

DEVELOPMENT OF ADMINISTRATIVE AND LEGAL REGULATION OF URBAN PLANNING ACTIVITY IN THE CONDITIONS OF ECONOMIC CRISIS AND EUROPEAN INTEGRATION DESIRE

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Abstract. The irreversibility of the European course of Ukraine, enshrined in the fifth paragraph of the preamble of the Constitution of Ukraine, determines the direction and methods of implementation in all spheres of society and the state, everyone's awareness of the leading role of guarantees of rights, freedoms, legitimate interests of each person, acquisition of power *ex officio*. The current legislation, endowing a person with power, not only provides the scope of rights, respectively, the functions performed, but also imposes additional responsibilities, the proper implementation of which is one of the guarantees of the legitimacy of state power. This fully applies to the implementation of permitting activities in the field of urban planning, which aims to create conditions for the formation and maintenance of a full living environment, including ensuring the preservation of cultural heritage and infrastructure necessary for the existence of the living environment. *Methodology.* The use of cognitive general scientific and special methods allowed to achieve the goal of this publication. Thus, the study of the historical development of administrative and legal regulation of urban planning allowed to determine the close relationship between the areas, in which such construction was carried out, and the development of legal norms for it (both administrative and legal, and technical). Comparative legal method, analysis, synthesis allowed to identify prospects for administrative and legal regulation of urban planning. *The practical importance.* Improving the administrative and legal regulation of urban planning activities takes into account not only specific law enforcement problems, but also general social (including economic, social, etc.) processes; systematization of construction legislation and its proper application. A feature of the current stage of development of administrative and legal regulation in this area is the focus on the best foreign experience, which gives initial importance to human rights and freedoms as factors of legal regulation in this area.

Key words: development of administrative and legal regulation, urban planning activity in the conditions of economic crisis; standards of urban planning activity; international guarantees of urban planning activity.

JEL Classification: K11, K23

1. Introduction

The conclusions of modern researchers in the field of urban planning allow us to formulate areas of urban development (in addition to the actual creation of construction projects), such as: planning, construction and recreation areas, other facilities, creating infrastructure and maintaining it in good condition, maintaining proper condition of cultural heritage sites, etc. (Shtompel, 2010). The implementation of all these areas involves compliance with certain standards of the creation of appropriate facilities. However, the Ukrainian experience of urban planning in the economic crisis shows not only a significant decline in the development of existing construction standards, compared with, for example, the flourishing of construction activities during the Soviet era in the 80s, but also numerous violations

of existing standards. As U. Mantsevich, the importance of the crisis in urban planning, especially economic, in the elimination of unnecessary management decisions, reducing the impact of outdated decisions on the actual course of urban development (Mantsevich, 2015). Another aspect that draws attention to the study of the historical development of sources of administrative and legal regulation of urban planning is the systematization of construction legislation. In particular, the Concept of public administration in the field of urban planning for 2019-2030 provides for the problems of legal regulation of urban planning: lack of codification of urban legislation and its inconsistency with other areas of legislation; terminological shortcomings of urban planning legislation; the need to bring certain bylaws in the field of urban planning in line with the

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requirements of legislative acts. Including, in relation to the permitting system: legislative gaps in relation to certain categories of work that require permits; gaps in procedures, guarantees of applicants' rights in respect of such permits, such as the issuance of a construction permit and the revocation of such a permit (Concept of public administration in the field of urban planning, 2019).

Concluding the description of the current stage of development of administrative and legal regulation of urban planning activities and the organization of its implementation, it is necessary to pay attention to the prospects for the development of this legislation. In the legal literature, there is a well-established position on determining the internal and external factors of the legal system. Thus, internal factors include: type and form of state, succession, reception, and so on. Among the external factors, there are the status and authority of the state in the international community, globalization processes in law (Petryshyn, 2015).

2. Directions for improving public administration in the field of urban planning

The concept of public administration in the field of urban planning for 2019-2030 provides a number of ways to improve public administration in the field of urban planning. These include: regulatory and legal regulation (including improving the quality of legislation through its systematization, the development of control over the legality of public authorities in the field of urban planning); procedures in urban planning (including automation of a significant number of permits, consistency of terminology, state classifiers); clarification of regulatory requirements for the implementation of spatial planning; public involvement in decision-making in the field of urban planning, etc. (Concept of public administration in the field of urban planning, 2019). It is easy to see that all these and some other areas have consequences for improving the quality of urban planning legislation and creating conditions for its proper enforcement (e.g., introduction of electronic information processing and adoption of separate permits in the field of urban planning). Special mention is made of the need to ensure transparency and stability of legislation on the provision of administrative services (Tymoschuk, 2013).

It should be noted that the "manual" mode of adoption of these acts is now defined as a lack of legality of licensing activities in this area in the works of many researchers, it is almost universally accepted. Thus, an important area of ensuring the legality of permitting activities in urban planning is the proper application of law in this area.

A separate group of guarantees of legality are international guarantees related to the activities of subjects of international law (Skakun, 2010). (voluntary compliance with standards while increasing their

requirements, the presumption of compliance with the construction standard by the subject of urban planning, harmonization of building standards and some others); transparency of the decision-making process on the approval of regulations and standards; codification of construction legislation; expansion of the electronic information database on urban planning (registers of conclusions of examination of project documentation on capital construction objects, information systems of territorial planning and urban planning); codification of construction legislation and some others (Stukalenko, 2016). A comparison of these provisions with the provisions of the Concept of public administration in the field of urban planning for 2019-2030 shows that a significant number of proposals set out in the Concept coincide with them. This can be stated, for example, in the proposals on: approval of the Urban Planning Code of Ukraine as a codified act in the field of urban planning; harmonization of urban planning and other sector specific legislation; monitoring of acts (decisions) of public authorities in the field of urban planning; creation of urban cadastre and its maintenance; automation of permitting and administrative procedures in the field of urban planning and others (Concept of public administration in the field of urban planning, 2019).

These and other changes in the organization of both urban planning and permitting activities in this area will contribute to the realization of human rights such as: improvement of living conditions, housing, a sufficient standard of living (part 1 of Article 11 of the International Covenant on Economic, Social and Cultural Rights dated December 16, 1966). Ensuring respect for human rights, including in relation to these rights, is carried out by such international organizations as the Organization for Security and Cooperation in Europe, the Committee of Ministers of the Council of Europe, the Parliamentary Assembly of the Council of Europe, the European Commission for Democracy through Law (Petryshyn, 2015), the European Parliament, the Council of the European Union, the European Free Trade Association.

Further research of administrative and legal regulation of urban planning activities should be conducted on the basis of the modern paradigm of legal understanding, which involves the consideration of legal knowledge as part of legal reality. Within such a paradigm, it is necessary to apply an axiological strategy of research, with the definition of human rights (including the provision of a proper living environment) as the starting value for which there is a right. At the conceptual level, this involves taking the value-normative concept of legal understanding as a basis, which involves the consideration of law as a system designed for certain human behavior and the preservation of a certain social integrity (Linnyk, 2006). It is the nature of behavior and social integrity in a particular case (the values to which the law is aimed) and determines the value-normative understanding of law.

3. Means of ensuring the rule of law in the field of urban planning

The carried out general characteristic of bases of maintenance of legality in the field of urban planning creates a basis for working out of separate actual problem questions, in this sphere. The study shows that such issues have developed historically, as traditionally problematic in the field of urban planning. However, outlining the range of these problems involves taking into account the existing scientific advances on the means of ensuring the rule of law as a generic category, on the basis of which the appropriate means in the field of urban planning will be determined.

In characterizing the administrative and legal means of ensuring legality, it is necessary to take into account the scientific achievements of a general nature, which determine the general provisions for such means. In particular, R. Lenivskyi, on the basis of scientific developments, defines the following features of such means: clear definition of subjects of application of such means and their legal personality in this regard; strict observance by them of the established order of realization of own competence; the existence of requirements for their activities as such, which has a law enforcement nature. In addition, the scientist determines the leading role of the procedural form of implementation of these funds, given that they are implemented mainly in the order of law enforcement (Lenivsky, 2018). It is worth agreeing with this conclusion of the scientist. Indeed, despite this wide range of guarantees of legal legitimacy, the study of individual means should take place solely in the light of their law enforcement nature.

Under this approach, it is necessary to identify the following most problematic administrative and legal means of ensuring the rule of law in the field of urban planning: legal liability of both urban planning entities and public authorities; administrative procedural support of urban planning, which provides for the development of administrative procedures that would take into account the special requirements determined by the conditions of urban planning activities.

Legal liability in the field of urban planning has been historically established within the general norms, without defining relations in the field of urban planning as a separate object of relevant violations. However, in almost all times there has been a tendency to separate certain groups of relationships into an independent object. In particular, emphasis has been placed on the separate establishment of liability for violation of the requirements for measures and weights in Kievan Rus, up to the application of the death penalty. In addition, at the beginning of the twentieth century (1903), criminal liability was established for a certain crime in the field of construction, such as violation of the order of construction works. Violation of building codes

and regulations was determined by a separate object of administrative liability during the Soviet era. Prosecution in the field of urban planning was carried out either by law enforcement agencies (for example, the police) or by specialized control bodies in the field of urban planning. Characterizing the current stage of development of urban planning legislation, the scientist proposes to consider construction law as a sub-branch of administrative law, which includes administrative responsibility in the field of construction as one of the institutions of this sub-branch (Stukalenko, 2016).

Therefore, it is necessary to point out the predominant administrative responsibility in the field of construction as one that has its own special object, which shows the consequences of the Soviet regulation of this social institution. However, market relations in this area (unlike in Soviet times) necessitate the use of more stringent means of ensuring the rule of law, given the numerous violations in this area, including through the criminalization of certain acts. This is confirmed by the above historical experience, when for violation of the order of construction work criminal liability has been introduced (the Russian Empire, 1903).

As for bringing to legal responsibility, the authors of the Concept of public administration in the field of urban planning activities for 2019-2030 do not pay direct attention to this issue. However, there are other areas of legality, including the legality of legal prosecution: the introduction of effective means of public control over the activities of public authorities in this area; improvement of means of compensation of damage by landowners caused as a result of restrictions on the right to use it; ensuring the right of the complainant to be present during the inspection, if it was initiated at his or her request; introduction of legal liability for non-compliance with guarantees of public participation in decision-making in the field of urban planning, etc.

Another means of ensuring legality is the implementation of control activities. It is necessary to note its rather broad meaning, as this concept covers all the variety of activities of public authorities aimed at: obtaining information on the state of affairs at the controlled object; detection, termination, as well as prevention of violations in the controlled area (Shemshuchenko, 2012). Consideration of appeals of private persons in the administrative order (the third means of ensuring legality) is in fact one of the forms and methods of application of control. The use of administrative proceedings (the fourth means of ensuring legality) can also be considered as one of the forms of control – judicial control. The study reveals the most complex problems in relation to the consideration of appeals of individuals and judicial control in the field of urban planning. Therefore, further research should be conducted in relation to these forms and methods of state control in urban planning.

Distinguishing between administrative consideration of appeals of private persons and consideration in the order of administrative proceedings, it is impossible not to take into account scientific developments in which the characteristic features of administrative jurisdictional (extrajudicial) proceedings are given: the subjects of their implementation are mainly executive authorities; settlement by administrative procedural norms; lack of detailed structuring of the procedural form (stages) and some others (Lenivsky, 2018).

A. Martin, E. Berdnikov and O. Malomuzh analyze the problems of the current state of permitting procedures in the field of urban planning. From the provisions cited by researchers, it can be concluded that the most common types of appeals in this area are complaints. After all, a typical situation is one in which a public authority in the field of urban planning makes a decision, and after a long period of time such a decision may be revoked by another government entity, and the most effective way to protect their rights is administrative proceedings. As one of the possible ways out of this situation, it is proposed to detail the regulation of procedures implemented within the state architectural and construction control (which may also include complaints procedures – the author's note) (Concept of public administration in the field of urban planning activities, 2019). Thus, the Concept of public administration in the field of urban planning activity for 2019-2030 marks inefficiency of actual procedures of the appeal of decisions of bodies of the state architectural and building control (Concept of public administration in the field of urban planning activities, 2019). Regarding the use of administrative proceedings as a way to ensure the legality of urban planning, they point to such problems as: lack of effective pre-trial dispute resolution procedures, in particular – by self-regulatory organizations in the field of urban planning; the need to introduce the right of representatives of the territorial community to judicial protection of the rights of the territorial community, which are violated as a result of territorial planning, as well as the placement of construction; building an optimal balance of the use of judicial and extrajudicial methods of protection of rights in relation to urban planning (Concept of public administration in the field of urban planning, 2019).

The guiding direction of further development of administrative and legal regulation of urban planning is the development of administrative and legal means of ensuring legality in this area. Using a systematic approach allows to identify relevant categories of such tools: firstly, the legal responsibility of individuals and public authorities, especially administrative; secondly, the administrative procedural activities of authorized entities aimed at exercising control in the field of urban planning by reviewing complaints against acts of public authorities, implementing judicial control in this area. Peculiarities of urban planning activity (increased requirements for predictability of decisions of public authorities, inadmissibility of delaying the resolution of legal conflicts in this area) determine the urgency of the development of out-of-court means of resolving administrative conflicts. Extrajudicial administrative jurisdiction may be a means of resolving such conflicts.

4. Conclusions

The requirement of transparency of administrative procedures in general and permitting in particular in the field of urban planning draws attention to such direction of management of the permitting system as its internal ordering according to the actual public request, which can be considered as one of the directions of public administration in this sphere. In this case, the immanent function of the head (both in line and functional management) is the internal management of the team. In this regard, it should be noted that at the level of the Law only the basic principles of permitting should be regulated: a specific body authorized to issue specific permits; paid nature of issuing a permit, etc.

Ensuring the legality of permitting activities in the field of urban planning involves improving not only the legislative regulation of its implementation, but also at the level of bylaws, including the regulation of interaction of units of public authorities in this area, as well as interaction between such subjects. That is the activity of, in particular, the management of public authorities on the organization of permitting activities within their powers.

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