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SOFT LAW AS AN INSTRUMENT FOR REGULATING ADMINISTRATIVE AND LEGAL RELATIONS

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The article examines the phenomenon of soft law as an instrument for regulating administrative and legal relations, defines its place and role in the system of legal acts, and explores its impact on law enforcement. It is proven that soft law plays a special role in the system of sources of administrative law, which is due to the growing influence of this phenomenon on the legal regulation of social relations. Traditionally, administrative law is associated with normative legal acts that are binding in nature. At the same time, in modern conditions, acts that are not legally binding but significantly influence the behavior of subjects of administrative and legal relations play a significant role. In particular, soft law in administrative law manifests itself in the form of recommendations, guidelines, codes of conduct, memoranda, administrative regulations, etc. Such documents are widely used in the activities of state authorities and local self-government bodies, international organizations, and institutions of the European Union, which enhances their importance in law enforcement practice. The scientific approaches of researchers to the key features of soft law and the peculiarities of its application in Ukraine are analyzed. It is proposed to differentiate between external soft law, which arises within the framework of international cooperation, in particular in the activities of international organizations, and internal soft law, which is formed within the national legal system (for example, in the form of recommendations, letters, codes of ethics). In the current conditions of the development of the legal system of Ukraine, the phenomenon of internal soft law is becoming increasingly important as an instrument that allows for effective management without excessive rigidity of legal norms. Its influence is particularly noticeable in the field of administrative law, where the regulation of social relations often requires efficiency, adaptability, and compliance with European standards.

Keywords: administrative law, source of law, public legal relations, soft law acts, normative legal acts.

Soft law as an instrument for regulating administrative and legal relations

Formulation of the problem. Administrative law regulates relations arising in the sphere of public administration between public administration bodies and individuals or legal entities. These relations are of a public-law nature and therefore require special forms of legal regulation based on the principles of legality, public interest, and, in certain cases, subordination. In today's environment, where there is a need for flexibility, adaptability, and compliance with European standards, soft law is becoming increasingly important as an instrument that has no formal legal force but can significantly influence the content, direction, and quality of administrative and legal relations. Recommendations, declarations, letters, codes of conduct, guidelines, framework agreements, and other soft law acts contribute to the formation of administrative practice, the definition of standards of conduct for public administration, and the establishment of benchmarks for law enforcement.

The use of soft law acts is particularly widespread in the field of public administration, where it is important not only to comply with formal norms, but also to ensure effective, ethical, and citizen-oriented management. In particular, such acts are often used to interpret the provisions of legislation, shape administrative practice, establish standards for interaction between authorities and citizens, and implement public policy in specific areas (health care, social protection, education, etc.).

At the same time, the legal nature of soft law acts remains controversial in the scientific community, as they are not binding, do not create legal obligations, and cannot directly create or change the rights and obligations of subjects of legal relations. Despite this, they have an impact on the activities of subjects of administrative and legal relations.

Thus, the study of soft law acts in the context of regulating administrative and legal relations allows for a deeper understanding of the transformation of public administration mechanisms, particularly in the context of European integration processes, digitalisation and decentralisation of power.

Analysis of the study of the problem. In the process of researching the issue of soft law as an instrument of administrative and legal regulation, scientific approaches and conceptual ideas of leading experts in the field of public law were taken into account, in particular those of G. O. Golovach, N. V. Grishina, E. I. Grigorenko, V. V. Mytsyk, O. O. Nigriyeva, O. V. Pasechnik, S. P. Pogrebnyak, E. D. Streltsova, I. V. Shalinska, Y. V. Tchaikovsky, and other researchers.

The purpose of the article is to provide a comprehensive analysis of soft law as an instrument for regulating administrative and legal relations, to determine its place and role in the system of legal acts, and to study its impact on law enforcement.

Presenting main material. Soft law plays a special role in the system of sources of administrative law, which is due to the growing influence of this phenomenon on the legal regulation of social relations. Traditionally, administrative law is associated with normative legal acts that are binding in nature. At the same time, in modern conditions, acts that are not legally binding but significantly influence the behavior of subjects of administrative and legal relations play a significant role. In particular, soft law in administrative law manifests itself in the form of recommendations, guidelines, codes of conduct, memoranda, administrative regulations, etc. Such documents are widely used in the activities of state authorities and local self-government bodies, international organizations, and institutions of the European Union, which enhances their importance in law enforcement practice.

Since the 1990s, Ukraine, as an independent state, has become an active participant in international relations. It has joined organizations such as the European Union and the Council of Europe, where soft law acts are of great importance. They are used to coordinate actions, develop standards, and form a unified legal policy. Despite the widespread use of this phenomenon, as Shalinska I. V. correctly notes, the scientific community has not reached a single definition of the concept of “soft law acts.” Both in international law and in the theory of state and law, there are different approaches to its interpretation, which reflects the complexity and multifaceted nature of this legal phenomenon [1, p. 1].

An analysis of scientific works by both foreign and domestic researchers shows that soft law is usually divided into two categories: legal soft law and non-legal soft law. For example, Butkevych V. G., Mytsyk V. V., and Zadorozhniy O. V. consider the norms of so-called soft law to be institutional, recommendatory provisions

of a non-legal nature that are enshrined in the documents of international intergovernmental organizations. Their provisions may have binding political, but not legal, significance. Such norms play an important supporting role in the formation and clarification of opinio juris in the field of customary law, as well as in the preparation and development of contractual international legal norms [2, p. 182]. On the other hand, N. V. Gryshyna and E. I. Grygorenko emphasize that at the present stage of development of the legal system, soft law has proven its effectiveness as a key modal instrument for regulating social relations, capable of serving as a basis for the formation of the most important imperative normative constructs. Given the growing complexity of social processes, we can predict the further development of soft law as one of the most effective concepts of normative regulation [3, p. 30].

Shalinska I. V., researching acts of soft law, analyzed the scientific approaches of foreign researchers to their classification. The scholar cites the opinions of Richard R. Baxter, who defines several categories of norms that belong to soft law. These include:

- pactum de contrahendo – provisions of international treaties that require further clarification in subsequent agreements;
- unenforceable provisions of treaties that do not have direct effect and become legally binding only after additional agreements;
- programmatic provisions of international agreements that do not create direct legal obligations for participants but may determine the directions of legal regulation;
- declarations, final acts, resolutions, and other forms of international agreements that are not formally binding but influence the behavior of states and individuals.

Malcolm N. Shaw holds a similar position, arguing that soft law does not belong to the category of law in the traditional sense. He defines it as a set of documents and agreements of a recommendatory nature, codes of conduct, standards, and other non-binding norms.

Hartmut Hillgenberg, on the other hand, considers soft law to be a phenomenon that has an independent legal nature, rather than merely a moral or political basis. In his opinion, such norms are universally binding and include:

- international agreements that do not have the status of treaties and, accordingly, are not subject to the Vienna Convention on International Treaties, but play a significant role in international law;
- resolutions of international organizations which, despite their lack of legal binding force, have a significant impact on international relations [1, pp. 1-2].

In our opinion, such a variety of approaches and interpretations is due to the interdisciplinary nature of the concept of soft law. Its interdisciplinary nature is due to the fact that it functions at the intersection of several areas: in the legal sphere – as a normative guideline for further implementation into hard law; in the political sphere – as a means of forming a coordinated position between states and other subjects of international relations; in theory – as a concept that expands the boundaries of the traditional understanding of sources of law.

In modern legal systems, soft law plays an important role because it complements traditional normative legal acts and contributes to the formation of state legal policy. Its importance is particularly growing in the context of globalization, the development of international cooperation, and the expansion of areas of legal regulation. In order for recommendatory norms to be considered legal, they must meet the generally accepted criteria of a legal norm, which are highlighted in the theory of state and law. These include: general character (such norms are intended to regulate a group of social relations and do not apply to individual cases); they are addressed to an indefinite circle of persons and do not lose their validity after a single application), formal certainty (the norms of soft law acts have a specific structured form of presentation, which allows them to be clearly identified and applied in relevant situations), volitional nature (their creation and application are the result of the will of entities that make relevant decisions in the field of international or national law), procedural order of acquisition and termination of validity (although such acts are not binding, their adoption and application often takes place according to a special procedure defined by international or national bodies [4, p. 128].

Thus, it can be concluded that soft law acts have all the key features of legal norms, with the exception of formal certainty. It is this characteristic that is the main difference between “soft” and “hard” law. Despite their recommendatory nature and lack of binding force, the norms contained in soft law acts can still be considered part of the legal system.

The Ukrainian legal system actively combines traditional normative legal sources with soft law documents. This process is particularly noticeable in the field of administrative law, where Ukrainian legislation is being adapted to European standards and international approaches.

Before comparing these sources in administrative law, it is necessary to note their specific features and the areas in which they correlate. A normative legal act as a source of law, including administrative law, is distinguished by a number of key features. First of all, it has a clearly defined content, establishes a model of permitted or prohibited behavior of legal entities, is impersonal, and applies to an indefinite (potentially unlimited) circle of persons. The characteristic features of a normative legal act include:

- adoption by an authorized subject of law-making within the limits of its competence;
- the presence of a structural organization, which usually includes a preamble, sections, chapters, articles, and paragraphs;
- clear and understandable wording of legal norms, which contributes to their correct interpretation and application;
- the function of creating law, in particular, establishing new norms, making changes, additions, or repealing existing provisions;
- official publication and entry into force, which ensures its legitimacy;
- flexibility and dynamism, allowing for a rapid response to the needs of social development by introducing changes or additions;
- a predetermined level of legal force in the system of normative legal acts. This means that acts of lower legal force (subordinate) must comply with the laws, and the law itself cannot contradict the Constitution of Ukraine as the basic law of the state;
- mandatory enforcement, accompanied by mechanisms to protect against possible violations;
- written form and the presence of established details, including: the name of the act, the date of adoption, the name of the body that adopted it, the number, and the signature of the relevant official;
- the possibility of adoption on the basis of the direct expression of the will of the people or a separate part of it, for example, through a national or local referendum [5, p. 155].

Thus, normative legal acts, as official sources of law, have a clearly defined legal force, are adopted by authorized bodies, and contain mandatory provisions. They ensure the stability of legal regulation, define the rights and obligations of subjects of administrative law, are enforceable, and are subject to mandatory execution. This allows public administration to be carried out on the basis of clear legal norms.

Unlike normative legal acts, "soft law" covers documents that do not have binding legal force but play a significant role in shaping legal standards and state policy. The main features of soft law are:

- non-binding, i.e., soft law documents are usually of a recommendatory, advisory, or political nature. For example, the Universal Declaration of Human Rights (UN, 1948) is not an international treaty, but its provisions have extremely high moral and legal authority. They have served as the basis for the adoption of many binding human rights instruments;
- issued by international intergovernmental organizations. Such documents are often created by organizations such as the United Nations or the Council of Europe and are not subject to mandatory ratification. For example, the Declaration on the Rights of Indigenous Peoples (UN, 2007), although not an international treaty, is widely used to shape legal approaches to the protection of minority rights;
- define policy directions and standards of conduct. Soft law acts often shape general approaches to solving legal problems, serve as methodological guidelines, and set the direction for the development of law. For example, the recommendations of the Parliamentary Assembly of the Council of Europe are not formally binding, but they influence the formation of regulatory and legal strategies in member states [2, p. 179].

The main difference between soft law and normative legal acts lies in the nature of their impact: soft law performs an orientational, motivational, and recommendatory function, while normative legal acts perform a regulatory and mandatory function. However, with the development of administrative law in Ukraine, elements of soft law are increasingly being taken into account in the development of normative legal acts, which indicates the gradual integration of these sources into the national legal system.

It should be noted that in the context of the analysis of soft law, we believe that it is advisable to differentiate between external soft law, which arises within the framework of international cooperation, in particular in the activities of international organizations, and internal soft law, which is formed within the national legal system (for example, in the form of recommendations, letters, codes of ethics). It is the influence of external soft law that is particularly noticeable in the process of adapting national legislation to international standards.

In the current conditions of the development of the Ukrainian legal system, the phenomenon of internal soft law is becoming increasingly important as an instrument that allows for effective management without excessive rigidity of legal norms. Its influence is particularly noticeable in the field of administrative law, where the regulation of social relations often requires efficiency, adaptability, and alignment with European standards.

In administrative law, soft law manifests itself through guidelines, methodological recommendations, and letters. They are not binding and are often informational or explanatory in nature. An example of this is the Methodological Recommendations on the Application of Certain Provisions of the Law of Ukraine "On Prevention of Corruption" Regarding the Prevention and Resolution of Conflicts of Interest and Compliance with Restrictions on the Prevention of Corruption as of February 3, 2025, issued by the National Agency for the Prevention of Corruption [6].

The Methodological Recommendations on the Criteria for the Formation of Administrative-Territorial Units of the Subregional (District) Level, prepared by the Directorate for Local Self-Government Development, Territorial Organization of Power, and Administrative-Territorial Structure of the Ministry of Regional Development, directly state that they are for informational purposes only and do not establish legal norms [7].

It should be noted that a common form of soft law acts are letters issued by public authorities. In particular, the Ministry of Justice of Ukraine actively uses the format of explanatory letters, which, although they do not have normative force, play an important guiding and interpretative role in law enforcement practice. A striking example of such a document is the explanatory letter from the Ministry of Justice of Ukraine "On state registration of land lease rights in connection with the renewal of a land lease agreement," the explanatory letter from the Ministry of Justice of Ukraine "On certain issues of state registration of real rights to immovable property, in particular, the list of persons who may be applicants in the event of termination of the right to sublease land," the explanatory letter "On the cancellation of registration actions/entries in the Unified State Register of Legal Entities, Individuals – Entrepreneurs and Public Formations," etc. [8].

Confirmation of the widespread practice of using such documents is provided by the scientific research of V.V. Reshota, which notes that in their activities, executive authorities quite often issue letters with explanations of the provisions of legislation or with the aim of giving instructions to subordinate structures. At the same time, as the researcher emphasizes, there are cases when central executive authorities over-estimate the significance of such letters, effectively giving them a normative character and obliging other entities to be guided by their provisions. According to the author, this situation is typical, in particular, for the practice of the State Fiscal Service of Ukraine (now the State Tax Service of Ukraine) [9, p. 37].

In his dissertation, H. O. Golovach emphasizes that although soft law has no formal coercion, it can produce indirect legal consequences: social pressure, expectations of compliance, and a desire to meet standards, and as a result, such prescriptions are perceived as binding [10, p. 84].

Thus, soft law acts as a kind of bridge between formal legal norms and practical management needs, ensuring flexibility, adaptability, and efficiency in decision-making by public authorities. It creates conditions for harmonizing national legislation with international standards, encourages proper behavior by legal entities, and promotes the effective functioning of the administrative apparatus without the need for harsh sanctions. At the same time, it is necessary to take into account the potential risks of excessive formalism or giving letters and recommendations actual normative force, which can lead to legal uncertainty or conflicts in law enforcement practice. Therefore, the use of soft law acts requires a clear definition of their status and limits of influence on the behavior of subjects of administrative law, as well as a systematic approach to their development and implementation.

Conclusions. Thus, despite their lack of binding force and legal force in the traditional sense, soft law acts play an important role in the mechanism of regulating administrative and legal relations. Their main purpose is to provide guidance, explanations, recommendations, or express the position of a state body on the interpretation of

legislation or the procedure for its application. The most common forms of such acts are methodological recommendations, explanatory letters, information letters, etc. In practice, they are widely used by state executive bodies. Soft law acts perform an important function of auxiliary regulation of administrative and legal relations, especially in situations of legal uncertainty or the absence of detailed legal regulation.

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М'ЯКЕ ПРАВО ЯК ІНСТРУМЕНТ РЕГУЛЮВАННЯ АДМІНІСТРАТИВНО-ПРАВОВИХ ВІДНОСИН

У статті розглянуто феномен м'якого права як інструменту регулювання адміністративно-правових відносин, визначено його місце та роль в системі правових актів, а також досліджено його вплив на правозастосування. Доведено, що в системі джерел адміністративного права м'яке

право відіграє особливу роль, яка зумовлена зростаючим впливом цього явища на правове регулювання суспільних відносин. Традиційно адміністративне право асоціюється з нормативно-правовими актами, які мають обов'язковий характер. Водночас у сучасних умовах значну роль відіграють акти, що не є юридично обов'язковими, але суттєво впливають на поведінку суб'єктів адміністративно-правових відносин. Зокрема, м'яке право в адміністративному праві проявляється у вигляді рекомендаційних актів, керівних вказівок, кодексів поведінки, меморандумів, адміністративних регламентів тощо. Такі документи широко застосовуються в діяльності органів державної влади та місцевого самоврядування, міжнародних організацій та інституцій Європейського Союзу, що посилює їх значення у правозастосовній практиці. Проаналізовано наукові підходи дослідників щодо ключових ознак м'якого права та особливостей його застосування в Україні. Запропоновано диференціювати зовнішнє м'яке право, яке виникає в межах міжнародного співробітництва, зокрема в діяльності міжнародних організацій та внутрішнє м'яке право, що формується всередині національної правової системи (наприклад, у вигляді рекомендацій, листів, кодексів етики). У сучасних умовах розвитку правової системи України дедалі більшого значення набуває феномен внутрішнього м'якого права як інструмента, що дозволяє забезпечити ефективне управління без надмірної жорсткості правових норм. Особливо помітним є його вплив у сфері адміністративного права, де регулювання суспільних відносин часто вимагає оперативності, адаптивності та узгодження з європейськими стандартами.

Ключові слова: адміністративне право, джерело права, публічно-правові відносини, акти м'якого права, нормативно-правові акти.