

# Legal regulation of physical culture and sports activities in Ukraine

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**Purpose:** analyze the characteristics of the functioning of the existing system of legal regulation of physical culture and sports activities in Ukraine.

**Material & Methods:** literature review; analysis of documentary materials; system method, formal legal method.

**Results:** analysis of documents of state bodies shows that simultaneously issued acts contradicting each other. This indicates the absence of structure, synchronizes functions in the organism of the state, and provides communication between all parts of the state structure. In turn, on the part of the legislators, there is an imperative reflection of their imagination in opposition to the actual social conditionality.

**Conclusion:** in the system of organization of the management process, in particular, the peculiarities of the legal regulation of physical culture and sports activities in Ukraine, there is completely no consideration of the main provisions of the organization of legal activities; the management process is not regarded as an action, proceeds at a certain speed, regulated by the course of social transformations in society; the statistical determination of the occurrence of these processes in obtaining an equifinal result and the tolerance of the event space in which this process is carried out is not taken into account; there is no understanding of the theory of the dynamics of legal regulation of administrative management in the context of reforming social and political transformations.

**Keywords:** legal system, legal regulation, state authorities, law, decree, order.

## Introduction

Physical culture, as a sociocultural heritage, existed long before the appearance of any written language and was governed by the need for social relations that developed. As an activity, its development was associated with the pleasure of the collective need for physical improvement, which, above all, was based on the need to ensure the protection and fulfillment of the relevant work activity. As an integral part of the general sociocultural heritage, it has been preserved and reproduced the types of motor activity most in demand in the relevant living environment.

Nowadays, activities in the field of physical culture and sports within the state are regulated by laws adopted by the Verkhovna Rada of Ukraine and subordinate acts developed on the basis of them: decrees and orders (Cabinet of Ministers of Ukraine), decrees (President of Ukraine), orders of the Ministry of Youth and Sports of Ukraine, as well as decisions, programs, instructions, regulations, statutes and the like. The resolution of specific issues of physical culture and sports activities is influenced by legislative acts from the field of economics, education, medicine and other industries.

Based on the above, we can say that at present there is a need to develop scientifically grounded conceptual provisions of the theory of regulation of physical culture and sports activities in the context of the problem of organizational and legal constructions of the norms of regulation of legislation of the field of state power.

Analysis of recent research and publications only indicates an episodic study of the system of legal regulation of physical culture and sports activities in Ukraine. The researchers fo-

cus on the consideration of individual issues of the formation of the national branch of the law "sports law of Ukraine" [1]; organizational and legal foundations of public administration [8]; regulatory, functional and methodological foundations of the formation of public administration at the level of administrative-territorial entity [19], the mechanism of state administration of physical culture and sports in Ukraine [2].

However, a comprehensive scientific research and solutions require the functioning of the existing system of legal regulation of physical culture and sports activities in Ukraine. The relevance of this work is also emphasized by the order of the Ministry of Education and Science of Ukraine dated 15.05.2018.

**Purpose of the study:** to analyze the characteristics of the functioning of the existing system of legal regulation of physical culture and sports activities in Ukraine.

## Material and Methods of the research

The study used the following research methods: analysis of literary sources; analysis of documentary materials; system method, formal legal method. The analysis of literary sources was used to determine the degree of scientific elaboration of the studied questions and the interpretation of the data obtained when comparing different points of view on the studied problem. Official normative legal acts regulating activities in the field of physical culture and sports were also analyzed, which allowed defining the characteristic features of the functioning of the existing system of legal regulation of physical culture and sports activities in Ukraine. The system method allowed to investigate the legal system, the state as complex phenomena, systematize and evaluate the accumulated data.

Using the formal legal method, state-legal categories were described, their external and internal forms (in particular, the competence of state bodies, etc.) were investigated.

## Results of the research

The significant importance of the sphere of physical culture and sports in the development of society was determined by the Law of Ukraine "On Physical Culture and Sport", adopted in 1994 [7]. The unsuccessful attempt to implement the Law of Ukraine "On Physical Culture and Sport", adopted in 1994, led to the adoption in 2009 of the Law of Ukraine "On Amendments to the Law of Ukraine" On Physical Culture and Sport" [6], which was enacted on January 1, 2011.

In the course of our study, it turned out that the lack of legal regulation of physical culture and sports activities in the legal framework of Ukrainian legislation and the accuracy of defining the functions of physical culture and sports activities does not always lead to a violation of the legal norms regulating physical culture and sports activities.

In particular, in 1996 Decree of the Cabinet of Ministers of Ukraine No. 80 approved the Regulation on state tests and standards for assessing the physical fitness of the population of Ukraine [12]. This resolution was sent in pursuance of Article 26 of the Law of Ukraine "On Physical Culture and Sports" and the State Program for the Development of Physical Culture and Sports in Ukraine. This task was assigned to the Ministry of Education and Science, the Ministry of Defense, the Ministry of Internal Affairs, the Security Service of Ukraine with the aim of introducing tests and standards for assessing the physical fitness of children, students, students, and people of military age, personnel of the Armed Forces, internal affairs agencies and other military formations established in accordance with the law.

Control over the implementation of the resolution of the Cabinet of Ministers of Ukraine of January 15, 1996 No. 80 was assigned to the Ministry of Youth and Sports. After 12 years, this Resolution, and did not have sufficient implementation, was canceled by the resolution of the Cabinet of Ministers of November 5, 2008 No. 992 [16] as having lost its force. In this case, the Prescription of the commands of the imperativeness of the authorities does not reflect the actual social conditionality of the Resolution of the Cabinet of Ministers of Ukraine of November 5, 2008 No. 992.

In our opinion, the cancellation of tests was not the right decision, since the test is a standard test of the effect of directional content. Used tests exist and are used for thousands of years; the direction of their action is determined by the arsenal of life in the appropriate habitat. The directionality of the action has a quantitative measurement value in terms of time, strength and spatial characteristics of the performance, allows us to enter the criterion of the complexity of its implementation. Existing tests fully met these requirements.

It should be noted that the introduced standards were also impractical to abolish, and as in any measurement, there should be a standard in relation to which the comparative indications are read. A randomly selected standard or "conditional rate" in statistics is defined as a "conditional average" value. Regarding its value, the "true norm" is defined, which characterizes the average level of the current value of the studied indicator.

Practically, the execution of the Decree of the Cabinet of Ministers of Ukraine of January 15, 1995 No. 80 should have led to the restoration of departmental sports societies and sports clubs, as it was before. But they are canceled completely as an unprofitable structure, forgetting that a physically trained worker has high labor productivity and brings more benefits to the enterprise.

In our opinion, the failure to comply with the resolution is primarily due to the lack of feedback or sufficient observability of the performance of the assigned work by the performers, which are specified in the resolution, and the lack of an item of financial expenses for its implementation.

In the course of our study, regulatory and policy documents of our government were also analyzed. So, in 2011, the Cabinet of Ministers of Ukraine issues an order dated August 31, 2011 No. 828-p "On approval of the Concept of the National Targeted Social Program for the Development of Physical Culture and Sports for 2012–2016" [11]. The concept of the program presents the existing problems in sufficient detail, the causes that caused these problems, the purpose of the Program, the possible ways to solve the problems identified, the overall indicative amount of expenses provided for the implementation of the Program objectives in the amount of 32.2 billion UAH. However, neither the tests nor the standards for monitoring physical development, physical fitness and physical condition have been established. We believe that without them the implementation of the Program is almost impossible.

In the Concept of the National Targeted Social Program for the Development of Physical Culture and Sport for 2012–2016. It was noted that the lifestyle of the population of Ukraine and the state of the sphere of physical culture and sports pose a threat and is a significant challenge for the Ukrainian state at the present stage of its development. This statement was characterized by several reasons, the main of which were:

- ✓ demographic crisis, due to the decrease in the number of Ukraine's population from 52,2 million in 1992. Up to 45,8 million in 2011;
- ✓ unformed traditions, established and motivated to physical education and mass sports as an important factor of physical and social well-being, improving health, maintaining a healthy lifestyle;
- ✓ deterioration in the health of the population with sharply progressing chronic heart diseases, hypertension, neurosis, arthritis, obesity and other diseases, which led to a decrease in the number of people who can be involved in the sport of higher achievements, which can train, withstand significant physical exertion and achieve high sports results;
- ✓ compared to 2007, the number of persons who, for health reasons, are classified as a special medical group, increased by 40%, which led to a decrease in the number of children and young people in youth sports schools by 110 thousand;
- ✓ non-compliance with the requirements of modernity and a significant backwardness from the world standards of resource, personnel, scientific and methodological, medical and biological, financial, material and technical, information support [11].

The term of the Program is over, but the indicators of the state of development of physical culture and sports in Ukraine have somewhat deteriorated. Massiveness in sports and recreational physical culture has decreased even more. The suc-

cess of Ukrainian athletes on the world stage has sharply decreased, sports schools continued to close, physical education in higher educational institutions was taken out of the number of compulsory classes. It is worth noting that all these changes pass through the decision of the Cabinet of Ministers of Ukraine. This indicates a rather large inconsistency of the decisions taken and their groundlessness [10].

Complementing the above, for example, we cite the Resolution of the Cabinet of Ministers of Ukraine of December 9, 2015 No. 1045, which approved the "Procedure for conducting an annual assessment of the physical fitness of the population of Ukraine" [13]. According to the decree of the Ministry of Youth and Sports, the Ministry of Education and Science, the Ministry of Internal Affairs, the Ministry of Defense, regional state administrations are tasked to develop tests and standards for 2016 to conduct an annual assessment of the physical fitness of the population of Ukraine and, starting in 2017, conduct an annual assessment of the physical fitness of the population of Ukraine, and by December 1, submit to the Ministry of Youth and Sports of Ukraine information on conducting an annual assessment of the physical fitness of the population of Ukraine to summarize it and submit it before December 30 of the Cabinet of Ministers of Ukraine. Coordination of the implementation of activities of central and city executive authorities on the annual assessment of the physical fitness of the population of Ukraine is entrusted to the Ministry of Youth and Sports of Ukraine without considering the capacity of the potential of this Ministry.

On the same date, December 9, 2015, the Order of the Cabinet of Ministers No. 1320-p welcomes the Concept of the State target social program for the development of physical culture and sports for the period up to 2020 [10] and specifies the decree of the Cabinet of Ministers of Ukraine of August 31, 2011 No. 284 "On approval of the Concept of the National Targeted Social Program for the Development of Physical Culture and Sport for 2012–2016".

The essential feature of the new Concept of the State target social program for the development of physical culture and sports for the period up to 2020 is that the priority of the development of state policy is the introduction of European standards of living in Ukraine. In terms of the Concept, problems are actually covered, without which the idea of introducing European standards is practically impossible. It is possible to speak only of the desire for such standards, since standards derive from their social conditionality, and not the will of the law. On March 1, 2017, the Cabinet of Ministers of Ukraine issued a decree "On approval of the State targeted social program for the development of physical culture and sports for the period up to 2020" [3].

An analysis of nationwide targeted social programs for the development of physical culture and sports, which change one for the other, showed that they contain figures for the decline in the population of Ukraine. Initial indicators of 1992 record that the population of Ukraine was 52.4 million. In 2010, this figure dropped to 45.8 million people in 2014, it already reached an estimate of 42.2 million people. A further decrease in the population of Ukraine does not appear in the reports, because the real account of its number is not conducted due to the social situation in the country.

Particular attention should be paid to the legal support of the

activities of the central executive body in the field of physical culture and sports. In 2015, the Cabinet of Ministers of Ukraine developed a draft Law of Ukraine "On Amendments to Article 6 of the Law of Ukraine" On Physical Culture and Sport (regarding the clarification of certain powers)" [17] in order to ensure effective management of the sphere of physical culture and sports and in accordance with of the decree of the President of Ukraine of January 12, 2015 No. 5 "On the Sustainable Development Strategy" Ukraine 2020" [18], resolutions of the Cabinet of Ministers of Ukraine of August 13, 2014 No. 408 "Issues of restrictions imposed on inspections by state inspectorates other regulatory authorities" [15] and on September 10, 2014 No. 442 "On the optimization of the system of central bodies of executive power" [14].

According to the initiators of the bill, it will help ensure the fulfillment of the functions entrusted to the Ministry of Youth and Sports of Ukraine to form and implement state policy in the field of physical culture and sports, ensure a reduction in the regulatory influence of the state on sports and maximize delegation of authority in the field of physical culture and sports to civil society, as well as the co-sponsorship of the Sustainable Development Strategy "Ukraine-2020".

As is known, until 2010, the central executive body in the field of physical culture and sports provided: licensing of business entities in the field of physical culture and sports and monitoring compliance with the licensing conditions for the implementation of physical culture and health and sports activities; organizing and conducting sports activities of professionals and sports enthusiasts; activities to prepare athletes for competitions in various sports, recognized in Ukraine [17].

At the same time, in 2010, paragraph 18 of Section I of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Restriction of State Regulation of Economic Activities" [5] Article 8 of the Law of Ukraine "On Physical Culture and Sports" (regarding the organization of licensing physical culture and sports) was excluded [7].

In addition, Decree of the President of Ukraine dated January 12, 2015 No. 5 approved the Sustainable Development Strategy "Ukraine 2020" [18], which notes that the medium-term goal of further reforms in this area is to create a favorable environment for doing business, developing small and medium-sized businesses, attracting investment, international trade and improving the efficiency of the labor market. The strategy establishes requirements for reducing the number of permissive documents and types of economic activities subject to licensing, the abolition of regulatory acts that make it difficult to conduct business, reducing the number of state supervisory (control) bodies.

Decisions of the Cabinet of Ministers of Ukraine of August 13, 2014 No. 408 "Issues of restrictions on inspections by state inspectorates and other regulatory bodies" [15] and September 10, 2014 No. 442 "On optimizing the system of central executive bodies" [14] does not exercise state supervision (control) in the field of economic activity.

At the same time, according to the theory of public administration, it is known that the body that makes appropriate management decisions should have the right to control them or entrust this function to other bodies subordinate to it. Consequently, the question arises of the need to form an inspection,

one of the main tasks of which is the implementation of state supervision (control) in accordance with the requirements established by the Law of Ukraine "On central executive authorities" [4]. At the same time, in accordance with paragraph three of part two of Article 18 of the Law of Ukraine "On Central Executive Authorities", inspections are formed if the majority of the functions of the central executive body are control and supervisory functions.

To implement the control mechanism, annually an organizational-administrative document of the Ministry of Youth and Sports should approve a plan for inspections of activities of economic entities in the field of physical culture and sports, which today numbers more than 12,0 thousand Units. However, for this it is necessary to take measures to attract additional human resources, which will ensure the organization of control over the quality of health and fitness and sports services, in turn, given the financial and economic situation in the country, will lead to additional costs from the State Budget of Ukraine.

In addition, the Order of the Cabinet of Ministers of Ukraine dated October 23, 2013 No. 902 approved the "List of enterprises, institutions and organizations related to the management of the Ministry of Youth and Sports", whose powers include the organization of control over the quality of sports and sports services [17].

## Conclusions / Discussion

From the analysis of documents of state bodies it can be seen that at the same time acts are issued that contradict each other, which indicates the missing structure of the synchronizing function in the body of the state, provides communication between all parts of the government. In turn, on the part of the legislators, there is an imperative reflection of their imagina-

tion of actual social conditionality.

In the system of organizing the process of management, in particular, the peculiarities of the legal regulation of physical culture and sports activities in Ukraine, there is a complete lack of consideration of the main provisions of the organization of legal activity. The management process is not considered as an action, it proceeds with a certain speed, regulated by the course of social transformations in society, with the power of manifestation and heterogeneity of their territorial location.

The statistical determination of the occurrence of these processes in obtaining an equifinal result and the tolerance (inaccuracy, fuzziness) of the event space in which this process is carried out, does not take into account the possible complexity (availability) of the ability to solve the problems, and not the desired level of its achievement.

There is no necessary observability system based on the results of management actions taken and the centralized structure of its construction. There is no understanding of the theory of the dynamics of legal regulation of administrative management in the context of reforming the sociopolitical transformations of society, leading to the need for an adequate redistribution of the government's potential to ensure its policy of achieving the goal stated in the basic law of the state, which is the Constitution of Ukraine.

**Prospects for further research.** These shortcomings determine the need for theoretical development of the legal regulation of physical culture and sports activities in Ukraine, taking into account the different significance of each of the constituent concepts and their functions in ensuring the functioning of the state. In this case we are talking about physical culture and sports activities.

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