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LEGAL NATURE OF THE ADMINISTRATIVE TORT LAW OF UKRAINE

The article deals with the legal nature of the administrative tort law of Ukraine. To that end, studied the signs of the administrative tort. The author distinguishes between a posteriori and a priori signs of administrative tort. Posteriori signs are fixed by law. These features — the truth of facts. They are the same for any behavioral act. A priori characterize the individual behavioral act. They are the result of the analysis of a particular behavioral act. These features — the truth of logic. They allow to characterize behavioral act as an administrative tort. The article deals with their classification according to the degree of public danger; the nature of the damage caused; guilty subjects; structural features; regulation in the legislation. The author proves that a set of a priori evidence of individual behavioral act is a system.

Key words: legal nature, administrative tort, signs of a posteriori, the truth of facts, signs of a priori, the truth of logic, individual behavioral act, signs of administrative tort, guilty subjects, structural features, regulation in the legislation.

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An understanding branch of law gives the knowledge of the characteristics of social relations, that the industry is regulated. The action legal norm transforms the social relations in the legal relationship. The totality of these relations constitutes the subject branch of law.

Present-day Ukrainian administrative law fundamentally requires definition of its subject-matter. Bringing it to correspondence with up-to-date realties will become an important step towards reformation of administrative-legal institutions and bringing white light to their role in evolution of the processes of formation of law-bound state and development of civil society.

For the modern Ukrainian administrative law correctness of the subject branch of law is of fundamental importance. Its establishment in line with modern realities is an important step towards the reconstruction of the administrative and legal institutions and objective coverage of their role in the evolution of the formation of the rule of law and civil society.

In the Soviet period the of the subject branch of administrative law officially recognized relationship in the field of public administration. The evolution of administrative law in Ukraine under the influence of the standards of the European administrative space formed the

subject of a new concept of administrative law [1].

Subject-matter of administrative law includes four types of relations. First, these are relations of public administration that involve the whole aggregate of administerial relations. Secondly, these are relations occurring in the process of delivery of justice in the form of administrative legal proceedings. These are relations of authority carriers' responsibility for wrong acts. Thirdly, these are relations of responsibility for violation of rules in effect, or relations of administrative responsibility (administrative-delict relations). Fourthly, these are relations occurring in the result of individual addresses to public administration bodies for the purpose of realization of individuals' rights (relations of administrative service). Fifth, it is relations of indirect authority (occurring in the result of mutual observance of administrative rules by subjects who are not bound by powers and authority) [2, p. 67].

This article examines the legal nature of the third kind of relationship: the relationship of administrative responsibility (administrative and tort relations).

The doctrine of administrative offense is a major component in the concept of an administrative tort law. Principal importance for determining the role of an administrative offense in aggregate of all the actions prohibited by law, determines the fact of fixation in the Constitution of Ukraine legal liability for such acts [3, c. 84–90]. Accordingly, the study of administrative offenses is an important task of science of administrative law. Fundamental theoretical research has differentiated attributes of administrative tort on a posteriori and a priori.

A posteriori signs are fixed by law. These features — the truth of facts. They are the same for any behavioral act. A priori characterize the individual behavioral act. They are the result of the analysis of a particular behavioral act. These features — the truth of logic. They allow to characterize behavioral act as an administrative tort.

The doctrine of the attributes of an administrative tort has important theoretical and practical significance. Firstly, it facilitates identification and classification of the most significant features of antisocial acts, helps in establishment of fair sanctions; secondly, it assists law enforcement authorities to properly qualify offenses, thus setting adequate influence measures; thirdly, makes possible to understand the law, support training of lawyers, and promotes legal culture of citizens [4].

Generally, the combination of elements is the description of act in the law. Description of an action not yet committed, but only possible or supposed. In practice, only legally significant features characterizing act as an offense, goes down for such a description. They have been named the structural features. The main source of this description is the Code of Ukraine on Administrative Offences (hereinafter the CAO) [5]. Elements features may be permanent and variable.

Permanent features received general recognition in legislation, legal theory, and social practice. For example, «age of administrative responsibility», «witness», «vehicle», «pedestrian», «firearm», «afforestation», «intellectual property», «building», «official» and so on.

Variable features can change their meaning quite often. By rule, these features are contained in regulations.

For example, the law established the responsibility for violation of infringement of sanitary rules (Art. 42) [6] Infringement of rules of trade by alcoholic drinks (Art. 156), public welfare (article. 152), holding dogs and cats (Art. 154), health facilities and lines of communication (Art. 147) and so on. These rules can be set, changed, canceled by the relevant authority, what results in changes of the respective compositions.

Assessment features are widely used in description of essential elements. The content of such features in statute is not clearly defined, thus the question of their presence or absence is under law enforcement officials consideration.

Therefore, theoretical studies play an important role in revealing of their content. Such features, as «gross violation» (Articles 85, 108), «Arbitrariness» (Article 186), «emergency situation» (Articles 127, 140), «provision of necessary conditions for living, training and education» (Article 184), «prodigal expenditure» (Articles 60, 98), «mismanagement maintenance» (Article 150), «mismanagement» (Art. 164-2), «devices similar to markings», «objects that contribute crowded birds hazardous to aircraft flight «(Art. 111), «insulting molestation to citizens», «similar actions» (Article 173) states that «offends human dignity and public morality «(Article 178), «persistent disobedience» (Article 185), «willful evasion» (Articles 185-3, 185-4), «reasonable excuses» (Article 210) and so on.

Features could be distinguished by the degree of generalization [3]. In this case, it is referred to the following features: a) general; b) generic or specific; d) specific or individual.

Common characteristics for all essential elements (illegality, sanity, fault etc.).

Generic (specific) are typical for the group of elements. For example, essential elements, that describe violations in the field of standardization, product quality, metrology and certification. Social relationships that develop in this area are the specific object of encreachments in this case.

Specific (individual) describes separate specific elements «expansion of inveracious hearings» (Art. 173), «stowaway travel» (Art. 135), «prostitution» (Art. 181-1), «silence in public places» (Art. 182), «narcotic substances in small sizes» (Art. 44), «organization of street procession» (Art. 185-1),» contempt of court» (Art. 185-3).

The Code of Ukraine on Administrative Offences: Official Bulletin of the Verkhovna Rada of Ukrainian SSR, 1984, annex to No. 51, Article 1122 (Brought into force by Resolution of the Verkhovna Rada of Ukrainian RSR, 1984, annex to No. 51, Article 1122.

The source of these articles is the Code of Ukraine on Administrative Offences, unless otherwise is noted.

Essential elements of administrative offenses classifies depending on: 1) the degree of public danger — on basic and qualified; 2) the nature of damage — on material and formal; 3) the subject of an offense — on private and official (service); 4) the structure — on alternative and definite; 5) the design features — on descriptive and blanket (referential) [7].

Let's examine characteristics of each type of essential elements of administrative offenses [8].

1. Basic and qualifying elements

Recognizing this, or that act as an administrative offense and imposing sanctions for violation, the legislator considers that the degree of public danger of similar offences may be different.

Thus, infringement by drivers of vehicles of railway crossings rules characterized by greater public danger while providing services for passengers or dangerous cargo transportation (Art. 123).

Due to this fact in several cases legislator, considers several essential elements of administrative offenses, belong to the same type of actions. These elements vary the degree of public danger. Any additional features called qualifying are indicating a higher degree of danger.

Thus, features may be basic, such as occuring in every offence of commitment of offence and qualifying, such as supplements the basic features.

Basic features in their turn form the so-called general essential element of an offence. If necessary, legislator complements essential elements with qualifying features, thus an act can be qualified under another article that imposes stricter punishment. Essential elements, with such features are named qualifying.

In the Code may appear such a qualifying feature as replication (Articles 44-2, 95, 104), an emergency situation (Articles 122, 127, 140), the presence or possibility of harmful material consequences (Articles 128-1, 140), state of drunkenness (Art. 127), leaving of a place of road traffic accident (Art. 122-4), a gross violation of rules (Art. 85), act committed by official (Articles 93, 95-1, 107-1).

2. Material and formal elements

Material essential elements contain such features, as A) occurrence of harmful material consequences caused by committed act. For example, forest damage by sewage, caused its shrinkage (Art. 72), infringement of requirements of fire safety in woods (Art. 77), abduction of other's property (Art. 51); B) describes action that necessarily leads to harmful effects, despite they are not identified by the law: breach of law of a state ownership on bowels (Art. 47); excess of limits and specifications of use of natural resources (Art. 91-2); prodigal expenditure of fuel and energy resources (Art. 98); sale of products in violation of the requirements for health warnings on tobacco products (Article 168-2).

To the formal (conditional term) belongs such elements that have no features of harmful material consequences. For example, residing without registration of location (Art. 197), infringement of a frontier regime (Art. 202), illegal withdrawal of passports in mortgage (Art. 201).

Completing the description of material and formal essential elements of administrative offenses is important to note, that the criminal law concludes slightly different meaning in their concepts. Under the material elements herein understands those in which the end of crime is associated with the occurrence of socially dangerous consequences (a person can be attracted for murder only if in result of his actions someone's death occurred); formal elements are those, where the occurrence of socially dangerous

consequences is not a feature, i.e. recognition of crime with such essential elements requires only the establishment that the committed act is prohibited by the law. These crimes include, for example, illegal possession of firearms.

3. Service and private elements

Essential elements of administrative offenses are divided into private and service (civil), depending on the subject of the offense, whether is he/she a civilian citizen or an official (Articles 93, 96, 99). The main characteristic of service offence is that the unlawful act should be committed through the service action [9, p. 32–34]. According to the Article 14 of the CAO, officials are subject to administrative responsibility for noncompliance with established rules, resulting from the performance of his/her official duties. Thus, according to the Article 185-2 (Creation of conditions for the organization and conduct with infringement of the established order of assembly, meetings, street campaigns or demonstrations) establishes administrative liability for officials if they provide premises, transport, facilities for conduct with infringement of the established order of assembly, meetings, street campaigns or demonstrations.

4. Definite and alternative elements

Division of essential elements on definite and alternative has a great practical value. Definite elements describe features of one act within the frameworks of one article of a regulation. For example, finishing of a minor to a state of intoxication (Art. 180), minor hooliganism (Art. 173), prostitution (Art. 181-1), and trade from hands in unstated places (Art.160).

Alternative elements describe several actions within the frameworks of one Article of regulation. Herewith, an act considered as an offence if one, several (or even all) actions have been committed. For example, Art.189-1 of the CAO stipulates that a breach of earlier approved: — norms of extraction, — an established accounting procedure, as well as failure of proper storage conditions of extracted precious metals and precious stones, precious stones of organogenic origin and semi-precious stones, established account procedure as well as violation of all specified above by the extraction subject should be considered as an offence.

As a separate offence it should be considered separately a breach of the established account procedure, violation of the established order of registration, failure to provide proper storage conditions for extracted precious metals, and violation of all the specified procedures together. Additionally, in this article we find an alternative offence items: it refers to rules concerning precious metals, precious stones, stones of organogenic origin, semi-precious stones.

Alternative elements are contained in Articles 171 «Infringement of rules of manufacture, repair, sale and hire of means of technical equipment», 173-2 «violence over family default of the protective instruction» 177-2 «Manufacturing, purchase, storage or realization of the falsified alcoholic drinks or tobacco products», 186-3» Infringement of the order of representation or use of the given State statistical supervision» 189-2 «Infringement of rules of manufacturing and the order of the account and storage of seals and stamps, and as manufacturing, import,

realization and uses of self-type-setting press» and others.

Thus, in such cases essential elements are the commitment of various actions, named in the law. At the same time, for performance of essential elements it doesn't matter if one, two, or all actions together have been committed. It is important to note, that a person is not committing a new offense if he/she consistently performs all actions named in the law, for example, initially illegal purchase, than storage and transfer of narcotic substances (Art. 44 of the CAO). If a citizen drinks alcohol beverages in public place and after appears in public place in a state of intoxication, that offends human dignity and public morality, in this case he/she commits one, but not two offenses (Art. 178 of the CAO). Separate actions of the same person, both manufacturing and selling of the forbidden instruments of getting objects of animal or flora, compose essential elements of one offence (Art. 85-1 of the CAO).

Thus, if the definite essential elements name those common features they consist of, then instead the alternative elements have several features variants. Frequently this characteristic of features description is caused by the desire of legislator to avoid general formulation, as well as to reveal the content of these features and specify it. And in some cases, the design of the alternative features is linked to the desire of authorities to save normative material and, instead of several articles creation, to create a single, but broader in its scope.

5. Descriptive and blanket (referential) elements

Descriptive essential elements that reveal the content and nature of an act in the full scope are recognized as an administrative offense. For example, minor hooliganism (Art. 173), drinking beer, alcohol, alcoholic beverages on manufacturing (Art. 179), an inveracious call of special services (Art. 183), intentional damage of passport (Art. 198). Article with the descriptive essential elements contains all of the three elements of legal norms (hypothesis, disposition and sanction). In this case, the logical structure of standards of law coincides with structure of an article of a legal act. The main purpose of such a development of normative materials is to promote individuals that apply for a provision with the possibility to find in appropriate article all necessary structural elements.

Blanket (or referential) elements contain a reference to related regulatory act that is necessary for establishment, if there is a lack of corpus delicti in actions or not. There are three types of such references known.

First, it refers to a specific article of the same regulation, containing missing data of legal norms. For example, considering nature of committed offense and offender's personality to specified persons (except persons who committed an offense under Article 185 measures of influence defined by Article 13 of CAO can be applied; penalties for an offense covered by Article 164-14, could be imposed within three months, from the day it was first detected Art. 38; small-sized vessels in the first, third, fourth and fifth paragraphs of an Article 116, second paragraph of an Article 116-1, third paragraph of Article 116-2, first paragraph of an Article 117, third paragraph of Article 118, paragraph three of Article 129, paragraph five of Article 130 of this

Code should be understood as a self-propelled vessels with the main engines power less than 75 hp (Art.116); State inspectors of Agriculture sphere have the right to constitute reports on administrative violations, within the jurisdiction of the authorities referred to in Articles 222–244-19 (Art. 255); things and documents which are tools or direct object of an offense and items that were found during detention, personal inspection or required inspection, subject to withdrawal by officials specified in articles 234-1, 234-2, 244-4, 262 and 264 (Art. 265); in the circumstances referred to in paragraphs 5, 6 i 9 Art. 247, agency (official) that ordered the imposition of administrative penalties, terminates its execution (Art. 302).

Second, it refers to another regulation. For example, infringement of rules of protection of electric networks (Art. 99); excess by drivers of vehicles of speed of movement, default of signals of regulation of traffic, infringement of rules of transportation of people and other traffic rules (Art. 122); infringement of Rules of protection of the main pipelines (Art. 138); failure of chief and other officials of State authorities, institutions and organizations, including the branches of the National Bank of Ukraine, commercial banks and other financial and credit institutions, the legal requirements of officials of the income and charges referred to in sub-paragraphs 20.1.3, 20.1.24, 20.130, 1/20/31 of paragraph 20.1 of Art. 20 of the Tax Code of Ukraine (Art. 163-3); violation by individual of statutory restrictions on business or other paid activities (Art. 172-4); violation of the rules of administrative supervision (Art. 187).

Third, it refers to several different regulations. For instance, infringement of conditions and rules of realization of the international automobile transportation of passengers and cargo (Art. 133-2); infringement of rules, norms and standards at the maintenance of highways and roads (Art. 140); infringement of rules of an accomplishment of territories of cities and other settlements (Art. 152); infringement of the legislation of budgetary system of Ukraine, purchase in advance of the goods, works and services for public funds (Art. 164-12); release and realization of production which does not meet the requirements of standards, non-standard production, certificates of compliance, regulations and samples (standards) for safety, quality, completeness and packaging (Art. 167).

In such cases, essential elements are «collected» from several different independent offences. This is the violation of various acts, regulations and requirements. Using formal approach in this case it is not difficult to indicate several offenses. For example, the infringement of the established rules and mode of operation of installations and manufactures from processing and recycling of waste (Art. 82). Moreover, legislator considers all these acts, as one offense. The basis of this approach is the likeness of these acts, so they are identical and have one and the same legal features of an essential element.

It should be also noted, that in one blanket construction of an essential element of an offence, a number of different references types could be combined. As an example Article 125 «Other infringements of traffic rules», establishes violations of traffic rules, except foreseen by Articles 121-128, part first and part second

of Art. 129, Articles 139, 140 of the CAO. Article 212-10, establishes restrictions on campaigning: campaigning person, whose participation in the election campaign is prohibited by law, campaigning beyond the terms established by law, or in places prohibited by law, campaigning in ways and means that are contrary to the Constitution and Laws of Ukraine, or other breach of statutory restrictions on campaigning, except foreseen by Articles 212-9, 212-13 and 212-14 of the Code.

In addition to these, the classification base of essential elements of administrative offences could be amended with other criteria. According to this feature of the subjective side, as a form of fault, offenses can be divided into intentional and reckless, and on the basis of motives into acquisitive and altruistic etc.

The foregoing gives rise to the conclusion that the legal nature of administrative delicts (administrative tort, administrative offenses) in the administrative law of Ukraine is the criminal law.

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Колпаков В. Правова природа делікту в адміністративному праві України

У статті розглянуто правову природу делікту в адміністративному праві України. З цією метою досліджено його ознаки. Автор розмежовує апостеріорні та апріорні ознаки адміністративного проступку. Апостеріорні ознаки (істина факту) єдині для будь-якого діяння і зафіксовані в законі. Апріорні ознаки (істина логіки) характеризують конкретне діяння і є результатом його аналізу. Їх сукупність знаходить вираз у категорії склад адміністративного проступку. Склад — це опис діяння в законі, для якого використовуються лише юридично значущі ознаки. Вони отримали назву конструктивних ознак. Різні властивості таких ознак дозволяють поділити склади на декілька видів. Залежно від ступеня суспільної небезпеки виділяють склади основні та кваліфіковані, залежно від характеру шкоди — матеріальні та формальні, від суб'єкта проступку — особисті та службові (посадові), від структури — однозначні й альтернативні. від особливості конструкції — описові та бланкетні (відсильні). За ступенем суспільної небезпеки детермінуються діяння одного типу, але різного рівня небезпечності. На вищий ступінь небезпеки вказують додаткові ознаки, які прийнято називати кваліфікуючими. Таким чином, ознаки можуть бути основними,тобто такими, що мають місце в кожному випадку вчинення проступку, і кваліфікуючими, тобто такими, що доповнюють основні. До матеріальних належать склади, у яких міститься така ознака, як настання шкідливих матеріальних наслідків діяння. До формальних належать склади, у яких немає ознаки настання шкідливих матеріальних наслідків. Поділ на особисті та службові (посадові) здійснюється залежно від того, хто є суб'єктом проступку — громадянин чи посадова особа. Однозначні склади описують ознаки одного діяння в межах однієї статті нормативного акта. Альтернативні склади описують кілька дій у межах однієї статті нормативного акта. Описові склади цілком розкривають зміст і сутність діяння. Бланкетні (або відсильні) склади містять відсилання до спорідненого нормативного матеріалу. Обґрунтовано системність сукупності апріорних ознак адміністративного проступку.

Ключові слова: правова природа, адміністративний проступок, апостеріорні ознаки, істина факту, апріорні ознаки, істина логіки, діяння, ознаки адміністративного проступку, винні суб'єкти, структурні особливості, регламентація законом.

Колпаков В. Правовая природа деликта в административном праве Украины

В статье рассмотрена правовая природа деликта в административном праве Украины. С этой целью исследованы его признаки. Автор разграничивает апостериорные и априорные признаки административного проступка. Апостериорные признаки (истина факта) едины для любого деяния и зафиксированы в законе. Априорные признаки (истина логики) характеризуют конкретное деяние и являются результатом его анализа. Именно они позволяют квалифицировать деяние как административный проступок. В статье представлена классификация априорных признаков по степени общественной опасности, характеру причиненного вреда, субъектам проступка, структурным особенностям, регламентации в законодательстве. Обоснована системность совокупности априорных признаков административного проступка.

Ключевые слова: правовая природа, административный проступок, апостериорные признаки, истина факта, априорные признаки, истина логики, деяние, признаки административного проступка, виновные субъекты, структурные особенности, регламентация законом.

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