

ADMINISTRATIVE-LEGAL REGULATION IN THE FIELD OF GENDER IDENTITY: THE ISSUE OF TERMINOLOGY



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Abstract. The article deals with the issue of terminology of administrative-legal regulation in the field of gender identity. It is noted that there is a significant difference in the doctrine of administrative law regarding the constituent elements of the mechanism of legal regulation. Using the method of comparison and analysis, the author has identified two approaches to understanding (narrow structural and advanced). The author's

definition of administrative-legal regulation in the field of gender identity has been developed on the basis of scientific achievements of administrative-legal and theoretical-legal direction.

Keywords: *administrative-legal regulation, gender identity, administrative-legal means, mechanisms of administrative-legal regulation.*

Introduction

The pluralistic approach to social being and the humanization of legal reality give rise to individualization as a basic criterion for human existence. The choice of way, style and peculiarities of behavior is characteristic for modern society. This includes choosing the type of gender identity. The natural approach to identity types was widespread by the end of the twentieth century. They are: masculinity (male gender) and femininity (female gender).

For centuries, institutional rules have been developed by society to recognize the behavior of men and women, which affects their social and legal status. The modern society places particular emphasis on the internal determinants that provoke a person's choice of social existence, his/her behavior and relationship with the outside world. Gender identity is particularly sensitive, because the classical social approach has discriminatory features. At present, the established moral and traditional norms cannot impose a compulsory choice on the group with which he/she is inclined to identify him/herself. The above said primarily relates to minors. The globalization processes of today have transformed social and later legal reality. The right to choose gender identity now belongs to the individual, not society. Today's globalization society is re-evaluating classic gender stereotypes. A special breakthrough lies in the dramatic reduction of gender differences. Therefore, the above said directly influences gender identity by eliminating clearly defined gender roles.

The state cannot differentiate itself from these processes, so the activity of public authorities, public administration should be aimed at ensuring the gender identity of the individual.

Research status. Problems of gender identity in legal science were usually dealt with by scholars of the theoretical-legal field of knowledge, including Y. Bisaga, I. Zharovskaya, O. Scanun and others. The problem of understanding the concept of administrative-legal regulation has been widely discussed by scholars of the administrative field of legal knowledge, including: P. Galunko, S. Goncharuk, I. Golosnichenko, V. Olefir, H. Yarmaki, and many others. However, the issue of administrative-legal regulation in the field of gender identity has

not yet been the subject of a comprehensive scientific research, so the primary task of this scientific article is to define terminological concepts in this field.

Summary of the main provisions. The ordering of social relations is made through the external influence. Regulatory activities play an important role here. It is a vital element of livelihood in all stages of social development. Public relations require regulation in all spheres and subjects of social reality. As a significant activity in the human existence, regulation can be divided into two

group characteristics: external influence on the subject or sphere carried out by the society or state, and internal influence - self-regulation as a personal factor of a person or group of persons.

A state cannot exist without the external regulatory activity carried out on its behalf by public authorities, implementing generally public policy in a given field. Legal regulation is the main way of influencing a certain sphere. N. Parkhomenko notes that "law as a historical, social, spiritual phenomenon, as a kind of social and normative regulator in a variety of ways that influences society and its development" [1, p.48]. It has the most authoritative influence on social relations, since it acts not as a certain moral and ethical ancillary regulation, but as a mandatory activity aspect, because for the failure to comply with legal regulatory requirements, comes a clear legal responsibility defined by the law and controlled by the state. V. Strykh describes legal regulation as "an activity of the state and society, which is carried out in the process of preparation and adoption of the rules of law, their implementation in specific relations and the application of state coercion to offenders in order to achieve a stable law and order in society" [2].

However, it should be understood that the very concept of legal regulation should not be understood solely by setting rules of conduct and monitoring their implementation. This legal category is much broader. According to the theorists of law, among whom O. Skakun, "legal regulation is a state-regulated ordering of public relations through the law and the totality of legal means, their legal consolidation, protection and development [3, p.488].

Therefore, the main purpose of legal regulation is to streamline relations in society. Therefore, it will be quite reasonable to refer to legal regulation any activity of a legal state character, aimed at establishing, protecting, preserving, and in case of need, improving public relations.

It is also important to distinguish between legal regulation and legal influence. The latter is a broader category. The law has not only a regulatory, but a much larger list of functions, including information, education, communication, orientation, etc. Thus, law exerts a global influence on societies, which fits within the concept of legal influence and provides both legal means of regulation and

psychological, social, ideological and other ways of influencing social reality. Thus, V. Babaev notes that "legal influence and legal regulation, although directed at public relations, however, in their scale, there is a difference, the essence of which is that legal influence applies to a much wider range of means, which include education, organization, prevention and other means of influencing human behavior and consciousness" [4, p.212].

Legal influence as an activity aspect of the state-legal system implies the formation of ideological determinants that will function in society, the legal ideology that forms the basis of the legal system, the system of legislation, the paradigm of relations within civil society. Legal influence operates through the legal consciousness, legal mentality and legal culture of both society and the individual, since law acts through a person, his/ her internal patterns, establishing his/her value or nihilistic manifestations of legal regulation.

Within the field of administrative law, there are not so much scientific developments that address the problems of understanding of legal influence, providing these areas to law philosophers and theorists. However, in our opinion, legal influence in the sphere of public administration cannot be dismissed, because it is these additional ideological determinants that set the basis for the proper functioning of the mechanism of administrative-legal regulation. We agree with N. Onishchenko, who notes that "the effectiveness of legal regulation among many factors is not least determined by the effectiveness of legal influence - legal functions" [5, p.58].

The regulation of social relations by legal methods conducts the legal regulation. However, the list of relations within the law is infinitely broad, so we distinguish, depending on the subject, different spheres of regulation, among which administrative-legal regulation plays a leading role. Administrative-legal regulation is a branch of legal regulation.

A. Korenev defines administrative-legal regulation as a process of consistent use of administrative-legal means to achieve the goals of regulating the behavior of participants in public relations [6, p. 60]. Such an interpretation is vague and does not reflect the features of administrative-legal regulation itself.

Therefore, the administrative-legal regulation is a state-administered, through admi-

nistrative-legal means, ordering of public relations, their legal fixing, protection and development.

Administrative-legal regulation is formed as a coherent mechanism. And here, in the scientific developments of specialists in the field of administrative law, we find a number of positions. However, all scientists agree that this mechanism provides for the complexity of this characteristic. K. Shundikov, S. Alekseev almost evenly position it as a "mechanism of legal regulation – is a complex category, which is "a set of all legal means, organized in a consistent manner, through which the effective special-legal influence on social relations is ensured [7; 8]. Without departing from the classical general theoretical approach, P. Golosnichenko understands the concept of study through a set of administrative-legal means, through which the influence on public relations that arise in the process of exercising state executive power is realized [9].

At the same time, the aim of this activity is determined by the researchers V. Halunko and V. Olefir, arguing that the mechanism of administrative-legal regulation is the means of functioning of a single system of administrative-legal regulation in order to ensure the rights, freedoms and public legal interests of individuals and legal entities, functioning of civil society and the state [10, p. 323–324]. Also, because of the ultimate goal, which is to build a rule of law, it defines the mechanism of administrative-legal regulation of V. Khropanyuk, namely, as "a system of legal means by which the ordering of public relations is carried out according to the purpose and tasks of the rule of law" [11].

There is a significant disagreement in the doctrine of administrative law as to the constituent elements of the mechanism of legal regulation. Using the method of comparison and analysis we consider it necessary to distinguish two approaches.

The first is narrow-structured. Representatives of this approach (K. Valigura [12], I. Golosnichenko [9, p.20], Z. Gladun [10, p.89], S. Goncharuk. [13], H. armaki [14]) attribute to such elements as: legal norms, legal relations and acts of realization of subjective rights and obligations, some of them also identify acts of interpretation as an independent element.

The second approach is to provide an expanded interpretation of the elements.

L. Shestopalova includes to structural elements: norms of law, legal relations, acts of realization of rights and obligations, acts of application of law, legality, justice and legal culture [15, p.157-158]. Such a set of elements may be characteristic of administrative-legal influence, since it includes the ideological component of managerial influence, but given that legal regulation is a narrower concept of a convincing argument, we do not consider such a position.

In turn, V. Galunka and V. Olefir include, in addition to the defined elements, the following: principles of administrative law; the administrative and legal status of the subjects of administrative law; individual acts of public administration entities; forms of activity of subjects of administrative law; methods of administrative law; administrative-legal regimes; administrative procedures; efficiency of administrative-legal regulation [10, p.324]. We also tend to consider the composition to be too broad, since it contains additional valuation elements. Thus, the reference to the elements of the evaluation criterion of a mechanism such as efficiency needs clarification, in particular an explanation of why other evaluation criteria such as legality, legitimacy, clarity of legal regulation are not included in the proposed system. In addition, the concept of efficiency is evaluative in nature, absolute efficiency cannot be achieved by any social system, but the authors do not explain what coefficient of efficiency is acceptable and how to calculate it.

So, by summarizing all the scientific perspectives, we sublimate to the pressing problem of nowadays - gender identity. Administrative-legal regulation in the field of gender identity should be understood as the process of consistent use of administrative-legal means to achieve such public relations in which a person can optimally express his/her gender identity.

The chosen terminology needs clarification. The Academic Interpretative Dictionary understands the concept of "process" as a successive change of states or phenomena that occurs in a regular order; the course of development of something or as a set of sequential actions, means aimed at achieving a certain consequence [16]. We believe that regulation as an activity characteristic in legal reality should act as a certain process, not a system that has in the context of

understanding the constant, not a progressive-developing characteristic.

The concept of gender identity should be understood as one of the basic characteristics of personality and a social construct, which lies in a complex organized, holistic, intramental structure of perception of personality and is connected with awareness and experience of oneself as a representative of a certain gender. Of course, the process of identification has internal characteristics, but the external influence, protection, preservation and creation of proper conditions for the normal course of internal processes - all this has an external legal form. Therefore, it is precisely the public administration bodies that, through a set of measures, through a special legal influence, will be able to overcome the existing problems that exist in the society in the specified field, first of all the problem of discrimination on the basis of gender.

And lastly, it is necessary to determine the purpose of administrative-legal regulation in the specified sphere. In the rule of law, a person, his/her rights and legitimate interests have the highest legal force, is the purpose of the existence of the state. N. Nizhnik and O. Mashkova noted that, in general, the goal of administrative-legal regulation is the practical organization of the normal life of society and ensuring the personal safety of citizens and the conditions for their material, cultural and spiritual development [17, p. 6]. The human-centric ideology of modern administrative law requires rethinking in the context of a departure from the purely managerial within relations of executive power, to its role as a regulator of relations in society, which recognize the person as an axiological primary constant. Therefore, the aim of administrative-legal regulation is to create the most favorable conditions for the individual in the field of gender identity.

Conclusions

The author's definition of administrative-legal regulation in the field of gender identity has been developed on the basis of scientific achievements of administrative-legal and theoretical-legal direction, which should be understood as a process of consistent use of administrative-legal means to achieve such social relations in which a person can optimally accept his/her gender identity.

According to S. Komarov, the mechanism of legal regulation expresses the active side of translating the normativity of law into the orderliness of social relations [97, p. 52].

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