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## **FEATURES OF STATE REGULATION OF MEDIATION IN EMPLOYMENT ABROAD**

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*The features of the mechanism of government regulation of mediation in employment abroad are highlighted, among them: imperative and public nature of legal relations arising between business entities and government authorities during issuing the license, monitoring of compliance with licensing conditions, subordination of one party (business entity carrying out the activity on mediation in employment abroad) to another one (state represented by licensing and monitoring authority).*

The government regulation of activity of business entities providing mediation services in employment abroad is an important aspect of state-building in modern market relations. This type of economic activity is characterized by a number of risks, which, in particular, consist of possible violations of citizens' rights and freedoms, illegal employment, violations of law when crossing the state borders and human trafficking. Such government regulation is carried out on administrative and legal bases, in particular, by introducing the mode of licensing of economic activity on mediation in employment abroad. All this dictates the need for study the problems of government regulation of activity on mediation in employment abroad in order to find the ways and means of adjusting the government policy in this area. In this regard, there is a need for formation of legislation aimed at proper government regulation of activity on mediation in employment abroad in order to ensure labor, social and economic rights and interests of employees according to the international standards. The licensing of activities is caused not by optional choice, but by objective need for government control over the quality of manufactured products, provided services, performed works, fair practices of entities carrying out this or that activity, as well as, in some cases, need for restriction of this or that activity due to its special nature.

The works of domestic and foreign scientists form the theoretical basis of thesis work. The authors of general theoretical scientific works in the field of government control, administrative and other branches of law, which laid the groundwork for study of this subject, are: V. B. Averianov, O. F. Andriiko, O. M. Bandurka, V. T. Bilous, Yu. P. Bytiak, D. N. Bahrah, V. V. Halunko, M. F. Holovatyi, I. P. Ho-

losnichenko, O. I. Datsii, Ye. V. Dodin, S. V. Kivalov, T. O. Kolomoiets, V. K. Kolpakov, O. L. Kopylenko, O. V. Kuzmenko, M. N. Kurko, V. I. Olefir, Ye. O. Romanenko, V. V. Stashys, V. Ya. Tatsii, Yu. A. Tykhomyrov and other scientists. However, despite the increasing attention to this sphere, in the domestic scientific communities many relevant general theoretical problems of government regulation of activity on mediation in employment abroad remain unexplored.

Article purpose is to determine the features of the mechanism of government regulation of mediation in employment abroad.

The government regulation of activity on mediation in employment abroad is a complex social phenomenon caused by existence of significant amount of intermediate systems. However, any of the systems connected with processes of activity regulation cannot be used without regulation mechanism, that is, functions, processes, etc. The normative legal acts regulating the legal relations in the field of mediation in employment also constitute a certain system, that is, legal regulation functions normally if it has signs of systemacity. Most legal scientists under the legal regulation understand the influence of the state on social relations made by means of the law and set of legal means with the purpose of their regulation, legal confirmation, protection and development to the benefit of person, society and state [1, 91–96; 2, 130–139].

Thus, special implementation mechanism is a specific feature of legal regulation distinguishing it among other legal phenomena. In legal literature, the mechanism of legal regulation is interpreted ambiguously. There is a long-term discussion on its elements. Several authors limit the concept of the mechanism of legal regulation by its main elements, corresponding stages of legal regulation: a) rules of law, b) legal relations; c) acts of exercise of rights and obligations; d) acts of law enforcement. At the same time, such legal processes as law-making, legal awareness, application of law in the mechanism of legal regulation are not directly contained in connection with the fact that these processes are represented in it only by the end results in the form of normative legal acts [3, 150–153]. Other scientists consider the mechanism of legal regulation as a complex system in interrelation and interaction of all components, consisting of: 1) legal means; 2) subjects conducting legal regulation or legal activity; 3) legally significant results of their activity [4, 170]. As a result, the mechanism of legal regulation by stages of legal regulation is divided into three components: mechanism of law-making, mechanism of exercise of the rules of law and mechanism of state coercion. Herewith, characterizing the mechanism of legal regulation as a complex system, scientists while separating the components, as a rule, do not show the nature of their interaction and features of interconnection of these elements.

According to M. H. Aliksandrov, links of the mechanism of legal regulation are:

- determination of legal status of the person;
- giving a value of legal facts to life situations;
- determination of models of legal relations;
- determination of measures of legal protection and legal responsibility.

The scientist also distinguishes three main elements in the mechanism of legal regulation: 1) legal rules; 2) legal relations; 3) acts of exercise of rights and obligations. The acts of law enforcement are an optional element [5, 183–188].

After a little while, S. S. Aliksieiev devoted to the mechanism of government regulation a separate monograph entitled “The mechanism of legal regulation in socialist state”, in which he step by step examined the general concept and features of legal regulation, influence of law on social relations and distinguished its main elements. S. S. Aliksieiev suggests understanding the mechanism of legal regulation as set of legal means providing the legal influence on social relations. The author concludes this concept of three main stages of the process of legal regulation: 1) regulation of social relations requiring the legal mediation; 2) effect of legal rules, as a result of which legal relations arise or change; 3) exercise of subjective legal rights and obligations. Three main elements of the mechanism corresponds to these stages of process of legal regulation: legal rules, legal relations, acts of exercise of subjective legal rights and obligations, and also two additional – normative legal acts, legal awareness and legal culture. [6, 30–35].

According to S. S. Aliksieiev, the dynamic category as a process of legal regulation consists of three main stages: first – regulation of social relations requiring the legal mediation; second – effect of legal rules, as a result of which legal relations arise or change; third – exercise of subjective legal rights and obligations [6, 34].

Three components of the mechanism of legal regulation correspond to these stages: legal relations; legal rules; acts of exercise of subjective legal rights and obligations. He defines the mechanism of legal regulation as set of legal means providing the legal influence on social relations. Herewith, firstly, the concept of the mechanism of legal regulation is a category that should cover all legal means; secondly, the mechanism of legal regulation makes it possible to systematically divide social phenomena by separate features that further merges them into the integral mechanism, each part of which, interacting with others, performs its specific functions [6, 78; 7, 498–499].

Some scientists also include legal awareness, law-making, legal rules, legal relations, legality and law and order to elements of the mechanism of legal regulation. Depending on the elemental composition A. T. Komziuk distinguishes two scientific approaches to determination of formal elements of the mechanism of legal regulation: 1) broad that is characterized by element multiplicity, in particular: rules of law, legal facts, legal relations, interpretation of the rules of law, exercise of the rules of law, legality as the principle of law, legal culture and legal awareness, good and illegal conduct, legal responsibility; 2) narrow that includes only some of the above elements, for example, rules of law, individual acts, legal relations and legality [4, 90].

Taking into account the above, we can conclude on the actual unanimity of scientists in defining the concept of the mechanism of legal regulation, which is understood as a complex of legal means regulating the social relations in order to meet the legitimate interests of the subjects of law according to the purposes and objectives of the state.

The mechanism of legal regulation expresses the effective side of the process of shifting the normativity of law to the regulating of social relations. Herewith, legal regulation is a long-term process, which is divided into stages, at each of which the special legal means, which collectively constitute the mechanism of legal regulation, are applied.

Thus, legal regulation includes the following stages: 1) issue of the rule of law and its general influence (regulation of social relations); 2) emergence of subjective rights and subjective legal responsibilities; 3) exercise of subjective rights and subjective legal obligations, their embodiment in particular, actual conduct of participants of social relations; 4) law enforcement [8, 94; 9].

**Conclusions.** Thus, state regulation is the influence of the rules of administrative law on the conduct and activity of participants of administrative and legal relations for the purpose of enforcement of rights and legitimate interests of individuals and legal entities, as well as the organization of effective management of public and legal relations.

The rule of law is the initial legal basis for legal regulation, as it contains the model of necessary conduct defined in its disposition. The nature of conduct of subjects of law depends on the type of the rule of law.

The rules of law establish general and legally binding rules of conduct of those participants of social relations in the sphere of legal regulation. They are stated in normative legal acts that differ in legal force, without losing their generally binding nature. The principal regulatory influence of the rule of law on legal relations is that it:

- defines the circle of subjects covered by it;
- creates circumstances by which these subjects are guided by it;
- reveals the content of the rule of conduct itself;
- determines the measures of legal responsibility for violation of the said rules.

## Джерела

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**ЯКИМЕНКО Н. М. Особливості механізму державного регулювання посередництва у працевлаштуванні за кордоном.**

Зазначено, що понятійний апарат, який використовується у сфері посередництва у працевлаштуванні за кордоном, потребує уточнення. Насамперед, поняття “діяльність з посередництва у працевлаштуванні за кордоном” запропоновано визначити як надання суб’єктами господарювання послуг з пошуку роботи за кордоном, укладення трудових угод та виїзду працівників до місця роботи відповідно до заявок іноземних роботодавців. Поняття “ліцензування діяльності, пов’язаної з посередництвом у працевлаштуванні за кордоном” потребує удосконалення: його необхідно розглядати як складне багатогранне явище, яке має в цілому двояку спрямованість: з одного боку, ліцензування являє собою здійснення заходів, пов’язаних із наданням суб’єктові господарювання дозволу на здійснення цієї діяльності, а з іншого — здійснення з боку уповноважених органів контрольної діяльності за дотриманням суб’єктом господарювання ліцензійних умов, що забезпечують безпеку особи, суспільства і держави.

Визначено стадії адміністративної процедури щодо видачі ліцензії на посередництво у працевлаштуванні за кордоном, а саме: відкриття адміністративного провадження за ліцензійною справою; розгляд ліцензійної справи; прийняття рішення по ліцензійній справі; оскарження або опротестування прийнятого рішення; стадія виконання прийнятого рішення.

Виокремлено особливості механізму державного регулювання посередництва у працевлаштуванні за кордоном, серед яких: владний та публічний характер правовідносин, що виникають між суб’єктами господарювання та органами державної влади у процесі видачі ліцензії, здійснення контролю за додержанням ліцензійних умов, підпорядкованість однієї сторони (суб’єкта господарювання, що здійснює діяльність із посередництва у працевлаштуванні за кордоном) іншій (державі в особі органу ліцензування та контролю).

Зазначено, що правовідносини є головним засобом, який дає можливість визначити, хто і як буде виконувати вимоги норми права. Це найважливіший і необхідний елемент застосування права. У ньому загальна модель поведінки конкретизується стосовно суб’єкта, фіксуються його суб’єктивні права та суб’єктивні юридичні обов’язки. Знеособлені права та обов’язки, закріплені у нормах права, перетворюються на конкретні та взаємопов’язані права та обов’язки індивідуальних суб’єктів (осіб або організацій), відповідно до яких ці суб’єкти повинні співвідносити свою поведінку.

Правовідносини встановлюють персональну міру можливої і належної поведінки учасників суспільних відносин. Втілення загальних прав і обов’язків, які містяться у правовій нормі, у правовідносинах дає механізові правового регулювання “можливість” завершити свою регулятивну функцію, тобто реально втілити права та обов’язки суб’єктів правовідносин у фактичні суспільні відносини.

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