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Special Aspects of Administrative Liability in Ukraine

Особливості притягнення до адміністративної відповідальності в Україні

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Abstract

Legal liability is an essential element of the legal regulation of public relations. Administrative liability is just as important to democratic governance as administrative efficiency; it even contributes to efficiency in the long run. The study of the essence and special aspects of bringing to administrative liability, particularly foreigners and minors, is of particular scientific interest since it is the most common type of legal liability most often used in Ukraine. That is why the characterization of administrative liability in Ukraine is an important and pressing issue and, therefore, our study's purpose. The object of the study is public relations in the sphere of bringing guilty persons to administrative liability. The subject of the study is the peculiarities of administrative liability in Ukraine. The authors used logical, legalistic, technical legal approaches and integrative cognition to solve the set tasks and achieve the goal. The structural elements of this paper are the coverage of the procedure for bringing to administrative liability in Ukraine, special aspects of bringing foreigners to administrative liability in Ukraine, and the administrative liability of minors.

Анотація

Юридична відповідальність є істотним елементом правового регулювання суспільних відносин. Адміністративна відповідальність не менш важлива для демократичного правління, ніж адміністративна ефективність; це навіть сприяє ефективності в довгостроковій перспективі. Вивчення сутності та особливостей притягнення до адміністративної відповідальності зокрема іноземців та неповнолітніх становить особливий науковий інтерес, адже є найбільш поширеним видом юридичної відповідальності, що найчастіше застосовується в Україні. Саме тому, характеристика адміністративної відповідальності в Україні є важливим та нагальним питанням, а відтак є метою нашого дослідження. Об'єктом дослідження є суспільні відносини у сфері притягнення винних осіб до адміністративної відповідальності. А предметом дослідження – особливості притягнення до адміністративної відповідальності в Україні. У ході вирішення поставлених завдань та досягнення мети використовували логічний, формально-юридичний, техніко-юридичний методи, а також метод інтегративного пізнання.

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Key words: legal liability, administrative liability, administrative liability of minors, administrative liability of foreigners, administrative penalty.

Структурними елементами цієї статті є висвітлення порядку притягнення до адміністративної відповідальності в Україні, особливості притягнення іноземців до адміністративної відповідальності в Україні та адміністративна відповідальність неповнолітніх.

Ключові слова: юридична відповідальність, адміністративна відповідальність, адміністративна відповідальність неповнолітніх, адміністративна відповідальність іноземців, адміністративне стягнення.

Introduction

Legal liability is an essential element of the legal regulation of public relations. Its essence is to influence the behavior of individuals through legal measures purposefully, and the goal is to protect public relations from any illegal violations through coercive measures, which leads to the regulation of public relations and providing them with consistency and stability (Minchenko, Lutsyuk, Kamensky, Kolodin, & Shamota, 2021). At the end of the 20th and beginning of the 21st century, under the influence of drastic societal changes, the formation of a new, post-Soviet paradigm of administrative law began. Changes in society inevitably led to a qualitative update and change in the doctrine of administrative law, its focus on the rights and interests of people, ensuring guarantees of their effective implementation and protection (Averyanov, 2006). Administrative liability is just as important to democratic governance as administrative efficiency; it even contributes to long-term efficiency (Finer, 2001). The study of the essence and special aspects of bringing to administrative liability, particularly foreigners and minors, is of particular scientific interest since it is the most common type of legal liability most often used in Ukraine. That is why the characterization of administrative liability in Ukraine is an important and pressing issue and, therefore, our study's purpose. The object of the study is public relations in the sphere of bringing guilty persons to administrative liability. The subject of the study is the peculiarities of administrative liability in Ukraine.

Theoretical framework

In the domestic theory of law, the essence of the legal liability and its features have been the object of scientific knowledge of many scientists. Given the enormous volume of scientific

material dealing with the study of the concept of legal liability, we will focus in more detail on covering only some of the scientific approaches to the definition of "legal liability". Thus, according to M. Tereshchuk, legal liability is adopting measures of state coercion against the offender to restore law and order and punish the person who committed the offense (Tereshchuk, 2015). Exploring the nature of legal liability, T. Grek considers it as an independent and necessary element of the mechanism of legal regulation, characterized by three specific features. Thus, it is a type of state coercion; the only basis for its application is an offense; it functions by taking certain negative measures against persons who have committed an offense. The scientist defines the essence of legal liability as an essential element of legal regulation of public relations, which consists of purposefully influencing individuals' behavior through legal means (Grek, 2010).

N. P. Bortnyk, I. Yu. Khomyshyn, S. S. Yesimov are convinced that administrative liability is the most common and demanded type of legal liability. This institution takes an active part in ensuring the stability of public life and improving guarantees of the protection of citizens' rights, acquiring a significant effective legal way to influence public relations. It should be noted that administrative liability, having all the fundamental features of legal liability, has common features with other types of liability (civil, material, disciplinary, criminal) and specific features that distinguish it (Bortnyk, Khomyshyn, & Yesimov, 2019).

According to the definition of M.V. Kolesnikova and L.P. Kalinichenko, administrative liability is the reaction of the state to the damage caused by the offense, the assessment by the state of the violation of the administrative rule. Liability

finds its external expression in the legal relations between the body (official) authorized to carry out actions to bring to administrative liability and the person being brought to liability. Each individual offense does not cause significant harm by its public danger, but all of them significantly worsen the stability and development of society and the state as a whole (Kolesnikova and Kalinichenko, 2019).

A more realistic and practical approach to administrative liability is recognized by Philip H. Jos, who emphasizes that the public is often divided and scattered. Political institutions are often unable to formulate unambiguous political directives (Philip, 1990).

In our opinion, administrative liability is an essential institution of administrative law designed to outline the boundaries between legal and anti-legal behavior and then punish any manifestations of socially harmful behavior aimed at violating the principles and postulates enshrined in the provisions of administrative legislation. The structural elements of this paper are the coverage of the procedure for bringing to administrative liability in Ukraine, special aspects of bringing foreigners to administrative liability in Ukraine, and the administrative liability of minors.

Methodology

To solve the tasks set and achieve the goal, the authors used logical method of cognition (subsection Theoretical framework), legalistic approach (subsections of the procedure for bringing foreigners to administrative liability in Ukraine, special aspects of bringing foreigners to administrative liability in Ukraine), and technical legal method (subsection administrative liability of minors). The integrative cognition method was used to analyze the dialectics of administrative liability in the papers by foreign and Ukrainian scientists. The use of these methods allowed to comprehensively analyze administrative liability in the administrative law of Ukraine in the context of modern understanding and new approaches.

Results and discussion

Procedure for bringing to administrative liability in Ukraine

It is worth noting that the influence of administrative provisions is felt, for example, by every citizen of Ukraine. Thus, relations between citizens and state authorities, through which the

performance of official powers takes place, are built and are based precisely on the rules of administrative law (Skoromnyy, 2020). In addition, all citizens of Ukraine from the moment they reach the age of 14 can be brought to administrative liability in case of violation of the requirements of administrative legislation.

The factual basis of administrative liability that allows bringing a person to it is the commission of an administrative offense (misdemeanor). Part 1, Article 9 of the Code of Ukraine on Administrative Offenses defines an administrative offense (misdemeanor) as an illegal, guilty (intentional or negligent) action or omission that infringes on public order, property, rights, and freedoms of citizens, on the established management procedure and for which the law provides for administrative liability. It should be noted that the above definition simultaneously uses and identifies two terms and, thus, two concepts: "administrative offense" and "administrative misdemeanor" (Law No. 8073-X, 1984).

The normative basis is a system of norms that fix the composition of administrative offenses, administrative penalties; the range of entities entitled to apply administrative penalties, and the procedure for bringing to administrative liability. The main regulatory act on administrative liability is the Code of Ukraine on Administrative Offenses. The procedural basis for administrative liability is an act of the competent authority imposing a specific administrative penalty on a specific guilty person for a specific administrative offense (Tsyuprik, 2014).

Tasks of administrative liability: protection of public relations formed in the course of activities to fulfill the powers of state bodies from illegal behavior; guarantee of citizens' rights; education of subjects of legal relations in the spirit of compliance with various administrative rules. The essence of administrative liability is administrative penalties as a necessary legal consequence of violation (non-compliance) of administrative prohibitions, condemnation of the violator's behavior, and restriction of personal benefits, material and other legal interests, assessment of the committed act. A special feature of this type of legal liability is the introduction of discretionary powers in many provisions of the Code of Ukraine on Administrative Offenses, i.e., the right to act at its discretion (of course, within the limits of legal regulations) when establishing administrative prohibitions or new types of punishments, replacing penalties, etc. (Koval, 1996).

According to the nature of the damage caused, administrative offenses are divided into material and formal ones. Material ones include those that indicate material consequences or describe an action that will necessarily entail harmful consequences, although the latter are not provided for by law. Formal ones include formulations that do not contain signs of harmful material consequences due to illegal actions (Kolpakov, 2008).

During the independence period, approaches to the essence and content of administrative liability in Ukraine are not remarkably different from the Soviet ones. On the one hand, this is evidence of compliance with the established classical theory, but on the other hand, it indicates the absence of reforms and essential changes. It is confirmed by the fact that the current Code of Ukraine on Administrative Offences was adopted during the existence of the totalitarian Soviet Union. In our opinion, despite the introduction of many changes to the latter, it is still important to adopt a new codified act, which will be an expression of a new formation and an updated approach to administrative liability.

Special aspects of bringing foreigners to administrative liability in Ukraine

Recently, the number of immigrants who legally stay on the territory of Ukraine is increasing. First, this is due to the successful geographical location, favorable climatic conditions, and the national direction of Ukraine toward the European community, access to the international trade arena. To provide favorable living conditions for foreigners and stateless persons in Ukraine, they are assigned, at the legislative level, rights, obligations, and prohibitions. However, these persons and citizens of Ukraine can commit administrative offenses, the consequence of which is an administrative liability.

The study of special aspects of administrative liability of foreign citizens and stateless persons, finding out its place and role in the system of administrative law is of particular importance since this is due to the need to improve Ukrainian administrative legislation in general, including its systematization (Lytikov, 2015).

An administrative offense, the subject of which may be foreigners and stateless persons, includes violation of the rules of stay in Ukraine and transit travel (i.e., living without documents for the right to live in Ukraine, with invalid papers or documents which validity period has expired,

or employment without the appropriate permission, if the need for such permission is provided for by the legislation of Ukraine, or failure to comply with the established procedure for movement and change of place of residence, or evasion from leaving Ukraine after the expiration of the relevant period of stay, failure to arrive without valid reasons to a certain place of study or employment after entering Ukraine for a certain period, and the violation of the rules of transit travel through the territory of Ukraine; failure to comply with the established registration procedure or violation of the established period of stay in Ukraine (Voevodina, 2009).

The procedure for bringing foreigners and stateless persons to administrative liability is determined by Articles 16, 24, 33-40 of the Code of Ukraine on Administrative Offences, Art. 23, 24, 26, 30, 32 of the Law of Ukraine On the Legal Status of Foreigners and Stateless Persons (Law No. 1667-IX, 2011). At the subordinate level, the procedure for implementing Articles 26, 30 of the Law of Ukraine On the Legal Status of Foreigners and Stateless Persons is determined by the instruction on the forced return and forced expulsion from Ukraine of foreigners and stateless persons, approved by the Joint Order of the Ministry of Internal Affairs of Ukraine, the Administration of the State Border Service, the Security Service of Ukraine dated April 23, 2012 No. 353/271/150 (Order No. 353/271/150, 2012). Considering the provisions of Article 16 of the Code of Ukraine on Administrative Offences, no foreign citizen can avoid liability in case of violation of administrative legislation. Article 24 of the Code of Ukraine on Administrative Offences, together with the list of administrative penalties, specifies a special type of administrative penalty against foreigners and stateless persons – expulsion from Ukraine. A comparative analysis of the provisions of the Code of Ukraine on Administrative Offences and the Law of Ukraine On the Legal Status of Foreigners and Stateless Persons indicates the following mandatory conditions for applying expulsion from Ukraine: the need for a special provision that provides for administrative expulsion; the commission by a foreigner or a stateless person of an administrative offense that grossly violates the order (Law No. 8073-X, 1984). Article 26 of the Law of Ukraine On the Legal Status of Foreigners and Stateless Persons (Law No. 1667-IX, 2011) provides for such a type of administrative coercion as the forced return of foreigners and stateless persons. This type of coercion is not envisaged in Article 24 of the Code of Ukraine on Administrative Offences.

It indicates the need to comply with the provisions of the Law of Ukraine On the Legal Status of Foreigners and Stateless Persons and the Code of Ukraine on Administrative Offenses. The mechanism and grounds for applying forced return indicate that it is specified as an administrative penalty.

Thus, it can be argued that the possibilities of conducting proceedings in cases of administrative offenses involving foreigners and stateless persons are enshrined in the current Code of Ukraine on Administrative Offenses in a generalized form, without highlighting the specifics of such proceedings. To improve the administrative and tort legislation of Ukraine and take into account European requirements and values and use a single law enforcement practice, it is advisable to allocate a separate section in the Code of Ukraine on Administrative Offenses, which would regulate the participation of foreigners and stateless persons in administrative and tort proceedings (Skripay, 2017).

Administrative liability of minors

Article 23 of the Code of Ukraine on Administrative Offences defines that an administrative penalty is a measure of liability and is used to educate a person who has committed an administrative offense, in the spirit of compliance with the laws of Ukraine, respect for the rules of cohabitation, and to prevent the commission of new offenses both by the offender and by other persons (Law No. 8073-X, 1984).

Measures of influence for minors are, like administrative penalties, measures of administrative liability. The following features unite them: a) the primary purpose of their application is to educate (correct) the violator; b) the basis for their application is the commission of an administrative offense; c) they are applied only to a delinquent person; d) the general procedure for their application (imposed by administrative jurisdiction bodies in proceedings on administrative offenses). However, these two different types of measures of administrative liability have specific differences: a) the application of an administrative penalty entails the emergence of a condition where a person is considered to have been brought to administrative liability during the year, the application of measures of influence for minors does not generate such legal consequences; b) the element of punishment is more inherent in administrative penalties than measures of influence for minors; c) measures of influence for

minors are applied only as a substitute for administrative penalties (Prodaevich, 2006).

One of the features of administrative liability of children provided for by the law is that the commission of an offense by a minor is a mitigating circumstance since minors generally do not have a stable psyche, sufficient life experience, do not always realize the harm caused, easily fall under the influence of other persons, especially older ones, who often become organizers or instigators of offenses; it is also taken into account that minors are easily subjected to educational influence and can improve without applying strict administrative penalties to them. In many countries, administrative liability does not occur from the age of 16 but much earlier. Given our realities, the age at which administrative responsibility begins should be reduced to 14 years. According to Article 12 of the Code of Ukraine on Administrative Offences, the age at which it is possible to bring to administrative liability is determined to be sixteen years. However, the full age of majority under the civil legislation of Ukraine begins from 18 years (Article 11 of the Civil Code of Ukraine) (Law No. 8073-X, 1984). If teenagers commit administrative offenses under the specified age, their parents are brought to justice under Article 184 of the Code of Ukraine on Administrative Offenses (Kornienko, 2018).

Conclusions

As part of the legal liability system, administrative liability is a distinctive legal form of state response to the protection of public and private interests, consisting of a set of substantive and procedural rules established by the state to encourage offenders who act voluntarily unreasonably. The application of systems theory to legal research allows identifying the objectively existing structure of relations with administrative liability in the system of legal liability, the hierarchy of goals and functional connections between them, which eliminates contradictions, finds out dynamic features, and includes axiomatic methods of law-making jurisprudence, indicating the actual boundaries and, in cooperation with similar legal institutions of European states, combining them into a single comprehensive system of knowledge about administrative liability. In Ukraine, there are special aspects of bringing foreigners to administrative liability (limiting the types of administrative offenses) and minors, considering the peculiarities of their psychophysiological development. During the independence period,

approaches to the essence and content of administrative liability in Ukraine are not remarkably different from the Soviet ones. Thus, it is essential to adopt a new codified Act, which will express a new formation and an updated approach to administrative responsibility.

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