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LEGAL ENTITY AS A SUBJECT OF ADMINISTRATIVE OFFENSE IN THE FIELD OF ENVIRONMENTAL PROTECTION

The article highlights the issue of finding ways to apply measures of administrative responsibility to a legal entity as a subject of an administrative offense in the field of environmental protection. The author determined that a type of application of measures of administrative responsibility is the application of administrative and economic sanctions to legal entities. The author found out that the establishment of the content of administrative responsibility and the imposition of administrative fines for the commission of administrative offenses in the field of environmental protection is connected with the need to solve the problem of a blanket approach to setting out the dispositions of the norms of the administrative-delict legislation of Ukraine. It has been established that administrative offenses are grounds for the application of measures of administrative responsibility. It was determined that the measures of administrative responsibility include both administrative fines and administrative and economic sanctions. The classification of administrative offenses in the field of environmental protection by object, subject, and method of commission was carried out. As a result of the carried out classification of administrative offenses in the field of environmental protection, a conclusion was made about the need to find a normative structure for the recognition of legal entities as subjects of administrative responsibility. The expediency of understanding administrative responsibility in the field of environmental protection as a system of administrative proceedings, the implementation of which leads to the application of administrative sanctions to a person, is substantiated. A conclusion was made about the need to introduce mechanisms of administrative liability without fault. It is emphasized that guilt is such a condition of the subjective side of the composition of an administrative offense that characterizes the volitional content of the activity of only natural persons, which eliminates the possibility of introducing universal approaches to the application of measures of administrative responsibility.

Key words: *administrative offense, administrative process, environmental protection, law enforcement, legal regulation, legal entity.*

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ЮРИДИЧНА ОСОБА ЯК СУБ'ЄКТ АДМІНІСТРАТИВНОГО ПРАВОПОРУШЕННЯ У СФЕРІ ОХОРОНИ ДОВКІЛЛЯ

У статті висвітлено питання пошуку шляхів застосування заходів адміністративної відповідальності до юридичної особи як субєкта адміністративного правопорушення у сфері охорони довкілля. Автором визначено, що різновидом застосування заходів адміністративної відповідальності є застосування до юридичних осіб адміністративно-господарських санкцій. Автором зясовано, що встановлення змісту адміністративної відповідальності та застсоування адміністративних стягнень за вчинення адміністративних правопорушень у сфері охорони довкілля повязується із необхідністю вирішення проблеми бланкетного підходу до викладення диспозицій норм адміністративно-деліктного законодавства України. Встановлено, що адміністративні правопорушення є підставою застосування заходів адміністративної відповідальності. Визначено, що до заходів адмінстративної відповідальності відносяться як

адміністративні стягнення, так і адміністративно-господарські сакнції. Здійснено класифікацію адміністративних правопорушень у сфері захисту довкілля за об'єктом, суб'єктом, способом вчинення. В результаті здійсненої класифікації адміністративних правопорушень у сфері охорони навколишнього природного середовища зроблено висновок про необхідність пошуку нормативної конструкції визнання юридичних осіб як субєктів адміністративної відповідальності. Обгрунтовано доцільність розуміння адміністративної відповідальності у сфері захисту довкілля як системи адмінстративних проваджень, реалізація як призводить до застосування до особи адміністративних санкцій. Зроблено висновок про необхідність запровадження механізмів адміністративної відповідальності без вини. Наголошено, що вина є такою умовою суб'єктивної сторони складу адміністративного правопорушення, що характеризує вольовий зміст діяльності лише фізичних осіб, що усуває можливість впровадження універсальних підходів до застосування заходів адміністративної відповідальності.

Ключові слова: *адміністративне правопорушення, адміністративний процес, охорона навколишнього природного середовища, правозастосування, правове регулювання, юридична особа.*

Urgency of the problem. The problem of administrative responsibility of legal entities is relatively new and is not characteristic of the development of legal science. The existence of such a problem is determined by the presence of a number of issues, which primarily include the "Soviet" legal heritage, which includes the prohibition of the existence of private property, the absence of mechanisms for the functioning of legal entities under private law, and therefore the absence of the need for legislative regulation of their responsibility for causing damage. The institution of legal responsibility in general, and in particular - administrative responsibility, is formed in accordance with the concept of applying measures of state coercion to guilty persons (cursor – author), while the category of "guilt" is understood as the "mental attitude of a person" to the committed act (Legal Encyclopedia, 1998: 394-395). At the same time, it is obvious to understand that a legal entity is not endowed with a psyche, and therefore, the application of the category "guilt" in the sense of "mental attitude" to legal entities is impossible. Thus, the introduction of the institution of administrative responsibility is associated with the problem of rethinking the category of guilt as a characteristic feature of the subjective side of the composition of an administrative offense.

We consider the search for a unified approach to understanding the expediency and possibility of bringing legal entities to administrative responsibility for committing violations of legislation in the field of environmental protection to be a problem that requires scientific consideration and practical correction. At the same time, the current legislation of Ukraine establishes the mechanisms for applying a special system of property levies to legal entities, which in their essence are measures of administrative responsibility (Kostytskyi, 2010: 314).

Analysis of recent research and publications. The state of scientific development of the problem is characterized by the fact that, despite the presence of numerous fundamental studies on the formation and development of legislation on environmental protection, in particular V.I. Andreytseva, A.P. Hetman, R.C. Kirin, V.V. Kostytskyi, V.A. Zuyev, P.M. Rabinovych, Yu.S. Shemshuchenko and others, which relate to environmental and legal problems, the issue of administrative responsibility for committing offenses in the relevant environmental field remains insufficiently developed.

Among the publications that should be singled out, the results of which contribute to the search for solutions to the problem of the application of administrative responsibility measures in general, and in particular, the establishment of an effective mechanism of administrative responsibility of a legal entity, it is necessary to single out the works of V. B. Averyanov, O. F. Andriyko, V. M. Bevzenka, Yu. P. Bytyak, L. R. Beloi-Tiunova, M. Yu. Vikhlyaeva, V. M. Harashchuk, E. A. Hetman, I. P. Holosnichenko, R. A. Kalyuzhny, S. However, taking into account the extremely low level of legal effectiveness of the application of measures of administrative responsibility in the field of environmental protection, the determination of its features and directions for improving the legal regulation of its mechanism in relation to the results of the activities of legal entities becomes particularly relevant.

Purpose and main objectives of the study. The purpose of the article is to characterize the characteristics of a legal entity as a subject of administrative offenses in the field of environmental protection.

Presentation of the main research materia. Despite the absence in the Code of Ukraine on Administrative Offenses (Code of Ukraine on Administrative Offenses, 1984) of mechanisms for applying mechanisms of administrative liability to legal entities in general, and in particular, in the field of environmental protection, it is necessary to define a number of legislative acts establishing mechanisms for applying administrative sanctions

to legal entities. Such legislative acts of Ukraine are the Laws of Ukraine: "On Veterinary Medicine" (On Veterinary Medicine, 1992), "On the Public Health System" (On the Public Health System, 2022), "On the Exclusive (Marine) Economic Zone" (About the exclusive (maritime) economic zone) and others. Certainly, such a legislative act is the Economic Code of Ukraine, which defines administrative and economic sanctions (Chapter 27) (Economic Code of Ukraine, 2003). In particular, in accordance with Part 2 of Art. 20 of the Economic Code of Ukraine establishes that the application of administrative and economic sanctions is one of the methods of protection of violated rights and interests defined by the current legislation. Article 49 of the Economic Code of Ukraine stipulates that entrepreneurs are responsible for causing damage to the environment. In case of violation of such a legal requirement, property and other legal liability may be applied to the guilty persons. Similar is the provision of Part 2 of Art. 104 of the Law of Ukraine: "On Veterinary Medicine", where it is determined that the payment of fines for violation of the requirements for the use of objects of the animal world does not exempt legal entities and individuals from the elimination, in accordance with the procedure established by law, of the committed violations and compensation for the damage caused by them. The Law of Ukraine "On the Exclusive (Maritime) Economic Zone" provides for a number of offenses, the commission of which is the basis for applying to legal entities liability measures for illegal industrial activity (Article 22), violation of the rules of safe operation of facilities (Article 23), illegal exploitation natural resources (Article 24), illegal conduct of marine scientific research (Article 25), pollution of the marine environment (Article 26).

Yu.O. Leheza, studying the problem of the institution of administrative responsibility in the field of use of natural resources, substantiates that the presence in the system of administrative and economic sanctions of such features as the property nature of restrictions, as well as the inclusion of such sanctions as fines, confiscation of means and tools, confiscation of illegal extracted natural resources, is an argument for its attribution to administrative or criminal liability of legal entities in general, and in particular, in the field of environmental protection (Legeza, 2017: 140-147). The approach proposed by Yu. O. Leheza correlates with the approach proposed by I. O. Vikhrova, who emphasizes that the argumentation of the inexpediency of "replacing" legal institutions is when, instead of legislative recognition of administrative (or criminal, in the case of an increased degree of social danger of the committed act) responsibility, "artificially » the institution of administrative-economic sanctions is introduced, which has the following features: 1) the basis for their application is the violation of the rules of economic activity in the field of environmental protection, which is not related to the violation of the terms of the economic-legal contract; 2) in contrast to economic sanctions that arise as a result of violations of the terms of an economic-legal contract, administrative-economic sanctions are applied by authorized bodies of state power or local self-government bodies, and not by other bodies or a party to the obligation; 3) administrative and economic sanctions are established exclusively by laws, not by-laws or a contract, which determine the types of these, the procedure and grounds for their application (Vihrova, 2015: 152).

The position of I. Ya. Kuyan stands out, which notes that in the case of offenses in the field of natural resource use, not only the penalties provided for in the current Code of Ukraine on Administrative Offenses are imposed, but also a number of measures of administrative coercion, the content of which is the restriction or deprivation of a person of a special right – the right to use natural resources or objects, the right to conduct ecologically significant activities, including the limitation of action or cancellation of permits and licenses. The application of such fines is established most often by the norms of subordinate regulatory legal acts, and in their essence are measures to stop offenses. A comparison of the signs of administrative sanctions, which are aimed at depriving persons (physical and legal) of special rights, in particular suspension of action, cancellation of permits, licenses, suspension, termination of activity, gave grounds for asserting the absence of a significant equality in the content of such sanctions (Kuyan, 2001: 8).

In practice, there is a combination of measures of administrative responsibility with measures related to the implementation of economic activity by the subjects of offenses in general, and in particular, in the field of environmental protection. In particular, in case No. 826/6868/14, the Kharkiv District Administrative Court, based on the claim of the State Environmental Inspection of Ukraine, made a decision to impose a fine on an individual entrepreneur for the offense provided for in Article 78 of the Code of Administrative Offenses, in the amount of UAH 136, as well as a decision to stop his sunflower oil processing activities due to violation of environmental protection requirements (Decision of the Kharkiv District Administrative Court, 2016).

Argument of Yu.O. Leheza on the expediency of introducing mechanisms of liability without fault in the event of damage to the environment, which occurs as a result of the operation of a source of increased danger. According to the current legislation of Ukraine, an object of increased danger must be understood as an object where one or more dangerous substances or categories of substances are used, manufactured, processed, stored or transported in an amount equal to or exceeding the legally established threshold masses, as well as other objects as such, which, according to the law, are a real threat of an emergency situation of man-made and natural nature (Article 1 of the Law of Ukraine "On Objects of Increased Danger").

According to Article 69 of the Law of Ukraine "On Protection of the Natural Environment", persons who own a source of increased ecological danger are obliged to compensate for the damage caused to citizens and legal entities, unless they prove that this damage occurred as a result of spontaneous natural phenomena or intentional actions of the victims.

In support of such an approach, it is worth quoting the position of D. M. Lukyants, who, examining the category of administrative responsibility of legal entities and applying the category of guilt to them, determines that: 1) legal entities cannot have their own mental characteristics; 2) realization of legal personality of legal entities is carried out exclusively through its authorized management bodies (one-person or collegial); 3) ownership of the internal organizational structure by legal entities; 4) a specific system of legal and economic evaluation of the activity of legal entities has been established (Lukyanets, 2007: 190).

In general, agreeing with the need to establish mechanisms of administrative responsibility without fault, it should be noted that guilt as a characteristic of the subjective side of the structure of administrative responsibility can be applied exclusively in the aspect of assessing the legality of the activities of natural persons, and therefore cannot be recognized as a mandatory feature of such a category.

Conclusions and prospects for further exploration of this issue. Thus, the introduction of the institution of administrative liability of legal entities for committing offenses in the field of environmental protection involves a review of the understanding of the category of guilt as its constituent element and the establishment of a unique system of penalties, which, in particular, must include the seizure of profit (income); imposing an administrative and economic fine; restriction or suspension of the activity of the business entity; prohibition of advertising of products produced by a legal entity polluting the environment.

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