ABSTRACT

Tanchyk O. M. Administrative and Legal Basis for Imposing Sanctions on Legal Entities. – Qualification scholarly paper: a manuscript.

Thesis submitted for obtaining the Doctor of Philosophy Degree in Law, Speciality 081 – Law. – V. N. Karazin Kharkiv National University, Ministry of Education and Science of Ukraine, Kharkiv, 2021.

The thesis uses modern methods of scientific knowledge to study the actual general theoretical and applied aspects of imposing sanctions to legal entities in an administrative manner. Among the theoretical aspects, the main attention is focused on identifying the characteristics of administrative and legal sanctions and formulating an appropriate definition of the concept, taking into account both modern views on the nature of administrative sanctions and the current state of administrative legislation, including the latest laws and draft laws. Along with this, the possibilities of imposing sanctions are studied taking into account modern views on the nature of legal entities as full-fledged participants in administrative and legal relations, the author's version of the concept of the functional purpose of sanctions is formed, the existing classifications of sanctions imposed on legal entities are expanded, the grounds and procedure for imposing such sanctions are identified, as well as the conceptual basis for their imposition with an emphasis on the principle of proportionality. The applied aspects of the thesis research are devoted to improving the regulatory framework for imposing sanctions on legal entities.

An administrative and legal sanction in the thesis research is defined as a statutory measure of the reaction of an authorized subject caused by a potentially possible or actual illegal act of the subject – addressee of a legal rule, and consists in preventing an illegal act, its being terminated or eliminating its consequences, or punishing the offender, and which is applied in an administrative manner.

Within the framework of the study of the nature of legal entities as subjects with administrative and tort legal personality, it is concluded that there is such a legal personality with the peculiarity that legal entities may not be subject to

sanctions of a moral and psychological nature due to the lack of a legal entity in the relevant sphere. All other types of sanctions, in particular financial, property and organizational, are fully applicable to legal entities.

The existing classifications of sanctions are supplemented by sanctions of a preventive nature, in addition to the existing suspensive sanctions and sanctions that have the character of legal liability measures. According to the legal consequences of imposition, it is proposed to distinguish: sanctions – prohibitions; sanctions – obligations; sanctions – restrictions; signal or informational, transformational and restorative sanctions. According to temporal characteristics, discrete-action sanctions and ongoing sanctions are distinguished.

Under the study, it is found that among the authorities, agencies or public officers endowed with the authority to impose sanctions on legal entities, the largest in terms of volume is a group of executive authorities that are endowed with both control and administrative-jurisdictional powers in relation to legal entities. At the same time, ways to consolidate the administrative and jurisdictional powers of such bodies are identified and described. A group of bodies authorized to impose sanctions on legal entities due to their constitutional and legal status as subjects ensuring national security is considered separately. It is also established that administrative courts are a separate type of entities authorized to impose sanctions on legal entities. At the same time, the provision that the expediency of transferring cases on the imposition of certain types of sanctions to administrative courts can be explained by the anti-corruption orientation of such mechanism of the imposition of sanctions is justified.

The grounds for imposing sanctions on legal entities are considered in the thesis research, depending on their functional purpose. In particular, it is established that the grounds for imposing preventive sanctions are not offenses as a fact of current reality, but only the risk of committing actions or actions of a legal entity that create real and/or potential threats to objects protected by law. The grounds for imposing sanctions of a suspensive nature are real offenses, but the general feature of these offenses is that they are ongoing. Common to almost all grounds for

imposing sanctions on legal entities is the absence of an indication of the subjective aspect of the offense, namely guilt, in the composition of the relevant offense.

Within the framework of the study, the inexpediency of codification of regulatory legal acts providing for administrative liability of legal entities is justified.

It is shown that the imposition of sanctions on legal entities in an administrative manner is characterized by a multiplicity of procedural forms. According to the specifics of the structure of administrative proceedings on the imposition of sanctions on legal entities, minimized and detailed proceedings are distinguished. Minimized proceedings are characterized by the availability of the required minimum number of stages necessary to achieve the goal of proceedings in their structure. Such proceedings, as a rule, are inherent in the imposition of those sanctions that are absolutely certain in nature, do not have alternative sanctions, and establishing a link between the basis for imposing sanctions and the legal entity, to which such sanctions are applied, is not difficult, and sometimes even presumed. Detailed proceedings have, in addition to the required minimum stages, other ones, the presence of which is due either to the complexity and diversity of the grounds for imposing sanctions, or to the characteristics of the sanctions themselves, the application of which requires compliance with the principle of adequacy (proportionality).

In addition, the thesis describes unique and universal procedural arrangements for imposing sanctions on legal entities. Unique procedural structures are designed to be used for imposing only one type of sanctions. In turn, universal procedural arrangements for imposing sanctions on legal entities are designed to be used for imposing various types of sanctions, but within the scope of the activities of, as a rule, one state body.

Among the proceedings on imposing sanctions on legal entities, a group of proceedings specific in procedural arrangements is singled out separately, namely, proceedings, in which the stage of making a decision on imposing sanctions on legal entities is implemented by an administrative court. This construction of proceedings

excludes the existence of a stage of appeal against the decision to impose sanctions in an administrative manner, since the decision is made not by any authority, agency or public officer, who or which have revealed the violation, but by the court, at the request of such authority, agency or public officer. Thus, the level of objectivity and impartiality of the adopted decision to impose sanctions increases.

In the thesis research, the principles of imposing sanctions on legal entities are considered separately. At the same time, it is shown that the most correct measure, from a methodological point of view, is to consider such principles from the standpoint of evaluating the conceptual foundations of the administrative procedure.

It is stated that the conceptual basis for imposing sanctions on legal entities, taking into account the specifics of administrative and tort proceedings, is formed by the following principles: the principle of imposing sanctions exclusively by authorized entities; the principle of imposing sanctions upon the availability of grounds defined by law; the principle of objectivity of truth in determining the existence of grounds for imposing sanctions; the principle of impartiality in making a decision on imposing sanctions; the principle of proportionality or adequacy of the sanction applied to the nature of the grounds for its imposition, as well as sufficiency to achieve the purpose of imposition; the principle of ensuring the right to appeal against the decision to impose sanctions. In turn, the implementation of these principles requires the introduction of and compliance with a number of purely procedural principles, in particular, such as the right to representation, the right to be heard, the validity of the decision, etc.

It is established that the proceedings on the imposition of sanctions on legal entities are mostly a continuation of control (inspection) proceedings. At the same time, both control proceedings and subsequent related proceedings on the imposition of administrative sanctions on legal entities are carried out by the same entities. The difference can only be in the level of subjects, at which the decision to impose sanctions is made. However, the control activity itself already contains principles that should ensure the objectivity of the truth regarding the establishment of the existence of grounds for imposing appropriate sanctions.

In cases, where control (supervisory) proceedings are associated with proceedings on imposing sanctions on legal entities, the principles of administrative procedure apply only to proceedings on the imposition of sanctions, but some of the principles that are identical in content are implemented under control proceedings. This is typical, in particular, for the principles of objectivity, impartiality and equality of participants in proceedings.

Special attention is paid to the principle of proportionality in the imposition of sanctions on legal entities, as a fundamental principle of the corresponding activity of authority, agency or public officer. In particular, the five main ways to ensure the implementation of the principle of proportionality in the imposition of administrative sanctions on legal entities are identified and described, namely, the method of conditional (quantitative) proportionality, which consists in determining the volume of an uncontested sanction depending on the number of manifestations of illegal behavior within one offense; the method of discretionary proportionality, which consists in determining the type and volume of sanctions, at the sole discretion of the subject of administrative jurisdiction within a certain list of sanctions or within a certain volume of the sanction (usually of a financial nature); the method of estimated-discretionary proportionality, which consists in taking into account the financial indicators of success of the economic activity of a legal entity carried out in violation of the relevant legislation, as well as at the expense of discretionary power to determine a specific amount of a fine in relation to its lower and upper limits; the method of “graduated proportionality”, which involves the gradual imposition of sanctions from relatively soft to the most severe ones, provided that the previously imposed sanctions are ineffective, and then until the absolute achievement of the goal of sanctions; the method of “integral proportionality”, which involves the use of the widest possible discretion of the administrative jurisdiction body to impose sanctions both in choosing the type of sanctions, their combination and size.

The study has also formulated a number of proposals for improving the legislation, which provides for the imposition of sanctions on legal entities in an administrative manner.

Key words: administrative and legal sanctions; legal entity; imposition of sanctions; grounds for imposing sanctions; administrative proceedings; principles of imposing sanctions; principle of proportionality.