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## **THE CONCEPT OF ADMINISTRATIVE AND LEGAL MECHANISM OF STATE REGULATION OF DENDROLOGY PARK IN UKRAINE**

***Annotation:** the essence and the concept of the term 'administrative and legal mechanism' are revealed in the article, the concept of administrative and legal mechanism of state regulation of dendrology park in Ukraine.*

***Key words:** mechanism, mechanism of legal regulation, state regulation, governance, mechanism of state regulation.*

Conservation, utilization and protection of natural resources are essential for economic and social development of the state. One of the constituent elements of the implementation of environmental policy and administrative reform in Ukraine is to create a network of protected areas and facilities, the organization of the functioning system of government. Formed current legal framework does not fully ensure the proper use and protection of territories and objects of the protected areas. Some issues are not regulated, some - only partially resolved, which, consequently, leads to a decrease in the efficiency of government bodies, academic institutions, and others.

Today, one of the priorities of state power in Ukraine is the formation of effective administrative and legal framework regulating the activities of facilities and areas protected funds. The existence of an effective mechanism, forms and methods of management of objectives and areas of natural reserve fund of Ukraine is the basis of the quality of the environment, natural resources and high achievement in science.

The formation of the effective mechanism of administrative - legal regulation of objectives and areas of natural reserve fund of Ukraine as a whole, as a complete object depends on the formation mechanism of regulation of each category of protected funds.

In this regard, of particular relevance issue gained research administrative and legal regulation of dendrology parks, which is one of the categories of protected areas of Ukraine and at the same time as the scientific establishment and the protected area. Scope of these parks requires submission of proposals on legal regulation of their activities and the implementation of appropriate changes in the practice of public management and proposals for improvement of the existing national legislation in this area and its practical implementation.

Ensuring the effectiveness and efficiency of public administration in a particular area of public life is complicated underdeveloped conceptual categorical apparatus of individual scientists and branch of science.

Sometimes a term or concept is a definition that is enshrined in the legal act, and scientists disagree about this term, they have different approaches to the interpretation of the same concepts. Even more complicated situation with the definition of concepts and terms that arise on the boundary of different branches of science.

**The purpose of the article** - to reveal the nature and content of scientific category "mechanism of state regulation" of dendrology parks Ukraine in administrative and legal aspects.

Among the commonly used scientific categories of "mechanism" is quite common in both precision and in the humanities. Various science, branches of activity, researchers and practitioners have invested in the concept of "mechanism" is so different meaning that there is a question that can't be described mechanism.

Investigated question is quite broad as it concerns different areas, including law, ecology, economics, and philosophy. However, the law significantly differs from the listed branches that its provisions for compulsory standards for compliance and enforcement.

Interpretation of the current understanding of mechanisms of public sector is examined in their research Batanova O., A.Kuznietsova, E. Morozova, O. Fedorchak. Some aspects of economic, institutional, legal, social and other governance mechanisms are describe by such scholars as A. Amos, H.Astapova, G. Atamanchuk,, V.Bakumenko, N. Briukhovetska, I.Bulieiev, O.Korotych, M. Lysenko V.Malynovskyi, M.Nyzhnyk. O.Obolenskyi, g.Odintsovo, Z.Rumiantseva, L. Yuzkova etc.

Investigation of the mechanism of administrative - legal regulation dendrological parks is impossible without clarification of the content of its basic concepts. Clarification of the content of this concept is made primarily on the basis of the interpretation of terms used in legal acts and scientific literature. Under the mechanism (from Gr. Μηχανή mechane - "machine") is classically considered a set piece movably connected-element, caused motion <sup>1</sup> device (a set of moving parts or components) that transmits or converts (plays) motion <sup>2</sup>, the internal structure of the system functioning something realities, the machine any kind of <sup>3</sup>.

Professor M. Farukshyn said "political system of any society is characterised by certain mechanisms that guarantee it the stability and viability. With these mechanisms social contradictions and conflicts are solved, efforts of various social groups, organizations and movements are coordinated, social relations are harmonized, a consensus on basic values, objectives and areas of social development is reached" <sup>4</sup>. Some scholars define the term "mechanism" as "a system of government organizations, which includes not only government agencies but also businesses, institutions and bilateral relations between them" <sup>5</sup>, or as "a system of state bodies exercising public functions" <sup>6,7</sup>.

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<sup>1</sup>Энциклопедический словарь / [гл. ред. Б.А. Введенский]. – М. : Большая советская энциклопедия, 1954. – Т. 2. – С.380.

<sup>2</sup> Механізм // Вільна енциклопедія [Електронний ресурс]. – Режим доступу:<http://uk.wikipedia.org/wiki/Механізм>.

<sup>3</sup> Толковый словарь русского языка : в 4 т. : собр. соч. [Электронный ресурс] / [под ред. Д.Н. Ушакова]. – М. : Адепт, 2004.

<sup>4</sup> Фарукшин М.Х. Политическая система общества [Электронный ресурс] / М.Х. Фарукшин // Политнаука: политология в России и в мире. – Режим доступа: <http://www.politnauka.org/library/teoria/farukshin.php>.

<sup>5</sup> Копейчиков В.В. Механизм советского государства. - М.: Юрид. лит., 1968. – С. 29-32.

<sup>6</sup> Власов В.А. Советский государственный аппарат. - М.: Госиздат, 1959. – 181– С. 65-68.

<sup>7</sup> Ковачев Д.А. Механизм правотворчества социалистического государства. Вопросы теории. - М.: Юрид. лит., 1977. – С. 6.

Whereas the state is a social institution created by human beings, all the mechanisms of the state, from the simplest to the most complex, is the product of organized human activity. As noted by A. Dobroliubov, "perfect the mechanism of democratic government - one that is designed for nonideal politicians (rather than leaders and geniuses), because only such state machine will be able to safely operate long time successfully experiencing bad and good, mediocre and outstanding managers" <sup>1</sup>.

State mechanism and the mechanism of state regulation is an example of the most complex mechanisms what millenniums evolved mechanisms to streamline tribe life, sort of a modern civilization and which have clear legal regulation. The concept of "mechanism of legal regulation" theorists of state and law revealing way: "This was taken in the unity of the system of legal means, methods and forms by which the normativity of law is translated in the ordering of social relations, met the interests of entities established by law and provided by rule of law (" good "the right to become" existent ") " <sup>2</sup>; "set of legal means by which the behavior of subjects of public relations is in line with the regulations contained in the rule of law" <sup>3</sup> others.

Mechanism of regulation requires: 1) the rule of law, 2) acts of law, and 3) individual requirements aimed at casual regulation of social relations, and 4) acts of state bodies aimed at forced sale of corporate social responsibilities in the event of non-object state management conditions and rules of law, regulation or casual acts of individual requirements - to ensure their implementation; 5) relationship associated with the implementation of these elements of the mechanism of legal regulation of the subject of the government

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<sup>1</sup> Рудніцька Р.М. Механізми державного управління: сутність і зміст / Р.М. Рудніцька, О.Г. Сидорчук, О.М. Стельмах ; [за наук. ред. М.Д. Лесечка, А.О. Чемериса]. – Л. : ЛРІДУ НАДУ, 2005. – С. 15.

<sup>2</sup> Скаун О.Ф. Теорія держави і права: Підручник / Пер. з рос. - Х.: Консум, 2001. – С. 498.

<sup>3</sup> Теорія держави і права: Навч. посіб. / А.М. Колодій, В.В.Копейчиков, С.Л. Лисенков та ін.; За заг. ред. С.Л. Лисенкова, В.В. Копейчикова. - К.: Юрінком Інтер, 2003. – С. 261.

<sup>4</sup> Алексеев С.С. Механизм правового регулирования в социалистическом государстве. - М.: Юрид. лит., 1966. – С. 38.

As for the term "government regulation," the first thing to note is that in the current legislation there is no general definition of the term. Instead, only three laws are to define "state regulation of financial services", "state regulation of the securities market" and "government regulation and control treatment products that adversely affect public morality."<sup>1</sup>

In large glossary of modern Ukrainian language the term "regulate" means "to organize anything, manage somehow, conquering its related rules, certain system"<sup>2</sup>.

However, the vast majority of researchers use the term as a purely economic category. Yes, V. Malynovsky provides the following definition: "Government regulation is economic method of public administration, which is a system typical of legislative, executive and controlling nature, carried out by relevant government agencies and NGOs in order to stabilize and adapt existing socio-economic system to continuously changing conditions"<sup>3</sup>. V. Vorotin gives a definition of "Government regulation is a meaningful and purposeful activity associated with the implementation of state-power by public authorities and regulated legal norms economic activity"<sup>4</sup>. O. Obolensky considers "state regulation" as "the exercise of state comprehensive measures (organizational, legal, economic, etc.) in the area of social, economic, political, religious and other social processes for ordering, common rules and norms of social behavior, and prevention of negative phenomena in society"<sup>5</sup>. Determination is made by O.Obolenskym is the most complete, because government regulation can and should be conducted not only by economic methods and tools.

Whereas in modern scientific literature correlation terms "governance" and "government regulation" does not get enough attention, respectively, and no

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<sup>1</sup> Данилюк О.О.Державне регулювання розвитку природно-заповідної справи: дис. канд.наук з держ. упр. / О.О. Данилюк; нац.академія держ.упр. при президентові України.-К., 2010. – С. 6.

<sup>2</sup> Великий тлумачний словник сучасної української мови / уклад. і голов. ред. В. Т. Бусел. – К. ; Ірпінь : ВТФ "Перун", 2009. – С. 1207.

<sup>3</sup> Малиновський В. Я. Словник термінів і понять з державного управління / В. Я. Малиновський. – Вид. 2-ге, доп. і випр. – К. : Центр сприяння інституц. розв. держ. служби, 2005. – 254 с. – (Серія "Бібліотека молодого державного службовця").- С. 46.

<sup>4</sup> Воротін В. С. Макроекономічне регулювання в умовах глобальних трансформацій: Моногр. / В. С. Воротін. – К.: Вид-во УАДУ, 2002. – С. 30.

<sup>5</sup> Державне управління та державна служба : словник-довідник / уклад. О. Ю. Оболенський. – К. : КНЕУ, 2005. – С. 69.

fixed conventional notion of "government regulation." Having similarities these two terms are identified or mutually replaceable. However, to distinguish these concepts need for distinctive features.

It should be noted that both governance and government regulation - is organizing the activities of the government, which aims to organize one or another sphere of public life. Such commonality of certain features suggest of identity management and content management, which is logical, because part always expresses the main features of the whole.

Authors of the academic course on administrative law explain these common notions that "state regulation may not be used without the application of a direct impact on facilities management, and therefore government regulation ultimately is impossible without government"<sup>1</sup>.

The distinctive features of these concepts are interpreted by the authors of "Legal Encyclopedia ". The concept of "government regulation" is broader than the concept of "governance" as the last to achieve their objectives apply primarily administrative methods impact <sup>2</sup>.

Professor O.Lazor in the monograph "The government in implementing environmental policy in Ukraine: organizational and legal framework," notes that "state regulation shall be in accordance with applicable law and consists of administrative and legal, economic and territorial-specific regulation." However, government regulation is inherently broader than the concept of "governance" as the last to achieve its goal using administrative impacts of the methods of direct communication <sup>3</sup>.

On this issue there are other opinions. In their work O. Boyko, Boychuk "Semantic analysis and definition of the category of" government regulation "in the" Journal of the National Academy of Public Administration ", based on the

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<sup>1</sup> Адміністративне право України. Акад. курс: Підруч.: У двох томах: Т. 1. Загальна частина / Ред. колегія: В. Б. Авер'янов (голова). – К.: Вид-во "Юридична думка", 2004. – С. 66.

<sup>2</sup> Юридична енциклопедія : в 6 т. / редкол. : Ю. С. Шемшученко (відп. ред.) та ін. – К. : Укр. енцикл., 1998. – Т. 2 : Д-Й. – С. 118.

<sup>3</sup> Лазор О. Я. Державне управління у сфері реалізації екологічної політики в Україні: організаційно-правові засади : монографія / О. Я. Лазор – Львів : Ліга-Прес, 2003. – С. 79, 85.

separation of semantic field categories" governance "and" government regulation "defines the assertion that the process of state management aims to create new properties object management, and process state regulation aimed only at streamlining and setting up internal space object management and improve its internal integrity<sup>1</sup>.

As already clarified above, most scholars consider governance as "regulating" the impact of state or government bodies and regulatory function refers to the basic functions of government. It should also be noted that the implementation of certain regulatory measures should be temporary and aimed at eliminating negative effects encountered in the specific field of public life. From this, we can conclude that the terms "governance" and "government regulation" relate to each other as total and partial. In the field of natural reserves are different mechanisms of regulation, including organizational, administrative, legal, political, and economic.

An example of the political, organizational and legal mechanism of state regulation is the Decree of the President of Ukraine of 23 May 2005 № 838 "On measures for further development of natural reserves in Ukraine." This decree President acknowledged the development of natural protected areas as a top priority of long-term public policy and gave a number of organizational tasks of the Cabinet of Ministers of Ukraine on the further development of natural protected areas.

Y. Malinowski to administrative mechanisms of state regulation relates organizational and administrative techniques that permeate all relations in public administration and is a collection of techniques and effects, based on the use of objective organizational relationships between people and general organizational management principles<sup>2</sup>.

As noted by Soloviev A.V., theme, administrative arrangements are as follows:

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<sup>1</sup> Бойко-Бойчук О. Семантичний аналіз та визначення категорії "державне регулювання" / О. Бойко-Бойчук // Вісн. НАДУ. – 2007. – № 3. – С. 46-58.

<sup>2</sup> Словник термінів і понять з державного управління / уклад.: В.Я. Малиновський. – К. : Центр сприяння інституційному розвитку державної служби, 2005. – С. 65.

- Direct impact on the controlled object by setting its powers (rights and obligations);
- One control subject selection and nearest the ultimate goal, task management process, procedures, deadlines for their implementation object, resource provision, conditions assignments at each stage;
- A legal binding administrative acts (decrees, regulations, decisions, directives, orders and resolutions), the failure of which is regarded as a breach of duty and may involve not only administrative or disciplinary responsibility, but criminal.

There are three main groups of administrative mechanisms of state regulation: regulatory, administrative, legislative <sup>1</sup>.

Under the legal mechanisms of public administration, Y. Malinowski understands the methods of the government which, defining the legal scope of management structures should facilitate free of administrative mechanisms. Legal mechanisms are used: firstly, to consolidate administrative legal relations are formed, and, secondly, to develop these relations in accordance with the set management goals. Consolidation and development of relationship management through legal mechanisms of governance aimed at achieving the objectives of the system and ensure the application of the method in accordance with the law. Legal mechanisms to control include the following: regulation, persuasion and coercion, subordination and coordination <sup>2</sup>.

According to Solovyov, OV, analyzing these two identification mechanisms, we can try to combine them into a single mechanism – the administrative-law, for a more thorough study thereof and effective practical application <sup>3</sup>.

Science of Administrative Law under the administrative and legal mechanisms determines the methods and techniques of direct and deliberate

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<sup>1</sup> Соловйова О.В.Адміністративно-правовий механізм державного регулювання розвитку рекреаційних послуг в Україні Держава та регіони. Серія: Державне управління,2009р., №42 — С.130.

<sup>2</sup> Словник термінів і понять з державного управління / уклад.: В.Я. Малиновський. – К. : Центр сприяння інституційному розвитку державної служби, 2005. – С. 124.

<sup>3</sup> Соловйова О.В.Адміністративно-правовий механізм державного регулювання розвитку рекреаційних послуг в Україні/ Держава та регіони. Серія: Державне управління,2009р., №4. — С.130.



action of the executive bodies (officials) on the basis of competence assigned to them within the prescribed limits and the appropriate form on the subordinate bodies and citizens.

The mechanisms of managerial influence are the administrative and legal mechanisms. The qualities of the state-management are determined exactly in them, which is implemented within the executive branch. With administrative and legal mechanisms the subject of the executive body makes an influence on the object over the management through the use of administrative and legal forms of governance. In administrative law, it is recognized that the method and form of government are interrelated components of the management process. It is in the appropriate form control mechanism actually serves as a way of (product) management influence.

Administrative mechanisms are usually classified as methods or means of influencing the activities of enterprises, institutions and organizations, officials and citizens through direct installation of their rights and responsibilities through orders. An administration within its jurisdiction makes administrative decisions legally binding for object management. This direct management influence comes directly from the power of nature management - as implemented executive. Without the use of administrative mechanisms can't achieve orderly influence the behavior of the various actors' management of public relations. Administrative mechanisms are used along with economic, acting methods or means of economic or indirect influence of the state and business management to the relevant control objects through their interests<sup>1</sup>.

However, in these extremely complex mechanisms with new specific features inherent to the same features as the primitive mechanisms, the simplest.

So, with this in mind, we propose to define "administrative and legal mechanism of state regulation of dendrology parks – exercise competent public authorities of measures to streamline, control and protection of parks,

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<sup>1</sup> Соловйова О.В.Адміністративно-правовий механізм державного регулювання розвитку рекреаційних послуг в Україні/ Держава та регіони. Серія: Державне управління,2009р., №4. – С.130.

arboretums, as objects of protected areas to preserve the natural diversity of landscapes, flora and an overall ecological balance of the state.”