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Types of administrative and legal support for the State defense order in Ukraine

Форми адміністративно-правового забезпечення державного оборонного замовлення в Україні

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Abstract

The purpose of the article is to reveal the forms of administrative and legal support for the state defense order in Ukraine. Methodology. The following methods are applied in the course of the research: dialectical, analysis and synthesis, deduction and induction, analytical, systematic, formal and legal, legal and dogmatic, system analyses, summarization. Research results. The article describes the concept of legal support, administrative and legal support and its forms. Classification of legal forms of public administration is proposed. Practical meaning. The types of forms of administrative and legal support of the state defense order in Ukraine are determined, their characteristics are provided, and their analysis is carried out. Value/originality. An author's definition of the forms of administrative and legal support for the State defense order in Ukraine is proposed.

Keywords: administrative and legal support, classification, forms, public administration, State defense order.

Анотація

Метою статті є розкриття форм адміністративно-правового забезпечення державного оборонного замовлення в Україні. Методологія. У ході дослідження застосовано такі методи: діалектичний, аналізу та синтезу, дедукції та індукції, аналітичний, системний, формально-правовий, юридично-догматичний, системного аналізу, узагальнення. Результати дослідження. У статті розкрито поняття правового забезпечення, адміністративно-правового забезпечення та його форм. Запропоновано класифікацію правових форм публічного адміністрування. Практичне значення. Визначено види форм адміністративно-правового забезпечення державного оборонного замовлення в Україні, надано їх характеристику та проведено їх аналіз. Цінність/оригінальність. Запропоновано авторське визначення форм адміністративно-правового забезпечення державного оборонного замовлення в Україні.

Ключові слова: адміністративно-правове забезпечення, класифікація, форми, публічне адміністрування, державне оборонне замовлення.

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Introduction

One of the main factors inhibiting the processes of the state defense order formation and the processes of restructuring and development of the defense-industrial complex as a whole is the lack of legislative and legal mechanisms for regulation of the activities of subjects of arms and military equipment production and ensuring favorable conditions for attracting investments in defense industrial complex of Ukraine (Krasnykov 2016, p. 17).

The aspects of security and defense issues have become particularly relevant recently, primarily due to armed aggression and violation of the territorial integrity of Ukraine, the increase of the military power of the Russian Federation, which have turned into a confrontation, the consequences of which may become a global military conflict (Povydysh 2021, p. 72). Thus, the urgent need to modernize the national system of state security and defense, especially in terms of administrative and legal support, is an urgent and obvious need.

The issue of regulatory efficiency is part of the overall framework for administrative and legal support of the state order for the defense capability of Ukraine and belongs to the forms of the latter, which, under the conditions of comprehensive regulatory transformation, require a modern scientific revision.

Thus, the purpose of the article is to reveal the forms of administrative and legal support of the state defense order in Ukraine based on the theory of administrative and military law, rules of national legislation and the views of scientists.

Methodology

The application of the dialectical method made it possible to investigate the legal nature of administrative and legal support in different spheres of public life.

The combination of the methods of analysis and synthesis, deduction and induction helped to examine legal form a complex category of legal science.

Analytical method as well as logical approach was used for the formulation of the author's definition of the forms of administrative and legal support for the state defense order.

The application of the system method along with the system and structural, system and functional

methods were applied to propose the classification of legal forms of public administration.

The combination of formal and legal method and legal and dogmatic approach were helpful when considering organizational forms of administrative and legal support for the state defense order, in particular planning; marketing research; development of core (indicative) indicators; preparation of defense procurement plans, formation of proposals for the consolidated three-year plan for procurement of defense goods, works and services under closed procurement and its approval; establishment and maintenance of an electronic register of participants in the selection and performance of public contracts (agreements).

With the help of system analyses method, the procedure for concluding state contracts (agreements) for procurement of defense goods, works and services under closed procurement, as well through the electronic procurement system, which is applied during special period (war, state of emergency, etc.), was investigated.

Summarization method was applied for highlighting the forms of administrative and legal support for the state defense order in Ukraine.

Literature Review

The concept of "legal support" refers to the powerful influence exercised by the state on social relations with the help of all legal means for the purpose of order, consolidation, protection and development, as well as influence on the behavior and consciousness of citizens by declaring their rights and obligations, establishing certain permits and prohibitions, approval of certain legal acts, etc. (Hizhevskiy, Holovchenko, & Kovalskiy 2003, p. 369).

At the same time, administrative and legal support is considered as one of the types of legal support, which is a purposeful influence on people's behavior and social relations with the help of legal means (Tsvik & Petryshyn 2009, p. 327).

Kolesnikov (2011, p. 434) defines administrative and legal support as implemented by the state with the help of a special mechanism for regulating social relations, their legal

consolidation, protection, implementation and development.

Bila (2020, p. 26) formulated a constructive definition of the legal form of public administration as a structured manifestation of the will of the subject (in accordance with the established legal procedure of objectification in administrative law), authorized to perform the functions of public administration, which causes the establishment of legal consequences in material and procedural relations. Such consequences arise in accordance with the sphere of action, the legal force and legal content of the dictates of power, defined by the competence of the subject of the expression of will and the stage of the mechanism of administrative and legal regulation.

In the formation of the essence of forms of administrative and legal regulation in the sphere of ensuring information security of Ukraine, Yakovlev (2020, p. 245) proposed the author's interpretation of this concept as forms of legally significant activity of state administration actors in the sphere of regulation of the processes of prevention, termination and liquidation of the consequences of encroachment on information security of Ukraine defined by current legislation.

Zubko (2018, p. 15) defined the forms of administrative activity of the public administration regarding the legal regulation of the defense-industrial complex of Ukraine as an external manifestation of the power-management, organizational, scientific and research activity of the latter within the limits of the defined competence for the regulation of legal relations that arise, change and are implemented in the field of public management of the military-industrial complex of Ukraine with the aim of guaranteeing national security and defense and corresponding protection of the rights, freedoms and legitimate interests of individuals, society and the State.

Results and Discussion

Legal form is a complex category of legal science, the importance of which for the theory of administrative law and the practice of public administration lies in its ability to systematize and generalize, to form connections between elements of legal matter and between legal and non-legal phenomena, to give the latter legal meaning and ensure their protection. At the sectoral level, the legal form acquires integrative qualities, which is manifested in the ability to

establish stable connections between the rules and institutions of administrative law, to express from the outside, to formalize the activities of public administration subjects and thanks to this, to ensure their influence on existing social relations in the field of public administration, which require legal regulation, to give legal significance to the results of the activities of participants in administrative and legal relations.

The legal form of public administration reveals the content of the activity of the latter, which it is advisable to be seen not only in the implementation of the substrate of the state will, but also in active participation in the formation and implementation of the norms of administrative law of self-governing organizations and other institutions of civil society, establishing its connections with external environment. The legal form of public administration has its own structure; its purpose is to organize, regulate the content of public administration activities, ensure a hierarchy of rules of conduct, create and guarantee the stability of connections both between the elements of administrative law and between the latter and other phenomena requiring legal regulation in public life (Bila 2020, pp. 26–27).

Thus, the forms of administrative and legal support for the state defense order in Ukraine are formed external manifestations of the will of the powerful subjects of the state defense order, which manifest their legally significant administrative and organizational activities regarding the regulation of defense procurement, organizational processes and legal procedures for the sake of high-quality, optimal and effective functioning of the defense procurement system, protection of the rights and interests of business entities in the context of the State defense order, and guaranteeing the national security and territorial integrity of Ukraine (Sydorova 2020).

The classification of legal forms of public administration allows not only to study and group the empirical set of existing external objectification of public administration activities, but also helps to identify existing shortcomings in their legal regulation.

On the basis of the study of the variants of the classification of legal forms and the practice of public administration bodies already developed by the science of administrative law, Bila (2020, pp. 15–16) proposed the author's division of legal forms of public administration into classes and subclasses. The basic criterion for the classification is the function in administrative

law. According to this criterion, legal forms of public administration are combined into two large, relatively independent classes of material and procedural legal forms. For its part, the class of material legal forms can be divided into the following subclasses: normative acts, individual acts, acts-plans, administrative contracts.

Procedural forms contain subclasses of administrative procedures and administrative proceedings. According to the content criterion, legal forms of public administration should be divided into classes of law-making, law-enforcing, and interpretive forms. Each of the above classes, except for interpretive forms, is divided into subclasses of regulatory, protective, and structural forms based on their functions in public administration.

Artificial classification of legal forms is proposed to include the following:

according to orientation (external and intra-structural);
by degree of legal expression (main and additional);
by the amount of regulatory influence (generally binding and individual);
by subject composition (unilateral and bilateral or multilateral).

Among the forms of administrative activity of the public administration regarding legal regulation of the defense-industrial complex of Ukraine, Zubko (2018, p. 10) identifies:

issuance of normative and administrative acts;
conclusion of administrative contracts regarding the objects of the military-industrial complex;
taking other legally significant administrative actions in the field of the defense-industrial complex;
implementation of material and technical operations for the functioning of the defense-industrial complex.

At the same time, such form of administrative activity of the public administration as issuing normative acts is characterized by the following features:

- 1) it is the most common and primary form of administrative activity, which is carried out by a wide range of subjects;
- 2) is official in the public administration of the defense-industrial complex;
- 3) expresses the will of the subject, because in its use, certain legal relationships are formed, changed and terminated, since its

basis is the creation of administrative law norms in the field of the defense-industrial complex;

- 4) aimed at guaranteeing national security and defense.

Yakovlev (2020, pp. 242-243) classifies forms of administrative and legal regulation in the field of ensuring information security of Ukraine by the legal consequences into law (those that entail legal consequences) and organizational (those that do not entail legal consequences) ones. Thus, the legal forms are the issuance of normative and individual acts on the state administration aspects, implementing information security (normative and individual) and the execution of other legally significant actions in the field of information relations.

Organizational forms are represented by planning and application of organizational measures and the implementation of material and technical actions. The first include training and deployment of personnel, departmental and public control of the activities of authorized agencies, events aimed at improving the functioning of the body (experience exchange, thematic conferences, professional seminars), professional collective discussion of organizational issues (meetings, boards, etc.).

The implementation of organizational actions does not require the development and adoption of special legal acts and is carried out in the course of everyday management activities. Securing of material and technical actions is designed to ensure the effectiveness of management activities in the specified area. In particular, it is record keeping, use of special equipment, technical improvement of the material base.

Planning is a mandatory form (in our opinion) in the field of defense procurement, so according to the Law of Ukraine "On Defense Procurement" (Law of Ukraine No. 808-IX, 2020), planning of the procurement of goods, works and services for defense purposes is a component of defense planning and is carried out taking into account the amount 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, implementation of other measures to strengthen the state's defense capability. The Cabinet of Ministers of Ukraine determines the order of planning, formation, features of deployment, adjustment of defense procurement, monitoring and reporting on compliance, disclosure of information.

Planning the procurement of defense goods, works and services is a component of defense planning carried out by the state customers. Its grounds are the needs and priorities of the latter, provided for by strategies, other strategic documents and state programs in the national security and defense areas, in accordance with the amount of financial resources allocated in the State budget for each customer.

State customers when planning defense procurement:

prepare and submit proposals for draft state programs in the spheres of national security and defense in the medium-term budget planning of defense procurement;

as chief budget managers prepare proposals in the Budget Declaration and make budget requests taking into account activity plans, forecast and program documents in the named spheres and submit them to the Ministry of Finance in the prescribed manner;

in short-term budget planning of defense procurement, they prepare three-year and annual plans for the procurement of defense goods, works and services for defense purposes and proposals for a consolidated three-year plan for such procurement, taking into account the expenditures allocated in the budget and State budget forecasts.

Another types of organizational measures in defense procurement sphere are:

Marketing research of the market of defense goods, works and services. In order to plan the procurement of the named products and prepare for procurement process, state customers can conduct marketing research, preliminary market consultations for the purpose of market analysis, including requesting and receiving recommendations and information from business entities, which can be used by the state customer during the preparation.

Marketing research is carried out by state customers in order to obtain and periodically update information on:

business entities that can be involved in defense procurement as executors of state contracts (agreements); the nomenclature of defense goods, works and services that can be manufactured, performed and provided by such business entities; prices for such products.

Market analysis is carried out by state customers through analytical research, preliminary consultations, in particular, sending requests to business entities for information on economic activity, conducting negotiations and receiving recommendations.

The results of marketing research can be used during the preparation and drawing up of three-year and annual procurement plans, basic (estimated) indicators.

Development of core (indicative) indicators, preparation of defense procurement plans. During the planning of defense procurements, State customers assume that the procurement of defense goods, works and services is carried out exclusively according to defense procurement plans. For three-year and annual planning, they use the Unified Procurement Dictionary, codes and names of other relevant classifiers of the subject of procurement (if available).

The three-year procurement plan is drawn up by state customers in the form of open data, contains indicators of the annual procurement plan and forecast procurement indicators for the next two budget periods. The annual plan for defense purposes and changes to it are published on the official website.

The named plans and amendments to them are pre-agreed with the Committee of the Verkhovna Rada of Ukraine, whose competence includes issues of national security, defense and intelligence.

Formation of proposals for the consolidated three-year plan for procurement of defense goods, works and services under closed procurement and its approval.

Following approval by the Cabinet of Ministers of the draft law on the State Budget of Ukraine for the planned budget period, the main body in the field of defense procurement planning develops within a three-day period a calendar schedule for the formation of a draft consolidated

three-year plan for the procurement of goods, works and services for defense purposes under closed procurement (core (benchmarks) indicators) and brings it to the attention of the State customers.

Proposals for a consolidated three-year procurement plan for defence goods, works and services are developed by state customers. The latter develop and submit to the main body in the field of defense procurement planning in accordance with the calendar schedule the proposal for the project of a consolidated three-year plan in the form established by such an authority on:

planned budget period – taking into account the expenditures provided for ensuring national security and defense for the planned budget period in the Draft Law on the State Budget of Ukraine;

following the planned two budget periods – taking into account the State budget forecast.

The creation of new and modernization, repair, reconstruction, expansion and conversion of existing production facilities for the production of defense goods in accordance with the consolidated three-year plan are carried out by implementing the following measures:

performance of research and development works on the creation of special means of technological equipment and technologies;
 manufacture and implementation of special means of technological equipment;
 technical re-equipment and reconstruction of existing factories.

Such measures are included in the core (indicative) indicators.

Establishment and maintenance of an electronic register of participants in the selection and performance of public contracts (agreements). The Register is maintained for the purpose of monitoring information on executed state contracts (agreements), keeping up-to-date and ensuring transparency of information on participants in selection and executors of state contracts (agreements), objectivity of evaluation, selection and re-evaluation of the executors, taking into account on their ability to produce and supply goods, perform works and provide services in accordance with the needs of government customers.

The Register ensures the systematization and retrospective analysis of data on business entities

involved in defense procurement according to the following classification criteria: nomenclature of goods, works, and services for defense purposes produced by a business entity, works and services performed by such an entity; the price for such products, including based on the results of previous purchases; financial and economic condition of the enterprise; certain types of production activity of the enterprise; availability of the necessary production capacity and technical capacity of the enterprise; affordability of necessary objects of intellectual property law; execution or participation in the research and other works; potential grounds for refusal to conclude a contract (agreement) based on the results of bidding (Resolution of the Cabinet of Ministers of Ukraine No. 363, 2021).

As for the conclusion of state contracts (agreements), it is carried out by state customers based on the results of negotiations and phased negotiations in accordance with the approved consolidated three-year plan for the procurement of defense goods, works and services under closed procurement. The state contract (agreement) is concluded on the basis of standard state contracts (agreements) approved by the Cabinet of Ministers of Ukraine.

The selection of executors of state contracts (agreements) under closed procurement is carried out by the state customer through a competitive procedure – "phased negotiations" or a non-competitive procedure – "negotiations". The non-competitive procedure for selecting the executor of a state contract (agreement) based on closed procurement is applied to procurement from a single contractor.

After the selection of the executor of the state contract (agreement) under closed procurement, the state customer prepares and concludes the state contract (agreement). The draft of the state contract (agreement) is drawn up by the state customer in the required number of copies, signed by the manager or an authorized person, sealed and sent to the economic entity determined by the results of the procedure for selecting the executor within the time limit established by the legislation.

The subject of the state contract (agreement), as a rule, must correspond to the main indicators by name and quantity.

The terms of the state contract must comply with the consolidated three-year plan for procurement of defense goods, works and services under closed procurement. The parties to state contracts

can specify the conditions of standard state contracts (agreements) based on the specifics of the activities of state customers and the peculiarities for the purchase of defense goods, works and services.

State contract (agreement) is concluded for the period during which there are economic obligations of the parties arising on its basis.

The state contract (agreement) can be concluded for no more than three budget periods based on substantiated proposals of the executor regarding the development of the latest (sophisticated) samples of weapons and military equipment, their procurement taking into account the production cycle by the decision of the state customer.

Note that during the special period in Ukraine, introduction of the emergency state, conducting anti-terrorist operation, implementation of measures to ensure national security and defense, repelling and deterrence of armed aggression of the Russian, and if the information on the purchase of goods, works and services for the guaranteed provision of security and defense needs is not a state secret, simplified bidding through the electronic procurement system is applied, which make it possible for all the involved parties to get unimpeded access to information resources; it means that the electronic systems play a crucial role in public procurement (Shmeleva 2021, p. 249).

In this case, the announcement of the selection is placed by the state customer in the electronic procurement system within one working day after the procurement decision is made. The period for submission of price proposals cannot be less than six working days from the date of posting of the selection announcement on the official website of the authorized procurement body. Simultaneously with the announcement of the selection, the state customer also publishes the draft procurement contract. Technical, qualitative and quantitative characteristics of the subject of procurement and qualification criteria for selection participants cannot contain discriminatory conditions and reduce the level of competition.

The price offer is submitted by the participant in electronic form. Information from the selection participant on his or her eligibility, as well as about the compliance of the product, work or service with the technical, qualitative and quantitative characteristics of the procurement item specified in the selection announcement, is

uploaded into the electronic procurement system independently.

The latter automatically assigns the time and date of the auction. The ranking of all bids/quoted prices submitted by the bidders is done in the electronic procurement system automatically, from the highest offered price/quoted price to the lowest, and is made public automatically during the auction.

Within three working days from the end of the auction, the state customer examines price offer of the selection participant, recognized by the electronic procurement system as the most economically advantageous, as well as other documents, and within one working day publishes the protocol with the shortcomings discovered during the consideration of the price offer. Based on the results of the latter, provided there are no deficiencies, the state customer makes a decision on the intention to enter into a procurement contract and makes it public within one working day.

The winner of the tender, within a period not exceeding three working days from the date of publication on the official website of the authorized procurement body of the decision on the intention to enter into a procurement contract, should provide the state customer with the necessary documents for its conclusion.

Conclusion

Thus, in the course of the research we have highlighted and analyzed the following forms of administrative and legal support for the state defense order in Ukraine:

- 1) issuance of normative acts on the regulation of the defense and national security sector;
- 2) adopting individual acts on defense procurement administration issues;
- 3) planning in the field of defense procurement;
- 4) conclusion of administrative contracts regarding the functioning of the defense procurement system;
- 5) organizational forms lying in the implementation of organizational measures and the execution of material and technical operations.

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