

# ИСКУССТВОВЕДЧЕСКИЕ И ГУМАНИТАРНЫЕ НАУКИ

## THE ROLE OF THE ADMINISTRATIVE LAW PRINCIPLES IN THE PROCESS OF REALISATION OF THE ADMINISTRATIVE LIABILITY – EVIDENCE FROM THE REGULANJRY ENFORCEMENT

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**Abstract.** The article is devoted to the coverage of the contemporary issues of realisation the administrative liability from the perspective of appealing to administrative law principles. As a result the author outlined concrete constituents of the principles of administrative law in the process of realisation of the administrative liability.

**Keywords:** the principles of administrative law, administrative liability, rule of law, legality, expediency, reasonability, equitable principles, assumption of law knowledge.

So far the issue of understanding the administrative liability is one of the most contradicting in administrative legal science. The term “administrative liability” is quite actively used in different spheres of social life which is related to its different interpretation. At the same time, the legislator while using this notion in various regulatory acts unfortunately doesn’t give its definition. Apparently, the result of abovementioned can be the absence of the unique approach to the defining the principles of the realization of administrative liability. In the administrative-legal literature are arising some efforts to observe the following notions: “principles of administrative liability”, “principles of administrative enforcement”, “principles of usage of administrative penalties”, “principles of administrative and delictual procedures”, “principles of the legislation on administrative offences”. However, we are sure that the relevant principles are the reflection of classification approach for the division of administrative law principles. But it must be said that exactly the last ones can serve as a basis for the characteristics of its role in the process of administrative liability realization.

In general, the principles of Administrative Law of Ukraine are the logical reflection of the axiological landmarks, fundamentals of organization and activity of public administration’s subjects which are mostly oriented on provision of the needs of realization and protection of citizens’ rights and freedoms in democratic, social and legal state, they ensure the observance of balance between public, state and private interests in public legal sphere, they define the legal basics of interaction between public state authorities and individuals, legal entities, collective entities in the sphere of realization of functions of executive power[1].

In its turn, the meaning of administrative law principles during the process of the realization of administrative liability will mark the main basics of administrative and legal relationships connected to defining the administrative offenses, their qualification,

bringing to administrative responsibility, the implementation of administrative and tort proceedings (proceedings on administrative offenses).

So, we consider it reasonable to divide the administrative law principles, which usage is based on the process of the realization of administrative liability into principles of: 1) the attribution of an act to administrative offenses; these are expediency and validity of such assignment; 2) bringing to administrative liability – legality, justice, proportionality of the act and punishment, presumption of innocence, presumption of law knowledge, inevitability, equality of all before the law and the decision-making body, objectivity, impartiality, etc.; 3) proceedings on administrative offenses – finding out the objective truth, equality before the law, realization of the right to defense and appeal, transparency, promptness of the proceeding, continuity the proceeding, the independence of the decision in the case, responsibility for violation of the rules of procedure and the decision taken in the case.

As the example of the problem issues of administrative liability realization would be an established practice in applying the law concerning bringing persons to liability under the Art. 172-6 of the Code of Ukraine on Administrative Offences [2] (COA). So, the problem of realization of violation of financial control requirements due to COA lays in contradictable approach to the assessment of the subjective aspect (state of mind) of this offence, ‘characterized by the presence of guilt in the form of direct or indirect intent; the commission of this act through negligence precludes bringing the person to administrative liability’[3]. The abovementioned position causes the acceptance of controversial decisions in this type of cases. For example, the judge of Zarichnii District Court in the case № 591/6134/17 [4] on December 18, 2017 cleared the proceeding on the case against the person under the part 1 Art. 172-6 COA due to the lack of a corpus delicti, on the grounds that administrative material relating to a person

according to the given composition of the offense has to contain the evidence of direct or indirect intent, but instead, none of the evidence does not refute the above statements but it also does not prove, firstly, the evidence that the person knew the anti-corruption legislations' requirements to submit in certain terms, namely, the declaration in the context of part 2 Art. 45 of the Law, secondly, doesn't prove the intent of the person concerning non committing such actions and awareness of its illegality.

As we can see, such an approach is rude violation of the principle of the legal liability (one of the types of it is administrative liability), namely "ignorance of laws does not exempt from legal liability" (Art. 68 of the Constitution of Ukraine [5]).

We are sure, that only intentionally can be done "the submission of the deliberate misrepresentations in the declaration of the person, authorized to perform state or local government functions" (p. 4 Art. 172-6 COA). In its turn, negligence, as a form of guilt in violation of financial control requirements, is typical for untimely submission of declaration by the person, authorized to perform state or local government functions and also failure to notify or untimely notice of the opening of a foreign currency account in an institution of a non-resident bank or significant changes in the property status. For example, the subject of the offence can forget or not know about the necessity of submission of notice or the declaration, be wrong in calculations or remembering the concrete term of submitting the declaration or notice, etc.

Next, we'll observe the problem issues of realization of the administrative liability due to Art. 172-5 COA. According to the p. 1 Art. 23 "On the Prevention of Corruption" Law of Ukraine [6], there is forbidden for persons, authorized to perform state government functions or equated to them, directly or by the help of other persons to demand, to ask, to receive from individuals or legal entities presents for themselves or connected persons, particularly in the context of performing activity related to performance state or local government functions.

The wording "in the context of performing activity related to performance state or local government functions" can be interpreted in different ways. Herewith, there is no clarification on its content in any regulatory requirements or recommendatory provisions. Thus, basing on the case law concerning bringing persons to responsibility for violation of the restrictions on the receipt of gifts we can conclude that they are, to put it mildly, controversial in the context of understanding of abovementioned restriction. For example, Taraschanskii District Court of the Kyiv Oblast stated by the ruling dated from August 25, 2015 (case No. 379/1230/15-п) that Social Inspector on Environmental Protection of the State Ecological Inspection of Kyiv region while performing his official authorities received from the citizen the present in the form of coupons for 200 liters of A-95 gasoline of gas station network "Avias", for not drawing up the

protocol on the environment legislation violations found on the individual entrepreneur, which results in the imposition of a fine, in so doing broke a restriction on getting presents, set by p. 1 Art. 23 "On the Prevention of Corruption" Law of Ukraine [7].

From the given example follows that performing activity related to performance state or local government functions is comprehended receiving the gift for exploitation by this person his official authorities in its own vested interests. This position can not be accepted for the following reasons.

Firstly, if we look to the notion of corruption according to Art. 1 of "On the Prevention of Corruption" Law of Ukraine, than such actions of the persons authorized to perform state or local government functions contain signs of corruption, and therefore they constitute a corrupt offense, and not an offense connected with corruption, which is administrative offence stipulated by Art. 172-5 of the COA. In turn, the semantic content of abovementioned court decision contains corpus delicti stipulated by Art. 368 of the Criminal Code of Ukraine (CCU) [8].

Secondly, lucrative impulse of the usage of official authority or position mainly is the evidence for violations in described case law pattern of restrictions on the use of official authority or position, which are set in Art. 22 of "On the Prevention of Corruption" Law of Ukraine.

Thirdly, such an approach to interpretation of restriction concerning the presents getting "in the context of performing activity related to performance state or local government functions" can be used as a legal remedy for avoidance of criminal responsibility for receiving unlawful benefits (Art. 368 CCU), because the notion of unlawful benefit is almost equal to the notion of a present, set by Art. 1 of "On the Prevention of Corruption" Law of Ukraine.

Concordantly abovementioned violates such general administrative law principles as rule of law and legality. To the list of special principles of administrative law, which are violated while making appropriate decisions, should be included next principles: expediency, reasonableness and fairness. The described above necessitates more precise assessment of cases being considered for the purpose of ensuring the proper qualification of offenses and, as a result, ensuring the bringing of the perpetrators to their responsibility. In its turn, the unified approach to decision-making for the relevant category of cases should be done by the delineation of the concepts of "unlawful benefit" and "present". This can be realized at the legislative level, solved by the Resolutions of the Plenum of the Supreme Court of Ukraine or methodological recommendations of National Agency of the Corruption Prevention.

The influence of administrative law principles can be also followed in terms of proceedings on administrative offenses. According to the amendments to Art. 294 COA the prosecutor can appeal the relevant judge's ruling only in cases, set by p. 5 Art. 7 and p. 1

Art. 287 COA. Herewith the provisions of the last article also refer to p. 5 Art. 7 COA which textually reflects the meaning of the legality principle in proceedings on administrative offenses. In turn, relevant provisions is established that the prosecutor carries out supervision over observance of the laws when applying enforcement actions over administrative offences by the realization of power powers to supervise the observance of laws in the application of coercive measures related to restrictions on personal freedom of citizens. It means that the prosecutor could realize the right to appeal in proceedings on administrative offenses in in cases determined by law, solely at the stage of execution of a court decision and only on conditions that sanction restricts personal liberty of citizens. However, sanctions for administrative offenses are often not connected to the personal liberty of citizens restrictions (for example, offenses related to corruption, offenses in the field of road safety, which materials are prepared by police authorities). As a result, it is obvious that relevant statutory concept, not taking into account the textual image of legality principle content, eliminates the possibility of objective determination of the case circumstances, is in contradiction with the principle of court decisions appeal. Abovementioned indicates the necessity of amendments to the current provisions of COA.

As follows, the role of the principle of administrative law in the process of realization of administrative liability, by reference to problems of case law lies in the fact, that first: can act as a kind of prism for statutory concept assessment while classification of violations (in particular, the distinction between administrative and criminal tortious acts); in the highest level define the content of the rules of proceedings on administrative offenses; serve as the basis for decision-making concerning clarification and/or correction of administrative and legal (substantive and procedural) rules.

Finally, we should note that within the limits of this research it is impossible to highlight all problematic issues of administrative responsibility realization. We described the general issues of execution of administrative responsibility, the solution of which is caused by the need of appealing to the

principles of administrative law, that can be a basis for the scientific research development on the implementation of the administrative law principles in law-enforcement activity of courts and subjects of public administration.

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