performance.

Of course, such a move will affect the administrative liability of legal entities. The problem of such responsibility has long been a subject of discussions among the scientists. The controversial nature of the abovementioned issue appears from the theory that considers the nature of the legal entity as a legal fiction, since the entity does not have the intelligence and appropriate mental attitude towards actions performed by it. That is why, we cannot use the traditional approach of the subjective side of the offense which contains such an element as the guilt to the legal entities. However, the approaches to the understanding of the nature of the legal entity are changing nowadays. While, during the formation and the development of the institution of the legal entity, the key point in the nature of such a person was in the considering it as an association of persons and capital, for the modern understanding of the nature of the legal entity, the transfer of the responsibility of the founders of the legal entity to the entity itself is priority-driven. This approach corresponds to the current state of the legal regulation of the institution of legal entity and, therefore, requires to be legally assigned.

The absence of a clear legislative definition of administrative liability of legal persons is caused only by its inertia and the delay from the development of public relations. In fact, the possibility of applying sanctions to legal entities which, in fact, are measures of administrative responsibility, already has found its consolidation in the legal rules in the form of administrative sanctions, which are actually the means of the administrative responsibility.

II. Conclusion

To sum up, administrative legal sanctions should be consolidated into one whole legal act, namely the Code on Administrative Offences of Ukraine. From this viewpoint, all the administrative and economic sanctions, which are currently scattered in different enactments, should be assigned in terms of one Article called «The administrative liability of legal entities and the application of administrative sanctions for the violations in the sphere of economies». Thereby, appropriate changes and amendments to the other articles of the Code on Administrative Offences of Ukraine should be made referring to the classification of the entities bearing administrative responsibility and the terms of the application of the administrative penalties.
The abovementioned approach corresponds to the current state of economic and administrative relations, the state of development of the institute of administrative liability of legal entities, and promotes more effective administrative legal protection of the sphere of economic relations.

References


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