

Як бачимо, стадії планування нагадують стадії прийняття адміністративних актів (правових актів управління). Традиційно найбільш досліджуваним в юридичній науці був порядок прийняття адміністративних актів, який отримав назву адміністративної процедури. З урахуванням цього факту в подальшому аналіз діяльності з планування можна здійснювати з урахуванням подібностей до процедури прийняття адміністративних актів.

Для з'ясування правової природи процедури планування важливе значення має аналіз результату, який отриманий у підсумку, – акту планування (плану). Проте, варто зазначити, що серед вчених-адміністративістів вже багато років точиться дискусія щодо сутнісної характеристики актів планування. Одні з них розглядають план як нормативні акти, інші зараховують акти планування до правозастосовних (індивідуальних) актів, треті – до особливої частини права, що існує окрім норм права. Найбільш обґрунтовано видається позиція, згідно з якою плани, в яких визначені конкретні виконавці та строки виконання, позбавлені нормативного характеру. Їм притаманні всі ознаки правозастосовних актів. У них вказується конкретний адресат, є припис щодо вчинення однорідних, однократних дій (заходів), їх виконання припиняє дію цього акту. Звичайно, акти

планування можуть містити в собі й приписи, притаманні нормативним актам. У таких випадках пропонується зараховувати їх до кола так званих складних за юридичною силою актів, які містять як правозастосовні, так і нормотворчі приписи. Таким чином, констатуємо, що представники адміністративно-правової науки вважають акти планування різновидом адміністративних актів.

Висновки. Отже, дослідивши окремі аспекти, пов'язані з процедурою планування: нормативні засади, принцип, стадії, – можемо припустити, що за своєю правовою природою планування є різновидом адміністративної процедури, здійснюваної органами публічної адміністрації. Результатом такої діяльності є прийняття акту планування, який за своїми характеристиками подібний до адміністративних актів. Разом із тим вважаємо, що для однозначності висновку щодо правової природи означеної процедури в подальшому необхідно дослідити й інші аспекти діяльності органів публічної адміністрації, що пов'язана з плануванням. Ще раз підкреслимо, що в умовах побудови в державі ефективної системи адміністрування питання раціонального використання державними інституціями своїх ресурсів (матеріальних, кадрових тощо) є актуальним та першочерговим.

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УДК 342.924

LEGAL NATURE OF ACCEPTING OF PLANNING ACTS PROCEDURE

ПРАВОВА ПРИРОДА ПРОЦЕДУРИ ПРИЙНЯТТЯ АКТИВ ПЛАНУВАННЯ

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In this article regulatory conditions and nature of planning are investigated, principles of its implementation are defined. The planning stages are considered. This analysis is done to determine the legal nature of the planning procedure.

Key words: public administration, forms of public administration, legal action, acts of planning.

У статті досліджуються нормативні передумови та сутність планування, визначаються принципи його здійснення. Розглянуто стадії планування. Даний аналіз здійснено з метою з'ясування правової природи процедури планування.

Ключові слова: органи публічної адміністрації, форми діяльності публічної адміністрації, юридична процедура, акти планування.

В статье исследуются нормативные предпосылки и сущность планирования, определяются принципы его осуществления. Рассмотрены стадии планирования. Данный анализ осуществлен с целью выяснения правовой природы процедуры планирования.

Ключевые слова: органы публичной администрации, формы деятельности публичной администрации, юридическая процедура, акты планирования.

Introduction. At present, administrative and legal science issues administrative process and administrative procedures are very relevant. Most scientists in administrative law area attention is focused on clarifying the nature and content of the concepts of «administrative process» and «administrative

procedure» limits their use. The great debate going on as to distinguish these concepts. Actively investigates the theory and practice of challenging actions (inaction) and decisions of public administration. With modern achievements of administrative jurisprudence and European experiences is rethinking

the postulates on the forms of public administration (executive authorities and local self-government), including procedures for decision-making.

In this context, the study justified the legal nature of the decision of administrative acts as the main form of public administration [1, p. 11-12]. At the same time the activities of public administration is characterized by a multiplicity of its forms and manifestations is not limited to the adoption of administrative acts.

Analyzing the activities of the public administration are often confronted with her actions that relate to the organization and the performance of its tasks and functions in the future, that is planning its activities. It should be noted that in modern administrative law aspects of planning as a form of legal procedures and planning as a result of acts are scarcely explored.

Major achievements in this area related primarily to research the legal representatives of Soviet science. The issue of legal regulation of state planning analyzed in his writings are known scholars of the Soviet period and today is O.K. Kravtsov, O. Kutafin, A.F. Nozdrachov, A.S. Pashkov, I.N. Roznatovskyy, I.S. Samoshchenko et al. In scientific studies then necessarily paid attention to governance issues, its legal regulation, enforcement activity of state bodies, includes scheduling problems.

Of course, planning procedures could disappear from the management, but for a long time, they have ceased to be a subject of study members of the administrative sciences. The current methodology, technology, methods and organization planning got us in a positive experience of western market economy macro corporation in the planning, design balance, applications and business plans at corporations [2, c. 119]. Scientific substantiation requirements of legal regulation plan as a kind of legal procedure, which is implemented by public administration, due to the phenomenon of reception plan and planning that are the heritage of Western jurisprudence, particularly administrative law in Germany [3, 4, 5].

In our time, issues related to the planning of the administrative activities of the public administration, as reflected in their research work devoted primarily to problems of governance in the internal affairs [6, 7]. These issues are discussed in the context of the analysis of management decisions, taking public authorities [8, 9].

At the same time believe that the adoption of acts of planning is a form of public administration. After all, its main purpose is the realization of their objectives to ensure the implementation and enforcement of laws that in practice policy decisions of political power in different fields and sectors of public life. It is clear that the effectiveness of such activities depends on the definition goals, order and sequence of activities, scope, deadlines, rational distribution of funds, etc., and solved the issue by planning. In turn, the planning should be done in an appropriate, necessary regulatory embodied manner.

Problem. This article examines regulatory conditions and nature of planning principles is determined and discussed its implementation planning stage. This analysis was done to determine the legal nature of the planning procedure.

Results. In the scientific literature and current legislation procedures for the preparation, adoption and entry into force of Acts planning (plans) is traditionally termed «planning» and related management activities. Given the purpose of this study specify that planning work is seen as a procedure that is regulated by law and other regulations of the procedure, consisting of a sequence of actions and aims to achieve legal results [10, p. 186].

Among scholars and still no unity of opinion on the legal nature of the planning procedure. Analysis of scientific literature allowed summarize expert opinions and highlight the following points of view on the legal nature of the planning procedure.

In Soviet science was the most common point of view, according to which the plan was considered a form of administrative procedures, the result of the implementation of which was the adoption of a management decision as an act of planning. Later was formed position, according to which planning was considered a form of government that regulated administrative procedure. Among the administrative and legal science was thought according to which the plan was a manifestation of the legal form of government, the result of which was the adoption of the act of governance. In domestic administrative science question of the legal nature of planning acts not specifically studied, and therefore, their legal nature remains unclear.

In the order of the problem try to consider some issues planning procedures which can later help solve the problem.

The current legislation there is no uniform standard established procedure for the adoption of acts of planning. As a result, the procedure for the adoption of planning regulations set various regulations: both legal (e.g., the Law of Ukraine «On regulation of urban development» of 17.02.2011 № 3038-VI), and subordinate (Regulation of the Cabinet of Ministers of Ukraine approved by the Cabinet of Ministers of Ukraine from 18.07.2007 № 950, procedure planning Customs Service of Ukraine, approved by the State Customs Service of Ukraine from 25.06.2007 № 530, provisions for planning and action in case of accident during the transport of radioactive material approved GKYAR Ukraine from 07.04.2005 № 38). Type of regulation that establishes planning procedure depends on the kind of plan, its contents, industry and public administration body that it takes. There are cases when these relations effectively regulated non-normative acts of nature (guidelines for drawing up the schedule of documentaries scheduled inspections of economic entities approved by order of the State Tax Administration of Ukraine of 1.04.2011 № 190).

It is worth noting that, despite the title of regulations, their content sometimes does not contain regulations that would define the proper procedure for the preparation, adoption, approval, publication and entry into force of acts of planning.

In this context it is worth noting that the legislation of Western European countries, this situation is excluded. All issues related to planning procedures are governed solely by laws. Yes, the UK has legislation on planning. The mechanism of regulation in Germany planning can be considered the most perfect. In the Law on Administrative Procedures as amended on September 21, 1998, this is general in nature, the question of planning well regulated, for example, building codes, laws relating to Air Services Act highways and other legislative acts.

Reasoned proposal for a legislative act on the organization and implementation of the plan were formulated in the Soviet Union back in the 60s of the last century. Similar views were expressed by domestic scholars in management and in our time, but the issue remains unresolved to this day.

In order to clarify the nature and content of planning activities of public administration should pay particular attention to the analysis of objective laws that are inherent in legal activities – with planning, incorporation and implementation of which ensures the quality and efficiency plans. They are general in nature and are inherent in all forms of planning acts, regardless of the subject [6, p. 552-555, 11, p. 277-278]. Here are the most important ones:

The principle of scientific validity means that the development of the act of planning should be based on a deep and comprehensive analysis, taking into account the situation and the real possibilities, next and future tasks of public administration. The scientific plans achieved: by collecting accurate and complete information about the situation, objective, comprehensive study and analysis of information, scientific prediction (forecasting) based on analysis of information on the state of governance in the past and present, and its future status, suggesting timely response to expected changes in the situation, the use of science and technology both in planning and in the implementation of the measures outlined.

The principle of relevance means importance, materiality measures involves the act of planning. Measures Work Plan should be aimed primarily at addressing critical in need of an immediate solution.

The principle of reality plans means that the Plan should take into account the real possibilities of their implementation. This is achieved by determining the optimal level of the body of the public administration, a comprehensive account of reserves of time, effort and resources, possible changes in the situation.

The principle of specificity requires that the act of planning clearly and clearly formulated problem facing public administration, the measures to be implemented, the timing of their execution and his agent or the person responsible for implementation.

The principle of consistency in the act involves lack of planning activities that would conflict with the plans of the parent bodies of public administration and other plans of the authority, as well as other measures of the same plan.

The principle of timeliness is aimed at successful implementation of the act of planning. Achieving the goals and objectives identified plan must provide adequate training, the necessary capabilities, their correct placement and use, which is achieved only timely scheduling and bringing it to the performers.

The principle informing about planning regulations mean that should be chosen a style statement that would allow at least possible physical and symbolic plan to lay the greatest amount of information which will contribute to the successful implementation of the plan.

Thus, having considered the principle of planning, we can ensure that this procedure is carried out in accordance with generally recognized principles that define the basic principles of public administration. Implementation of the principles can improve the performance impact of government agencies in other members of administrative relationships.

Planning, as well as any other kind of public administration body is realized through the implementation of certain proceedings, and transactions that logically and sequentially changing each other – stages. Analysis of regulations that establish your decision planning regulations, in summary allows distinguishing common to all manifestations of the planning stage.

In the process of making planning regulations can be roughly distinguishing five stages:

- 1) development task of preparing an act of planning;
- 2) collecting proposals to the Planning Act;
- 3) the preparation and coordination of project planning intercourse;
- 4) making the act of planning and approval;
- 5) making available to the stakeholders act of planning.

At the first stage of the analysis of the problem situation and defined the tasks for which the certificate will be prepared and planning activities established body of public administration. It identifies the weekend to plan performance. At this stage it is important to choose from all the behaviors one in which the targets will be the largest, and the costs of resources – the least. By decision of the head of the public administration body may be a working group on drafting the act of planning.

The second stage of the procedure for preparing an act of planning is to gather information for the preparation of the draft plan. Information should be obtained from both internal sources and flow to an organ of public administration from other outside bodies and the public. The proposals should be coordinated, reviewed and evaluated by project developers plan.

The third stage is actually drafting within which proposals are processed stakeholders objectively defined and formulated a plan objectives, and measures for their implementation, elected by the sequence of their execution. Establish

Responsibility, estimated time of implementation of measures addressed other issues related to the preparation of project planning act.

Coordination of projects is to define (determine, clarify) the extent taken into account and used offers the results of previous, related, effective short-term or long-term instruments.

At this stage of the examination can be carried out the project, which is an assessment of their internal (compliance of the real political, economic and social situation, etc.) and external quality (compliance with formal requirements).

This stage is the most time consuming and responsible stage of the planning process.

At the fourth stage, the adoption of the act of planning that is based on the procedure can be either individually or collectively.

Prior approval must be: to assess whether the content and number of planned activities this task, verify that followed legality, or take into account scientific advice and best practice, assess planned activities in terms of the requirements imposed on them, to evaluate the uniformity of load distribution to implement the action plan between the direct implementers, specify the order and timing verification of each item plan, anticipate slack.

Most common method of approval is an administrative act administrative nature (regulations, orders, etc.). However there may be other options, for example, by putting the head of public administration body resolution «Approved» and the signing of planning. According to the approval of the Planning Act becomes legal value. The measures provided for it to become binding on the relevant subjects.

The fifth stage – bringing to the attention of stakeholders act of planning – the responsibility of the public administration body to take measures to bring the act of planning to direct performers.

In control theory proof plan to direct perpetrators generally not included in the planning process, which ends with the approval of the plan. Turning to the category management cycle, the approval of the plan is completed the next stage of the management cycle, followed by the next – execution. At the same time believe that the binding and the importance of this stage is due not only to further the effectiveness of the plan, but also the legal obligation enshrined body of public administration. Thus, in accordance with Part 1 of Art. 13 Law of Ukraine «On Principles of Regulatory Policy in Economic Activity» dated 11.09.2003 № 1168-IV plan of the regulator to prepare draft regulations and amendments thereto shall be made public through publication in the print media of the regulatory authority and, if their absence – in the print media by this regulatory authority and / or by posting the plan and its revisions on the official relevant regulatory authority on the Internet. A similar provision is contained in the century. 5 of the Law of Ukraine «On Principles of State Supervision (Control) in Economic Activity» from 5.07.2007 № 877-V. Furthermore, according to Art. 10 of the Act, an entity may prevent officials of state supervision (control) to state supervision (control), if he had not been notified in due course.

Amendments to existing Acts planning occurs by the same procedure as their adoption.

Deadlines for action by members of the administrative procedures specific regulations that shall govern the planning. Violation of the delays adversely affected, and sometimes impossible process of planning.

As you can see, the planning stages resembling stages of the adoption of administrative acts (acts of administration). Traditionally, the most studied in legal science was the order of adoption of administrative acts, called administrative procedure. Given this fact, further analysis of the planning can be done on the basis of similarities in the decision of administrative acts.

To clarify the legal nature of the planning procedure is important to the analysis result, which is obtained as a result – the

act of planning (plan). However, it is worth noting that among scientists for many years. The discussion on the essential characteristics of the planning regulations. Some of them consider the plan as regulations and other acts referred to planning enforcement (individual) acts, and others – to a particular part of the law, but the law exists. Seems most reasonable approach according to which the plans, which set out specific artists and deadlines, lack normative. All they have all the hallmarks of enforcement acts. They specify a particular recipient is a requirement to commit homogeneous, unitary actions (measures), their execution terminates this act. Of course, planning acts may include and regulations specific to regulations. In such cases, offered to enroll their so-called range of complex legal force acts to contain both of law enforcement as well, and normative prescriptions. Thus, states that members of the

administrative and legal science find a variety of planning acts of administrative acts.

Conclusions. Thus, examining some aspects of the planning procedure: normative principles, the principle stage – we can assume that its legal nature of planning is a form of administrative procedure carried out by the public administration. The result of this activity is to take the act of planning, which is similar in its characteristics to administrative acts. At the same time believe that for unambiguous conclusion on the legal nature of the abovementioned procedures continue to explore other aspects of the public administration that is concerned with planning. Once again I stress that in constructing an effective system of state administration question rational use of public institutions of its resources (material, human, etc.) is important and a priority.

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УДК 347.1

ПРОБЛЕМНІ АСПЕКТИ ВИЗНАЧЕННЯ ПРАВОВОГО СТАТУСУ СПОРТСМЕНІВ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ

PROBLEMATIC ASPECTS OF THE LEGAL STATUS OF ATHLETES ACCORDING TO THE LEGISLATION OF UKRAINE

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Автор статті досліджує проблеми правового статусу спортсменів відповідно до законодавства України. Правовий статус спортсменів опосередковує три види правових статусів: конституційно-правовий, галузевий та спеціальний. Основною перешкодою для чіткого визначення правового статусу спортсменів є відсутність уніфікованих підходів до розуміння спортивного права та небажання законодавця визнати частину відносин у сфері спорту предметом правового регулювання цивільного права.

Ключові слова: спорт, професійний спорт, правовий статус, спортивний контракт, цивільне право.

Автор статьи исследует проблемы правового статуса спортсменов в соответствии с законодательством Украины. Правовой статус спортсменов опосредует три вида правовых статусов: конституционно-правовой, отраслевой и специальный. Основной преградой для четкого определения правового статуса спортсменов является отсутствие унифицированных подходов к пониманию спортивного права и нежелание законодателя признать часть отношений в сфере спорта предметом правового регулирования гражданского права.

Ключевые слова: спорт, профессиональный спорт, правовой статус, спортивный контракт, гражданское право.

The article is dedicated to the problem of the legal status of athletes according to the legislation of Ukraine. The legal status of athletes mediates three types of legal statuses: constitutional and legal, industry and special. The main obstacle to a clear definition of the legal status of athletes is the lack of standardized approaches to understanding of sports law and the reluctance of legislators to recognize the relations in the field of sports as a subject of legal regulation of civil law.

Key words: sports, professional sports, legal status, sports contracts, civil law.

В юридичній літературі не існує уніфікованого підходу до проблеми визначення поняття правового статусу учасника певних правовідносин. Поняття «правовий статус» часто ототожнюється з поняттям «правове становище». Дійсно, слово «status» у перекладі з латини означає

«стан», «становище», «положення». Загальноприйнятим вважається, що правовий статус (правове становище) особи – це система закріплених у нормативно-правових актах і гарантованих державою прав, свобод, обов'язків, відповідальності, відповідно до яких індивід як суб'єкт