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Administrative-Delict Law Reform in Ukraine: Main Issues and Directions

1. Introduction

Almost two decades ago the administrative reform was proclaimed in Ukraine. Among numerous organizational measures this reform declared the adoption of new Administrative-Delict Code, based on the ideas of supremacy of law, justice, humanism, inevitability of punishment for delict, and economy of repressive measures.² Under various objective measurements these aims have not been achieved yet. Because of the lack of establishment's will and without consolidated academic approach, all the steps in this direction were useless. During the last ten years at least three drafts of new Administrative-Delict Code were submitted to the general public. But none of them got wide recognition support. In fact, the question of development and adopting the new Code remains unresolved.

The real prospects of a solution appeared only recently, in the context of final phase of another significant reform – the reform of Ukrainian Criminal Justice. Being in the center of public and government attention, Criminal Justice reform takes place very dynamically. Adopted within it were: The Criminal Procedural Code of Ukraine, the Act on free legal assistance, the Act on the legal profession and advocacy and a wide range of sub-legislative acts, aimed at the improvement of national Criminal Justice. And the next long range goal outlined by the President, the Cabinet of Ministers, and the National Security and Defense Council of Ukraine is the adoption of the Code on criminal offences, which will provide for an individual's responsibility for minor criminal delicts.³

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² *Pro zahody shhodo vprovadzhennja Koncepcii' administratyvnoi' reformy v Ukraïni*, Ukaz Prezydenta Ukraïny, vid 22 lyp. 1998 r. no. 810/98, "Oficijnyj visnyk Ukraïny" 1998, no. 21, p. 32.

³ *Pro rishennja Rady nacional'noi' bezpeky i oborony Ukraïny*, Ukaz Prezydenta Ukraïny vid 15 ljutogo 2008 roku, *Pro hid reformuvannja systemy kryminal'noi' justycii' ta pravoohoronnyh organiv*, vid 8 kvit. 2008 no. 311/2008, "Oficijnyj visnyk Ukraïny" 2008

This goal is valid due to objective reasons. Despite continuous updating of criminal law, from the point of view of its conceptual background, it is still in the Soviet past, where legal consequences of minor offences haunt a person for many years, and such a person wears the stigma of a “criminal” for the rest of their life. In this regard, there is a need to humanize the national criminal legislation by limiting the scope of the strictest punishments (such as confiscation, imprisonment, etc.), by removing convictions for minor delicts, by simplification of judicial review of the cases, and in distant future – by transferring such cases to the jurisdiction of magistrates.

But even the first steps in this direction showed the impossibility of achieving this aim at the branch (criminal law) level. Due to historical peculiarities of national administrative-delict legislation, it is that legislation (and not criminal law) that determines the responsibility for considerable part of minor criminal delicts, such as: pilferage (Article 51 of the Code of Ukraine on administrative offences); disorderly conduct (Article 173 of the Code of Ukraine on administrative offences); domestic violence (Article 173–2 of the Code of Ukraine on administrative offences), etc.

Indeed, upon the creation of the Code on criminal offences, all these and similar delicts (or rather – corresponding norms) will “transfer” into it. In turn, it will cause big changes in the structure and contents of the valid Administrative-Delict Code. And these changes promise to be so cardinal, that further existence of Administrative-Delict Code in its present form will lose any practical sense.

Thus, effective improvement of the Code on criminal offences is impossible “in isolation” from reforming administrative-delict legislation, especially, without adoption of the new Administrative-Delict Code. Recognizing this fact, the President of Ukraine made the order no. 98/2012 of 30 May 2012, creating an inter-branch team to work on reforming both administrative and criminal delict legislation. This document has given a powerful impulse to the search for optimal ways of national administrative-delict legislation development, taking into consideration constitutional provisions, international democratic norms, and Ukraine’s duties and responsibilities coming from its membership in the Council of Europe.⁴

no. 27, p. 838; *Pro zatverdzhennja planu zahodiv shhodo realizacii’ Konceptcii’ reformuvannja kryminal’noi’ justycii’ Ukraïny*, Rozporjadzhennja Kabinetu Ministriv Ukraïny vid 27 serp. 2008 no. 1153-r, Oficijnyj veb-sajt Verhovnoi’ Rady Ukraïny; <http://zakon4.rada.gov.ua/laws/show/1153-2008-%D1%80/card6#Public> (12.02.2015).

⁴ *Pro robochu grupu z pytan’ reformuvannja zakonodavstva pro administratyvni pravoporushennja ta zaprovadzhennja instytutu kryminal’nyh prostupkiv*, Rozporjadzhennja Prezydenta Ukraïny, vid 30.05.2012 no. 98/2012-rp, “Oficijnyj visnyk Prezydenta Ukraïny” 2012, no. 19, p. 449.

2. The latest research and publications analysis

The development the new Administrative-Delict Code stipulates the need for a clear definition of its conceptual background. This need has found a broad response among representatives of the national legal science. Individual views on the new Administrative-Delict Code (in particular, on its ideological orientation, contents and structure) are represented in the works of V. Averyanov, I. Golosnichenko, I. Koliusko, V. Kolpakov, D. Lukyanets, V. Stefanyuk and other well-known scholars.⁵ Nevertheless, holistic concept of such Code has not formed yet. That, on the one hand, highlights the great problem of complexity, and on the other hand, makes the discussion on its possible solutions necessary.

The aim of the article is to form theoretical background for administrative-delict reform in light of Ukraine's integration into the European community.

Taking into account the impossibility of detailed exploration of all opinions on the new Administrative-Delict Code of Ukraine within one article, let us discuss its most important and principal points.

The *first* such point is the orientation of this Code on dealing with delicts in public-administration sphere. Historically, in spite of its very unambiguous name, the valid Code of Ukraine on administrative offences covers the issues of responsibility not only for administrative delicts, but for other types of offences, and in particular for the civil ones (unauthorized occupation of land, ticketless travel, violation of broadcasting service regulations, etc.).⁶

Obviously, not all similar delicts are referred to the public administration sphere. They do not infringe upon administrative relationships and corresponding cases are not under the public administration jurisdiction (such cases are solved by the courts). Therefore, all these offenses should

⁵ V. Aver'janov, D. Luk'janec', N. Horoshhak, *Potribni novi konceptual'ni zasady stvorennja proektu Kodeksu Ukraïny pro administratyvni prostupky*, "Pravo Ukraïny" 2004, no. 11, p. 11–16; V. Aver'janov., D. Luk'janec', N. Horoshhak, *Chy mozhlyve reformuvannja instytutu administratyvnoi' vidpovidal'nosti na konceptual'nyh zasadah proektu novogo KpAP?*, "Advokat" 2003, no. 1, p. 3–8; D. M. Luk'janec', *Administratyvno-deliktyni vidnosyny v Ukraïni: teorija ta praktyka pravovogo reguljuvannja*, Univer-sytets'ka knyga, Sumy 2006; I. Golosnichenko, I. Koliushko, *Do problemy vidmezhuvan-nja administratyvnyh prostupkiv vid prostupkiv, jaki pidpadajut' pid jurydykciju sudu*, „Pravo Ukraïny” 2001, no. 3, p. 39–42; V. Stefanjuk, *Problemy stvorennja proektu kodeksu Ukraïny pro administratyvni pravoporushennja*, „Pravo Ukraïny” 1993, no. 9–10, p. 7–9; V. K. Kolpakov, *Kodeks Ukraïny pro administratyvni pravoporushennja: poshuk novoi' paradygmy*, „Pravo Ukraïny” 2004, no. 7, p. 85–89; V. K. Kolpakov, *Administratyvno-deliktynj pravovyj fenomen*, Jurinkom-Inter, Kiev 2004.

⁶ T. A. Gurzhiy, N. P. Kamenskaja, *Administrativno-deliktne zakonodatel'stvo Ukraïny: osnovnye priority razvitija*, „Aktual'nye problemy administrativnoj otvetstvennosti: mater. Vserossijskoj” nauchno-prakt. konf., (Omsk, 19 maja 2011 goda). – Omskij juridicheskij institut, Omsk 2011, p. 219–230.

be included into the relevant branch codes (in particular, in the Civil Code and in the Criminal Code), but not in the Administrative-Delict Code, where they will always look like a “foreign” element. However, this is not a new idea. It runs through the wide range of modern research in the field of legal responsibility. Unfortunately, this idea did not find understanding among the lawmaking subjects.

Clear evidence of it is the draft of the Code on criminal offences, submitted to Ukrainian Parliament of the 7th term.⁷ Even a brief glance at the draft reveals the absence of clear criteria for distinction of administrative, criminal and civil delicts.

In particular, it has included many delicts of administrative type (for example, “violation of electoral legislation”, “violation of public service regulations”, etc.). At the same time, a range of general criminal nature offences (such as: intentional hiding of venereal disease source, coercing minors to drink alcohol, gambling in public places, prostitution, etc.) have not been included into the draft of Code on criminal offences. In fact, it means, that the draft authors are planning to keep these offences in the Administrative-Delict Code, giving them formal administrative status. For reasons mentioned, such approach cannot be recognized as well-founded. One can only hope that during further modification, the draft of Code on criminal offences will get logical consistency and conceptual distinctness.

The *second* question that needs to be solved during development of the new Administrative-Delict Code is the exclusion from its contents all the offences committed by public administration executives, such as: violation of house registration and accounting procedures, discrimination of businessmen by authorities, breach of issuing administrative permits, etc.

Indeed, all mentioned offences have administrative nature. They are committed by representatives of public administration, infringe on public relationships, so at first glance, they could be included into the Administrative-Delict Code. However, on closer inspection, such a step looks quite disputable.

Since 2005 a system of administrative legal proceedings has been functioning in Ukraine. Its main task is to protect individuals’ and businessmen’s rights, freedoms and interests from being violated by government and local authorities.⁸ All corresponding cases are tried by administrative courts, which are not involved in the struggle with administrative offences committed by individuals.

⁷ *Proekt Zakonu pro vnesennja zmin do Kryminal'nogo kodeksu Ukraïny shhodo vvedennja instytutu kryminal'nyh prostupkiv*, Oficijnyj veb-sajt Verhovnoi Rady Ukraïny; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=45306 (14.03.2015).

⁸ *Kodeks administratyvnoho sudochynstva Ukraïny*, “Oficijnyj visnyk Ukraïny” 2005. – no. 32, p. 1918.

In fact, the general paradigm of national legal system provides that administrative courts should solve cases regarding violations committed by public authorities against private (business's and individual's) rights and interests, including the ones, which are now "covered" by the valid Code on administrative offences. And quite obviously, this line should be steadily followed during the reform of administrative-delict legislation and development of the new Administrative-Delict Code.

The future Administrative-Delict Code of Ukraine should define the legal background of an individuals' only administrative responsibility. In turn, administrative delicts, committed by public authorities (both entities and executives), should come exclusively into administrative courts' jurisdiction and be solved under the Code on administrative proceedings (in Ukraine exactly this Code regulates the activity of administrative courts).

The *third* point. Legislative separation of individual's administrative offenses (meaning only the delicts in administrative-public sphere) and concentrating them in the Administrative-Delict Code raises the question of their jurisdiction.

Nowadays cases about administrative offences are tried both by public administration entities and by the courts of general jurisdiction, which solve the cases about offences of criminal type and apply the penalties similar to criminal punishments, such as: arrest, public work, confiscation, etc. This state of affairs essentially "discords" with general European practice, under which the cases of administrative offences fall under non-judicial procedure. In most West European counties (Belgium, Italy, Germany, Portugal, Switzerland and others), competence of general courts in administrative sphere is limited by appointment of procedural penalties and solving complaints against public authorities' decisions. Accordingly, the function of courts is not in solving administrative-delict cases, but in protecting the rights of their participants.⁹

Modern trends in development of national administrative law state that Ukraine should just come down to such jurisdiction model. As it was mentioned above, in the new Administrative-Delict Code only administrative nature delicts (mean the delicts committed in public administrative sphere and under the jurisdiction of the authorities) should be included. It shows, in particular, the necessity of transferring many offenses (e.g. avoiding administrative prescriptions, violation of election rules and others) from the court competence to the competence of public authorities and their executives.

The fourth point. The important direction of the national administrative-delict legislation reform should be improving, and accordingly, giving the

⁹ O. A. Banchuk, *Administratyvne deliktne zakonodavstvo: zarubizhnyj dosvid ta propozycji' reformuvannja v Ukraïni*, Knygy dlja biznesu, Kiev, 2007, p. 21–71.

Administrative-Delict Code the responsibility for legal entities. The valid Code of Ukraine on administrative offences “operates” by general term “an entity”, without specifying what kind of entity “an individual” or “a legal entity” is referred to in its articles.

Nevertheless, from the contents of the current Code on administrative offences provisions (Articles 12–17, 20, 34) it is clear that administrative offences can be committed only by individuals. Properly speaking, it is not strange, as the valid Code on administrative offences was developed in Soviet times, when most legal entities had a public status. At those times, an idea of their administrative responsibility seemed to be almost absurd: in fact, it could mean applying administrative sanctions by the state to itself. And Soviet doctrine would never recognize it.

Independence declaration, society democratization and economy denationalization caused fundamental review of a legal entity’s status. In modern economy, it can be any type and form of property: private, corporative or national. At now in Ukraine over 1 million legal entities are registered, and majority of them are private ones.¹⁰

Since introduction of private legal entities in social practice, domestic jurisprudence faced with the problem of determining the conceptual basis of responsibility for delicts, committed by them in public-administrative sphere. The point is, that national legislation (in particular, the Code of Ukraine on administrative offences) associates administrative responsibility with administrative penalties execution, and administrative penalties execution – with individuals’ responsibility. Soviet and early post-Soviet paradigm of administrative-tort law stated that only individuals can be subjects of administrative offences and administrative penalties. As to legal entities, it was traditionally considered that for committing delicts in public-administrative sphere they are brought to other types of penalties (which are not administrative) and therefore to another type of legal responsibility.

However, postulating this thesis, national legislator has not been able to define which type of legal responsibility takes place in this case. Meanwhile, the rules on the responsibility of legal entities remained “outside” the Code on administrative offences. Currently, they are scattered over a large number of sectoral laws. And for definition of corresponding penalties, law-maker uses such terms-substitutes as: “sanctions”, “method of influence”, “coercive measures” and so on. But he never uses the terms “administrative offence”, “administrative responsibility” or “administrative penalty” in this context. Thus, to date, no national law specifies what type of responsibility (administrative or another) applies to legal entities for committing delicts in public-administrative sphere.

¹⁰ *Kil’kist’ sub’ektiv JeDRPOU za pravovym statusom*, Oficijnyj sajt Derzhavnogo komitetu statystyky Ukraїny; http://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU_2013/ks_za_ps/ks_za_ps_0213.htm (09.01.2015).

Such situation, when the origin, nature and institutional dependencies of a large complex of tortious relationships remain undefined, can't consider acceptable. The objective realities of today give all grounds to consider the responsibility of legal entities for delicts in public-administrative sphere as a kind of administrative responsibility that must be regulated by administrative-delict legislation. Taking into account this fact and positive international experience (integrated legislative regulation of responsibility for administrative offences committed by individuals and legal entities is successfully carried out by the majority of European states, as well as by our geographical "neighbors" – Belarus, Kazakhstan, Russia), the priority task of new Administrative-Delict Code should be the defense of public interests from all types of administrative offenses, regardless of whom they are committed by.

The fifth important point. Probable improvement of legal entities' administrative responsibility defines the problem of their guilt. From the late 1950's to the early 1980's, discussions went on in Soviet jurisprudence about guilt as a mandatory condition of administrative responsibility. A number of experts stood up for the concept of objective guilt. In accordance with it, for prosecuting the offense it is enough to state the objective fact of it being committed. Another group of experts was of the opposite opinion. From their point of view, administrative responsibility must take place only in the case of proving the persons' guilt, as a specific psychological attitude to committed offense and its negative consequences.

This discussion was put to the end by the Soviet lawmaker, who was the first to define guilt as the necessary condition for administrative responsibility in the Basic (federal) law on administrative offences (1980) and later in the current Code of Ukraine on administrative offences (1984). From this time the psychological concept of guilt has taken place in domestic administrative-delict law. And it still dominates today. For the last decades the institution of administrative responsibility has not changed greatly. Today, as it was at the end of the XX century, its rules state the responsibility for minor delicts of criminal nature and only individuals are recognized as the subjects of administrative offenses. Naturally, for this situation psychological concept of guilt is not dissonant with the law or the requirements of practice. But in the case of further reforming administrative-delict legislation this concept predictably will lose its relevance. Firstly, it cannot be applied for legal entities, especially for those who have collegiate management.

Secondly, in case of exclusion of all the delicts of criminal and civil nature from the Administrative-Delict Code, it will "cover" only the offenses that infringe on the order of public administration. In our opinion, the qualification of such offenses does not require neither analysis of mental state of offender nor determination of his personal attitude to the

committed delict. Their commitment is always deliberate and always guilty. Therefore, the responsibility for them should be borne without regard to the mental processes in the offender's mind. It should be based on the fact of committing the offense by concrete person.

Thus, the heart of the future Administrative-Delict Code should contain the principle of objective guilt. In accordance with it, the person is convicted of committing the administrative offense if it is proved that: a) exactly this person committed the delict; b) this person was able to avoid violation of administrative regulations but had not used this possibility.

Sixth. The obligatory aspect of reforming the national administrative-delict legislation must be the revision of administrative penalties' system. Unlike the majority of European countries, where the list of such penalties is rather short, in Ukrainian juridical practice, more than a dozen of them are used. Only the main list of administrative penalties in Article 24 of the current Code on administrative offences includes: – warning; – administrative fine; – paid withdrawal of the item which was the direct object of administrative offence; – confiscation of such item or money, obtained by committing the offence; – revocation of special right given to a citizen; – public works; – correctional work; – administrative arrest; – deportation of foreigners and persons without citizenship.¹¹ And, this list is not full. As opposed to Criminal Code of Ukraine, which does not allow to extend the list of criminal punishments, current Code on Administrative Offences stipulates other types of administrative penalties. Moreover, administrative penalties not listed in the Article 24 of Code on Administrative Offences are fixed in some other articles of the same Code. For example, part 3 of the Article 46–1 Code on Administrative Offences provides for the imposition such penalty as a removal of radioactively polluted objects. For committing the offense described in Article 148–1 of this Code, guilty person must *pay the losses sustained by the operator of telecommunication service* and so on.¹²

Obviously, in case of adopting the new Administrative-Delict Code, aimed at dealing with offenses in administrative-public sphere, the need for such complicated system of penalties will disappear. All penalties which are identical to criminal punishments (e.g., administrative arrest, confiscation, public works, correctional work and so on) should be excluded. In West European practice these penalties are used only by court decision and only for committing criminal delicts. Therefore, the relevant tort norms that are planned to be included in the Code of Ukraine on criminal offenses should be considered as criminal punishments.

¹¹ *Kodeks Ukraïny pro administratyvni pravoporushennja*, „Vidomosti Verhovnoi Rady URSR” 1984, no. 51, p. 1122.

¹² T. O. Gurzhij, *Administratyvne pravo Ukraïny: navch. posib*, KNT, Kiev 2011, p. 108.

The following administrative penalties should also be excluded from the list:

- *paid withdrawal* of the object which has become the tool of committing or the direct object of administrative offense (being ineffective and very complicated in practical use, this penalty is not allowed in majority of European countries, except Moldova and Ukraine);
- *replacement for losses* (this penalty has purely compensational character and in essence it is civil-legal. Therefore, it must be realized within the framework of civic responsibility);
- *deportation of foreigners and persons without citizenship* (in most European countries deportation is not a self-sustained penalty. It is considered as a specific enforcement measure which is used in addition to some criminal and administrative penalties (for committed serious crimes, illegal entry to the country, overstaying and/or braking the visa conditions etc.).

At the same time, it is difficult to agree with those experts who propose to keep only the types of administrative penalties: warning, administrative fine and revocation of special right given to a citizen.¹³ Such step will reduce the opportunities of administrative influence on concrete offenders and lower the efficiency of administrative responsibility in the whole. It is unlikely that small administrative fines and, moreover, warnings, as purely psychological measure, will have measurable impact on the people with high living standards. The revocation of special rights is not always effective as well.

Considering this, the new system of administrative penalties should be not only “compact”, but also quite variable in order to ensure the reliable protection of public-administrative relationships. In our view, future Administrative-Delict Code of Ukraine should provide such penalties as: – warning; – administrative fine; – temporary revocation of a special right; – temporary prohibition of certain activities; – temporary prohibition (termination) of the legal entity.

And at last, the seventh problem which is under consideration is the structure of future Code: the correlation of its “material” and “procedural” parts. In scientific publications there are different thoughts about probable inclusion of procedural norms in the Code, regulating the process of solving administrative cases.

One group of experts proves the necessity of concentration of both material and procedural norms in one codified document – the Administrative-Delict Code of Ukrainian. The other experts take the opposite view. They insist on exclusion of procedural norms from the future Code, but at the same time there is no agreement between them on the way of

¹³ O. A. Banchuk, *Administratyvne deliktne zakonodavstvo: zarubizhnyj dosvid ta propozycji reformuvannja v Ukraïni*, Knygy dlja biznesu, Kiev, 2007, p. 283.

implementation of this idea. Some of them propose to develop a separate Administrative-Procedural Code similar to the Criminal Procedural and Civil Procedural Code¹⁴; the others find it possible to combine corresponding norms with regulations of the current Code on Administrative Legal Procedures¹⁵; and the rest – see these norms as a constituent part of the future Administrative-Procedural Code, which will define all types of administrative procedures: permissive, controlling, supervising, jurisdictional and so on.¹⁶ Undoubtedly, all these approaches are worth discussing. But from the standpoint of practice, the most reasonable seems the idea of keeping the procedural part in the structure of the new Administrative-Delict Code.

First of all, probable changes in administrative-tort sphere (the exclusion of administrative offenses from courts' jurisdiction, the shortening of administrative penalties list etc.) will substantially simplify the administrative-delict procedure both in the part of penalties imposition and in the part of their execution. Correspondingly, the total number of procedural norms will be greatly reduced. And accounting this, there will be no reason to adopt a separate procedural code.

Secondly: in the light of the last legislative initiatives of the Ukrainian government, inclusion of administrative-delict procedural norms into the fundamental Administrative-Procedural Code does not look very likely. For example, Article 2 of Administrative-Procedural Code project that remains before the current Parliament clearly says: "*The operation of this Code does not apply to the relations which arise during the criminal process, proceeding the cases on administrative offences, search activities, executive process, notarial actions, execution of punishments, application of regulations on economic competition, taxes and customs*".

Thirdly: the idea of exclusion the "procedural part" from the contents of Administrative-Delict Code causes a number of practical questions: Will this step simplify the proceedings in administrative-delict cases? Will it provide a prompt and error-free qualification of administrative offenses? Does it facilitate the work of agents of administrative jurisdiction? Answers to these and other similar questions are on the surface. It is quite obvious that in practical activity, when it is necessary to make efficient decisions, it is better to use one Code instead of two. The list of arguments in favor of preservation of the "bilateral" (material and procedural) structure of the Administrative-Delict Code may be extended.

¹⁴ O. V. Jashhuk, *Zakonodavstvo Ukraïny pro administratyvnu vidpovidal'nist': suchasnyj stan i perspektyvni polozhennja jogo rozvytku*, "Jurydychna nauka" 2011, no. 2, p. 152.

¹⁵ S. M. Polishhuk, *Mozhlyvosti reformuvannja administratyvnogo prava za novitnoju klasyfikacijeu jurydychnyh nauk*, "Derzhava ta regiony" 2010, no. 2, p. 177.

¹⁶ V. Tymoshhuk, *Do problemy pravovogo reguljuvannja administratyvno-procedurnyh vidnosyn*, "Jurydychnyj zhurnal" 2003, no. 3, p. 38.

3. Conclusion

Summarizing the above arguments, we may state that the reform of administrative-delict legislation opened wide range of important practical questions: about the essence of administrative offenses, about their *corpus delicti*, about the system of administrative penalties, about proceeding of administrative-delict cases and many others. In our opinion, the key points in solving them should be the following:

- conceptual determination of administrative offense as a delict, infringing on social relations in the administrative-public sphere;
- taking out from administrative-legal regulation the offenses of criminal and civil nature;
- recognition of the subjects of administrative offenses as both individuals and legal entities;
- putting into the basis of administrative responsibility the principle of objective guilt, according to which the fact of committing the delict by concrete person is a sufficient basis for statement of its guilt and administrative responsibility;
- transferring administrative offenses, committed by individuals and legal entities, under the jurisdiction of public authorities;
- proceeding the administrative-delict cases only in non-judicial (out of court) procedure;
- improving the system of administrative penalties by the following way:

a) exclusion of those measures that are identical to civil penalties and criminal punishments from their list;

b) including in them penalties which can effectively influence legal entities (in particular, the “temporary prohibition of certain business activities” and “temporary prohibition (termination) of the legal entity”);

c) maintenance of traditional approach to codification of administrative-delict legislation, which provides for uniting into a single Code both material and procedural norms.

It should be noted that the author of this article expresses his own opinion. He does not pretend to comprehensively analyze the entire spectrum of problems in the administrative-delict sphere. In this regard, the article is offered to be considered as a polemical one and as an invitation to further discussion about Administrative-delict reform in Ukraine.

Bibliography

Aver'janov V., Luk'janec' D., Horoshhak N., *Chy mozhyve reformuvannja instytutu administratyvnoi' vidpovidal'nosti na konceptual'nyh zasadah projektu novogo KpAP?*, “Advokat” 2003, no. 1.

- Aver'janov V., Luk'janec' D., Horoshhak N., *Potribni novi konceptual'ni zasady stvorennja proektu Kodeksu Ukraïny pro administratyvni prostupky*, "Pravo Ukraïny" 2004, no. 11.
- Banchuk O. A., *Administratyvne deliktne zakonodavstvo: zarubizhnyj dosvid ta propozycji' reformuvannja v Ukraïni*, Knygy dlja biznesu, Kiev 2007.
- Golosnichenko I., Koliushko I., *Do problemy vidmezhuvannja administratyvnyh prostupkiv vid prostupkiv, jaki pidpadajut' pid jursydykciju sudu*, "Pravo Ukraïny" 2001, no. 3.
- Gurzhij T. A., Kamenskaja N. P., *Administrativno-deliktne zakonodatel'stvo Ukraïny: osnovnye priority razvitija*, "Aktual'nye problemy administrativnoj otvetstvennosti: mater. Vserossijskoj" nauchno-prakt. konf., (Omsk, 19 maja 2011 goda) – Omskij juridicheskij institut, Omsk 2011.
- Gurzhij T. O., *Administratyvne pravo Ukraïny: navch. posib*, KNT, Kiev 2011.
- Jashhuk O. V., *Zakonodavstvo Ukraïny pro administratyvnu vidpovidal'nist': suchasnyj stan i perspektyvni polozhennja jogo rozvytku*, "Jurydychna nauka" 2011, no. 2.
- Kil'kist' sub'ektiv JeDRPOU za pravovym statusom*, official website of the Ukrainian State Statistical Office; http://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU_2013/ks_za_ps/ks_za_ps_0213.htm (09.01.2015).
- Kodeks administratyvnoho sudochynstva Ukraïny*, "Oficijnyj visnyk Ukraïny" 2005. – no. 32.
- Kodeks Ukraïny pro administratyvni pravoporushennja*, "Vidomosti Verhovnoi Rady URSR" 1984, no. 51.
- Kolpakov V. K., *Administratyvno-deliktnyj pravovyj fenomen*, Jurinkom-Inter, Kiev 2004.
- Kolpakov V. K., *Kodeks Ukraïny pro administratyvni pravoporushennja: poshuk novoï paradygmy*, "Pravo Ukraïny" 2004, no. 7.
- Luk'janec' D. M., *Administratyvno-deliktne vidnosyny v Ukraïni: teorija ta praktyka pravovogo reguljuvannja*, Universytets'ka knyga, Sumy 2006.
- Polishhuk S. M., *Mozhlyvosti reformuvannja administratyvnoho prava za novitnoju klasyfikacijeu jurydychnykh nauk*, "Derzhava ta regiony" 2010, no. 2.
- Pro rishennja Rady nacional'noi bezpeky i oborony Ukraïny*, Ukaz Prezydenta Ukraïny vid 15 ljutogo 2008 roku, *Pro hid reformuvannja systemy kryminal'noi justycji' ta pravoohoronnyh organiv*, vid 8 kvit. 2008 no. 311/2008, "Oficijnyj visnyk Ukraïny" 2008, no. 27.
- Pro robochu grupu z pytan' reformuvannja zakonodavstva pro administratyvni pravoporushennja ta zaprovadzhennja instytutu kryminal'nyh prostupkiv*, Rozporjadzhennja Prezydenta Ukraïny, vid 30.05.2012 no. 98/2012-rp, "Oficijnyj visnyk Prezydenta Ukraïny" 2012, no. 19.
- Pro zahody shhodo vprovadzhennja Konceptii' administratyvnoi' reformy v Ukraïni*, Ukaz Prezydenta Ukraïny, vid 22 lyp. 1998 r. no. 810/98, "Oficijnyj visnyk Ukraïny" 1998, no. 21.
- Pro zatverdzhennja planu zahodiv shhodo realizacii' Konceptii' reformuvannja kryminal'noi' justycji' Ukraïny*, Rozporjadzhennja Kabinetu Ministriv Ukraïny vid 27 serp. 2008, no. 1153-r, Oficijnyj veb-sajt Verhovnoi' Rady Ukraïny; <http://zakon4.rada.gov.ua/laws/show/1153-2008-%D1%80/card6#Public> (12.02.2015).

Proekt Zakonu pro vnesennja zmin do Kryminal'nogo kodeksu Ukrainy shhodo vvedennja instytutu kryminal'nyh prostupkiv, Oficijnyj veb-sajt Verhovnoi' Rady Ukrainy; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=45306 (14.03.2015).

Stefanjuk V., *Problemy stvorennja proektu kodeksu Ukrainy pro administratyvni pravoporushennja*, "Pravo Ukrainy" 1993, no. 9–10.

Tymoshhuk V., *Do problemy pravovogo reguljuvannja administratyvno-procedurnyh vidnosyn*, "Jurydychnyj zhurnal" 2003, no. 3.

Nowelizacja ukraińskiej ustawy – Kodeks wykroczeń administracyjnych: główne zagadnienia i kierunki

Streszczenie

Artykuł skupia się na ważkim zagadnieniu reformy prawa na Ukrainie i porusza szeroki zakres teoretycznych i praktycznych problemów dotyczących rozwiązań ustawodawczych w obszarze odpowiedzialności administracyjnej. Dodatkowo w artykule zawarta jest opinia autora na temat struktury i treści projektu ukraińskiego Kodeksu wykroczeń administracyjnych.

Słowa kluczowe: administracja publiczna, wykroczenie, delikt, odpowiedzialność, jurysdykcja

Administrative-Delict Law Reform in Ukraine: Main Issues and Directions

Abstract

The article revolves around the topical issues of administrative-delict law reform in Ukraine. It outlines a wide range of theoretical and practical problems of legislative regulation in the field of administrative responsibility. It also offers the author's view on the structure and content of the draft Administrative-Delict Code of Ukraine.

Keywords: public administration, offence, delict, responsibility, jurisdiction