

Administrative and Legal Implementation of the Rights of Business Entities

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Abstract. The study considers theoretical and practical aspects of the administrative and legal implementation of the rights of business entities based on the current legislation and regulatory requirements of the European Union from the perspective of the modern theory of state and law and administrative law. The relevance of the subject matter is conditioned by the need to improve legislation for the purpose of a comprehensive theoretical substantiation for improving the efficiency of the implementation of rights by business entities in the context of the transformation of the Ukrainian economy. The purpose of the study is to investigate the implementation of the rights of business entities. The study applied the methodology of a systematic comprehensive analysis of legal phenomena using factor and evolutionary research methods. It is indicated that the activities of public administration bodies have public legal goals (law enforcement, regulatory, fiscal, and accounting). One of the activities of public administration bodies is to ensure the implementation of the rights of business entities. The specific features of administrative and legal implementation of business rights by public administration bodies are considered. It is indicated that this activity is implemented by issuing individual administrative legal acts or performing certain administrative actions. Implementation methods (registration, licensing procedures, certification, and accreditation) are considered. The content of technical regulation is disclosed, including the development and adoption of technical regulations, rules, standardisation, conformity assessment, quotas. The role and significance of state supervision and control in the sphere of entrepreneurial activity as a way of administrative and legal support for the implementation of the rights of business entities is substantiated. The role of administrative procedure law and administrative procedure for the administrative and legal implementation of the rights of business entities is indicated. The study is aimed at improving the norms of administrative law regarding the implementation of the rights of business entities

Keywords: entrepreneurship, administrative law, public administration bodies, methods and forms of legal regulation

Introduction

The state, as a special participant in economic relations, acts as a subject of power, carrying out legal regulation of entrepreneurial activity, supervision and control over the implementation and compliance of business entities with regulatory requirements, protection of the rights of business entities.

An important component of sustainable socio-economic development of the state is the national economy, where the state has created conditions for a highly competitive institutional environment that stimulates the entrepreneurial activity of the population, a favourable investment climate, and contributes to attracting foreign capital to the country's economy.

A number of factors can contribute to achieving these results, among which a well-developed system of legal regulation and effective mechanisms of law enforcement in the field of implementation and protection of the rights of business entities, elimination of administrative barriers and

ensuring the effectiveness of the public administration system in the field of business activities are important.

This is reflected in strategic goal 1 "Ensuring transparent and effective regulation of enterprises' activities" of the strategic policy course for the development of a comfortable regulatory environment of the National Economic Strategy for the period up to 2030 [1].

The rights of business entities are defined in a number of laws and regulations: the laws of Ukraine "On Entrepreneurship" [2] and "On the Development and State Support of Small and Medium Enterprises in Ukraine" [3] and others. The state, granting individuals and legal entities certain rights in the form of consolidating in the norms of legislation, simultaneously assumes the obligation to provide all the necessary organisational, material, and legal conditions for the implementation processes.

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The acquisition and implementation of rights in the sphere of entrepreneurial activity provides for the adoption by public administration bodies of relevant individual law enforcement administrative acts or the commission of administrative actions. In these cases, the executive and administrative activities of public administration bodies are of a security nature in relation to the processes of acquisition and implementation of rights, which refers to the administrative and legal implementation of rights in the field of entrepreneurship.

The exercise of the right to engage in entrepreneurial activity is associated with the need for state registration of a legal entity or individual entrepreneur. The exercise of the right to engage in certain types of activity or perform certain actions in the field of entrepreneurship provides for the entrepreneur to pass the procedures for obtaining special permits or licenses. The implementation of certain types of business activities is associated with the acquisition of a special legal status by an entrepreneur. The property basis of entrepreneurship is the right of ownership, which requires state registration.

Considering the above, it is necessary to comprehensively investigate the administrative and legal implementation of rights in the field of entrepreneurship, which form the content of administrative procedures in order to solve organisational and legal problems that arise within the framework of such activity. These circumstances determined the choice of research topic and determined its relevance. Scientific originality consists in the classification of administrative and legal ways of exercising rights in the sphere of entrepreneurial activity.

The purpose of the study is to provide a comprehensive theoretical substantiation of the provisions on the administrative and legal implementation of the rights of business entities to improve the norms of administrative and administrative-procedural law in this area. Achieving this goal depends on the investigations of the main features of administrative and legal implementation of rights in the field of entrepreneurial activity.

The subject matter is multifaceted. Its various aspects became the subject of scientific research. O.V. Harahonych [4], K.I. Anapasenko [5], O.E. Dyakunovskiy [6] considered certain institutions of administrative and legal implementation of rights in the field of entrepreneurial activity (licensing system, registration) and put forward a number of proposals that deserve attention. D. Matricano [7], J. Doran, N. McCarthy, M. O'Connor, and Ch. Nsiah [8], M. Almodóvar-González, A. Fernández-Portillo, and J.C. Díaz-Casero [9] in the context of national law and European Union law, investigated the implementation of rights in the field of entrepreneurship from the standpoint of administrative and civil law, proposing changes to national legislation. In the context of adapting legislation to EU requirements, the views of these authors are of scientific value.

Some aspects of administrative law on the issues under study are covered by O.S. Dnipro on the subject of administrative law [10], Ya.V. Zhuravel on public-service relations [11], A.M. Shkolyk on administrative procedure [12]. The general principles of law enforcement and administrative law were considered from the standpoint of view of the author's groups of educational literature edited by S.D. Gusarev [13] and O.I. Ostapenko [14].

Materials and Methods

To achieve the purpose of the study, general scientific and private scientific methods were used together. In particular, the methods of analysis and synthesis were used to describe the content of the studied concept of the administrative and legal implementation of business rights, its individual aspects, connections, and to identify law enforcement problems that arise within the framework of implementation. The use of deduction and induction methods allowed formulating definitions of the administrative and legal implementation of rights in the sphere of entrepreneurial activity based on the concepts of law implementation developed by the theory of law and the science of administrative law. The use of factor and evolutionary methods revealed the administrative and legal foundations of administrative and legal regulation of the implementation of rights. The use of the formal legal method allowed considering state supervision and control in the field of entrepreneurial activity from the standpoint of one of the administrative and legal means of ensuring the protection of business rights. Using the system-structural method, the legal relations that develop within the framework of the implementation of rights and the relationship between their individual elements were investigated. The generalisation provided not only intermediate conclusions, but also summarised the research. All these methods were used comprehensively.

Results and Discussion

The Constitution of Ukraine and the current legislation guarantee the right to engage in entrepreneurial activity, including: the right to acquire special legal status in business relations; the right to carry out certain types of entrepreneurial activity and perform certain actions in this area; the right to own real estate and intellectual property used in business activities; to use or manage certain objects (water bodies, non-stationary commercial objects, outdoor advertising objects, etc.), territories (water areas), subsurface areas for the purpose of conducting business activities; the right to use budget subsidies in cases established by law for the purpose of carrying out business activities [15]. These rights form the basis of the country's economic well-being and provide for a regulatory procedure for implementation.

O.V. Harahonych notes that entrepreneurship is carried out in various organisational forms [4, p. 30].

Business rights require the implementation of legal reality and the legally established governmental intervention of public administration bodies in the form of the use of certain administrative and legal methods.

The activity of competent bodies and officials of public authorities to assist in the implementation of the right is of a power nature, is carried out in accordance with the procedure established by law and is accompanied by the commission of power law enforcement actions or the adoption of individual legal acts, without which the relevant legal relations provided for by law cannot arise.

By carrying out the power enforcement actions provided for by law and issuing individual legal acts, the competent authorities and their officials ensure that the subjects of the relevant rights arise or consolidate the possibility of using rights, fulfilling legal obligations by entrepreneurs or observing legal prohibitions.

In the theory of law, there are two types of law enforcement activities: operational and executive (regulatory) and law enforcement [13, p. 18].

The first is the positive regulation of public relations on the basis of individual law enforcement acts that ensure the emergence or change of subjective law and legal obligation. The second one is aimed at ensuring the protection of the right from illegal encroachments, eliminating obstacles to the implementation of subjective rights.

The law enforcement activities of public administration bodies, based on the norms of administrative legislation, occupy a special place in the implementation of subjective rights of individuals and legal entities, in particular, in the field of entrepreneurship.

As noted by O.I. Ostapenko, the uniqueness of legal regulation in the form of administrative law in that it affects many public relations and relations, transforms the content of legal regulation already formed considering other branches of law, creates means to ensure and guarantee the uninterrupted implementation of rights, and the existence of public institutions [14, p. 36].

Relations that develop in relation to entrepreneurial activity are mediated by the norms of administrative law, which include administrative and legal means and methods of influence, the application and use of which ensures the implementation of entrepreneurial rights.

Regulation through administrative law is designed to regulate the executive and administrative activities of public administration bodies, the essence of which is the development and legalisation of business activities, ensuring the safety of processes and products related to their activity.

The content of administrative and legal regulation of entrepreneurial activity is formed by the measures applied by the state of legal, economic, organisational and control nature, including state support and protection of business entities.

According to the author of this study, the areas of administrative and legal regulation of the activities of business entities include:

- activities related to the creation of a business entity;
- measures that ensure the organisation of access of business entities to the market of goods, works, and services;
- state support for business entities;
- measures of supervision and control in the sphere of entrepreneurial activity.

The tasks of administrative and legal influence on relations in the field of entrepreneurship include the creation of a regulatory framework for the activities of business entities, which ensures the smooth functioning and development of the economy, freedom of entrepreneurial activity without compromising the rights and legitimate interests of the population.

D. Matricano writes that two main areas of research can be identified. One refers to what underlies entrepreneurship, that is, the role of innovations that affect the emergence and initial development of entrepreneurship. The other relates to the study of the impact of entrepreneurship on the economic and social aspects of state development [7, p. 29].

The administrative and legal procedure for the implementation of rights in the sphere of entrepreneurial activity contributes to the solution of these tasks. The purpose of this procedure is to regulate relations arising from the satisfaction of the needs for making a profit laid down in the norms of law.

The administrative and legal implementation of the rights of a business entity depends on an appeal to the competent public administration body, as a result of which special legal relations arise.

Describing such relationships, O.S. Dnipro suggests that they cannot be attributed only to managerial relations, since the implementation of rights can take place outside the management process. It is legally significant that a subject with authority participates in such relations. In practice, these legal relations are not subject to management itself, but to the implementation of the rights granted to subjects into legal reality [10, p. 178].

The subject of the administrative and legal implementation of rights in the sphere of executive power is a set of public relations that develop between individuals and legal entities and public administration bodies in the implementation of power activities. Implementation covers the impact on public relations arising from the use of rights and freedoms mediated by the activities of public administration bodies. A public administration body is an obligated entity in relation to a business entity.

The obligation depends on the need to make an individual legal decision on the issue raised by the entrepreneur or make a legally significant impact.

Legal relations that arise and exist regarding the granting of certain subjective rights or special legal status by public administration bodies to individuals and legal entities in the form of making appropriate administrative decisions are considered as public service relations.

According to Ya.V. Zhuravel, these are relations that arise in the sphere of public law regarding the provision of management services [11, p. 72].

The state, represented by the relevant public administration bodies, promotes the acquisition of private rights or private legal status by interested parties. In relation to the analysed problems, it is advisable to understand the implementation of rights in the sphere of entrepreneurial activity as acquisition and the possibility of further use with the assistance of competent public administration bodies through the use of appropriate administrative and legal means.

The implementation of rights includes the norms of administrative, administrative and procedural law, which form the basis and procedural mechanism of action, and legal facts that are the basis for the emergence of relevant legal relations in which the implementation is carried out.

An administrative procedure is defined as a logically separate sequence of administrative actions performed under state supervision and control or during the provision of public services [12, p. 27-28].

Administrative and legal implementation of rights in the sphere of entrepreneurial activity should be understood as a system of administrative and procedural law provided for by the norms, applied within certain administrative procedures, administrative and legal methods of influencing public relations that develop between the authorities and businesses regarding administrative support for the acquisition, confirmation, and use of granted rights to meet the needs for making a profit from entrepreneurial activity.

According to the author of the study, the acquisition and exercise of rights in the sphere of entrepreneurial activity require legally established governmental intervention by public administration bodies by administrative and legal means:

- administrative – in the form of direct publication based on the relevant appeals of individual administrative acts – granting special legal statuses regarding the norms that determine the procedure for actions of public administration bodies;
- state registration of: business entities; rights to immovable property; intellectual property objects; certain facts of legal significance in the field of entrepreneurship;
- permissive – by issuing licenses on the basis of relevant requests – granting special rights to carry out certain types of business activities; performing certain types of actions; creating and using certain objects in the field of entrepreneurship.

Each of these methods is based on a characteristic method of administrative and legal influence, with the help of which the public administration body resolves an administrative case within the framework of proceedings. These methods of influence should include:

- an order that is reduced to direct power influence of a regulatory nature in the form of issuing individual administrative and legal acts;
- registration of subjects;
- issuing licenses and other special permits to individuals and legal entities.

Within the framework of the function of supervision and control, the following are distinguished: activities for issuing permits (licenses) by public authorities regarding the type of activity; activities for registering rights and issuing individual acts [16].

The listed administrative and legal methods, which ensure the implementation of the rights consolidated in the norms of legislation, are designed either to establish certain legal facts, or to consolidate the legal status or status of subjects or objects in the field of entrepreneurship. Such means can take place in situations of establishing general conditions of entrepreneurial activity (state registration), or special conditions of activity (licensing, certification, accreditation), influencing the principles of functioning of the legal regime of Diya City [17].

An external official and documentary expression of the exercise of rights is an individual administrative and legal act or administrative action, from which rights (legal status) are granted, and the necessary conditions for use are created.

Administrative granting of rights, special legal statuses in the sphere of business activity and individual objects of civil law, funds of the budget system of various levels for the purpose of using in business activities, benefits, and preferences has its own characteristics.

These features in the context of entrepreneurship development in developed and developing countries are described in detail by J. Doran, N. McCarthy, M. O'Connor, and Ch. Nsiah [8].

When using the above-mentioned method of exercising rights, the activities of public administration bodies are reduced to direct power granting to individuals and legal entities on the basis of appeals, certain subjective rights without state registration or issuing a special permit. The essence of the analysed relations is that the public administration body, in the form of issuing a non-normative administrative act, grants the applicant the corresponding subjective rights or legal status.

A characteristic feature of administrative granting of subjective rights is that public administration bodies are obliged to provide organisational and financial conditions for the implementation of the granted subjective rights. This is not typical for registration or licensing methods for granting

rights. For example, the provision of a subsidy to a business entity does not end with the adoption of an individual legal act on granting a subsidy, but is implemented by the actual payment of the subsidy and verification of the intended nature of use.

The administrative method of granting rights under consideration is applied in cases where the resources intended for use are limited. Several business entities apply for obtaining it, either when the commodity market functions more efficiently in the absence of competition (the sphere of natural monopolies), or when there is another need to comply with special conditions of activity due to the purpose of security. This can be seen when providing land plots and budget funds to business entities for use.

The acquisition of certain rights determines the mandatory application by business entities in the sale of goods, works and services of regulated prices, the activity of establishing which is covered by the concept of “tariff regulation”. In the absence of the tariff approved by the authorised body of the public administration, an entrepreneur in legal relations with a counterparty does not have the right to independently determine the price of products sold, otherwise, actions form part of an antimonopoly offense.

State support for business activities in the form of financing consists in the administrative method. The allocation of budget funds to business entities is not continuous, has a targeted nature, and is carried out by selecting business entities that meet the established criteria.

In the Law “On the Development and State Support of Small and Medium Enterprises in Ukraine”, support for small and medium-sized businesses is defined as the activities of government bodies at all levels (state, regional and local), carried out for the purpose of developing entrepreneurship on the basis of programmes [3].

The purpose of developing state-targeted programmes is to promote the implementation of state policy in priority areas of state development [18].

Budget funds for financial support of small and medium-sized businesses are provided indirectly by the entrepreneur.

M. Almodóvar-González, A. Fernández-Portillo, and J.C. Díaz-Casero note that financial support for business is the leading tool for the influence of public administration on the development of the economy [9, p. 11].

The state provides subsidies to state funds to support scientific and innovative activities, and to local budgets responsible for bringing funds to the final recipients – small and medium-sized businesses.

Another, different from the administrative, activity of public administration bodies in the field of entrepreneurship, is the permissive granting of rights to carry out certain types of business activities and perform certain types of legally significant actions, the creation and use of certain objects in the field of entrepreneurship.

In administrative law, to denote this type of activity, the categories “permitting activity”, “licensing-permitting activity”, and “permitting system” are used, the content of which, in fact, is the issuance of permits for the conduct of activities by public administration bodies at the request of interested persons [5; 19].

Permission and license are related as generic and specific concepts. In the current legislation, a permit (license) is associated with the emergence of a special right to carry out certain types of activities and use individual objects.

The licensing procedure is introduced in those spheres of life where there is a possible threat to the security of citizens, society, and the state. A subject who has expressed a desire to use a separate object on the basis of a permit is evaluated by public administration bodies for compliance with the requirements, its readiness (competence) to perform such actions, the result of which is the adoption of an individual administrative and legal act in the form of a permit or refusal to accept it.

A characteristic feature of permits is that, despite the imperativeness of legal relations, the process of obtaining is based on dispositive principles, which is conditioned by the free expression of the will of the authorised subject in the exercise of a subjective right, which, by applying for a permit, independently forms a special legal personality.

Currently, licensing, certification, accreditation, technical regulation, and quotas can be attributed to permissive methods of exercising rights in the field of entrepreneurial activity.

Certification is a procedure used by the state to assess and confirm the status of the subject (object) of rights, its compliance with established quality indicators and criteria.

The analysis of the current legislation on accreditation issues allows recognising the absence of a single legal interpretation of the specified term, and the existence of approaches to defining accreditation as a certifying procedure, official recognition of the subject's competence, and confirmation of the subject's compliance with the accreditation criteria. The existence of different approaches is conditioned by the variety of areas of application of accreditation.

Accreditation is a certain procedure established by laws and regulations to confirm the competence of a business entity, its ability to carry out a certain type of activity or perform certain legally significant actions. Official recognition is confirmed by the issuance of an accreditation document to the accredited person.

Carrying out business activities requires a business entity that the quality of goods, works, and services meets the requirements directly related to such a form of licensing activity as technical regulation. The legal basis of relations in this area is defined by the Laws "On Accreditation of Conformity Assessment Bodies" [20] and "On Technical Regulations and Conformity Assessment" [21].

Technical regulation covers the development of technical standards for objects, the establishment of rules for assessing the compliance of objects with technical standards, checking the compliance of objects with the specified standards, and taking measures regarding the results of the inspection. Forms of technical regulation are the development and adoption of technical regulations, rules, standardisation, and conformity assessment [22]. Permits in the field of technical regulation are the result of procedures for assessing the compliance of products and related production and circulation processes with the mandatory requirements established in technical standards.

Legal relations that develop during conformity assessment procedures indicate that the mandatory subject of such relations is a public administration body or a legal entity to which the state has delegated powers in this area. The result of such relations is the issuance of a document confirming the compliance of products with mandatory requirements.

An important component of administrative and legal action on public relations in the field of entrepreneurship is quotas related to the establishment of quantitative requirements (restrictions). The establishment of quotas can take place in foreign economic activity and in domestic economic activity. Regarding domestic economic activity in Ukraine, quotas for the participation of foreign capital in certain sectors of economic life and the establishment of various quotas in the environmental sphere should be noted. The legal significance of quotas is to ensure a balance between socially significant interests and those of business entities.

A significant list of administrative and legal ways to implement rights in the sphere of entrepreneurial activity causes the need to improve the system of protection of rights,

O.E. Dyakunovskiy, from the standpoint of Polish legislation, suggests strengthening institutional support for improving the legal status of the business ombudsman in Ukraine and expanding their powers to consider complaints [6, p. 227].

According to the author of this study, the intersectoral nature of the right to engage in entrepreneurial activity with a significant presence in legal relations of the administrative and legal component, when implementing this right, determines the need to apply out-of-court administrative and legal means of protecting the right.

Conclusions

Many rights related to entrepreneurship require the assistance of public administration bodies through the adoption of individual non-normative legal acts and the implementation of certain administrative actions. The norms of administrative and procedural law mediate the rights of entrepreneurs, ensuring their implementation in legal reality.

The system of norms of administrative and procedural law applied within certain administrative procedures regarding public relations that are established between public administration and business, regarding administrative support for the acquisition and implementation of granted rights in the field of entrepreneurial activity to meet the needs for systematic profit-making forms the administrative and legal implementation of rights in the field of entrepreneurial activity.

Administrative and legal methods of exercising rights designed to establish certain legal facts, legal status or status of subjects or objects in the field of entrepreneurship. Administrative and legal methods of exercising rights by business entities cover administrative activities, state registration, and licensing activities. Further study should cover the latest administrative and legal ways of exercising rights by business entities in the context of the digital economy of Ukraine.

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Адміністративно-правова реалізація прав суб'єктів підприємницької діяльності

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Анотація. У статті з позиції сучасної теорії держави і права та адміністративного права розглянуто, на основі чинного законодавства та нормативних вимог Європейського Союзу, теоретичні та практичні аспекти адміністративно-правової реалізації прав суб'єктів підприємницької діяльності. Актуальність теми зумовлена необхідністю удосконалення законодавства з метою комплексного теоретичного обґрунтування підвищення ефективності реалізації прав суб'єктами підприємницької діяльності в умовах трансформації економіки України. Мета статті – дослідження реалізації прав суб'єктів підприємницької діяльності. У ході дослідження застосовано методологію системного комплексного аналізу правових явищ із застосуванням факторного та еволюційного методів дослідження. Зазначено, що діяльність органів публічної адміністрації має публічно-правові цілі (правоохоронні, контролюючі, фіскальні, облікові). Одним із напрямів діяльності органів публічної адміністрації є забезпечення реалізації прав суб'єктів підприємництва. Розглянуто особливості адміністративно-правової реалізації підприємницьких прав органами публічної адміністрації. Вказано, що зазначена діяльність реалізується за рахунок видання індивідуальних адміністративно-правових актів або вчинення певних адміністративних дій. Досліджено способи реалізації (реєстрація, ліцензування, дозвільні процедури, атестація, акредитація). Розкрито зміст технічного регулювання, що включає розробку та прийняття технічних регламентів, правил, стандартизацію, оцінку відповідності, квотування. Обґрунтовано роль і значення державного нагляду та контролю у сфері підприємницької діяльності як способу адміністративно-правового забезпечення реалізації прав суб'єктів підприємницької діяльності. Вказано на роль адміністративно-процесуального права та адміністративної процедури щодо адміністративно-правової реалізації прав суб'єктів підприємництва. Дослідження спрямоване на вдосконалення норм адміністративного права щодо реалізації прав суб'єктів підприємницької діяльності

Ключові слова: підприємництво, адміністративне право, органи публічної адміністрації, способи та форми правового регулювання