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COURT AS A TRIBUNAL, AUTHORIZED TO TRY THE CASES ABOUT ADMINISTRATIVE INFRACTIONS

The most important issues of the functioning of judicial authority in cases of administrative offenses are researched and analyzed in detail. The basic approach to the resolution of legal and reasoned decision of the court in cases of administrative offenses is noted.

Keywords: *administrative offense, jurisdiction, judicial procedure, cases of administrative offenses, court decision on administrative violation.*

. An important condition for ensuring the rights and freedoms of citizens in Ukraine as a sovereign and independent, democratic, social and legal State is the functioning of the judicial system. The state of Justice in Ukraine is one of the criteria for evaluation of the level of democracy and the rule of law. World experience proves that the legal State can exist only if the country is strong, independent and authoritative judicial power. Appointment of the judiciary is to strengthen the prestige of the law, comprehensively promote the approval by the democratic principles of the State, its stabilization, encourage the establishment of high legal culture. The constant aspiration of the Ukrainian State to carry out judicial and legal reform, improve the national legislation, including administrative, make adjustments in the development of the function of Justice.

For a dozen years, the judicial system was gradually reformed. Lawmaking strive tmake justice an independent, impartial and fair, while generating and implementing many innovations. However, emphasizing some aspects, lawmakers like not to notice other equally important issues.

Today, the share of citizens, who do not trust the work of the Court and do not support his activities, reached 55.5%, according to polls conducted by the respondents of the Ukrainian Centre for economic and political studies of O. Razumkov Centre. It is not

an exception the justice in cases about administrative offences in which for years independence preserved old ones and accumulated new problems [1].

The purpose of our paper is an analysis of judicial practice in cases of administrative offences and in the major problems of the Court as an organ which subordinate cases about administrative offences. The organs entitled to consider and take decisions in the cases of administrative offences are listed in art. 213 of the Code of Administrative Offences.

According to art. 213 the Code of Administrative Offences are examined: administrative commissions of the Executive Committees of village, township, city councils; executive committees of township, city councils; district in the city, urban or city regional by the courts (judges), and in cases, local administrative and economic courts, appeal courts, higher specialized courts and the Supreme Court of Ukraine; the bodies of internal affairs bodies, state inspections and other bodies (officials) [2]. Because litigation matters referred to the jurisdiction of the courts (art. 221 of the Code of Administrative Offences), is one of the major issues in administrative tort proceedings – about the guilt of the person who is attracted to administrative responsibility, and imposing on it an administrative penalty or measure impact, this consideration can rightly be recognized the central and most important stage of the administrative process for tort cases on administrative offences, prescribed by law.

The issue of judicial activity in cases of administrative offences pay attention the following domestic and foreign scientists as: G. Korchevny, O. Kuzmenko, Y. Lamonov, M. Maslennìkov, O. Mykolenko, L. Moskvich, G. Perepeliuk, V. Skavronìk and others. At the same time was generally accepted approach to the defining of the administrative tort of the Court in the legal literature. The study also acquires relevance, gives the adoption of the new Bill of Ukraine "About Judiciary and Status of Judges" [3]. According to M. Skavronìk, in administrative proceedings, the Court performs primarily only one stage – the stage of consideration of a case, and only in exceptional cases – all the stages of the proceedings (for example, cases of disrespect to the Court, where the Court himself violates the deal, conducts an administrative investigation, considering it and provides the execution of a court order) [4, 9]. “About the Affairs about

Administrative Offences" confirms the logical and psychological basis of administrative and jurisdical process, clarity, quality, which contributes to the implementation of the principle of procedural economy. This is due to the fact that all the procedural steps on the stage of the administrative jurisdical process are exclusively legal nature ", says the researcher [4, 9].

Today the courts occupy a special place in the system of administrative and jurisdictional authorities. District, district in the city, urban courts (the judge) considers the case of the most serious administrative misconduct, which provided the most severe administrative charges and penalties, which are used exclusively in the courts, is fine in an elevated rate, paid retrieval vehicle confiscation, corrective work and administrative arrest, as well as the cases of administrative offences committed by persons aged sixteen to eighteen years. Judicial review is an independent study by the Court all necessary circumstances, cases of administrative misconduct according to the specific circumstances of the subject of evidence, the study of which the Court is not bound by the findings of the administrative investigation and is not limited in the actions to the actual circumstances of the case. The judge is obliged to comprehensively, fully and objectively examine all the circumstances of the case and give them proper legal assessment, which may not necessarily those with the assessment officer that amounted to a Protocol on Administrative Offences.

In the judicial proceedings and administrative tort process most researchers distinguish four stages [5, p. 419; 6, pp. 6–8; 7, p. 194], that are interconnected and along with the resolution of common tasks of the proceedings on its own specific objectives [8, p. 194]. These include: 1) receipt and preparation of cases to trial; 2) consideration on the merits (V. Kolpakov calls the stage of hearing the case [5, p. 421], O. Mykolenko – an analysis of collected materials, the circumstances of the case [7, s. 195]); 3) adoption of resolutions (decisions); 4) making the decision (decision) to the attention of interested persons [6, p. 6–8]. Last phase of selection as an independent is controversial in the theory of administrative tort process [7, p. 195], because differentiation stages of judicial proceedings used subjective criteria.

As it is noted, the practice of solving courts cases about administrative offences suggests that in the work of the Court there is a mass of deficiencies that affect the solution of objective and balanced decision. In art. 256 of the Code of Administrative Offences are defined several requirements for the contents of the Protocol on Administrative Offences, however, are rare facts of improper clearance to administrative materials employees of internal affairs bodies. There are the times when, due to illegal requirements of the militia is actually due to the absence in the works of persons with administrative delinquency protocols consist, unreasonably violated constitutional rights and freedoms of the individuals. Instead, the local courts on the basis of these materials brought unjustified ruling that pulls their abolition. This practice is inadmissible and superficial, because the requirements of a militia employee and disposal – act legally snares an order that expressed an incontestable manner – have to be legally justified.

Protocols on administrative offences consist mainly in compliance with the requirements of art. 255 of the Code of Administrative Offences authorized to entities, however, detected cases of filing protocol on administrative offense unathorized for individuals, including the employees of the Tax Police, who do not have the right to formulate a Protocol, which entail closing the proceedings. Quite often, employees of internal affairs bodies badly designed the administrative materials: can't tell the post, surname, name, patronymic of the person who made the Protocol; do not specify any information about the identity of the infringer, such as the address that in the future it makes notification of time and place consideration of the case by the Court, the date of birth of the offender, that eliminates the opportunity to make a correct conclusion about whether the subject of age face administrative responsibility (for example, minor); missing information about bringing before the person responsible; do not indicate marital status offender and his dependents; the identity of offender not to certify your Passport; do not specify the place of committing an administrative offence and incompletely or not at all from his essence; not always elaborate form of committing offences; sometimes the refusal of persons who committed offences, from the signing of the Protocol does not certify signatures of witnesses; do not specify names, addresses of witnesses and victims (if indicates, then often the witnesses are police officers); no explanation of the offender

and a link to a normative act, which stipulates liability for committed offences; missing documents confirming medical examination of persons, although the Protocol and we can see that the offender was in a state of alcoholic intoxication; Protocol on Administrative Offences contains fixes that are inadmissible, etc.

In addition, the courts do not always react to the facts of improper clearance to administrative materials bodies of Internal Affairs, which affects the quality of proceedings. In most cases to the requirements of Art. 281 of the Code of Administrative Offences protocols courtroom is not maintained, so the cases are missing: information about the turnout of people who participated in the proceedings by the Court; explanation of the application of these persons and the results of their examination; information about the documents and the evidence examined by the Court when considering cases; information about the announcement of accepted orders and explain the order of their appeal. According to the explanations contained in paragraph 17 of the resolution of the plenum of the Supreme Court of Ukraine dated 26 June 1992 No. 8 "About the Application by the Courts of Legislation" which provides for responsibility for an attack on the life, health, dignity and property of judges and employees of law enforcement bodies, judges are obliged to check the correctness of compiling a Protocol on Administrative Offences, the availability of data that characterize the offender, including, or drew it to administrative responsibility throughout the year. In the absence of the data material refundable organ of Internal Affairs for the proper clearance.

In addition, courts do not always react to the facts of improper clearance to administrative materials bodies of Internal Affairs, which affect the quality of proceedings. In most cases to the requirements of art. 281 of the Code of Administrative Offences protocols courtroom is not maintained, so the cases are missing: information about the turnout of people who participated in the proceedings by the Court; explanation of the application of these persons and the results of their examination; information about the documents and the evidence examined by the Court when considering cases; information about the announcement of accepted orders and explain the order of their appeal. According to the explanations contained in paragraph 17 of the resolution of the Plenum of the Supreme Court of Ukraine dated 26 June 1992 No. 8 "On the Application

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Circumstances that are important for the proper solution of the case, are set by the Protocol on Administrative Offences, the explanations of the person sued to administrative responsibility, victims, witnesses, conclusion of expert, material evidence, the Protocol about deleting things and documents, as well as other documents (art. 251 of the Code of Administrative Offences). Some courts do not always properly check whether it is contained in administrative proceedings the evidence of culpability in committing crimes, sufficient for the consideration of the case in court. Often evidence of the Court, it is laid down in the regulation on administrative offences, does not correspond to the actual facts of the case as well as the other document.

Sometimes the protocols on administrative violations were unduly as a result of illegal requirements or orders, the police violated constitutional rights and freedoms of individuals. In such cases, on the basis of clause 1 of article. 247 of the Code of Administrative Offences the courts quite rightly also closed proceedings. Sometimes the court decisions have not motivated, duplicated circumstances committed acts that superficially outlined in the Protocol on Administrative Offences, provides an explanation of the offender, the witnesses, not defending the prove of the fault of the offender or is limited to a list of unanalized documents not provided legal assessment of their actions. So, in accordance with the requirements of art. 283 of the Code of Administrative Offences the Decree of the Judge in the case of administrative offence should contain: the name of the Court and the name and initials of the judge who issued the order, the date of consideration of the case; information about the person against whom the right is considered; explanation of the circumstances was set out in the consideration of the case; specify a normative act, which provides for responsibility for this administrative offence; taken in the decision.

However, the judges of the local courts when making decisions in cases about administrative offences do not always adhere to the requirements of the law. Often these disorders are caused by the fact that the case dealt with in the absence of individuals who are attracted to administrative responsibility, because they for some reason did not appear in court. It happens that the offenders are not properly informed about the place and the time of consideration of the case by the Court. Therefore the Court has no way in court to clarify the data about the identity of the offender, correctly set the actual circumstances of the case, and then give the correct legal qualifications upon guilty of misdemeanor [9]. The judge ruling on the recognition of persons guilty of committing a misdemeanor must be grounded enough and undeniable evidence (the Protocol on Administrative Offences, the explanation is the person called to justice, witnesses, expert findings, physical evidence, etc.). But in many cases the ordinances are not given an explanation and the relation to committed offences of the person called to responsibility, explanation of witnesses and other evidence of the guilt of the offender, reasoning and motivated conclusions of the Court, but only one sentence indicated the signs of offences.

Some ordinances on confirmation of committing offences court refers only to a protocol of administrative offence or that the circumstances of committing the offence supported by materials, while they have one protocol. Sometimes in ordinances courts refer to evidence that are in violation of a law. In particular, employees of the internal affairs bodies which make up the protocols in cases of violations of traffic rules (approved by the Cabinet of Ministers of Ukraine from October 10, 2001 No. 1306) not followed by the requirements of art. 256 of the Code of Administrative Offences regarding the content of the Protocol on Administrative Offences: the false note of the place, time and circumstances of committing an administrative offence, does not indicate the addresses of the witnesses and victims, and other information necessary for solving the case, allow the other deficiencies. But the judge in the Ordinances also make mistakes, repeating the content of such Protocol or referring to it as the proof. In some Ordinances on bringing people to administrative responsibility for violation of traffic rules do not set points of these regulations. The requirement of art. 283 of the Code of Administrative Offences concerning the compulsory indication of the regulation regulation that provides for

liability for such an administrative offence is aimed at ensuring the legality of decisions being taken, and eliminates the ambiguity of an interpretation of administrative acts for committing the person imposed administrative penalties. But sometimes when the presentation of the dissolutive part of the resolution of the judges did not indicate an article of the Code of Administrative Offences, by which the offender was brought to administrative responsibility.

Findings of the Court in some Ordinances substantially contradict Decree in the case of the decision, that is not valid [10]. In accordance with part 4. 283 of the Code of Administrative Offences in the operative part of the judgment in cases about administrative offences in addition to the decision should be listed as resolved the issue about deleting things or documents. But in resolutions about imposing of administrative penalty in the form of a penalty of forfeiture of the subject violations the judge does not always indicate the cost of the item that you want to recover in the event of his absence. Such a statement of the dissolving part of the Ordinance further difficulties caused during its performance. During the imposition of administrative penalties, the courts do not always adhere to the principle of the individualization of penalties, pinned in the art. 33 of the Code of Administrative Offences, did not take into account the nature of the committed offences, the identity of the offender (including whether drew earlier to criminal or administrative responsibility), the degree of his guilt, property status, circumstances that mitigate or aggravate responsibility. Not always is the requirement concerning the relationship between gravity and the West committed misdemeanor state coercion applied to a person (administrative charge).

Sometimes the courts closed proceedings in cases involving the uni offences without regard to the fact that actions of offenders constitute a public danger, causing harm to the public or State interests, etc. [11]. A person liable to the imposition of administrative penalties becomes impossible of course deadlines set out in art. 38 the Code of Administrative Offences. So, if you took two months from the date of Commission of offence, then it is subject to closure on the basis of part 1. 38, p. 7. 247 the Code of Administrative Offences. Terms of imposing administrative penalties occasionally due to violation of the Court article 280 of the Code of Administrative

Offences, in particular, through the obscurity of all the circumstances of the case that have an importance for the correct solution. Sometimes the proceedings close because it was a long time in court, but was considered when expired imposing administrative penalties.

. In addition, the proceedings in the cases involving the flow of imposing administrative penalties clozed by the courts without the installation and grounding fault of the offender. Administrative materials are not always properly documented bodies of Internal Affairs, quite often do not contain sufficient evidence of culpability, in particular, study the legality requirements police, etc. Instead, the courts, as a result of violation of the requirements for the timely, comprehensive, complete and objective clarification of the circumstances of each case does not always react to these facts [12]. Sometimes courts incompletely examined circumstances, subject to clarifying when considering cases on administrative offences, in particular, did not investigate whether administrative offences were committed. Sometimes in the courts of it was allowed one-sided score available in the case of evidence of guilt, that pulls the wrong skills. While the purpose of an administrative penalty is not always the courts to fully take into account the personality of the offender, the extent of his guilt, the nature of the committed offence, circumstances that mitigate or aggravating responsibility. The violation of the requirements of art. 33 of the Code of Administrative Offences imposed administrative penalties not stipulated the sanction of an incriminated article.

Nowadays the obvious seems to be the fact that nearly every amendment to the legislation causes a range of derived questions, arising, stimulate the activity of a legal opinion. It concerns the laws relating to the functioning of the judiciary as well. Status of the quality of preparing and processing of court decisions in criminal cases and cases of administrative offences was analyzed with the aim of improving the activity of the courts and eliminate the causes of violation of legislation when decrees of judgments, the establishment of the principle of legality and residualance. The appellate courts should constantly be training local and appeal courts and organize seminars with the aim of improving the compilation and execution of judicial decisions, improving their quality. It is important to eliminate violations of the law during the operation of the Court as an organ which subordinate cases about administrative offences, bringing the courts

regulations for this category and increase the efficiency of proceedings, taking appropriate steps to remedy the deficiencies that contribute to increasing the level of Justice.

Quality cases about administrative offences is one of the indicators of the administration of Justice. Analyzing the problems of functioning of "House of the Themis", it should be emphasized that the above mentioned problems are caused by a superficial approach to address the issue through overload with work of the Court. Administrative materials are entering, there is no proper evaluation, but judge seeks speedy resolution to the case, because along with this category of affairs are those which require greater effort. In addition, the judge did not have the professional knowledge required for the solution of Affairs about administrative offences. Therefore, we propose to amend the building of the judiciary in Ukraine through the creation of special courts, which would be competent in handling affairs about administrative offences, not supposing annoying mistakes when making decisions in this category of cases, set to local courts and strengthened the authority of the judiciary.

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