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DIFFERENTIATION OF LIABILITY FOR COMMITTING ADMINISTRATIVE OFFENSES

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The Ukraine's acquisition of the status of a "candidate state" of member states of the European Union, as well as the influence and observance of the international legislation on human rights and freedoms, significantly complements the administrative and legal status of citizens of our country. The ratification by the Ukrainian state of the European Convention on Human Rights (1997) and other international legal acts related to rights and freedoms opened a new stage in the development of national legal science, especially regarding the protection of the rights of natural persons [1, p. 15–32].

Existing approaches in the administrative and legal science to the protection of individual rights, as well as to the application of measures of coercive influence to the violator, are closely related to the characterization of a natural person as a participant in the administrative and legal relations existing in society.

Note that Chapter 11 of the Constitution of Ukraine contains a non-exhaustive list of rights, freedoms and responsibilities of a human and a citizen [2]. The legislator also uses the term "person" in order to specify the individuality of a natural person and his/her legal status with the designation of his/her features. At the same time, the presence of terms characterizing the administrative and legal status of an individual always requires clarification of the relationship between such terms as "natural person", "citizen", as well as their legal impact on the differentiation of liability of subjects who commit administrative offenses.

Each of the mentioned terms has different interpretations according to the object and subject of research, which in general indicate the historical, social, cultural and other attainments of a person who possesses socially determined and individual qualities that are manifested in the intellect, emotions and will of a person. When characterizing a natural person, it is worth noting the social connections and relations, features and qualities that have social and individual significance. These include: the ability to think and make conscious and not instinctive decisions; individuality (talent, education, profession, preferences, etc.); freedom, that is, the right to choose from the options of behavior provided by society, which ensures the realization of personal interests and does not violate the rights of other subjects; responsibility to society [3, p. 630].

It is worth noting that the concepts of "person" and "personality" are not equivalent to each other, especially in terms of defining a human as a person. In our case, we may be talking about the insanity of a person who, at the time of committing illegal actions or inaction, is in a state of insanity, that is, could not be aware of his/her actions

or control them due to a chronic mental illness, a temporary disorder of mental activity, mental retardation or another medical condition [4].

The social and individual characteristics of a natural person testify to its administrative and legal status, the essence of which is the establishment by the norms of administrative law of the subject's position, which is characterized by subjective rights, legal obligations and liability of the subject in the field of the public administration [5, p. 405].

Therefore, it is relevant to characterize the differentiation of the liability of subjects for committing administrative offenses, the administrative and legal status of which in most cases is asymmetric, since individuals act within the limits of rights and freedoms granted to them.

Key words: administrative liability, administrative offense, differentiation, citizen, human, natural person.

Statement of the problem. According to the Article 9 of the Code of Ukraine on Administrative Offenses, administrative liability arises taking into account the features characterizing the concept of an administrative offense. Issues related to a natural person of the violator, the course of action for carrying out procedural procedures for bringing the guilty person to the administrative responsibility are not left out of the legislator's attention. At the same time, as practice shows, the application of the norms of administrative law to a person who has committed an administrative offense has in some cases a so-called "universal" approach without taking into account both general and special features that characterize not only a natural person, but also his/her administrative and delictual actions or inaction. These and other aspects require an analysis of the impact of differentiation on the individualization of the application of administrative penalties for administrative offenses committed by a natural person.

Analysis of the research of the problem. In scientific publications, a lot of attention is paid to the consideration of the essence of subjects of administrative liability for committed administrative offenses. Issues related to the administrative and legal status of natural and legal entities, as well as the basis of their classification, are investigated, which affects a more meaningful understanding of the administrative and legal aspects of liability. Attention is drawn to the scientific works of Bytyak Y. P., Bevza A. I., Vernadskyi V. I., Hrytsenko I. S., Gula O. V., Zadykhaila O. A., Kovalya S. O., Kolomoyets T. O., Kolpakova V. K., Kopylenka O. A., Kravchenko A. V., Palamarchuka I. V., Smetaniuka R. S., Shemshuchenko Yu. S. and others.

The objective of the article. To conduct an administrative and legal analysis of the administrative liability in relation to identification, determination and influence of the features characterizing a natural person as a violator of administrative and legal norms. To offer the authors vision as to the resolution of controversial issues regarding the differentiation of the responsibility of a natural person for committing an administrative offense.

Presentation of the main material. One of the types of state coercion is an administrative liability, which is applied to natural and legal entities who commit administrative offenses. The purpose of administrative liability is that its application involves the elimination of the conditions and reasons for committing administrative offenses, as well as the restoration of the rights, freedoms and legitimate interests of citizens of the state against which an illegal encroachment was committed.

One of the constitutional duties of both the citizen and the state is to compensate for the damage caused (Article 66 of the Constitution of Ukraine) [2] and bring the guilty person to a legal responsibility. At the same time, there are certain legal peculiarities that apply to certain categories of citizens who have committed administrative offenses and are held accountable. Thus, when a natural person who has committed an administrative offense is detained and in the further proceedings of the case, his/her citizenship and legal status are clarified. We mark that the administrative and legal status of a citizen of

Ukraine is a component of the general legal status, which certifies a persons belonging to the state, a person's permanent connection with the state, which is manifested in their mutual rights and obligations [6, p. 149].

The provisions regarding the citizenship of the Ukrainian People's Republic, which were proposed in the draft of the Administrative Code of the UPR (1932), are instructive from a historical perspective. We will list some of them. The following are recognized as citizens of Ukraine: all persons of Ukrainian nationality who have permanently lived and live on the territory of Ukraine, as they are not deprived of the right to this citizenship [7, p. 111]. In the following list of categories of citizens, we are talking about persons of other nationalities, persons born to citizens of the UPR, persons who acquired the citizenship of another state on the basis of treaties with other states, persons adopted according to the procedure for citizenship of the UPR established by the law, persons born to mixed marriages of citizens of the UPR with foreign citizens, when a father is a citizen of the UPR. This testifies to the efforts of the authors of the draft of the Code to regulate the legal status of the citizens of the UPR and persons of other nationalities in order to protect their rights, freedoms and legitimate interests.

The current Law of Ukraine “On Citizenship” allows for the following grounds for acquiring Ukrainian citizenship (Article 6): 1) by birth; 2) by territorial origin; 3) as a result of admission to citizenship; 4) as a result of a renewal of citizenship; 5) as a result of adoption; 6) as a result of establishing a guardianship or a custody over the child, placement of the child in a health care institution, an educational institution or in the other child institution, in a family-type orphanage or a foster family; 7) as a result of the establishment of guardianship over a person recognized by the court as disabled; 8) in connection with the stay in Ukrainian citizenship of one or both parents of the child; 9) as a result of recognition of paternity or maternity or establishment of the fact of paternity or maternity; 10) on the other grounds stipulated by the international treaties of Ukraine [8].

It is possible to establish the peculiarities of the life activity of a separate natural person and his/her social relations by considering individual elements of the administrative and legal status, which include: citizenship; administrative and legal personality (legal capacity, capacity, delictual capacity); basic rights, freedoms and obligations of citizens in the public sphere of activity; constitutional, administrative and legal guarantees of observance and implementation of the rights and freedoms of citizens on the part of the state. As we can see, the administrative and legal status of a natural person, human and citizen implies legal ties with a society and the state.

It is worth noting that this legal relationship is specific, which finds its normative consolidation in laws, separate administrative and legal norms that regulate the relations of all citizens, without exception, who live or are on the territory of Ukraine. Other elements of the administrative and legal status of a person apply only to citizens of Ukraine, that is, they affect the specification of the constitutional rights, freedoms and responsibilities of a person and a citizen (chapter 11 of the Constitution of Ukraine) [2], create conditions for their implementation, and are also the basis for the formation and functioning of the public administration bodies, which are obliged to provide services to citizens in the realization of their rights, freedoms and legitimate interests, and in case of their violation prosecute the guilty ones.

To a large extent, it depends on: the age, gender of a natural person, the functional duties that the person performs in the public and private spheres, the presence or absence of discrimination against the person, as well as the ability of the person, through his/her actions in accordance with the procedure established by the law, to acquire and perform special functional duties and exercise rights, the violation of which entails administrative liability.

We indicate that the object of our research is issues related to the differentiation of the liability of natural persons for committed administrative offenses. The term “differentiation” is commonly understood as division, dismemberment of the whole into parts [9, p. 606]. Therefore, the definition of the administrative differentiation hypothetically includes differences established by the state (legislator) in the possibility of applying responsibility to natural persons for committed administrative offenses. To a certain extent, the elements that characterize administrative differentiation arise by the definition of the

administrative liability, which includes features of applying to persons who have committed administrative offenses that entail for these persons heavy consequences of a property, moral, personal or other nature and are imposed by authorized bodies or officials on the grounds and in order established by the norms of the administrative law [5, p. 5]. This means that the subject of an administrative offense should be understood as a person who has committed an illegal act for which administrative liability is provided by law [5, p. 416].

The author of the textbook "Administrative Law of Ukraine" (2011) T. O. Kolomoets considers the classification of subjects of the administrative law, dividing them into:

1) subjects that do not have authority (natural persons, associations of citizens, enterprises, institutions);

2) subjects endowed with authority (executive authorities, central, regional, local, other public administration bodies, local self-government bodies) [10, p. 65–115].

According to a common rule, subjects of administrative liability are divided into *general* (these are natural persons who have reached the age established by law at which they can be brought to administrative responsibility; the presence of sanity at the time of committing an administrative offense and during the proceedings), *special* (when a natural person who has committed an administrative offense has age peculiarities, a special administrative and legal status). The special administrative and legal status of a person can be both long-term and short-term.

In the administrative law and legislation of Ukraine, there is the following division of subjects who are held accountable in case of an administrative offense. They are as follows:

1) minors (Article 13 of the Code of Ukraine on Administrative Offenses);

2) officials (Article 14 of the Code of Ukraine on Administrative Offenses);

3) owners of vehicles (Article 14-1 of the Code of Ukraine on Administrative Offenses);

4) responsible persons – a natural person or the head of the legal entity in whose name the vehicle is registered, as well as the proper user of the vehicle and the person exercising the manager authority of the legal entity under which the vehicle is registered (Article 14-2 of the Code of Ukraine on Administrative Offenses);

5) military personnel and other persons subject to disciplinary statutes for committing administrative offenses (Article 15 of the Code of Ukraine on Administrative Offenses);

6) foreigners and persons without citizenship (Article 16 of the Code of Ukraine on Administrative Offenses).

Taking into account the suggested division of subjects of administrative liability, we note that it (division) is a part of another classification of subjects of administrative liability, which is divided into the following groups:

1) *subjects of administrative jurisdiction* who have the authority granted to them by the state within the limits of their authority to consider cases of administrative offenses, take, if necessary, measures to provide proceedings in cases, make decisions on them and ensure their implementation;

2) *subjects submitted to the administrative liability* for committing administrative offenses, i.e. natural persons who, at the time of committing illegal actions or inactions, are capable of delict and reprehensible. The administrative delictual capacity of a natural person allows for the possibility, if available, of individual features characterizing the person (age, gender, mental state and other circumstances) at the time of committing an administrative offense. These features testify to the existence of *general* and *special* delictual capacity of a natural person. The features characterizing the *general* administrative delictual capacity of a natural person include:

1) the age of a natural person at the time of committing an administrative offense.

According to the Article 12 of the Code of Ukraine on Administrative Offenses – persons who reached the age of sixteen at the time of committing an administrative offense are subject to the administrative liability. For this category of persons, the legislator provided a number of measures, which by their essence have a preventive, disciplinary and not a punitive nature (Article 24-1 of the Code of Ukraine on Administrative Offenses);

2) the mental state of a natural person who, at the time of committing an illegal act or inaction, is in a state of sanity, or on the contrary, in a state of insanity, i.e. he/she could not be aware of his/her actions or control them due to a chronic mental illness, a temporary disorder of mental activity, mental retardation or another medical condition (Article 20 of the Code of Ukraine on Administrative Offenses).

It is worth noting that the general administrative delictual capacity of a natural person is characterized by circumstances that mitigate or aggravate his/her responsibility for committing an administrative offense (Articles 34, 35 of the Code of Ukraine on Administrative Offenses) [4]. The above-mentioned features indicate that the legislator, by means of differentiation (division), designates the general administrative delictual capacity of a natural person.

The *special* administrative delictual capacity of a natural person provides for the availability of features that have legal significance during the consideration of a case on an administrative offense. The valid administrative legislation of Ukraine, consisting of the Code of Ukraine on Administrative Offenses and other laws of Ukraine, defines the following special features of the administrative delictual capacity of a natural person:

1. *Having the status of an official*, which means that a natural person holds a position determined by the structure and staff schedule of the public administration bodies, and performs the organizational and management, consultative and advisory duties assigned to him/her [5, p. 316]. T. O. Kolomoets suggests to recognize the administrative and legal status as a set of rights and obligations established by the norms of the administrative law for a certain subject. The mandatory feature of a person's acquisition of administrative and legal status is the existence of the specific subjective rights and obligations that are implemented by this person both within the confines of the administrative and legal relations and outside them [10, p. 64]. It is worth to emphasize that the responsibility of officials (Article 14 of the Code of Ukraine on Administrative Offenses) is determined for administrative offenses committed in the sphere of protection of administrative system, of state and public order, of nature and public health. A rather broad interpretation in terms of bringing an official to the administrative responsibility means “other rules, the enforcement of which is a part of their official duties”, which creates wide opportunities in the application of administrative liability to officials.

2. *The administrative and legal status of the owner (co-owner) of vehicles* (Article 14-1 of the Code of Ukraine on Administrative Offenses) who owns and disposes of vehicles. *Ownership* of a vehicle by a natural person means its legal assignment. The *use* of a vehicle by a natural person testifies to the legally guaranteed possibility of its actual exploitation. The *disposal* of a vehicle by a natural person means the presence of a legally guaranteed possibility to determine its further usage by performing legal acts in relation to it (for example, concluding a lease agreement, etc.).

It should be stated that the recording of administrative offenses in the field of the road safety is automated by special technical means, with the help of which the owner (co-owner) of the vehicle, to whom the measures of the administrative influence are applied, is detected. At the same time, the legislator in the Article 14-2 of the Code of Ukraine on Administrative Offenses established the provisions on responsibility for administrative offenses, in the field of ensuring road traffic safety, recorded in automatic mode, and for violations of the rules of stopping, stationing, parking of vehicles, recorded in photo (video) mode, for liable persons (natural persons, head of legal entity) in whose name the vehicle is registered and who are the proper users of this vehicle. As you can see, we are talking about expanding the list of natural persons (owners, co-owners, liable persons, proper users) who can be held administratively responsible for administrative offenses committed in the field of traffic safety.

3. *Liability of servicemen and other persons subject to disciplinary statutes for committing administrative offenses* are liable under disciplinary statutes (Article 15 of the Code of Ukraine on Administrative Offenses). At the same time, for committing certain administrative offenses, servicemen and persons equated to them are brought to administrative responsibility on common grounds. Yes, the Article 15 of the Code of Ukraine on Administrative Offenses was supplemented (in 2015) with the provision that for committing military administrative offenses, military personnel, as well as conscripts

and reservists during military service, bear the responsibility provided for in the Chapter 13-B (Articles 172-10–172-20 of the Code of Ukraine on Administrative Offenses).

4. *The liability of foreigners and persons without citizenship* (Article 16 of the Code of Ukraine on Administrative Offenses) also has features of differentiation, which indicate their responsibility for committing administrative offenses on a common basis with citizens of Ukraine, as well as in accordance with the international treaties of Ukraine regarding persons who enjoy immunity from the administrative jurisdiction of Ukraine.

The laws of Ukraine may allow for the administrative expulsion from Ukraine of foreigners and stateless persons for committing administrative offenses that brutally violate law and order (Article 24 of the Code of Ukraine on Administrative Offenses), as well as for deportation. The application of deportation means the forced expulsion of a foreigner or a stateless person out of Ukraine on condition that they have not committed an administrative offense. Deportation of foreign citizens and stateless persons should be considered a measure of termination applied by the state, assuming that these persons violate the norms and rules of the stay in the country.

It is worth mentioning that in some cases, foreigners and stateless persons may be banned from leaving Ukraine. This concerns:

– when a person is notified of suspicion of committing an offense or the case is being considered by an authorized body (official);

– when a person is convicted of a criminal offense – until serving the sentence or being released from the sentence;

– when the departure of a person contradicts the interests of the national security of Ukraine - until the termination of the circumstances preventing the departure (for example, the fulfillment of property obligations) [11, p. 74].

The possibility of applying such measures of administrative influence can be explained by the absence of a specific legal connection with the country of residence for foreign citizens and stateless persons.

Differentiation of administrative responsibility occurs when an administrative offense is committed by persons who are participants in administrative proceedings in a case of an administrative offense. This category of natural persons includes: witnesses, eyewitnesses, experts, specialists, lawyers, legal representatives and representatives. Provisionally, the application of certain types of administrative fines and their amount can be attributed to the features that affect the differentiation of the administrative responsibility of a natural person for committing an administrative offense.

It should be marked that the legislator provided for the application to a minor, who committed an administrative offense between the ages of sixteen and eighteen, not of administrative penalties, but of measures of administrative impact (Article 24-1 of the Code of Ukraine on Administrative Offenses), which have disciplinary and preventive nature. The provisions regarding the application of administrative arrest (Article 32 of the Code of Ukraine on Administrative Offenses) and arrest with detention at the guardhouse to women who have committed administrative offenses (Article 32-1 of the Code of Ukraine on Administrative Offenses) remain quite controversial.

Yes, administrative arrest cannot be applied to pregnant women, women with children under the age of twelve (the question immediately arises, why could the child's age limit not be increased to sixteen? – the author's opinion), to persons who have not reached the age of eighteen, to disabled persons of the first and second health groups. Therefore, if the violator is a woman who does not “fall” under these requirements, then this person can be subject to administrative arrest for a period of up to fifteen days (for example, minor hooliganism – Article 173 of the Code of Ukraine on Administrative Offenses). The legislator allows for the application of this administrative penalty to male and female individuals (with the

exception of military administrative offenses) in the Articles 44, 51, 122-4, 123, 173, 173-2, 178, 183-2, 185, 185-10, 187, 204-1 of the Code of Ukraine on Administrative Offenses.

Now let's return to the administrative penalty provided for in the Article 32-1 of the Code of Ukraine on Administrative Offenses "Arrest with detention at the guardhouse", which cannot be applied to female military persons. We believe that this "differentiation" of administrative responsibility in relation to the first group of female offenders is to some extent discriminatory in nature, which negatively affects the jurisdictional activity of the judicial bodies of our country and stimulates the appeal of citizens to the European Court for the Protection of Human Rights.

Conclusions. Summarizing, we believe that the issue of differentiation of liability for the commission of an administrative offense is legally enshrined in the administrative legislation of Ukraine, which allows the authorized bodies (officials) to apply measures of administrative influence to natural persons – violators, taking into account the features provided by the legislation.

At the same time, the research on the impact of the differentiation of the administrative liability on the state of legitimacy and implementation of the tasks provided for in the Article 1of the Code of Ukraine on Administrative Offenses remain relevant.

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ДИФЕРЕНЦІАЦІЯ ВІДПОВІДАЛЬНОСТІ ЗА ВЧИНЕННЯ АДМІНІСТРАТИВНИХ ПРАВОПОРУШЕНЬ

Отримання Україною статусу "держави – кандидата" країн-учасників Європейського Союзу, а також вплив і додержання міжнародного законодавства щодо прав і свобод людини значною мірою доповнює адміністративно-правовий статус громадян нашої країни. Ратифікація Українською державою Європейської конвенції з прав людини (1997 р.) та інших, пов'язаних із правами і свободами міжнародних нормативно-правових актів, відкрила новий етап у розвитку національної юридичної науки, особливо щодо захисту прав фізичних осіб [1, с. 15–32].

Існуючі в адміністративно-правовій науці підходи у питаннях захисту прав особи, а також про застосування до порушника заходів примусового впливу, тісно пов'язані з характеристикою фізичної особи як учасника існуючих в суспільстві адміністративно-правових відносин.

Зазначимо, що розділ 11 Конституції України містить у собі невичерпний перелік прав, свобод та обов'язків людини і громадянина [2]. Законодавець також використовує термін "особа" з метою конкретизації індивідуальності фізичної особи та її правового статусу з позначенням належних йому ознак. Водночас наявність термінів, що характеризують адміністративно-правовий статус фізичної особи, завжди потребує з'ясування співвідношення між такими термінами, як "фізична особа", "громадянин", а також їх правовий вплив на диференціацію відповідальності суб'єктів, що вчиняють адміністративні правопорушення.

Кожен із зазначених термінів має різні за об'єктом і предметом дослідження тлумачення, які у загальному вимірі свідчать про історичний, соціальний, культурний та інші надбання людини, що володіє соціально обумовленими, а також індивідуальними якостями, які проявляються в інтелекті, емоціях і волі особи. При характеристиці фізичної особи варто зазначити властиві їй суспільні зв'язки і відносини, риси та якості, що мають соціальне та індивідуальне значення. Це зокрема: здатність мислити і приймати усвідомлені а не інстинктивні рішення; індивідуальність (талант, освіта, професія, уподобання тощо); свобода, тобто право вибору з наданих суспільством варіантів поведінки, яка забезпечує реалізацію особистих інтересів і не порушує прав інших суб'єктів; відповідальність перед суспільством [3, с. 630].

Варто зауважити, що поняття "особа" і "особистість" не є рівнозначними між собою, особливо в частині визначення людини в якості особи. У нашому випадку може йтись про неосудність особи, яка під час вчинення протиправних дій чи бездіяльності була в стані неосудності, тобто не могла усвідомлювати свої дії або керувати ними внаслідок хронічної душевної хвороби, тимчасового розладу душевної діяльності, слабоумства чи іншого хворобливого стану [4].

Наявні у фізичної особи суспільні та індивідуальні ознаки свідчать про її адміністративно-правовий статус, сутність якого полягає у закріпленні нормами адміністративного права положення суб'єкта, яке характеризується суб'єктивними правами, юридичними обов'язками та відповідальністю суб'єкта у сфері публічного адміністрування [5, с. 405].

Отже, актуальною є характеристика диференціації відповідальності суб'єктів за вчинення адміністративних правопорушень, адміністративно-правовий статус яких переважно є асиметричним, оскільки індивідуальні особи діють у межах наданих їм прав і свобод.

Ключові слова: адміністративна відповідальність, адміністративне правопорушення, диференціація, громадянин, людина, фізична особа.