

ADMINISTRATIVE LAW, ADMINISTRATIVE PROCEDURE

UDC 342.9:343

TO QUESTION OF ESTABLISHMENT OF ADMINISTRATIVE AND CRIMINAL RESPONSIBILITY OF LEGAL ENTITIES FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

O.P. SVITLYCHNYI, *doctor of legal sciences,*
National University of Life and Environmental Sciences of Ukraine

The article examines theoretical legal questions of establishment of administrative and criminal responsibility of juridical persons for infringement of intellectual property rights.

Legislation, legal responsibility, juridical person, infringement of intellectual property rights.

In any area of human activity, including in a struggle against offences in the field of intellectual property, a fundamental importance is attached to learning of legal responsibility, especially to the question of responsibility of legal entities.

In foreign countries the control over the activity of organizations of a collective management of copyright and allied rights to possessions are realized under the norms of the civil and administrative law.

For violation of requirements of the legislation of Ukraine in the field of a copyright and(or) allied rights and in accordance with Procedure of accounting of organizations of collective management and monitoring their activities by Government service of intellectual property of Ukraine, to organizations of collective management the following sanctions can be applied: caution, temporary interdiction (suspension) of right of

organizations of collective management to conclude an agreement for obtaining a reward or agreements for granting a permission for the use of items of copyright and(or) allied rights within three months, or removal from the register.

The aim of this article is research of theoretical and legal questions of establishment of responsibility of legal entities by the norms of the administrative and criminal legislation for infringement of intellectual property rights. General questions of legal responsibility for violation intellectual property rights infringement were investigated by the scientists of the different branches of law, in particular: P.P. Andrushko, O. D. Svyatotskyi, R.B. Shyshka, A. M. Koval, G. V. Korchevnyi and others. However as a rule most authors examined the general questions of legal responsibility for infringement of intellectual property rights, but not administrative or criminal responsibility of a legal entity.

On the basis of the stated in the article the author comes to the conclusion about the inexpediency of establishment of administrative and criminal responsibility of legal entity for infringement of intellectual property rights. Today the current national legislation has enough norms which establish administrative responsibility of a legal entity. If we are talking about criminal responsibility of a legal entity, it should be noted, that a legal entity is an abstract legal construction, and criminal punishment has the personal repressive character focused on the will and psychological attitude toward committed crime. Unlike a physical person, a legal entity answers neither a mind nor will. Besides the procedure of initiation of criminal case of a legal entity does not comport with the procedural order of initiation of criminal case of a physical person, to give a testimony about accusation presented to him or refuse to give a testimony and answer questions and others like that. Accordingly a guilt of a legal person cannot be ascertained by the same rules, that a guilt of a physical person. That is

why, in opinion of the author, today a question of establishment of administrative or criminal responsibility of a legal entity is premature.