

**THE COMMENTARY TO ARTICLE 164 OF THE CODE OF UKRAINE ON
ADMINISTRATIVE OFFENCES IN THE WORDING OF THE LAW OF
UKRAINE «ON AMENDMENTS TO SOME LEGISLATIVE ACTS OF
UKRAINE CONCERNING HUMANIZATION OF THE RESPONSIBILITY
FOR VIOLATIONS IN THE SPHERE OF ECONOMIC ACTIVITY»**

**V.I. KURYLO, *Doctor of Legal Sciences,*
*National University of Life and Environmental Sciences of Ukraine,***

**O.M. KAPLYA, *PhD (Law),*
*National Academy of internal Affairs***

In this article made of the scientific commentary to article 164 of the Code of Ukraine on administrative offences in the new edition, which was brought by the Law of Ukraine «On amendments to some legislative acts of Ukraine concerning humanization of the responsibility for violations in the sphere of economic activity».

Offences, economic activity, resolution, licensing, standard, state registration.

November 15, 2011 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On amendments to some legislative acts of Ukraine concerning the humanization of responsibility for violations in the sphere of economic activity". In the explanatory Memorandum States, that domestic legislation is characterized by unrealistically high level of criminalization of offences in the sphere of economic activity, which is an obstacle for business development, as well as because of deficiency of the State budget of Ukraine adequate compensation for the harm caused by the wrongful actions in this area.

Unreasonably, wide range of statutory grounds for the application of

the penalty of imprisonment for crimes in the economic sphere does not contribute to the compensation of prisoners caused them harm. In addition, there are cases of abuse by law enforcement agencies in attracting entrepreneurs to criminal responsibility, which is a consequence of the deterioration of the investment climate in the state and reduced business activity of the population. So, today is a clear need to bring the provisions of the domestic legislation establishing legal liability for criminal offences in the field of Economics and economic activities, in line with European standards, according to which for committing these offenses priority is given to the application of financial sanctions.

That is, with the aim of humanizing the existing legislation of Ukraine sanctions for committing criminal offences in the field of Economics and economic activities specified by the law for crimes in the economic sphere instead of a sentence of imprisonment imposed sanction in the form of a fine. Some offences decriminalized by simply dragging the components of administrative offences. The consequence of this was the presentation of Art. 164 of the Cao "violation of the procedure of carrying out economic activity" as follows:

"The implementation of economic activities without state registration as a business entity, or without obtaining a license for a certain type of economic activity subject to licensing under the law, or the implementation of such types of economic activity in breach of the licensing terms, as well as without a permit, other permits, if the receipt is provided by law (except where the application of the principle of tacit consent), - entails a fine of from twenty to one hundred untaxed minimum incomes of citizens with confiscation made products, instruments of production, raw materials and money received as a result of committing the administrative offence, or without such.

Actions envisaged in part one of this article committed by a person who during the year had been administrative penalty for the same crime, or

connected with the receipt of income on a large scale, - shall entail imposition of a fine from one hundred to five hundred non-taxable minimum incomes of citizens with confiscation of manufactured products, means of production, raw materials and money received as a result of committing the administrative offence.

The provision by an entity permitting authority or the administrator false information regarding the compliance of the material-technical base requirements of the law - shall entail the imposition of a fine of forty to one hundred untaxed minimum incomes of citizens."

Proposed revision Art. 164 of the Cao has a complex legal structure.

The objective of the offences provided for in Art. 164 of the code of Ukraine on administrative offences, is in the implementation of economic activity, which contains the signs of business, without state registration as a business entity, or without obtaining a license for a certain type of economic activity subject to licensing under the law, or without a permit, other permits, if the receipt is required by law. The main object of the offence is the procedure for state registration and licensing of entrepreneurial and other economic activities, including banking and professional activity on the securities market. An additional object of the act the tax system, the principles of fair competition, the legitimate interests of consumers.

The subject of the offence are: 1) physical sane person, regardless of citizenship, under 16 years of age, including persons who are registered in business activity without creating a legal entity; 2) officials of legal entities - commercial and other entities that accept and / or implement decisions about the implementation of economic activities without the proper license, or staff person who has not ensured that the company, institution or organization licenses, although such an obligation was placed on normative acts of the constituent documents or the employment contract. The presence of the responsibilities of a particular employee or organization to

comply with the licensing requirements should be established in each specific case, taking into account the conducted factual and legal control over financial and economic activities of the entity. The subjective side of the offense is characterized by direct intent.