

Administrative and Legal Protection of Public Morality

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Abstract. In the article on the basis of complex system analysis with the use of formal-legal, comparative-legal and factorial methods, the administrative-legal protection of public morality is considered. The peculiarity of the methodology of this study is explained by the multifaceted nature of the category of “public morality” and the existing need to study it, considering the approaches and developments of other legal sciences. Insufficient efficiency of public authorities in protecting public morals can lead to a decrease in the level of spiritual well-being of society. The aim of the article is to analyse the administrative and legal regulation in the field of protection of public morality. It is pointed out that public morality is a historically determined state of social relations that have formed as a result of conscious human activity. Public morality is correlated with public order and public safety as part and whole, where public morality is a component. Legislation on determining the purpose and functions of administrative and legal norms aimed at protecting public morals is considered. In the process of research the structural-functional analysis of the mechanism of interaction of law and morality is carried out, its elements as interacting parts of the system (legal norms, morality) are identified, functional connections and relations between them are established and theoretically substantiated. Subjective and objective factors that determine the measures of administrative and legal protection are considered. It is proposed to single out public morality as an independent object of administrative and legal protection. Protection of public morality is considered as an activity aimed at ensuring the conditions of moral well-being of society and the individual. The concept of the mechanism of administrative and legal protection of public morality and its content is formulated. Administrative and legal protection of public morality ensures the neutralisation of threats in the field of research

Keywords: social regulation, administrative and legal protection, protection system, public relations, administrative responsibility

Introduction

Relations in society are governed by various social norms. Among the variety of social norms can be distinguished rules of law, moral norms, customs, traditions, corporate norms. A special role belongs to law and morality. Law regulates important areas of life. Morality permeates almost all the diversity of relations between people, enshrined in legal norms. Morality and law are inextricably linked with the foundations of law and order and the consciousness of the individual. In the modern period, the relevance of the interaction of law and morality is especially great. The destruction of the totalitarian state and the emergence of the state, which declared its main task of ensuring the rights and freedoms of citizens, requires a change in ideological attitudes in the relationship between citizen and society and state, law and morality.

The relevance of the study of the problem of interaction of law and morality in social regulation is difficult to overestimate. The fact of close social and functional interaction of law and morality is well known. At the same time, the task of eliminating undesirable conflicts and contradictions between law and morality, achieving the most optimal interaction is clearly not solved due to different approaches to understanding law and morality, lack of theoretical developments in the mechanism of interaction of these social regulators. It is necessary to solve this problem, because without considering the multifaceted relationship of law and morality, the legal

system is ineffective. The movement of the state by building a sustainable economic and political system, the development of civil society and the rule of law is impossible without proper legal regulation. To date, the manifestations of legal and moral nihilism have become widespread, which indicates the presence of serious shortcomings in social regulation.

Protection of moral foundations at every stage of development of society and the state is an important condition for normal existence. The Constitution of Ukraine declares the duty of the state to recognise and protect the rights and freedoms of citizens [1]. Public morality organises the consciousness and behaviour of individuals in such a way that the private is subordinate to the general. The peculiarity of moral rules is that they are usually provided by the power of public opinion. The development and complication of social relations leads to the desire of the state to carry out legal regulation of moral values, making it mandatory. Such provisions acquire special significance and become the object of legal protection. The need for administrative and legal protection of public morality is conditioned upon the process of globalisation and the growth of threats explained by the accelerated development of information and communication technologies. Law in general is understood as a system of universally binding, formally defined norms, which are issued or sanctioned by the state and are protected by the possibility

Suggested Citation

Article's History: Received: 05.01.2022 Revised: 05.02.2022 Accepted: 06.03.2022

Bulachek, V.R. (2022). Administrative and legal protection of public morality. *Social and Legal Studios*, 5(1), 41-45.

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of state coercion. Morality is perceived as a form of social consciousness, as one of the types of social regulation aimed at reconciling personal and social interests.

Problematic issues of administrative and legal protection of public morality in the system of social regulation were studied by: O.P. Bilan [2], V.P. Boychenko [3], M.V. Kovaliv, V.S. Borovikova [4], O.V. Yemets [5], S.S. Yesimov [6], O.V. Zakharova [7], S.A. Kucher [8], O.L. Lopuha [9], N.I. Svadeba [10], G. Blicharz [11], R. Perrone [12] and others.

V.P. Boychenko writes that from the standpoint of the anthropological approach it should be about morality as an element of individual development and public morality as an element of law and order. This is the modern anthropological approach [3, p. 13]. O.V. Yemets notes that public morality is a sphere of moral regulation that encompasses values accepted in society and focused on the achievement of common (collective) good, rules of conduct, their reflection in the minds of people and relevant behavioral standards (patterns of behaviour) relevant values and norms, and also has the means of collective condemnation of immoral acts of members of this society [5, p. 185].

According to V. Kuchera, the opportunity to spread their own views and beliefs is not only the right of a citizen of Ukraine, but also provides responsibility for the content of those views that a person spreads [8, p. 45]. G. Blicharz connects public morality with constitutional provisions and human rights [11, p. 19]. The development of social morality was influenced by morality, which emerged in the historical development of human society and is a mandatory attribute that characterizes the state of society and reflects common interests, including morality expressed in real social relations of people who implement moral norms in behavior. The sphere of protection of public morality in modern conditions requires the development of the most acceptable solutions to the problem. Lack of consolidated and coherent state policy, insufficient efficiency of public authorities to protect public morality can lead to a decrease in the level of spiritual well-being of society as a whole.

The aim of the article is to study the administrative and legal protection of public morality in modern conditions.

Legal Bases of Protection of Public Morality

In the context of Russia's economic and informational expansion, activities to protect national moral values, rights and interests of children, educating the younger generation such as patriotism and spiritual and moral values are especially important as the basis for confident development of Ukrainian society and integration into the European socio-economic space. There are no effective measures of administrative and legal protection of public morality in Ukraine. This fact can provoke the loss of spiritual values in society, as well as landmarks in the education of the younger generation.

Significant increase in diseases and other negative factors accompanying antisocial behavior, intensification and consolidation of criminal groups of criminal business, negative trends in public morality indicate that the protection measures applied by public authorities are not effective enough. One of the main reasons is the imperfection of current legislation [9, p. 53]. The long-term absence of state policy in the field of protection of public morals has led to the need to take radical measures to change the situation. In this regard, determining the forms of administrative and legal policy in this area is a priority.

The literature shows that the problem of public morality in the context of human rights requires in-depth and continuous study, as it depends on space and time [13, p. 42]. The constitutional right to free expression of views and beliefs may be limited in certain cases established by law [1]. One of the grounds for restricting this right is a violation of the law on the protection of public morals. Criteria for determining the fact of violation of public morality due to the spread of certain views are set out in the Law of Ukraine "On Protection of Public Morality" [14].

The Law of Ukraine "On Protection of Public Morality" defines public morality as a system of ethical norms, rules of conduct established in society based on traditional spiritual and cultural values, ideas of goodness, honor, dignity, public duty, conscience, justice [14].

Unlike morality and ethics, which are ethical categories, social morality is a legal category. It can be defined as a historically determined state of social relations formed as a result of conscious human activity under the influence of customs, traditions, morals and ethics governed by the rule of law in places open to free access of citizens (including cyberspace by technical means) that ensure the physical, mental, social, spiritual well-being of individual citizens and society [2, p. 44]. Public morality is correlated with public order and public safety as part and whole, where public morality is a component. The system of state protection of public morality includes:

- normative certainty;
- public authorities endowed with the functions of protecting public morals;
- system of indicators, reporting and centralised collection of information, which reflects the practice of administrative and legal protection of public morality;
- special measures of administrative and legal protection of public morality;
- norms that provide for legal liability for encroachment on protected relations;
- other measures to protect public morals: related to social adaptation; aimed at informing citizens about the negative consequences of antisocial phenomena; aimed at strengthening and protecting the family;
- banning all forms of propaganda and advertising of anti-social phenomena;
- interaction of public authorities with the public, including volunteer movements and organizations;
- specialised social assistance; measures of medical protection of public morality; measures of religious protection of public morality [3; 5; 7, p. 164].

Under the administrative and legal protection of public morality should be understood as a set of administrative and legal measures, including coercive, applied by public authorities to persons leading an antisocial lifestyle aimed at neutralizing and eliminating threats in this area, jurisdictional activities in the field of public morality. The study of administrative and legal protection of public morality allows speaking of a double understanding of this institution. In a broad sense, it includes all elements, including administrative liability for offenses in the area under consideration. In the narrow sense, the administrative and legal protection of public morality is the activities of public authorities to implement state tasks related to ensuring the proper moral condition of society and the individual citizen, which is carried out through administrative and legal protection of various orientations.

Priority in matters of administrative and legal protection of public morality belongs to the understanding in the narrow sense, as the protection of public morality is one of the tasks of public administration and can be achieved through the proper functioning of public authorities. This activity should be aimed at eliminating the causes and conditions of social deviations from socio-moral behaviour and their eradication in the future. In this approach, the emphasis should be on the application of administrative and legal prevention, rather than punitive and repressive measures aimed at eliminating factors and conditions that may adversely affect socio-moral behaviour. Legal recognition of the existence of negative socio-legal phenomena gives rise to preventive norms. In the field of protection of the law, preventive regulation arises from the moment when there is a rule of law that contains or allows the possible negative consequences of illegal behaviour or behaviour that is evaluated by society or the state negatively [8, p. 43].

Two conditions are required for the attribution of methods and means to administrative and legal measures for the protection of social morality. First, the administrative and legal measures to protect public morality should include methods and means used after the violation of subjective law, non-performance or improper performance of duties or in the event of threats to public morality. Secondly, administrative and legal protection measures should be aimed at restoring socio-moral behavior. Observance of the rules of coexistence in the rule of law is carried out consciously and voluntarily, because the law embodies the will of the people, its rules are mandatory, based on the support of the state and public opinion [15, p. 350].

Administrative and Legal Protection of Public Morality in Modern Conditions

The peculiarity of the application of legal protection measures is that the application can be initiated by a public authority, a person whose rights are violated, a person who directly leads an anti-social lifestyle [16, p. 54]. However, the norms of one administrative law do not protect public morality. Administrative and legal protection of public morality is a structural element of legal protection of public morality. In the field of legal protection of public morality can be divided into two groups of legal protection measures: administrative and criminal and criminal. These measures have special properties that distinguish them. The main ones concern the grounds for administrative and criminal liability, types of punishment, application procedures, sectoral regulations [3].

Administrative and legal protection of public morality is one of the elements of the system of higher order – the system of protection of public morality. Protection of public morals is not limited to administrative and legal measures and provides for an arsenal of other measures (social, medical, religious, pedagogical). Together, these measures form an original model of protection of public morality. R. Perrone notes that when the law mentions morality, it refers to social morality, ie the rules of coexistence and behavior that must be followed in a civilized society [12, p. 365-366]. We can talk about the understanding of the term “protection of public morality” in a broad, narrow and personal sense. In a broad sense, the protection of public morality means the activities of the state to protect public morality with the use of measures of various directions. Protection of social morality

is the activity of public authorities to protect social morality through administrative and legal measures [16, p. 55]. In the narrow sense, the protection of public morality should be understood as the application of measures of legal responsibility for offenses in this area.

The mechanism of administrative and legal protection of public morality includes a number of interrelated elements. Opinions on the mechanism of protection of objects of legal protection were expressed in the scientific literature. The following elements were proposed: threat – object of protection – police protection [7, p. 46]. The content of the mechanism of administrative and legal protection of public morality is conditioned upon the peculiarities of the area under consideration:

- normative-value (consists of legal norms that form attitudes to the protection of public morals, requirements for lawful conduct);
- target (represented by the system of public authorities that protect public morals, legally established goals, objectives and functions in the analyzed area);
- organisational and instrumental, includes the establishment on a regulatory basis of the powers of the subjects of protection of public morality and the formation of links between them in the protection of public morality with the use of various legal instruments;
- factor (includes a system of factors that harm public morality as an object of administrative and legal protection) [3; 5; 7].

One of the elements of the mechanism of administrative and legal protection are the factors that cause harm in the legislation [14; 17] and the works of scientists [3; 7, 16; 18] are considered as “danger”, “threat”. Although the study of the content and relationship of the concepts of “danger”, “threat” is important for the protection of public order and public safety, there are no generally accepted or scientifically developed approaches to the definition.

Both terms are used in legislation. In the legislation of Ukraine [17] the threat to public safety is understood as the possibility of harm to human rights and freedoms, material and spiritual values of society. Recently, in the scientific literature, the categories of “challenge” and “risk” have been used as factors causing damage to protected objects [18]. In law, risk is understood as a model of negative implementation of the law, which threatens the deformation of the final legal results, reducing the quality of legal regulation [18, p. 54].

The system of factors causing damage to the objects of administrative and legal protection is formed by danger, threat, challenge and risk. The danger can be described as a potential possibility of harm to various protected administrative and legal relations. Factors causing damage to public morality should be considered threats due to compliance with these characteristics. Antisocial phenomena cause real and irreparable damage to public morality.

According to N. Svadeba, law and morality have a common purpose – it is to influence the behaviour of the subjects. The functioning of law and morality is not subject to a certain area of social relations, operate in a single field of social relations; they form a standard of behaviour, value and normative orientation of society. Law and morality are based on common socio-economic interests, culture of society, people's commitment to the ideals of freedom and justice, they have a single spiritual nature, a single value core – justice [10, p. 407].

M.V. Kovaliv and V.S. Borovikova noted that the functional purpose of the police is law enforcement to protect and defend the population in criminal and non-criminal situations, this determines the number of personnel, the need to maintain a constant and high level of mobilisation training, round-the-clock work, information, use of vehicles and communication [4, p. 189]. This position is consistent with the position of the legislator. The strategy of public safety and civil protection of Ukraine among the main sources of threats to public safety in the context of public morality includes: alcohol abuse, non-medical use of drugs, psychotropic substances and precursors that cause a significant number of crimes under the influence of alcohol or drugs [19].

Conclusions

Administrative and legal protection of public morality is a structural element of legal protection of public morality, consideration of the features of which allows speaking of the duality of its understanding. Administrative and legal protection of public morality is one of the elements of the system of higher order – the system of protection of public morality. Protection of public morals is not limited to administrative and legal measures and provides for an arsenal of

other measures. Together, these measures form a model for the protection of public morals in Ukraine. The mechanism of administrative and legal protection of public morality can be defined as a complex administrative and legal phenomenon, including a system of legal norms and starting points, purpose, objectives and content of organizational and legal activities of authorized entities that independently and in cooperation with certain forms various administrative and legal measures protect public morals.

The broad content of the studied mechanism requires the need for an orderly mutual arrangement of components and content formation. The content of the mechanism of administrative and legal protection of public morality is a holistic system of interconnected elements formed based on administrative and legal regulation, which are consolidated into developing components and organically interconnected, functionally oriented to achieve a common goal – moral well-being. The mechanism of administrative and legal protection of public morality includes blocks: normative-value; target; instrumental and functional; factorial. The study of these blocks involves the continuation of scientific research to develop proposals to improve the effectiveness of administrative and legal protection of public morality

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Анотація. У статті на підставі комплексного системного аналізу з використанням формально-юридичного, порівняльно-правового та факторного методів, розглянуто адміністративно-правовий захист суспільної моралі. Особливість методики цього дослідження обумовлена багатоплановістю категорії «суспільна мораль» та наявною потребою її вивчення з урахуванням підходів і напрацювань інших правових наук. Недостатня ефективність діяльності органів публічної влади щодо захисту суспільної моралі можуть призвести до зниження рівня духовного добробуту суспільства. Метою статті є аналіз адміністративно-правового регулювання у сфері захисту суспільної моральності. Вказано, що суспільна мораль є історично обумовленим станом суспільних відносин, що сформувалися унаслідок свідомої діяльності людей. Суспільна мораль співвідноситься з громадським порядком і публічною безпекою як частина та ціле, де суспільна мораль є складовою. Розглянуто законодавство щодо визначення цільової належності та функцій адміністративно-правових норм, спрямованих на захист суспільної моралі. У процесі наукової розвідки проведено структурно-функціональний аналіз механізму взаємодії права та моралі, виявлено його елементи як взаємодіючі частини системи (правові норми, мораль), встановлені та теоретично обґрунтовані функціональні зв'язки та відносини між ними. Розглянуто суб'єктивні та об'єктивні чинники, що детермінують заходи адміністративно-правового захисту. Запропоновано виділити суспільну мораль як самостійний об'єкт адміністративно-правового захисту. Захист суспільної моральності розглянуто як діяльність, спрямовану на забезпечення умов морального добробуту суспільства та конкретної особи. Сформульовано поняття механізму адміністративно-правового захисту суспільної моралі та його зміст. Адміністративно-правовий захист суспільної моральності забезпечує нейтралізацію загроз у сфері, що досліджують

Ключові слова: соціальне регулювання, адміністративно-правовий захист, система захисту, суспільні відносини, адміністративна відповідальність