

TO QUESTION OF DEFINITION OF SUBJECT OF ADMINISTRATIVE OFFENCE IN FIELD OF ILLEGAL USE OF ITEMS OF INTELLECTUAL PROPERTY RIGHT

V.V. MAKARENKO, *researcher,*
National University of Life and Environmental Sciences of Ukraine

The article is devoted to the research of subjects of offences in the field of illegal use of items of intellectual property right.

Subject of offence, items of intellectual property right, administrative, civil and special legislation.

According to part 1 article 41 of the Constitution of Ukraine everybody has a right to own, to use and dispose his own property, results of his intellectual, creative activity. The peculiarities of acquisition of intellectual property right, so the determination of the moment (legal fact), from when a person acquires the status of subject of intellectual property right depends on the features of items of intellectual property right.

The analysis of the source related to administrative responsibility for violation of property and non-property rights of subjects of intellectual property rights, shows the insufficiency of theoretical and methodological analysis of the main aspects of the subjects of the specified offences, induces to the analysis of other normative-legal acts in the field of intellectual property, which explains the **timeless of this article**.

Administrative responsibility for the illegal use of items of intellectual property right is prescribed by the Code of Ukraine on Administrative Offences and by the Customs Code of Ukraine and is the most important social element of protection of subjects of intellectual property right on the

objects of this right belonging to them. The norms of the articles of these codes, which provide responsibility for violation of items of intellectual property right, do not detail the subject of an administrative offence directly.

The subject of intellectual property right is a person, who has his own non-property and (or) property intellectual rights, which are characterized by a legal status, which has a specificity, due to a number of conditions related to items of intellectual property right. Taking into consideration that classification of subjects of intellectual property rights which is given in article 421 of the Civil Code of Ukraine has a general nature, and also taking into consideration that the disclosure of any phenomenon, including the specificity of the legal status of different subjects of intellectual property rights is possible through the prism of their classification, dividing them into several groups.

The first group includes the subjects of intellectual property rights, which acquired its status as a result of creation or the state registration of the rights on items of intellectual property rights.

The second group includes the subjects of intellectual property rights, which themselves do not create the items of intellectual property, but under the law or the agreement have obtained in accordance with the established procedure intellectual property rights.

The prescribed in article 421 of the Civil Code of Ukraine the range of subjects corresponds to special legislation. For example, according to article 3-1 of the law of Ukraine «On protection of rights to plant varieties», the subjects of intellectual property rights on plant variety is the author (authors) of plant varieties and other persons who have acquired the intellectual property rights on plant variety under the agreement or the law. According to the civil legislation the subjects of intellectual property rights are legal and physical person. These persons may be subjects of intellectual property rights under different conditions. For example, the

subjects of intellectual property rights to an item created in connection with the performance of the employment contract.

Unlike the norms of civil, economic and special legislation, the norms of which, except responsibility of physical persons, provide responsibility of legal entities and sole proprietors. The main regulatory legal act, which provides administrative responsibility for illegal use of items of intellectual property rights, is the Code of Ukraine on Administrative Offences. Besides the responsibility of the physical person it provides the responsibility of officials for administrative offences related to non-observance of the established rules in the field of protection of the order of administration, state and public order, environment, health of population and other regulations, enforcement of which is included in their official duties. However, among articles 51-2, 156-3, 164-3, 164-6, 164-9, 164-13 of the Code of Ukraine on Administrative Offences, which provide responsibility for violation of intellectual property rights, the direct responsibility of an official is described only in article 156-3 of the of Ukraine on Administrative Offences. At the same time, the analysis of norms of the articles of the Code of Ukraine on Administrative Offences gives grounds to note that except citizens, officials, the subjects of administrative violations are sole proprietors.

The considered attributes of subjects of intellectual property rights on the items of intellectual property right which are belonged to them are regulated by different legal institutions, which play a significant role at bringing a person to administrative responsibility, and to other types of legal responsibility, as well as at determining the legal status of the victim.