

**THEORETICAL AND PRACTICAL PROBLEMS OF
ADMINISTRATIVE RESPONSIBILITY INSTITUTE OF INDIVIDUALS-
ENREPRENEURS IN THE SPHERE OF WASTE MANAGEMENT**

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In the article theoretical and practical questions are investigated related to the institute of administrative responsibility of an individual - entrepreneur in the sphere of waste management.

Administrative responsibility, theoretical and practical questions, waste management, improvement of legislation.

Nowadays entrepreneurial activity in the sphere of waste management needs the detailed administrative and legal regulation. The effectiveness of management largely depends on the binding rules that exist in the public administration. Diversity of government relations causes many kinds of entities that are members of the administrative and legal relations in general and administrative responsibility relations in particular. In connection with this general and special subjects of an administrative offense are distinguished.

In science of administrative law separate aspects of an individual – entrepreneur activity were investigated by such scientists as V. Averyanov, O. Andriko, D. Bahrah, E. Golosnichenko, P. Kalyujniy, T. Kolomiec, V. Kolpakov, O. Kuz'menko, V. Kurilo, O. Svitlichniy and others. However, the question of individual persons - entrepreneurs activity in the sphere of waste management were not the subject of special researches yet. Thus, the aim of this publication is investigation of administrative responsibility institute of individuals - entrepreneurs in the sphere of waste management.

A deep analysis of the Administrative Code the rules of which provide liability in the sphere of waste management, gives reason to conclude, that among a wide range of articles, rules of which provide liability in the sphere of waste management rules of art. 82 and art. 82-8 of CAO provide responsibility of an individual – entrepreneur. Except the above-mentioned articles of Administrative Code, that provide responsibility of individual - entrepreneur in the sphere of waste management, to our opinion, individual - entrepreneur can be also subjects of offence provided by art. 164 of CAO. Although this article provides responsibility for violation of commercial activities, but taking into the consideration the fact that an administrative offense under art. 164 of CAO consists of realization of activity, that contain sign of entrepreneur, in other words such activity involves the right to obtain a license to engage in certain business activities, we consider it necessary to examine this article through the lens of administrative responsibility of the individual - entrepreneur whose activities are related to the sphere of waste management.

Individual – entrepreneur's administrative and legal status comes from the state registration, receipt of license for realization of certain type of entrepreneurial activity. However, this activity connected with not only problematic issue of bringing individual – entrepreneur to administrative responsibility in the sphere of waste management, but also with declaring this person official. On this occasion in the letter of Ministry of Justice of Ukraine from November 3, 2006 № 22-48-548 it is mentioned, that a citizen – performer of entrepreneurial activities, can be declared an official person (public individual) only when it actually becomes possible to perform the above mentioned duties. And it can happen in the case when such citizen on the terms of labour contract hires workers for an assistance to him in the course of business. Under such circumstances he gains organizational and administrative authority over employees (right to put set tasks before them, to

determine size of salary, daily routine, apply disciplinary penalties and other activities like that).

At the same time in the above-mentioned letter of Ministry of Justice of Ukraine it is said that letters of ministries and other central executive bodies do not establish the law and they are not regulations, they are explanatory, for informational purposes only. Described in this letter states the definition of entrepreneur as the official person or public individual if it exists certain components. One of these components is that an entrepreneur can be recognized by an official person (public individual) only when he operates with employees, under an employment contract hires employees to assist him in the implementation of business and he has a right to put before them certain tasks to determine wages, routine day to apply disciplinary measures and so on. Thus, the recognition of an official person (public individual) as entrepreneur depends on the fact whether he performs his work with employees on conditions of employment.

However, such an explanation as to the definition of entrepreneur by official person or public individual did not fully take into account the specificity of the business entity (entrepreneur). In addition, the definition of entrepreneurship and separation from other activities that operate in the sphere of waste management has both theoretical and purely practical.

Taking into consideration the issues related to the legal status of "individual person - entrepreneur," as stated in the explanation of the Ministry of Justice of Ukraine "status of an individual - entrepreneur: law enforcement problems" on January 14, 2011 the status of individual person - entrepreneur has no effect and does not limit any powers of a person arising out of civil capacity.

However, under chapter 1 of art. 128 of Civil Code of Ukraine a citizen is recognized entity in case of realization of his entrepreneurial activity if he has state registration as an entrepreneur without status of legal entity in accordance with art. 58 of the Commercial Code.

In economic relations individuals – entrepreneurs participate primarily as entrepreneurs, not as individuals, and only on the basis of their registration and entering information about them in the Unified State Register of legal entities and individual persons - entrepreneurs.

Article 51 of the Civil Code of Ukraine stipulates that the business activities of individuals apply normative - legal acts regulating business entities, unless otherwise provided by law.

Ambiguous interpretation of this provision in the scientific and legal literature and in practice causes the appearance of conflicting opinions, which certainly affects its enforcement because somehow merge the legal status of the individual with the legal status of a legal entity that, that by its legal character are different.

First of all, the capacity of the individual entrepreneur almost becoming equivalent to the capacity of legal entities – commercial organizations. He can have rights and responsibilities necessary for carrying out any activities not prohibited by law, and for which the law provides restrictions (art. 50 of Civil Code of Ukraine). The above mentioned can be seen, in particular, based on the provisions of art. 91 of the Civil Code of Ukraine.

Secondly, to the business activities of individuals applied rules of general civil law (Civil Code of Ukraine) as well as special law (the Commercial Code of Ukraine, Laws of Ukraine "On state registration of legal entities and individual persons - entrepreneurs", "On State Support of Small Business" [7] "On licensing certain types of activity ", etc.).

It should be remembered that in commercial law notion "legal person" and "individual person - entrepreneur" covered common term " entrepreneur ".

Thus, the specific features of each subject of the administrative offense should follow from the disposition of the relevant article of the administrative law. According to the the purpose of this investigation according to the CAO such offenses are violation of the requirements for waste management during

their collection, transportation, storage, processing, recycling, disposal, removal or disposal (art. 82) and disposal of unprocessed (raw) waste (art. 82-8).

Accenting attention on the signs of the special subject, we mean that such subject is provided with not only general properties of all subjects of misconduct but also is characterized additionally the special qualities, peculiar only to him.

General provisions concerning persons who may engage in entrepreneurial activities contained in the Civil Code of Ukraine and Commercial Code of Ukraine. Thus, within the meaning of art. 50 of Civil Code of Ukraine the right of establishment, that is not prohibited by law, has an individual person with full civil capacity. Restrictions on the right of an individual person to carry out business activities are established by the Constitution of Ukraine and the law. Individual exercises its right to business in the case of registration in the order set by a law.

Thus, if the citizen wants to exercise his constitutional right to business, after passing the relevant registration and other statutory procedures he doesn't lose or change his status of an individual, which he gains from his birth, he only gets a new status - "entrepreneur".

The status of an individual - entrepreneur – is a legal status, which reflects the individual's right to engage in business activities, namely independent, active and systematic at his own risk business activities undertaken by entities (entrepreneurs) to achieve economic and social benefits and profit.

According to Part 1 of art. 3 of Civil Code of Ukraine under the economic activity is seen the activities of economic entities in the social production aimed at manufacturing and sale of goods, works or services value character with price certainty. According to art. 55 of Civil Code of Ukraine entrepreneurs are participants of economic relations, that are making business, implementing economic competence (set of economic rights and

obligations), with separate property and are responsible for its obligations within the property, except as provided legislation. For the purposes of paragraph 2 of Part 2 of art. 55 citizens of Ukraine, foreigners and stateless persons, that are making business and registered under the law as entrepreneurs.

According to art. 5 of the Law of Ukraine "On state registration of legal entities and individual persons - entrepreneurs" registration of individual persons - entrepreneurs conducted by the state registrar only in the executive committee of city council or regional importance of the regional, Kyiv and Sevastopol city state administration at the location of the legal person or the place of residence of a individual person - entrepreneur. According to art. 43 of this Act, the date of registration in the Unified State Register of state registration of a individual person - entrepreneur is the date of state registration of a individual person - entrepreneur. Thus, the individual loses the status of the entrepreneur from the date of registration in the Unified State Register of state registration of the termination of business of a individual person - entrepreneur (Part 3. 46 of the Act).

The general definition of individual person - entrepreneur contained in subpoint 3.8.1 point 3.8 of art. 3. Classification of organizational forms of management control 002:2004, approved by the State Committee of Ukraine for Technical Regulation and Consumer Policy of 28 May 2004 № 97, according to which the entrepreneur is an individual who is a citizen of Ukraine, foreign citizen, stateless person, who carries on business. Citizen recognized entrepreneur in the case of his business if he has state registration as an entrepreneur without a legal status. The individual entrepreneur is liable for its obligations with all his assets, which in accordance with the law can be levied.

Art. 164 of CAO provides an administrative liability, in particular business activity without state registration. If it will not be proved that the work which was carried out, was just business, to make the person responsible for

the above mentioned article will be impossible. Thus, if the entity carries out activities in violation of the requirements for waste management during their collection, transportation, storage, processing, recycling, disposal, removal or disposal and the disposal of unprocessed (raw) waste without state registration or such activities are suspended due to Part 3 art. 46 of Law of Ukraine "On state registration of legal entities and individual persons - entrepreneurs" from the date of registration in the Unified State Register of state registration of the termination of business of individual person - entrepreneur. In this case, the subject of an administrative offense can only be an individual, not a business entity under art. art. 82, 82-8 of CAO.

Analysis of the administrative code indicates however that individual - an entrepreneur in the economic activities in the sphere of waste management may be responsible not only for violation of waste management at the time of collection, transportation, storage, processing, recycling, disposal, removal or disposal (art. 82) and the disposal of unprocessed (raw) waste (art. 82-8), but also for economic activities without state registration as a business entity, or without obtaining a license to carry a type of economic activity subject to licensing under the Act, or of such economic activities in violation of licensing conditions, as well as without obtaining permission, other authorizing document, if it is prescribed by the law (art.164).

Special feature of the subject of an administrative offense indicates a particular legal status of an individual - a business entity that considered a part of business relationships, and is subject of administrative responsibility for offenses in the sphere of radioactive waste if the state registration and licensing in the sphere of waste management and implementation of economic (business) activities.

To recognize an individual - entrepreneur, the subject of the administrative offenses provided for by art. 82, and art. 82-8. 164 of CAO, the officer authorized to draw up a protocol on administrative offense as provided for by these Articles and shall obtain information about the certification of the

fact of the entry or withdrawal of the status of a business entrepreneur and receipt or withdrawal of a license for carrying out activities in the sphere of waste management.

It is understood that the violation of the legislation rules of economic activities to entities (individual person - entrepreneur) may be used by authorized state bodies or local government administrative and economic sanctions, that is, organizational and legal measures or material nature, aimed at ending violations of the entity and the elimination of its consequences provided for by art. 239 of Commercial Code of Ukraine.

The grounds for administrative liability of an individual - entrepreneur for offenses in sphere of waste management has great importance because it eliminates gaps and avoid collisions in the legal regulation of administrative responsibility.