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Administrative and legal status of the state inspectorate for architecture and urban planning in proceedings on administrative offences provided for in Article 96 of the Code of Ukraine on Administrative Offences

Olena L. Marchenko*

National Academy of Internal Affairs
03035, 1, Solomianska Sq., Kyiv, Ukraine

Abstract

Having analysed the reform in the field of urban planning, this study aims to investigate the administrative and legal status of the State Inspection of Architecture and Urban Planning in cases of administrative offenses provided for in Article 96 of the Code of Ukraine on Administrative Offenses and the specifics of its powers; to systematize proposals for improving the activities of the State Inspection of Architecture and Urban Planning regarding proceedings, detection of violations and bringing to administrative responsibility under Article 96 of the Code of Ukraine on Administrative Offenses. In accordance with the purpose and specificity of the research subject, a number of methods were used, which include: descriptive, systematic analysis, generalization, comparative method, functional and other methods of scientific knowledge. The scientific originality of the study is due to the fact that the author has for the first time investigated the administrative and legal status of the State Inspection of Architecture and Urban Planning in cases of administrative offenses provided for by Article 96 of the Code of Ukraine on Administrative Offenses. The relevance of improving the activities of not only the divisions of the State Inspection of Architecture and Urban Planning, but also other divisions that implement state policy in the field of construction is substantiated. It is proposed to make changes to the legislation of Ukraine regarding the expansion of the powers of the State Inspectorate of Architecture and Urban Planning in detecting violations and conducting proceedings in the field of construction, and it is also proposed to harmonize the Law of Ukraine "On Regulation of Urban Planning Activities". Development of activities with the resolution of the Cabinet of Ministers of Ukraine dated December 23, 2020 No. 1340 "Some Issues of the Functioning of Architectural and Construction Control and Supervision Bodies". On the basis of the conducted study of the administrative and legal status of the State Inspection of Architecture and Urban Planning, a conclusion was formulated, according to which the Law of Ukraine "On Regulation of Urban Planning Activities" dated February 17, 2011 needs to be supplemented, since its content does not reflect the administrative status of the State Inspection of Architecture and Urban Planning as a central of the executive authority, which carries out control and supervision in the field of urban planning

Keywords:

administrative and legal status; urban planning; State Inspectorate for Architecture and Urban Planning; subject; proceedings; Article 96 of the Code of Ukraine on Administrative Offences

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*Corresponding author

Introduction

The construction industry in Ukraine is important for supporting the national economy. The quality of life of the population depends on the success of its functioning. At the same time, one of the most significant obstacles in this area is corruption.

According to research, the field of urban planning is one of the most complex and corrupt in Ukraine, and therefore a source of illegal enrichment. In general, losses from corruption in the field of urban planning amount to UAH 2.7 to 3.5 billion per year [1]. Considering the above, the authors share the opinion that "corruption was, is and, obviously, will be (at least in the near future) one of the biggest and most global problems in Ukraine" [2]. Therefore, it is necessary to work on reducing its level, since "otherwise one of the largest countries in Europe in terms of the potential of human and natural resources will be one of the poorest on the continent" [3]. In this connection, reformation takes place in various spheres of social life. Therefore, it is necessary to reform the construction industry.

The development of national policy in the field of urban planning requires clear legislative regulation of the activities of all participants and determination of their administrative and legal status, transparency and liberalization of their functioning and accountability. V.V. Stukalenko emphasizes the need to harmonize the mechanism of bringing to administrative responsibility in the field of urban planning with current international standards[4]. Effective implementation of this policy is impossible without ensuring effective regulation of control and supervisory functions in the field of urban planning. Taking into account the above, a completely expected step is the creation of a new central body of executive power, the activity of which is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Community and Territorial Development and implements state policy in the field of state architecture and construction, control and supervision – this is the State Inspection of Architecture and urban planning of Ukraine (hereinafter – DIAMP).

In the science of administrative law, problems of the functioning and legal status of state bodies in the field of urban planning were considered by V.B. Averyanov [5], M.I. Braginskyi [6], O.E. Yershov [7], P.V. Kivalov [8], V.K. Kolpakov [9] and others. The researchers outlined the powers and theoretical foundations of the activities of the state architectural and construction control bodies. However, after the reform in the field of urban planning, the administrative and legal status of DIAUP and the prospects for improving the control function of this state body in the context of modern processes of decentralization of Ukrainian politics were quite neglected.

The purpose of the study is to investigate the administrative and legal status of the DIAP in conducting cases on administrative offenses provided for by Article 96 of the Code of Ukraine on Administrative Offenses. To achieve the goal, the following tasks are planned:

1) consider the specifics of the powers of SIAUP;

2) to systematize proposals for improving the activities of the DIAP in the conduct of cases on administrative offenses provided for in Article 96 of the Code of Ukraine on Administrative Offenses.

Presentation of Main Material

The study of the administrative and legal status of SIAUP makes it possible to highlight the specifics of the powers of state bodies that carry out administrative control over compliance with the requirements of legislation regarding building regulations, standards, and rules during construction.

As for the scientific category "administrative-legal status", there is no clear definition of it in science, which causes separate discussions among researchers. In particular, D.M. Bachrach and V.B. Averyanov assume that the administrative-legal status contains three blocks of elements: a) targeted; b) structural and organizational; c) competent [5]. In this study, the authors lean towards the position of researchers who in the textbook "Administrative Law of Ukraine" (under the general editorship of Academician S.V. Kivalov) consider the administrative-legal status of the executive power body through the prism of functions, tasks and competence [8]. Therefore, this study will highlight the functions, tasks and competence of DIAP as a subject of administrative control in accordance with Article 96 of the Code of Ukraine on Administrative Offenses.

The administrative and legal status of the Inspection of Architecture and Urban Planning was formed under the influence of the requirements of modern society. In the end, corruption and non-transparent performance of official duties by employees of the state architectural and building inspection led to its liquidation and the beginning of reforms.In March 2020, at an off-site meeting of the government, the President of Ukraine announced the liquidation of the State Architectural and Construction Inspection (SDAI) and the adoption of a resolution of the Cabinet of Ministers of Ukraine on the creation of three new bodies instead of DIAUP: the State Town Planning Inspection, the State Technical Regulation of Town Planning and the State Service of Town Planning. Each organ has special functions. The functions of control and supervision in the construction system are assigned to the State Urban Planning Inspectorate. Subsequently, the created bodies were optimized and a new central body of executive power was formed in the field of implementation of the architectural and construction policy of the state – the State Inspection of Architecture and Urban Planning of Ukraine. The administrative and legal status of the newly created body is special. In their activities, inspectors use a single state electronic system in the field of construction. The main components of the system include a new Register of construction activities, a public portal, electronic offices and automated construction services on the Diya portal.

There are no corruption risks under the new system. The single state electronic system in the field of construction minimizes contacts between process participants as much as possible. Thanks to this system, construction processes are carried out clearly and transparently. The urban planning reform is based on two key theses: the liberalization of certain construction processes, and on the other hand, the criminalization of responsibility for violations, as noted by the Minister of Community and Territorial Development Oleksiy Chernyshov [10].

The newly created body – the State Inspection of Architecture and Urban Planning – reflects the need of society, developers and the state to introduce new approaches to activity and control in the field of urban planning. Minister O. Chernyshov noted during a press conference in Ukrinform: "SIAUP is not a substitute for SACI. This is a completely new body, with a new structure, with new powers, with new principles of work" [11].

Unlike the State Architectural and Construction Inspection, which had four main functions: architectural and construction control, implementation of permit procedures, implementation of licensing and regulatory activities [12], DABI is a central body of executive power, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister development of communities and territories and implements state policy on issues of state architectural and construction control and supervision. It was formed on the basis of the resolution of the Cabinet of Ministers of Ukraine No. 1340 dated 12/23/2020 [13] instead of the State Construction Inspectorate and the State Urban Planning Service. On March 13, 2020, instead of the State Architectural and Construction Inspection of Ukraine, the Cabinet of Ministers allowed DABI to carry out state architectural and construction control and supervision dated 09/15/2021, finally liquidating DABI [14].

The administrative and legal status of DIAUP can be outlined with the help of the tasks performed by the newly created body, namely: implementation of state policy on state architectural and construction control and supervision, in particular: implementation of state architectural and construction control; of state architectural and construction supervision, licensing of types of economic activity in the construction of objects, according to the class of consequences (responsibility) belong to objects with medium (CC2) and severe (CC3) consequences, and the implementation of control over compliance by business entities with licensed according to the conditions of carrying out types of economic activity for the construction of objects, according to the class of consequences (responsibility), they belong to objects with medium (CC2) and severe (CC3) consequences.

Since this study aims to investigate the administrative and legal status of the DIAP in the proceedings in cases of administrative offenses provided for in Article 96 of the Code of Ukraine on Administrative Offenses, it is worth noting that this work includes violations of legislative requirements, building norms, standards and rules during construction. SIAUP has the authority to conduct inspections; issue orders to eliminate violations of legislative requirements, stop preparatory and construction works, eliminate violations of license conditions; carry out licensing; cancellation or suspension of the decision of the objects of supervision, etc. It has the ability to exercise its powers directly and through territorial bodies formed in accordance with the established procedure.

In accordance with the Regulation approved by the Resolution of the Cabinet of Ministers of Ukraine dated December 23, 2020 No. 1340 "On the State Inspection of Architecture and Urban Planning of Ukraine", the administrative and legal status of this state body can be determined through its administrative powers:

– preparation and submission to the Minister of proposals to ensure the formation of state policy on the issues of state architectural and construction control and supervision. The central body is endowed with such powers, its proposals cannot be ignored by an official;

– implementation of state architectural and construction control over compliance by customers, enterprises that provide engineering support for the construction site, architects and other designers, contractors, experts, expert organizations responsible for executors of works, consulting engineers, within the limits of the powers defined by law owners of buildings and linear structures in compliance with the requirements of legislation in the field of urban planning, building regulations, standards and rules during the performance of preparatory and construction works [3];

– implementation of state architectural and construction supervision over compliance with the requirements of legislation in the field of urban planning activities, construction norms, standards and rules by territorial bodies of DIAUP, authorized bodies of urban planning and architecture, structural subdivisions of the Kyiv and Sevastopol regional state administrations, administrations and executive bodies of village, settlement, city councils from issues of state architectural and construction control, other bodies exercising control in the field of urban planning activities (hereinafter referred to as objects of supervision), during the implementation of urban planning activities;

– licensing of types of economic activity for the construction of objects, which according to the class of consequences (responsibility) belong to objects with medium (CC2) and high (CC3) consequences, control over compliance by economic entities with license conditions for carrying out types of economic activity with construction of objects, according to the class of consequences (responsibility), belong to objects with medium (CC2) and severe (CC3) consequences;

– implementation of licensing and registration functions in construction in cases specified by legislation. In addition, the competence of SIAUP includes:

conducting inspections of the compliance of preparatory and construction works with the requirements of construction norms, standards, rules, and the requirements of the approved project; verification of compliance with the order of inspection and certification of objects, implementation of measures to ensure reliability and safety during their operation; implementation of control over compliance by business entities with license conditions for carrying out types of economic activity in the construction of objects that, by the class of consequences (responsibility), belong to objects with medium (CC2) and severe (CC3) consequences; to check compliance by architects, design engineers, experts, other responsible executors of the requirements of legislation, construction regulations, standards and rules, requirements for compliance with qualification certificates of the class of consequences (responsibility) of objects determined by qualification requirements for the corresponding or lower category of employees, as well as legality decisions in the field of urban development, adopted by the objects of supervision [15]. Among the administrative and power functions of DIAUP, which determine its special administrative and legal status in proceedings in accordance with Article 96 of the Code of Ukraine on Administrative Offenses, the following can be distinguished:

– the ability to give binding instructions regarding:

– elimination of violations of the requirements of legislation in the field of urban development, building regulations, standards and rules;

– suspension of preparatory and construction works;

– elimination of violations of legislation requirements in the field of urban planning by objects of supervision;

– elimination of violations of the licensing conditions for the implementation of types of economic activity for the construction of objects, which according to the class of consequences (responsibility) belong to objects with medium (CC2) and severe (CC3) consequences;

– elimination of violations of legal requirements in the field of urban planning by enterprises providing technical conditions for engineering support of the construction object, architects, other designers, contractors, experts, expert organizations, responsible executors of works, consulting engineers, owners of buildings and linear structures, customers.

DIAP cancels or terminates the effect of the decisions taken by the objects of supervision regarding the violation of the requirements of legislation in the field of urban planning activities, with the simultaneous drawing up of a protocol in accordance with the Code of Ukraine on administrative offenses and the subsequent publication of such information on the official website of SIAUP. In addition, inspectors are authorized to draw up reports of inspections, protocols on the commission of offenses, to consider cases of offenses in the field of improvement and cases of administrative offenses with the adoption of relevant resolutions, to impose fines in accordance with the legislation. DIAP, in the course of supervision, may submit a request to the body that granted such right to deprive an official of the subject of supervision of the right to perform certain types of work. An important function of DIAUP is that inspectors have the right to prohibit the operation of completed construction facilities that have not been put into operation by a motivated written decision. It is necessary to monitor the execution of the issued instructions. The newly created central body of the executive power – DIAUP – must develop and participate in the preparation of international agreements of Ukraine on matters of state architectural and construction control, conclude interdepartmental international agreements of Ukraine in accordance with the law, and carry out international cooperation on issues within its competence. SIAUP registers the notification of the start of preparatory work, the notification of the start of construction work, makes changes to them, and also cancels the right to start the preparatory or construction work acquired on the basis of the submitted notification. DIAUP also exerts administrative and legal influence by issuing permits for construction works, registering notices of changes to them or refusing to issue such permits, canceling permits for construction works. Accepts completed construction objects into operation in the established order (issues acts of acceptance into operation of completed construction objects or refuses to issue them, registers declarations about the object's readiness for operation, makes changes to them, returns such declarations and cancels them registration). Considers in the order of supervision the decision of the state architectural and construction control bodies on registration or return of the declaration of readiness of the object for operation (without the right to register declarations), the decision on issuing or canceling a permit to perform construction works (without the right to issue a permit), the decision on refusal in the issuance of the act of acceptance into operation of the facility completed by construction (without the right to issue a certificate). The powers of SIAUP are clearly defined by law [15]. Summarizing the tasks, functions and powers of SIAUP, we can conclude that it is a powerful state body whose activities are based on European values. The priority in the body's activities is to overcome corruption risks in the field of urban planning.

It is the administrative and legal status of SIAUP that determines the state's ability to ensure quality organization of urban development activities. However, after analysing the content of the Law of Ukraine "On Regulation of Town Planning Activities" dated February 17, 2011 [1], its provisions must be supplemented by defining the administrative and legal status of DIAUP as the central body of the executive power that exercises control and supervision in the field of town planning.

The originality of the study is due to the fact that the administrative and legal status of the DIAP in cases of administrative offenses provided for by Article 96

of the Code of Ukraine on Administrative Offenses was investigated for the first time. The need to improve the activities of not only DIAUP divisions, but also other divisions that implement state policy in the field of construction is argued. It is proposed to make changes to the legislation of Ukraine regarding the expansion of the powers of the DIAP when bringing to administrative responsibility for offenses in the field of construction.

Based on the results of the study, it can be stated that the detection of administrative offenses in the construction sector is a key to the prevention of criminal offenses [16].

The study agrees with the opinion of V.V. Stukalenko that during the reformation of the urban planning industry, it is necessary to create a new paradigm with several vectors of activity and a combination of the obtained results, in particular: a) rethinking of the main scientific and theoretical foundations of the institute of administrative responsibility (purpose, tasks, principles, subjects, etc.); b) inventory and codification of a large array of current administrative and tort legislation taking into account theoretical developments of legal science in general and norms of administrative law and urban planning legislation in particular [4].

Yu.V. Tarasyuk proved that the regulation of legal relations in the construction sector is a guarantee of a high level of statehood. The improvement of administrative responsibility in the field of housing construction is aimed at increasing the efficiency and effectiveness of this type of responsibility as one of the most important tools for ensuring the proper level of legality and discipline in this area, increasing the level of legal awareness and culture of citizens, subjects of legal relations that are formed in it [17].

Conclusions

Based on the analysis of the outlined problems, the following conclusions were drawn:

1) several approaches to the interpretation of the administrative-legal status as a complex legal phenomenon were considered, the specific position of scientists was chosen as the basis;

2) the content of DIAUP activity was investigated and the state policy regarding its development, functions, powers and tasks in the field of construction was outlined;

3) proposals for improving the activities of SIAUP were systematized.

It is proposed to make changes to the legislation of Ukraine regarding the expansion of the powers of the DIAP in the detection of offenses in the field of construction, as well as to harmonize the Law of Ukraine "On Regulation of Urban Development Activities" with the Resolution of the Cabinet of Ministers of Ukraine of 12/23/2020 No. 1340 "Some issues of the functioning of architectural and construction control and supervision".

On the basis of the conducted study of the administrative and legal status of DIAUP, a conclusion was formulated, according to which the Law of Ukraine "On Regulation of Urban Development" dated 02/17/2011 needs to be supplemented, since its content does not reflect the administrative status of DIAUP as a central body of executive power, which carries out control and supervision in the field of urban planning.

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Адміністративно-правовий статус Державної інспекції архітектури та містобудування в провадженні у справах про адміністративні правопорушення, передбачені статтею 96 Кодексу України про адміністративні правопорушення

Олена Львівна Марченко

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна

Анотація

Проаналізувавши реформу у сфері містобудування, ставимо за мету в цій статті дослідити адміністративно-правовий статус Державної інспекції архітектури та містобудування в провадженні у справах про адміністративні правопорушення, передбачені статтею 96 Кодексу України про адміністративні правопорушення, а також особливості її повноважень; систематизувати пропозиції з удосконалення діяльності Державної інспекції архітектури та містобудування в провадженнях, виявленні порушень і притягненні до адміністративної відповідальності за ст. 96 Кодексу України про адміністративні правопорушення. Відповідно до поставленої мети та специфіки предмета дослідження, автор використав низку методів, серед яких: описовий, метод системного аналізу, узагальнення, порівняльний метод, функціональний та інші методи наукового пізнання. Наукова новизна публікації полягає в тому, що автор уперше здійснив наукове дослідження адміністративно-правового статусу Державної інспекції архітектури та містобудування в провадженні за справами про адміністративні правопорушення, передбачені ст. 96 Кодексу України про адміністративні правопорушення. Аргументовано необхідність удосконалення діяльності не лише підрозділів Державної інспекції архітектури та містобудування, а й інших підрозділів, які реалізують державну політику у сфері будівництва. Запропоновано внести зміни до законодавства України щодо розширення повноважень Державної інспекції архітектури та містобудування під час виявлення порушень і здійснення проваджень у сфері будівництва, а також запропоновано узгодити Закон України «Про регулювання містобудівної діяльності» з постановою Кабінету Міністрів України від 23 грудня 2020 року № 1340 «Деякі питання функціонування органів архітектурно-будівельного контролю та нагляду». На підставі здійсненого дослідження адміністративно-правового статусу Державної інспекції архітектури та містобудування, сформульовано висновок, за яким потребує доповнення Закон України «Про регулювання містобудівної діяльності» від 17 лютого 2011 року, адже в його змісті не відображено адміністративний статус Державної інспекції архітектури та містобудування як центрального органу виконавчої влади, який здійснює контроль і нагляд у сфері містобудування

Ключові слова:

адміністративно-правовий статус; містобудування; Державна інспекція архітектури та містобудування; суб'єкт; провадження; стаття 96 Кодексу України про адміністративні правопорушення