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ADMINISTRATIVE PENALTIES AS A TYPE OF STATE COERCION

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The relevance of this research is closely connected to the fact that Ukraine, among the principles enshrined in the Constitution, provides for the state's obligation to protect individuals, their lives, health, honor, dignity, and inviolability in public life. Bringing a person to justice for committing an administrative offense involves the application of penalties, which, actually, are measures that determine the type and amount of compensation and/or reimbursement for the consequences of unlawful actions or inaction. An administrative fine is one of the types of penalties most firmly established in the norms of Ukrainian administrative law. It should be mentioned that, taking into account the size of the non-taxable minimum income of citizens, the application of such a measure does not correspond to the modern realities. The purpose of this research was to study the main provisions regarding the characteristics of administrative fines and their categories, classification, and taking into account the proposals of the authors of the draft Code on Administrative Offenses of June 28, 2024. In accordance with the set goal, the task of the study was to examine the general provisions regarding administrative penalties as a type of state coercion and administrative fines as the main type of punishment for committing an administrative offense. To achieve the set goal, general scientific research methods (analysis, synthesis, comparison) have been used. As the result of the research, we have got the substantiation of the provisions characterizing the application of administrative penalties, taking into account their features and characteristics that are inherent in administrative fines as a measure of punishment. The conclusion of the study has become the author's argument regarding the need for a broader application of administrative penalties in the form of fines for committing administrative offenses within the framework of current legislation.

Keywords: administrative penalties, administrative and legal regulation, administrative sanctions, administrative fines, categories of administrative fines, classification of administrative fines, norms of administrative law, subjects of authorities.

Formulation of the problem. To study the main provisions regarding the characteristics of administrative penalties as a type of state coercion, as well as approaches to the application of administrative fines in the event that the Ukrainian legislature adopts a new Code of Administrative Offenses.

Analysis of the study of the problem. The current practice of applying administrative penalties by authorized authorities is widespread in Ukraine. Statistical data show that administrative fines are widely used as the main measure of punishment for persons who have committed administrative offenses. Administrative fines are generally considered by scholars and practitioners from the perspective of their amounts and grounds for application, as reflected in the works of V. B. Averyanov, O. M. Bandurka, Yu. P. Bytyak, A. Buchynska, T. O. Kolomoets, V. K. Kolpakov, M. V. Kovaliv, and other scholars.

The purpose of this research was to study the main provisions regarding the characteristics of administrative fines and their categories, classification, and taking into account the proposals of the authors of the draft Code on Administrative Offenses of June 28, 2024.

Presenting main material. Administrative penalties are a type of state coercion, distinguished by the fact that they carry criminal sanctions, have a specific purpose (educational, punitive, or compensatory), and are applied in accordance with the norms of administrative law. The interpretation of administrative penalties as a generalized legal category remains controversial to this day. There are approaches that indicate its different characteristics in terms of content.

Among the features that characterize administrative penalties there are “rule,” “collection,” “punishment,” and “penalty.” In some dictionaries, the term “penalty” has the features like “measure of influence,” “measure of legal responsibility,” and “general means of prevention” [1, p. 882]. It is clear that this is a general explanation and definition by the legislator of this type of punishment and/or penalty as state coercion against a guilty person for committing an administrative offense. At the same time, the term “punishment” means compensation, restoration, indemnification, and/or retribution for something [2, p. 293]. This term is usually used in the criminal legislation of Ukraine. In legal dictionaries, administrative penalties are characterized as a measure of legal responsibility defined by law in the form of certain unfavourable measures of a moral, material, or physical nature, which are applied to the subject of an administrative offense as a consequence of committing an administrative offense [1, p. 20].

T. O. Kolomoets offers the following definition of administrative penalties, understanding them to be coercive measures applied by state-authorized entities with administrative powers, usually executive authorities, on behalf of the state to persons guilty of committing administrative offenses [3, p. 290]. In accordance with current legislation, individuals and legal entities guilty of committing administrative offenses are held accountable. Administrative penalties are applied to them. The list of the penalties is set out in Articles 24 and 24-1 of the Code of Ukraine on Administrative Offenses (hereinafter referred to as the CUAO) and other laws of Ukraine. It is worth agreeing with the opinion of T. O. Kolomoets regarding the educational, repressive, punitive, and preventive nature of the application of administrative penalties [3, p. 289].

Yu. P. Bytyak believed that administrative penalties are a form of response by the state to violations of administrative and legal norms through the application of administrative liability measures [4, p. 179]. It should be noted that the authors of the draft Code of Administrative Offenses (No. 11386 of 28.06.2024) [4.] do not see the need to replace the term “administrative penalty” with “administrative punishment,” which historically has Soviet origins. At the same time, the term “administrative penalty”, in its meaning and purpose, has a punitive, educational, and protective function in terms of protecting social relations by the norms of administrative law. In addition, penalty is one of the components of punishment. The purpose of applying punishment to a person (natural or legal) guilty of committing an administrative offense is to prevent individual and collective offenses through the application of administrative penalties. The interpretation of the term “penalty” in relation to non-property sanctions (e.g., warnings, short-term arrest, deprivation of the right to engage in certain activities, deprivation of the right to hold certain positions or engage in certain activities) is controversial in its content.

One type of administrative penalty is an administrative fine in the form of a monetary payment imposed on citizens and officials (currently legal entities) for administrative offenses in cases and amounts established by the laws of Ukraine [1, p. 22]. The word “fine” comes from the German word “Strafe,” which

literally means punishment or penalty. In more detail, “Strafe” means a measure of legal coercion of a monetary nature, established by law or contract and applied by a competent state body, court, authorized official, person, or subject of contractual legal relations [1, p. 1003].

Let us consider some approaches to the vertical definition of a fine as a punishment. Article 53 of the Criminal Code of Ukraine defines a fine as a monetary penalty imposed by a court in cases and in amounts established in the Special Part of the Code [5]. Article 27 of the Code of Administrative Offenses provides that a fine is a monetary penalty imposed on citizens, officials, and legal entities in the cases and in the amount established by this Code and other laws of Ukraine [6].

Ukrainian civil law considers a fine to be a penalty calculated as a percentage of the amount of the unfulfilled or improperly fulfilled obligation. A penalty is understood as a sum of money that the debtor must transfer to the creditor in the event of a breach of obligation by the debtor [7].

A.Buchynska believes that an administrative and economic penalty is a monetary unit paid by a business entity in accordance with the budget in the event of a violation of the established rules for conducting economic activities [8, pp. 68-69]. The imposition of a fine or penalty is not considered double jeopardy and does not contradict Article 61 of the Constitution of Ukraine [9]. Article 129 of the Tax Code of Ukraine provides for the following requirements for the application of penalties:

1) penalty interest is charged after the expiration of the statutory repayment period for the agreed monetary obligation in the amount of the tax debt.

2) the accrual of penalty interest ends on the date of crediting funds to the relevant account of the State Treasury of Ukraine and/or in other cases of repayment of tax debt or monetary obligations.

3) in the event of partial repayment of the tax debt, the amount of such a share is determined taking into account the penalty accrued on such a share.

In Polish law, a fine is defined as a sum of money that a debtor is obliged to pay for non-performance or improper performance of a non-monetary obligation (Article 483 of the Polish Civil Code) [10].

An administrative fine is a type of penalty imposed in monetary form on individuals and legal entities. The legal criteria for determining the amount of an administrative fine include:

− the minimum wage (excluding additional coefficients affecting the amount of wages) at the time of completion and/or cessation of unlawful actions/inaction;

− the value of the subject of the administrative offense at the time of the commission and/or cessation of the unlawful actions/omissions;

− the amount of unpaid and payable taxes, fees, debts, fines, etc.

Analyzing the essence of administrative fines, T. O. Kolomoets draws attention to their property nature, their application in administrative and judicial proceedings by authorized authorities, the existence of official limits on the amount of fines (minimum or maximum) established by law, and the consideration of the administrative and legal status of the entity being held liable (age, gender, position, financial status, etc.).

Yu. P. Bytyak's opinion on the absence of an established amount for administrative fines is debatable. It should be noted that the current Code of Administrative Offenses provides for minimum and maximum amounts of administrative fines for individuals, officials, and legal entities. For example, the authors of the draft Code of Administrative Offenses propose dividing the amounts of administrative fines into minimum and maximum categories for individuals and legal entities.

Article 31 of the draft Code of Administrative Offenses defines a fine as a monetary penalty imposed on an individual or legal entity for committing an administrative offense in an amount that is divided into categories, including individuals and legal entities. It should be noted that the penalty rate will be 1/30 of the minimum wage, which will be set on January 1 of the relevant year by the Law on the State Budget of Ukraine. For administrative offenses committed in the sphere of morality, the authors of the draft Code of Administrative Offenses propose to apply the penalties provided for in categories 1, 2, and 3 of fines [4].

Ultimately, the authors of the draft Code of Administrative Offenses do not use the concept and amount of the non-taxable minimum income of citizens from which is not taxable. The practice of applying the non-taxable minimum income for citizens in Ukraine began on July 5, 1991, and has always been unstable due to the influence of political, economic, and other factors of an objective and subjective nature [10, pp. 277−282].

In terms of its administrative and criminal impact, a fine provides for positive moral, legal, and property consequences for persons who have committed administrative offenses. Administrative fines are defined in most articles of the Code of Administrative Offenses and other regulatory legal acts that provide for sanctions in the form of administrative fines.

According to data from the Patrol Police Department of the National Police of Ukraine dated March 10, 2023, for committing administrative offenses, authorities preferred to impose administrative fines within the limits provided for by law [11].

Years	Fined Individuals	Fines imposed (UAH.)
2018p.	2444752	1204986887
2019p.	2733373	1347212559
2020p.	3065179	1579349758
2021p.	3390533	2983199344
2022p.	2367831	2748072351

It should be noted that even the introduction of martial law in Ukraine (February 2022) did not prevent administrative offenses from being committed (although the types of administrative offenses committed have changed somewhat) and fines from being imposed on guilty individuals and legal entities.

The application of an administrative fine is a specific form of exercise by an authority of its powers related to bringing the guilty person to justice. The essence of this form of implementation is that an administrative fine is imposed by an authority on the guilty person within the limits provided for by law, regardless of the offender's wishes and/or unwillingness. Under such conditions, the application of administrative penalties is expressed in the practical resolution of a specific fact of an offense committed by an authority, the mandatory use of one of the types of state coercion, in accordance with the requirements of substantive and procedural norms of administrative law.

Administrative penalties are enforced in various ways, taking into account the specifics of their application and enforcement, but within the limits provided for by administrative law. Persons subject to administrative penalties, as well as authorities that make decisions on their enforcement and execution, carry out the actions provided for by a specific type of administrative penalty or refrain from performing prohibited actions (for example, when imposing an administrative fine). To a large extent, the enforcement of an administrative penalty in the form of a fine depends on the behavior of the person (for example, evasion of alimony payments), as well as the specifics of the procedure for enforcing the penalty.

Among the features of the application of administrative fines, the following can be distinguished:

1) Administrative fines may only be imposed by state bodies (in most cases, executive authorities) and other entities vested with official powers (or their officials) who, within the limits of their competence, have the right to make decisions that are binding on other entities involved in administrative proceedings.

2) The application of an administrative fine depends on the characteristics of the unlawful action or inaction specified in the disposition of the administrative legal norm. It should be noted that the disposition of an administrative legal norm may be subject to consideration and application in assessing the evidence and circumstances of the offense, while the sanction of the norm is applied only by entities vested with authority (state bodies and local self-government bodies) (in cases specified by the Code of Administrative Offenses and other laws - by the court).

3) The application of an administrative fine can be considered a legally significant activity only when this activity is carried out on the basis of administrative and legal norms in the manner prescribed by administrative legislation.

4) The application of an administrative fine is aimed at establishing individual legal consequences, i.e., subjective rights and obligations and their implementation through the adoption of an individual administrative and legal decision (specific resolution) regarding a specific subject of administrative responsibility.

In characterizing the application of administrative fines, an important place belongs to the requirements that are a condition for their successful implementation. Among them are:

− Authorities and their officials, when looking into an administrative offense case, have to use fines as punishment within the limits and amounts set by administrative law sanctions.

− Administrative fines may only be imposed by authorized authorities in accordance with the procedural norms of administrative law.

− Administrative fines must be imposed within the time limits (taking into consideration the categories of time, space, and action) provided by administrative law.

− Supervision and control over the application and enforcement of administrative penalties in the form of fines by authorized authorities.

Considering this, it should be noted that the most important means of implementing the requirements for the enforcement of a decision to impose an administrative fine are the norms of administrative law. With their help, on the one hand, the behavior of the individuals brought to administrative responsibility, their rights and obligations, as well as the powers of authorities to apply administrative penalties in the form of fines, have been regulated.

The next pressing issue is the need to consider the classification of administrative fines, which provides for their distribution according to certain characteristics specific to them. The basis for the classification of administrative fines should be the characteristics that are most essential and specific to this type of punishment. Thus, administrative fines are systematic in nature, which determines the cases and amounts in which they are applied (Article 27 of the Code of Administrative Offenses). The authors of the draft Code of Administrative Offenses have made a similar proposal regarding the systematic nature of administrative fines, highlighting the provision that fines have been divided into categories according to their size (paragraph 2, Article 31 of the draft Code of Administrative Offenses).

Under these conditions, administrative fines should be classified on the following grounds:

1) depending on the source by which the types of administrative penalties (Articles 24, 24-1 of the Code of Administrative Offenses) and administrative fines are established (Article 27 of the Code of Administrative Offenses), as well as the procedure for enforcing a decision to impose an administrative penalty for the violations in the sphere of road safety, recorded automatically, or for a violation of the rules for stopping, standing, or parking vehicles, recorded by means of photo (video) recording – Article 300-1 of the Code of Administrative Offenses, the procedure for enforcing a decision to impose an administrative penalty in the form of a fine for the violations in the field of road transport safety (Article 300-2 of the Code of Administrative Offenses);

2) depending on the object of the administrative offense (social relations regulated by administrative law), for which liability in the form of an administrative fine is provided;

3) depending on the degree of public danger and harmful consequences resulting from the commission of administrative offenses, administrative fines have minimum and maximum amounts, which are enshrined in the sanctions of administrative legal norms and apply to individuals and legal entities;

4) depending on the type of entities to which the administrative fine applies (Article 27 of the Code of Administrative Offenses):

− individuals, depending on the age at which administrative liability arises (Article 12 of the Code of Administrative Offenses), except for the minors (Article 24-1 of the Code of Administrative Offenses), officials (Article 14 of the Code of Administrative Offenses), authorized users of vehicles (Articles 14-2, 14-3 of the Code of Administrative Offenses), foreigners, and stateless persons (Article 16 of the Code of Administrative Offenses). Military personnel serving in the armed forces who have committed military administrative offenses provided for in Chapter 13-B of the Code of Administrative Offenses are not subject to administrative fines [6];

− legal entities (Article 27 of the Code of Administrative Offenses), heads of legal entities (Articles 14-2, 14-3 of the Code of Administrative Offenses);

5) depending on the types of entities authorized to impose administrative fines (Articles 213, 217 of the Code of Administrative Offenses), Chapter 17 “Jurisdiction over cases of administrative offenses” of the Code of Administrative Offenses;

6) depending on the nature of the subjective characteristic of the administrative offense committed (intentionally or negligently), which indicates the psychological aspects of the person's actions and their assessment at the time of consideration of the case of administrative offenses and determination of the measure of punishment in the form of a fine;

7) depending on the content of objective signs characterizing the commission of an administrative offense (independence and/or complicity) in the commission of unlawful actions by a person and their multiplicity and causality between actions and consequences affecting the amount of the administrative fine;

8) depending on the nature of the loss/damage suffered by persons subject to administrative liability:

− an administrative fine is imposed on a specific person, both natural and legal, guilty of committing unlawful actions/omissions;

− an administrative fine is a property-related punishment (monetary penalty) and is imposed on citizens, officials, and legal entities for administrative offenses (Article 27 of the Code of Administrative Offenses);

9) depending on the order of appointment, an administrative fine is the main type of penalty (part one of Article 24 of the Code of Administrative Offenses).

The classification levels we propose cannot be considered complete, as a number of other components requiring additional clarification have formal and logical significance and contribute to the individualization of the guilty person's responsibility and the application of an administrative penalty in the form of a fine.

Conclusions. Administrative penalties are a type of state influence applied to persons who have committed unlawful acts or omissions. The characteristics of administrative penalties include features of state coercion (T. O. Kolomoets) and forms of state response to unlawful actions committed by individuals (Yu. P. Bytyak), which made it possible to consider administrative fines from the perspective of their preventive, educational, restorative, and prophylactic content. The need to take into account the classification of administrative fines based on the objective and subjective components of their application has been identified. The proposals of the authors of the draft Code of Administrative Offenses regarding the definition of the essence of administrative fines and their classification into categories, depending on the size of the fine rate, which is equal to 1/30 of the minimum wage, have been agreed. The proposals would come into force on January 1, of the relevant year, and would be included in the Law on the State Budget of Ukraine.

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АДМІНІСТРАТИВНІ СТЯГНЕННЯ ЯК ВИД ДЕРЖАВНОГО ПРИМУСУ

Актуальність дослідження полягає в тому, що Україна серед засад закріплених в Конституції, передбачає обов'язок держави щодо захисту людини, її життя, здоров'я, честі, гідності і недоторканності в суспільному житті. Притягнення особи до відповідальності за вчинення адміністративного правопорушення передбачає застосування стягнень, які за своїм наповненням є мірою, що визначає вид і розмір відновлення та /або відшкодування за наслідки вчинених протиправних дій чи бездіяльності. Адміністративний штраф є одним з видів стягнення застосування якого має найбільше закріплення в нормах адміністративного законодавства України, а його застосування з урахуванням розмірів неоподатковуваного мінімуму доходів громадян не відповідає реаліям сьогодення. Метою дослідження було вивчення основних положень щодо характеристики адміністративного штрафу та його категорій, класифікації з урахуванням пропозицій авторів проєкту Кодексу про адміністративні проступки від 28.06.2024 року. Відповідно до поставленої мети, завданням дослідження було вивчення загальних положень щодо адміністративного стягнення як різновиду державного примусу та адміністративного штрафу, як основного виду покарання за вчинення адміністративного правопорушення. Для досягнення поставленої мети використовувалися загальнонаукові методи дослідження(аналіз, синтез, порівняння). Результатом дослідження стало обґрунтування положень , що характеризують застосування адміністративного стягнення з урахуванням його ознак, особливостей, які властиві для адміністративного штрафу як міри покарання. Висновком дослідження стала аргументація позиції автора щодо необхідності більш широкого у межах чинного законодавства, застосування адміністративного стягнення у вигляді штрафу за вчинення адміністративного правопорушення.

Ключові слова: адміністративне покарання, адміністративно-правове регулювання, адміністративні санкції, адміністративний штраф, категорії адміністративного штрафу, класифікація адміністративного штрафу, норми адміністративного права, суб'єкти владних повноважень.