
PROBLEMATIC ASPECTS OF ADMINISTRATIVE LIABILITY

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Summary. *The article explores the issue of administrative liability for pedestrian traffic violations. It has been found that road safety issues are of concern to everyone, as we are all road users, whether drivers, passengers or pedestrians. According to the World Health Organization, the number of road traffic fatalities is extremely high and is set at around 1.25 million per year, which is unacceptable. Moreover, most of all deaths are in middle- and low-income countries, including Ukraine. It is argued that, at present, the rules of the Code of Administrative Offenses relating to measures of liability for pedestrian traffic violations are essentially dead, which is explained by the use of only a preventive measure and a rather low amount of penalties for such offenses.*

Administrative responsibility in the field of security is the responsibility of drivers of vehicles or other road users, including officials who are authorized to ensure the safe operation of roads and road structures, transport, operation of transport and roads, for violations of express traffic rules in the application to the perpetrators of administrative penalties in accordance with the grounds and in the manner prescribed by the rules of administrative law

This all contributes to the spread of mass offenses in the industry by the efforts of legislators to remedy this situation by amending the relevant Code of Conduct in order to increase accountability and thereby reduce pedestrians' attempts to take similar actions. It is emphasized that as of 2020, a mechanism for the effectiveness of administrative liability for violation of traffic rules by pedestrians has been worked out, in the form of a draft Law on Increasing Administrative Liability in this Field for such road users – as pedestrians.

Keywords: *administrative responsibility, administrative liability for traffic violations, pedestrian, traffic, traffic accident*

Introduction.

Reforming administrative legislation, the spread of administrative offenses, their structure, causes and dynamics necessitate a substantive study of the institution of administrative responsibility (Kovalyeva, 2019: 130).

The problems in the field of road safety are those that affect everyone, because we are all road users in the form of drivers, passengers or ordinary pedestrians. According to the World Health Organization, the number of deaths resulting from road accidents is extremely high and is set at around 1.25 million

per year, which is unacceptable. In addition, the majority of all deaths occur in middle- and low-income countries, including Ukraine («Global status report...», 2015).

In addition, not taking into account fatalities caused by traffic accidents, the level of offenses on the roads of Ukraine is even higher. At the same time, it is impossible not to say that only drivers are the perpetrators of such offenses, as the share of culprits-pedestrians is also high, and the level of their prosecution is extremely low. This, in turn, makes it possible to avoid liability, thus continuing to contribute to the further spread of cases of pedestrians committing offenses in this area. All of this is the cause of an overly loyal measure of liability in the form of either a warning or a small fine provided for in a codified act establishing administrative liability for pedestrian traffic violations.

However, it should be noted that the mechanism of effective application of administrative liability for traffic violations by pedestrians is currently being developed, in the form of a draft law on increasing administrative liability in this area for such road users as pedestrians, in connection with which there is relevance of this research.

Analysis of recent research and publications.

V. Horkava, N.A. Litvin, A.M. Podolyaka, M.M. Stotska, M.O. Svirina, Y.O. Tihomurova, V.P. Timoshchuk, M.Yu. Veselova, V.V. Zui and others have studied the administrative liability for traffic violations.

The purpose of this research is to clarify the problematic aspects of administrative liability for violation of traffic rules by pedestrians.

Results.

According to the Strategy for Improving Road Safety in Ukraine for the period up to 2020, approved by the order of the Cabinet of Ministers of Ukraine dated June 14, 2017 № 481-r, among other main areas of implementation of this strategy is «analysis and improvement of safety legislation road traffic in order to ensure compliance with the best legal standards in force in European countries with the safest road transport systems; development of legislation on road traffic in order to regulate all spheres of life, including the issue of liability for offenses and more severe punishment of violators; introduction of scientific and scientific-technical research in the field of road safety in order to assess the effectiveness of measures aimed at improving safety, comfort and culture of road traffic» («Road Safety Improvement Strategy...», 2017).

N.A. Litvin notes that the increase in the number of vehicles and increase the intensity of traffic, which leads to an increase in the number of road accidents (hereinafter – accidents) and their negative consequences (Litvin, N.A. & Litvin, O.V., 2020: 142).

Analyzing the data on the number of road accidents (hereinafter – accidents) in Ukraine in 2019 (166,675 cases) it is possible to say that the situation in Ukraine is quite alarming. Of the total number of accidents, the cause of traffic violations by pedestrians is also quite high – about 30 % of the total number of offenses in this area are pedestrians («Statistics on the number...», 2019).

This number of traffic accidents occurs due to the fact that pedestrians, as road users, quite often and rudely ignore traffic rules, which is expressed in crossing the street in unforeseen places, including

under the influence of alcohol and other dangerous substances. As a result, the irresponsibility of such actions is the result of accidents that damage not only the lives and health of pedestrians themselves, but also outsiders, including drivers.

It is possible to reduce the above indicators only if the level of culture of movement of all road users is increased, a number of preventive measures are applied, as well as the efficiency of administrative liability for traffic violations is increased.

According to the second part of Article 14 of the Law of Ukraine «On Road Traffic», road users include not only drivers of vehicles, but also, in particular, pedestrians.

Part five of this article establishes a number of responsibilities for all road users, including knowing and strictly complying with the requirements of the Rules of the Road, creating safe conditions for traffic, not by their actions or inaction to harm enterprises, institutions, organizations and citizens.

At the same time, the level of responsibility of pedestrians for violating traffic rules clearly does not correspond to the level of public danger of their actions and the size and nature of the damage (including potential) caused to other road users («On traffic», 2020).

Turning directly to the study of the concept of administrative liability for violation of traffic rules, we must first define the concept of traffic itself.

And it should be said at once that the legislative definition of the concept of traffic, unfortunately, still does not exist. Neither the Law of Ukraine «On Road Traffic» («On traffic», 2020), the name of which should already provide for the existence of a normative definition, nor the Code of Ukraine on Administrative Offenses (Code of Ukraine on Administrative Offenses, 2020), which de-

fines liability for traffic violations, nor the Resolution of the Cabinet of Ministers of Ukraine «About Traffic Rules» («About traffic rules», 2020).

This is usually a significant gap and in some cases forces us to turn to case law and doctrinal definitions to clarify this concept.

Scientists define traffic – as a regulated activity that has a social nature, as a result of which the spatial movement of people and goods on the roads with or without vehicles (Mikhailov, 2011: 6).

According to this definition, the key characteristics of traffic are:

- a social phenomenon, as it employs the vast majority of the population;
- aggregate volitional activity of people aimed at achieving certain goals;
- e) a managed process in which the main subject is the state represented by authorized bodies that constitute a single system
- objectively determined by social development, the process of orderly spatial movement of people, goods or naturally, or with the help of vehicles driven by people;
- has a social character, because it realizes the political, economic and cultural interests of the state and society as a whole.

It should be noted that in Ukraine, preference is usually given to administrative and legal measures and means of influencing violators of traffic rules. This is confirmed by the constant efforts to increase and strengthen the measures of administrative responsibility.

B. Gorkava notes that administrative liability for violation of the established rules is given as a counterbalance to the unsatisfactory condition of transport on highways, poor driver training, as well as other shortcomings of road transport infrastructure (Gorkava, 2017: 91).

V.B. Averyanov points out that administrative liability is a special kind of legal liability, and is also a specific form of adequate response of the state to illegal actions by individuals and legal entities. The main measures of legal liability applied to the offender and which he must perform in full are the result of the application of property, moral or other restrictions. In addition, the offender must be held accountable to the state and society for his wrongful conduct (Averyanov, 2004: 223).

The scientific literature defines it as the responsibility of drivers of vehicles or other road users, including officials who are authorized to ensure the safe operation of roads and road structures, transport, operation of transport and roads, for violation of traffic rules, which is expressed in the application to the guilty persons of administrative penalties, respectively, on the grounds and in the manner prescribed by the rules of administrative law (Mikhailov, 2011: 6).

St. 14 of the Law of Ukraine «On The Road Traffic» states that «road users are persons who use highways, streets, railway crossings or other places intended for the movement of people and transportation of goods by vehicles. Road users include drivers and passengers of vehicles, pedestrians, cyclists, animal racers» (Litvin, N.A. & Litvin, O.V., 2020).

The definition of a pedestrian is contained in paragraph 1.10 of the Traffic Rules and which defines a person who participates in traffic outside vehicles and does not perform any work on the road. In addition, pedestrians, in accordance with these rules, are equated with persons in wheelchairs without a motor, riding a bicycle, moped, motorcycle, sleigh, wheelchair, baby carriage or wheelchair. It is also stated that a pedestrian who is waiting for public trans-

port in an unspecified place may also be recognized as a subject of an administrative offense («On traffic», 2020).

The codified normative legal act establishing administrative liability is the Code of Ukraine on Administrative Liability (hereinafter KUpAP), which in its articles includes seven types of offenses that infringe on road safety (Code of Ukraine on Administrative Offenses, 2020).

At the same time, if we analyze the Code of Administrative Offenses, a group of administrative offenses in the field of traffic is not singled out. Chapter 10 of this code, which contains offenses for violating traffic rules, is entitled «Administrative offenses in transport, in the field of road management and communications». In this Chapter, Art. 121-1332, 139-142 concern precisely the measures of responsibility for violations in the field of road safety.

As for liability for violation of traffic rules by pedestrians, the establishment of administrative liability is regulated by parts 1,3,4 of Art. 127 of the Code of Administrative Offenses, entitled: «Violation of traffic rules by pedestrians, cyclists and persons driving carts and animal drivers».

Thus, part 1 of this article stipulates that disobedience of pedestrians to traffic signals, their crossing the carriageway in unspecified places or directly in front of oncoming vehicles, failure to comply with other traffic rules, entail a warning or a fine of three to n ‘ tax-free minimum incomes).

Part 3 of this article indicates that the same offenses committed by intoxicated persons result in a fine of eight to ten non-taxable minimum incomes.

And part four of Art. 127 of the Code of Administrative Offenses states that pedestrians may be fined from ten to fifteen non-taxable minimum incomes

or community service for a period of twenty to forty hours for violations provided for in part one or two of this article, which caused the creation of an emergency situation (Code of Ukraine on Administrative Offenses, 2020).

Therefore, depending on the type of offense and the degree of its danger, the current legislation of Ukraine establishes certain measures of administrative penalties, the least vulnerable for offenders in the form of a warning and more – in the form of an administrative fine or community service.

At the same time, as the practice of bringing pedestrians to administrative responsibility usually shows, it is limited to a warning, which is only preventive. Therefore, an effective road safety mechanism in Ukraine should be reflected in the improvement of administrative practice in bringing to administrative responsibility violators of traffic rules, whose irresponsible behavior creates accidents or conflicts and which often end in accidents.

V.B. Averyanov indicates that the feeling of impunity and permissiveness for pedestrians leads to the commission of such road users who realize that for violating traffic rules, patrol police officers rarely take measures to bring them to administrative responsibility (Averyanov, 2004: 125).

At the same time, R.I. Mikhailov suggests that the number of traffic violations and the severity of their consequences are affected by different conditions and circumstances, both subjective and objective. These include such conditions as: low level of traffic discipline of road users, time of day, weather, poor lighting while driving, improper condition of roads, road equipment, lack of road markings, signs on dangerous sections of roads, outdated traffic lights, neglect of

basic safety requirements of state bodies in relation to ensuring the proper condition of roads, improper performance of state duty in relation to road users and others (Mikhailov, 2011: 7).

However, it can be said that no matter how perfect the streets and roads, as well as other technical means of traffic regulation and organization, the necessary and key component was the effectiveness of current administrative legislation and strict compliance with traffic rules by pedestrians.

In connection with the inefficiency of administrative liability for violation of traffic rules by pedestrians currently in the Verkhovna Rada of Ukraine, a bill «On Amendments to Article 127 of the Code of Administrative Offenses to strengthen the liability of pedestrians for traffic violations», which provides for exclusion prevention as a measure of administrative responsibility and increasing the number of tax-free minimum incomes («On Amendments to Article 127...», 2019).

The Explanatory Note to this bill states that the level of responsibility of pedestrians for violating traffic rules clearly does not correspond to the level of public danger of their actions and the amount and nature of damage (including potential) caused to other road users. As a result, increasing the level of fines for pedestrians violating traffic rules, including while intoxicated, will increase the level of individual responsibility of individuals and improve road safety. In addition, it will have a significant preventive effect, as the threat of paying relatively large fines will be a deterrent to traffic violations.

It is quite possible to agree with the position of the legislator on increasing the level of fines for pedestrians, as well as the exclusion of the rule on warning for committing offenses by pedestrians in the field of road safety.

Thus, having analyzed and investigated certain aspects of administrative liability for violation of traffic rules by pedestrians, it is possible to draw certain conclusions of the research.

Conclusions and prospects.

Currently, the norms of the Code of Administrative Offenses concerning measures of liability for violation of traffic rules by pedestrians are essentially dead, which is explained by the use of only a warning, which is purely preventive and relatively low fines for such offenses.

All this contributes to the spread of mass offenses in this area in the efforts of legislators to correct this situation by making appropriate changes to the current Code of Administrative Offenses in order to increase accountability and thus reducing the efforts of pedestrians to commit such actions.

References

1. Kovalyeva, S. (2019). Administrative responsibility as an effective mechanism for the legal regulation of breeding in animal husbandry. *Law. Human. Environment: scientific and practical journal*, 10(4). Available at: <http://dx.doi.org/10.31548/law> (accessed 28.03.2020) (in Ukrainian).
2. Global status report on road safety 2015. World Health Organization. Available at: <http://www.who.int> (accessed 28.03.2020) (in English).
3. Road Safety Improvement Strategy for Ukraine for the Period to 2020: Ordinance of the Cabinet of Ministers of Ukraine of June 14, 2017 No. 481-p. Available at: <https://zakon3.rada.gov.ua/laws/show/481-2017> (accessed 28.03.2020) (in Ukrainian).
4. Litvin, N.A. & Litvin, O.V. (2020). Administrative responsibility as a component of the mechanism for combating traffic safety offenses. *Science and law enforcement*. The publication is indexed in the international scientometric database Index Copernicus International Journals Master List,1 (47): 142–143 (in Ukrainian).
5. Statistics on the number of road accidents in 2019. Available at: <https://www.radiosvoboda.org/a/news-dtp-ukraina-2019/30420329.html> (accessed 28.03.2020) (in Ukrainian).
6. On traffic: the Law of Ukraine as of 01.01.2020 № 3353-XII. Available at: <https://zakon.help/law/3353-XII> (accessed 12.04.2020) (in Ukrainian).
7. Code of Ukraine on Administrative Offenses: Law of Ukraine as of 02.04.2020 № 80731-X. Available at: <https://zakon.rada.gov.ua/laws/show/540-20#n146> (accessed 12.04.2020) (in Ukrainian).
8. About traffic rules: resolution of the Cabinet of Ministers of Ukraine as of March 7, 2020 № 1306-2001-p. Available at: <http://zakon4.rada.gov.ua/laws/show/1306-2001-p> (accessed 12.04.2020) (in Ukrainian).
9. Mikhailov, R.I. (2011). Provision of administrative responsibility for violation of the legislation in the field of traffic safety in modern conditions. author's abstract. diss. ... cand. lawyer. Academy of Labor and Social Relations of the Federation of Trade Unions of Ukraine. Kyiv, 20 (in Ukrainian).
10. Gorkava, V. (2017). Administrative responsibility in the field of traffic: theoretical and legal aspects. *Bulletin of the National University «Lviv Polytechnic»*. Series: Legal Sciences: Collection of Scientific Papers. Lviv: Publishing House of Lviv Polytechnic, 865: 190–197 (in Ukrainian).
11. Averyanov, V.B. (2004). *Administrative Law of Ukraine*. Academic course: textbook. In two volumes: Volume 1. Common part. ed. Board: VB Averyanov, Kyiv: Legal Thought, 584 (in Ukrainian).
12. On Amendments to Article 127 of the Code of Administrative Offenses on Increasing the Responsibility of Pedestrians for Traffic Violations: Draft Law No. 2697 of 27.12.2019. Available at: <https://w1.c1.rada.gov.ua> (accessed 12.04.2020) (in Ukrainian).

О.В. Артеменко (2020). Проблемні аспекти адміністративної відповідальності за порушення Правил дорожнього руху пішоходами. Право. Людина. Довкілля, 11(3): 109-115. <https://doi.org/10.31548/law2020.03.013>.

Анотація. У статті досліджується питання адміністративної відповідальності за порушення правил дорожнього руху пішоходами. Було з'ясовано, що проблеми, у сфері забезпечення безпеки дорожнього руху є такими, що стосуються кожного, адже всі ми є учасниками дорожнього руху у вигляді чи то водіїв, пасажирів чи простих пішоходів. За даними Всесвітньої організації охорони здоров'я, кількість випадків смерті, що стали наслідком дорожньо-транспортних пригод є надзвичайно високими та встановлюється приблизно на рівні 1,25 млн. на рік, що є неприпустимими. До того, більшість із усіх смертельних випадків припадає на країни із середнім рівнем та низьким рівнем доходу, серед яких є і Україна.

Стверджується, що в даний час норми КУпАП, які стосуються мір відповідальності за порушення пішоходами правил дорожнього руху по суті є мертвими, що пояснюється застосуванням лише попередження, яке має суто профілактичний характер та досить низькими сумами штрафів за такі правопорушення. Це все сприяє розповсюдженню масових правопорушень у даній галузі на намаганнями законодавців виправити дану ситуацію шляхом внесення відповідних змін до чинного КУпАП з метою підвищення мір відповідальності та тим сам зменшивши намагання пішоходів вчиняти подібні дії.

Наголошується на тому, що станом на 2020 р. напрацьовується механізм ефективності застосування адміністративної відповідальності за порушення правил дорожнього руху саме пішоходами, у вигляді проекту Закону про підвищення мір адміністративної відповідальності у даній сфері саме для таких учасників дорожнього руху – як пішоходів.

Ключові слова: адміністративна відповідальність, адміністративна відповідальність за порушення правил дорожнього руху, пішохід, дорожній рух, дорожньо-транспортна пригода
