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Administrative coercion as the method for providing state defense order

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Abstract

Using the logical and semantic method the purpose of the research was to reveal the essence of administrative coercion as a method of ensuring the state defense order. In the results of the research the article defines administrative coercion as the method of ensuring the order of defense of the state in the system of legal and administrative measures to assert compliance with the duties and requirements related to the implementation of the studied institution. In terms of practical significance, it is established that administrative coercion is aimed at ensuring the smooth, efficient and operational functioning of the military-industrial complex and other important sectors providing production, supply and development of military equipment, as well as scientific research institutes and organizations engaged in the development of new technologies for defense needs. It is concluded that administrative coercion is an important and necessary method in the process of ensuring Ukraine's security and defense capabilities, as it allows controlling the production and supply of strategically important goods and services.

Keywords: administrative coercion; control mechanism; method and arrangement; state defense order; goods and services.

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La coerción administrativa como método para proporcionar una orden de defensa del Estado

Resumen

Mediante el método lógico y semántico el propósito de la investigación fue revelar la esencia de la coerción administrativa como método para asegurar el orden de defensa del Estado. En los resultados de la investigación el artículo define la coerción administrativa como el método de asegurar el orden de defensa del Estado en el sistema de medidas legales y administrativas para afirmar el cumplimiento de los deberes y requisitos relacionados con la aplicación de la institución estudiada. En términos de significado práctico, se establece que la coerción administrativa tiene como objetivo garantizar el funcionamiento fluido, eficiente y operativo del complejo militar-industrial y otros sectores importantes que proporcionan la producción, suministro y desarrollo de equipos militares, así como institutos de investigación científica y organizaciones dedicadas al desarrollo de nuevas tecnologías para las necesidades de defensa. Se concluye que la coerción administrativa es un método importante y necesario en el proceso de garantizar la seguridad y la capacidad de defensa de Ucrania, ya que permite controlar la producción y el suministro de bienes y servicios de importancia estratégica.

Palabras clave: coerción administrativa; mecanismo de control; método y disposición; orden de defensa del Estado; bienes y servicios.

Introduction

The relevance of the study of administrative coercion as a tool for securing State defense order lies in the fact that the effective implementation of a defense order requires proper control, coordination and enforcement of duties by enterprises, organizations and citizens related to the defense sphere, especially considering the processes, threatening social existence of the society (Kharytonov *et al.* 2021) and struggle between freedom and dependence (Panchenko *et al.*, 2022). State defense procurement is a complex system of planning, implementation and control over the manufacture and supply of military products, weapons, equipment and services.

Ensuring successful implementation of defense order requires the availability of effective tools enabling compliance with the established norms, rules and restrictions. Administrative coercion, or administrative measures, are one such tool, the study of which can contribute to the

implementation of effective management mechanisms aimed at preventing violations, ensuring the implementation of agreements and monitoring compliance with safety, quality and technological standards in the production of defense products.

Thus, administrative coercion in the aspect of ensuring State defense order is an acute scientific issue, which in turn necessitates new scientific research within the symbiotic combination of administrative and military law.

Therefore, the purpose of the article is to reveal administrative coercion as a method for securing State defense order based on the theory of administrative and military law, rules of national legislation and the views of scientists.

1. Methodology

The methodological basis for the Article is a set of methods and techniques of scientific knowledge. Their application is guided by a systematic approach, which made it possible to investigate the problems in the unity of their social content and legal form, to carry out systematic analysis regarding the application of measures of administrative coercion.

Separate methods of scientific knowledge were also used in the work.

With the help of the logical and semantic method and the method of ascent from the abstract to the concrete, the conceptual apparatus was deepened, the essence and features of administrative coercion were determined.

The methods of classification, grouping, system and structural, system and functional approaches were used to identify the problems connected with State defense order, as well as the range of measures and control mechanisms of administrative coercion, which are used by state bodies to support the implementation of the State defense order.

Dogmatic and legal method was useful when considering legal instruments governing State defense order in Ukraine.

Logical method was applied when analyzing scientific approaches to the issues under consideration.

The method of legal abstraction helped to formulate the authors' view on the administrative coercion in general and as a method of ensuring a state defense in particular.

2. Literature Review

In the theory of administrative law, the definition of administrative coercion is approached ambiguously. Thus, Kliushnychenko (1979) defines administrative coercion not only as a set of certain measures applied by the relevant State bodies to certain subjects, but also reveals its purpose – preventing illegal acts, bringing to justice for administrative offenses, ensuring public safety.

Riabov (1974) defines administrative coercion as certain measures, without delineating either their types or purpose, while emphasizing only the extrajudicial nature of their application.

According to Kolpakov and Kuzmenko (2003), administrative coercion should be understood power exercised on behalf of the State against the subjects of offences unilaterally and in cases provided for by law, firstly, measures to prevent offences, secondly, measures to deal with offences, thirdly, penalties for violations of regulations.

Komziuk (2002) proposes to understand administrative coercion as the application by relevant actors of moral, property, personal and other influence measures to persons outside their control, regardless of the will and desire of the latter with the aim of protecting social relations, which arise in the sphere of public administration, through prevention and cease of offenses, punishment for their commission.

The topic of the state defense order is always under the close attention of society, since the state of the defense capability of the country in general and the Armed Forces in particular depends on its completeness.

The state defense order envisages providing the Armed Forces of Ukraine and other paramilitary formations with new promising weapons and military equipment: modern artillery systems, armored missile boats, unmanned aerial vehicles, armored vehicles, means of observation, aiming and night vision, modernization of airplanes, helicopters and other military equipment, etc. (Matvuishin and Otsabryk, 2018).

Usachenko (2020) assures that the essence of the state defense order can be defined as a special method of management to meet State needs. It acts both as an economic tool for regulating macroeconomic processes on the part of the state, and as a means of balancing supply and demand for certain goods. With its help, one can influence the organization of private production processes, develop competition between producers and increase the competitiveness of the economy in general.

As an object of administrative and legal support, Povydysh (2021) defines state defense procurement as the system of relatively diverse range of social relations that arise, change or terminate due to the planning,

formation, placement, adjustment and execution of a state defense order for the purpose of supplying (procurement) goods, works and services to meet the military needs of the law enforcement agencies of Ukraine in weapons, military equipment, other material means and ensuring national security and defense.

3. Results and Discussion

The State defense order is formed and implemented within the framework of the Resolution of the Cabinet of Ministers of Ukraine “Some issues of the State defense order for 2021” (Resolution of the Cabinet of Ministers No. 614, 2021), which approves the following documents:

- Temporary procedure for placement, adjustment of the state defense order, as well as control over its execution;
- Standard state contract for the supply (purchase) of products under a state defense order;
- Standard state contract for the performance of works (providing services) under a state defense order;
- Typical state contract for the performance of research and development (research, technological) work under a state defense order.

The customers of the state defense order are: Ministry of Internal Affairs, Ministry of Economic Development and Trade, Ministry of Defense, Ministry of Justice, State Emergency Service, Security Service of Ukraine, Foreign Intelligence Service, State Space Agency, State Border Service Administration, State Service Administration special communications and information protection, the Main Intelligence Directorate of the Ministry of Defense, the State Security Office, the National Anti-Corruption Bureau, the National Guard, the National Police, the State Special Transport Service.

The Law of Ukraine “On Defense Procurement” No. 808-IX (2020) and “On the National Security of Ukraine” (Law of Ukraine No. 2469-VIII, 2018) serve as the main tool for management of the orders for the purposes of State consumption. It is the economic and legal, organizational, management, and administrative mechanism through which the State realizes its financial, material, and other resources in the country’s economy for the fulfillment of various state programs of orders, primarily in the military area.

A sound procurement process for defense-related goods and services is extremely important for the defense forces, their capability and readiness. Problems and contradictions related to defense procurement are well known

in Ukrainian society. Some cases from the past directly affected the political rating of the country's top leadership. Despite some positive changes, the Ukrainian defense procurement system needs significant reforms.

The main stakeholders of the process of reforming the procurement system constantly expressed their expectations regarding the successful implementation of the key provisions of the reform and the introduction of a new well-functioning system. Stakeholders are the Ukrainian government, the Ukrainian Armed Forces (as the end user of the procurement system), an active part of Ukrainian civil society, and the international community.

Defense procurement reform is one of the main requirements of the road map of Euro-Atlantic integration of Ukraine and a condition for receiving international military aid. The adoption of the Law "On Defense Procurement" was an important milestone in this regard, as it establishes new principles for the procurement system. At the same time, the best principles alone are not enough; in order for the system to work, developed and detailed algorithms of procedures are necessary. The quality of these procedures will determine the quality of the reforms (Center of Defensive Strategies, 2021).

According to the Law No. 808-IX (2020), defense procurement is procurement by the state customer of goods, works and services intended for the implementation of State programs in the spheres of national security and defense, as well as other goods, works and services for the guaranteed provision of security and defense needs.

In doing so, State contract is an agreement concluded in writing by the State customer on behalf of the state with the executor in accordance with the approved plans for procurement of defense goods, works and services.

State customers in the field of defense are central bodies of executive power, other State bodies, military formations formed in accordance with the laws of Ukraine, determined by the Cabinet of Ministers of Ukraine;

State customer carries out defense procurement planning, on the basis of which:

1. form proposals for a consolidated three-year plan for the procurement of defense goods, works and services under closed procurement in accordance with the State programs and submits them to the main body in the field of defense procurement planning within the time limit set by the said body;
2. draws up and approves three-year and annual plans for procurement of defense goods, works and services, amends them. These plans and amendments are previously agreed with the committee of the Verkhovna Rada of Ukraine, whose powers include issues of national security, defense and intelligence;

3. organizes and carries out procurement of goods, works and services for defense purposes;
4. submit reports on the results of procurement, conclusion and execution of State contracts (agreements) to the main body in the field of defense procurement planning, within the time limit determined by it;
5. concludes purchase agreements and state contracts, including import ones;
6. ensures payment in accordance with the terms of state contracts (agreements), including advance payment (advancement);
7. provides the executors of state contracts (agreements) with a technical specification;
8. organizes tests (state, inter-agency, departmental and other tests of the state customer, and, if necessary, certification) of samples of weapons, military and special equipment, accepts them for armament (use), supply, allows them to be used;
9. participates in tests of prototypes, experimental and serial samples (complexes, systems) of weapons, military and special equipment, materials and components;
10. evaluates the participant's selection of information regarding on the cost of the life cycle of defense goods, etc.

Planning the procurement of goods, works and services for defense purposes is a component of defense planning and is carried out in accordance with the Law of Ukraine "On the National Security of Ukraine" (Law of Ukraine No. 2469-VIII, 2018) and this Law, taking into account the number of expenditures necessary to finance the security and defense sector.

The basis for planning the procurement of defense goods, works and services is the needs, priorities of the security and defense sector, the amount of financial resources necessary for their satisfaction, provided by strategies, other strategic documents and state programs in the spheres of national security and defense, the development of the components of the security sector and defense, in particular, equipping them with modern weapons and military equipment, creating the necessary stocks of material and technical means and the necessary capacities of the defense-industrial complex for this, implementation of other measures to strengthen the state's defense capability.

Currently, there are a number of problems in the procurement system with State defense orders:

1. The current State defense order procedure allows relevant departments to specify a type of equipment with an indication of the model and/or manufacturer, while there is no formal requirement to consider alternative options and justify their choice. This excludes competition, and even with the existence of real alternatives between the options presented, the final choice is based solely on individual decisions.

At the same time, there is no procedure for purchasing from a single supplier, which would resemble similar international practices.

2. The government approves State defense order every year through a time-consuming process in a short time frame. Long-term projects, whose implementation period reaches more than a year, every year risk being interrupted. Open-ended projects, such as renovations, are also regularly interrupted. The projects, the term of which extends for more than three years, are not allowed under any circumstances.

Despite the possibility of concluding three-year contracts, state customers have the right to accept obligations under contracts for no more than one year. Suppliers are unable to plan their long-term operations (including staffing, financing and facility maintenance) due to uncertainty about future sales in each subsequent year. We are talking about all goods, including expensive equipment and equipment with a long manufacturing cycle. The state-owned defense industry and its lead ministry are unable to agree on their plans at the same time.

3. The State defense order system is based on the fact that the armed forces formulate their needs in an opaque, overly complex and completely obsolete way. In the case of the Armed Forces, this process takes place at the General Staff of the Armed Forces. However, it is in no way related to the availability of budgets to support these requirements, since these budgets are managed by the Ministry of Defense. Thus, the needs of defense forces are often very unrealistic. The Ministry of Defense, which is formally responsible for procurement, does not have a requirements planning policy. Therefore, it is very difficult to connect the strategies of the armed forces and their vision of future capabilities within the framework of the State defense order system. Besides, there is the distribution of responsibility for this process between the Ministry of Defense and the Chief of the General Staff.

4. State defense order may include only products that are part of the adopted military equipment (which makes it impossible to have a transparent procurement process, starting from development, and putting into service “in the process” of procurement, when the necessary technical solution is formed in the process of negotiations) and produced by suppliers that are registered in the non-transparent register of weapons and military equipment producers. This process is full of

classified decisions, which leads to corruption and delays. As a result, the introduction of new products becomes difficult, and customers can choose only those products that are already in the “list of adopted military equipment.” Because of this, old and obsolete equipment is often purchased from year to year (Center of Defensive Strategies, 2021).

As one can see, the solution of these and a number of other problems requires administrative and legal regulation, including the use of administrative coercion measures. Therefore, the latter in the aspect of ensuring the state defense order is an actual scientific issue, which in turn necessitates new scientific research within the symbiotic combination of administrative and military law.

In legal science, any definition of a right contains an indication of its binding character – compulsory provision by the State. That is why coercion carried out by the State within the limits and on the basis clearly defined by the legislation can be considered a means of ensuring law and order, compliance with the requirements determined by the rules of law (Kolomoiets, 2005).

In the scientific literature, there is an opinion that one of the problems of understanding “administrative coercion” is the lack of normative consolidation of this concept and the shortage of unity of the conceptual apparatus among practical workers and researchers. Analyzing scientific and educational literature, we can conclude that this is due to the application of various features characterizing this administrative and legal phenomenon when designing an appropriate definition of the concept by scientists, as well as certain indifference on the part of the legislator to its creation.

Although administrative coercion is primarily legal coercion, because the application of appropriate measures is strictly regulated by law, it is carried out on the basis of and in compliance with regulatory prescriptions. Unlawful use of coercive measures is a *de facto* arbitrary measure (Shestak, 2011).

Kolomoiets (2007) notes that administrative coercion is a special type of state-legal coercion, i.e. methods of official physical or psychological influence of authorized state agencies (and in some cases public organizations) on individuals and legal entities in the form of personal, property, organizational restrictions of their rights, freedoms and interests in cases of illegal acts committed by these persons (in the sphere of public relations) or in extraordinary circumstances within the scope of separate administrative proceedings for the prevention, termination of illegal acts, ensuring proceedings in criminal cases, Accountability, prevention and containment of consequences of emergency situations.

Holosnichenko, Stakhurskyi and Zolotariova (2005) defines administrative coercion as the method of purposeful influence on the

behavior of citizens, as well as the activities of enterprises and organizations, bodies, services and employees of the state executive apparatus in the interests of ensuring the optimal level of compliance with the requirements of legislation.

In turn, Bytiak (2006) interprets administrative coercion as the system of means of psychological or physical influence on the consciousness and behavior of people with the aim of achieving clear fulfillment of established duties, development of social relations within the law, ensuring law and order and legality.

Stetsenko (2007), in his turn, interprets administrative coercion as a type of state coercion applied by the relevant state bodies (officials) to individuals and legal entities in order to prevent and cease offenses and holding the perpetrators accountable.

Thus, the term administrative coercion should be understood as a legal instrument used by the state to ensure compliance with the established norms, requirements or decisions. Administrative coercion is a complex approach including various measures and mechanisms of control, regulation and influence on individuals and legal entities.

In domestic scientific literature, method is understood as means of achieving a set goal, and administrative and legal methods are ways and means of direct and purposeful influence of executive bodies (officials) on subordinate bodies and citizens on the basis of their competence, within the established limits and in the appropriate form. As a result of the fact that some methods are common to all government activities, all state bodies, and others – to only some of them, management methods are divided into general and special ones.

The authors refer persuasion and coercion, administrative and economic influence, supervision and control, direct and indirect influence, regulation, leadership and management to general methods. At the same time, they consider persuasion and coercion as universal methods (Bytiak, 2007).

As Kysil (2011) correctly point out, “coercion” is an additional method of state administration, which is the psychological or physical influence of state bodies or officials (subjects of administration) on certain persons (objects of administration) with the aim to compel them to comply with legal provisions. This method of state administration manifests itself in two forms: judicial and administrative and is based on the authority of the state and the force of the law. The method of coercion is aimed at developing certain forms of behavior, as well as maintaining social discipline.

Complementing the above, attention should be paid to the opinion by Dembitska (2014), who noted that the method of coercion is an integral component of the system of state management methods. This method

belongs to the most rigid and undeniable means of influence, therefore, in the activities of management bodies and their officials, coercion is used, as a rule, in combination with other management methods.

Thus, administrative coercion as a method of ensuring a state defense order is a system of legal and administrative measures to ensure the fulfillment of duties and requirements related to the implementation of a state defense order. This method aims to ensure smooth, efficient and operational functioning of the military-industrial complex and other important sectors ensuring the production, supply and development of military equipment, as well as research institutes and organizations engaged in the development of new technologies for defense needs.

Administrative coercion can include a wide range of measures and control mechanisms used by government agencies to ensure compliance with State defense order. These can be measures such as:

1. licensing and registration of enterprises engaged in the production of military products and equipment. The State can establish special requirements and restrictions for such enterprises, as well as monitor compliance with these requirements;
2. establishment of mandatory standards and technical requirements for military products. The state may require manufacturers to use certain quality and safety standards that guarantee compliance of products with the established requirements;
3. control over the supply and distribution of military products. The State may supervise the supply of military equipment and other products, control the volumes, delivery and destination;
4. financial control and financing. The State may establish special financial rules and procedures for the enterprises engaged in the production of military goods. This may include the provision of financial support, involvement in special funding programs, as well as control over the use of allocated funds and compliance of expenditures with the approved budget volumes;
5. application of sanctions, including fines. In the event of non-compliance with the requirements of a government defense order or violation of the established rules and restrictions, the government may apply administrative sanctions such as fines, license suspensions or other restrictions;
6. audit and verification. State bodies may conduct audits and inspections of enterprises involved in the execution of a state defense order, in order to verify compliance with requirements, product quality, financial activity and compliance with established procedures.

Conclusion

The ongoing large-scale armed aggression of Russia against Ukrainian independence necessitates an effective response to all illegal phenomena that can have a destructive effect on the stability of social legal relations in Ukraine (Odnolko *et al.*, 2023). A sound procurement process for defense-related goods and services is extremely important for the defense forces, their capability and preparedness.

Problems and contradictions related to defense procurement are well known in Ukrainian society. Some cases from the past directly affected the political rating of the country's top leadership. Despite some positive changes, the Ukrainian defense procurement system needs significant reforms.

Administrative coercion is an important and necessary method in the process of ensuring the security and defense capability of the country, because it allows to control the production and supply of strategically important goods and services, to ensure the uniformity of standards and quality, as well as to respond to the changes in defense needs and geopolitical environment.

Along with this, it is worth noting that administrative coercion should be carried out taking into account transparency, efficiency and fairness. The state should provide all the necessary resources and support for the development of the military-industrial complex, including research activities, innovative projects and cooperation with the private sector, because such an approach will help ensure competitiveness, thereby increasing the appropriate quality and reliability of military equipment.

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