

КРИМІНАЛЬНЕ ПРАВО ТА КРИМІНАЛЬНИЙ ПРОЦЕС

UDC 342.9:640:002

<https://doi.org/10.31548/law2021.01.018>

GENERAL CHARACTERISTICS OF CRIMES FOR VIOLATION OF LEGISLATION IN THE FIELD OF DOMESTIC SERVICES

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Summary. The article analyzes the current state of legislation, which provides for administrative liability for violations in the provision of consumer services in Ukraine. Attention is drawn to the fact that the main source of norms that establish administrative liability is the Code of Ukraine on Administrative Offenses. The concept of administrative misconduct is revealed by defining its main characteristics.

It is established that administrative offenses, where the object is public relations in the field of consumer services are contained in Chapter 12 «Administrative offenses in trade, catering, services, finance and business» (Articles 155, 155-1, 155-2, 156-1, 164) and Chapter 13 «Administrative offenses in the field of standardization, product quality, metrology and certification» (Article 168-1) of the Code of Ukraine on Administrative Offenses.

Administrative offenses in the field of household services are analyzed by the structure of its composition, which contains the object, the objective side, the subject and the subjective side, which together determine the composition of the administrative offense (misdemeanor). The analysis of separate components of structure of structure of an administrative offense is analyzed. It is emphasized that the administrative torts analyzed in this way will contribute to a holistic systematic presentation of the substantive characteristics of administrative offenses and administrative liability for violations of legislation in the field of household services, which gave grounds to establish that in addition to the general subject, the subject of administrative liability individuals – business entities.

In order to improve the administrative-tort legislation, it is proposed to differentiate between administrative and legal norms that establish administrative liability in the field of consumer protection and the provision of household services.

Keywords: *legislation, construction of services, violations, administrative responsibility*

Introduction.

Administrative liability is an important tool for state regulation of business (economic) entities in the field of household services. Almost every administrative scientist has addressed the issue of administrative liability in his works, but the issue of administrative liability in the field of household services is little studied in the science of administrative law, which leads to a comprehensive analysis of administrative liability in the field of household services. In view of this, the study of the composition of administrative torts for violations of legislation in the field of domestic services is important from both theoretical and practical points of view, which determines the relevance of the scientific article.

Analysis of recent research and publications.

Among the scholars who have dedicated their works are A. Berlach, R. Kalyuzhny, V. Kolpakov, O. Kuzmenko, V. Kurilo, O. Ponomarenko, S. Taranyshovich and others. However, given the existing problems of theoretical and practical nature, there are a number of issues that need to be studied.

Results.

Depending on the type of offense in the field of household services, the absence or infliction of property damage by the offense, as well as the degree of state security, the violator may be subject

to different types of legal liability. The classification of legal liability depending on the object of belonging of the violated legal norm is widespread. On this basis, the theory of law distinguishes such types of legal liability as criminal, administrative, civil, disciplinary liability. Specified types of legal liability are generally recognized and it is within these types of guilty persons are brought to legal responsibility (Svitlichnyy, 2010: 139).

The actual basis of administrative liability for violation of legislation in the field of consumer services is an administrative offense, the definition of which is provided in Part 1 of Art. 9 of the Code of Ukraine on Administrative Offenses of 07.12.1984 № 8073-X.

Administrative offenses where the object is public relations in the field of consumer services are contained in Chapter 12 «Administrative offenses in trade, catering, services, finance and business» (Articles 155, 155-1, 155-2, 156 -1, 164) and Chapter 13 «Administrative offenses in the field of standardization, product quality, metrology and certification» (Articles 168-1) of the Code of Administrative Offenses.

Administrative offenses in the field of consumer services in terms of its composition can be analyzed by the structure of its composition, which contains the object, the objective side, the subject and the subjective side, which together determine the composition of the administrative offense (misdemeanor). As for our study, the topical issue is the analysis of individual components of the structure of the administrative offense.

We hope that the administrative torts analyzed in this way will contribute to a holistic systematic presentation of the substantive characteristics of administrative offenses and administrative liability for violations of legislation in the field of domestic services. St. 155 of the Code of Administrative Offenses provides for liability for «Violation of the rules of trade and provision of services by employees of trade, catering and services, citizens engaged in entrepreneurial activities».

The objective side of the offense is actions that take the form of violations established for trade and services (including domestic). This means that the executor is a business entity (business activity) that provides services, is obliged to provide (transfer) a household service that must meet the established requirements. Requirements for the provision of services, rights and obligations of business entities in the field of household services are defined by the Law of Ukraine «On Consumer Protection» of 12.05. 1991 № 1023-XII and other regulations. The subject of the offense in the provision of household services are individuals – business entities, as well as officials or individuals of consumer services.

The object of the offenses under Art. 155-1 KUpAP is public relations in the field of settlement operations. St. 2 of the Law of Ukraine «On the use of registrars of settlement transactions in the field of trade, catering and services» from 06. 07. 1995 № 265/95-VR, determines that the settlement transaction – is the acceptance of cash from the buyer, payment cards, payment checks, tokens, etc. at the place of sale of goods (services), issuance of cash for the goods returned by the buyer (unprovided service), and in case of using a bank payment card – execution of the relevant payment document for payment in

non-cash form of goods (services) by the buyer's bank. in case of return of the goods (refusal of service), registration of settlement documents on transfer of means to bank of the buyer.

The norms of this Law are directly related to the sphere of household services. This is indicated by paragraph 3 of the «Rules of consumer services», which states that the provision of consumer services is regulated by the Law of Ukraine «On the use of registrars of settlement transactions in trade, catering and services».

The above indicates that business entities that carry out settlement operations in cash and / or non-cash form (using payment cards, payment checks, tokens, etc.) in the provision of household services, as well as operations to accept cash for further transfer. are obliged to follow the order of settlement operations. The objective side of the offense is to violate the statutory procedure for settlement transactions in the field of consumer services. In accordance with the provisions of Art. 155-1 KUpAP, in cases of violation by the person of the order of carrying out settlement operations in the field of household services, its actions in the presence of the bases can be qualified under part one of Art. 155-1 KUpAP.

Subjects of offenses under parts one and two of Art. 155-1 of the Code of Administrative Offenses may be persons who, in accordance with their functional responsibilities, carry out settlement operations in the field of household services, as well as officials and individuals – business entities.

The object of the offenses under Art. 155-2 KUpAP. «Deception of the buyer or the customer» are the rules of trade and rendering of services to the population established by the legislation, and also legitimate interests of buyers and customers.

The objective side of the offenses under this article is to deceive buyers or customers. Such deception may consist in incorrect calculation of the cost of the provided household service, excess of the established prices and tariffs of household services, etc. The obligatory sign of the objective side of the offense is the deceptive nature of the relevant actions – they are committed in a way that gives the customer the impression of the correctness of the actions of the guilty person. The obligatory sign of the objective side of the offense is the situation. That is, the offense may be committed during the provision of household services to the customer at consumer service enterprises, markets or other places.

The subject of the offense is the provided domestic services that violate the legal rights and interests of service customers.

The obligatory sign of the objective side of this offense is the commission of the latter only during the provision of household services. The qualifying feature is the commission of an offense by a person who during the year was subject to administrative penalties for the same violations, as well as actions that cause material damage to the customer in excess of three non-taxable minimum incomes (51 UAH). According to the note provided to Art. 155-2 of the Code of Administrative Offenses, «fraud of buyers or customers on a large scale should be considered fraud that caused material damage to a citizen in an amount exceeding three non-taxable minimum incomes».

The object of the offenses under Art. 156-1. «Violation of legislation on consumer protection» of the Code of Administrative Offenses is public relations in the field of consumer protection. The main legal act in this area is the Law of Ukraine «On Consumer Protection», which regulates relations

between consumers of goods, works and services and producers and sellers of goods, contractors and service providers of various forms of ownership, establishes consumer rights and determines their mechanism. protection and basics of implementation of state policy in the field of consumer protection.

The objective side of the offenses under Art. 156-1 KUpAP consists in commission by workers of sphere of household services and physical persons – subjects of business activity in sphere of household services, such actions: refusal by employees of the sphere of consumer services and natural persons – subjects of entrepreneurial activity in the sphere of provision of consumer services to provide citizens-consumers with necessary, accessible, reliable and timely information about consumer services, their types; restriction of the rights of citizens-consumers to check the quality and price of purchased household services.

Given the significant number of types of household services and entities (citizens, legal entities) involved in the provision of household services. It should be noted that the subjects of such services may also be persons without state registration. In this case, such actions must be qualified in accordance with Art. 164 KUpAP as violation of the order of carrying out economic activity.

The object of the offenses under Art. 164 KUpAP is the order of realization of economic activity established by the legislation. Given that the field of consumer services is impossible without such activities, it is necessary to analyze the normative definition of this concept. In particular, subparagraph 14.1.36 of Art. 14 of the Tax Code of Ukraine dated 02.12.2010 № 2755-VI, defines economic activity as the activity of a person related to the production (manufacture)

and / or sale of goods, works, services, aimed at obtaining income and is carried out as such a person independently and / or through its separate divisions, as well as through any other person acting in favor of the first person, in particular under commission agreements, power of attorney and agency agreements.

The objective side of the offenses under Art. 164 of the Code of Administrative Offenses, is to carry out activities that contain signs of business, without state registration as a business entity in the provision of household services, carrying out such activities without a license, or a ban on certain types of economic activities. The disposition of the article is of a blanket nature, to clarify the content of the administrative-legal prohibition it is necessary to refer to the Laws of Ukraine, in particular, «On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations» dated 15.05.2003 № 755-VI, «On licensing of economic activities» from 02.03. 2015 № 222-VIII and others.

Problematic issue of bringing a person to justice under Art. 164 of the Code of Administrative Offenses is the lack of a legislative definition of the concept of «systematic business activity». With regard to «systematicity», we should pay attention to the position of the Supreme Court of Ukraine, which in the decision (case № 6-146tss12u) from 12.12. 2012, expressed the legal position that in defining the concept of «systematicity» should refer to Part 1 of Art. 782 of the Civil Code of Ukraine, which gives the landlord the right to withdraw from the lease if the lessee does not pay for the use of the thing for three consecutive months.

Qualifying features of offenses (Part 1 of Article 164) are: the commission of an offense by a person who during the year was subjected to an administrative penalty for the same violation;

income in large amounts. Income on a large scale occurs when its amount is a thousand times or more than the tax-free minimum income of citizens.

In terms of attracting a person under part two of Art. 164 of the Code of Administrative Offenses should be guided by the «Procedure for notifying the administrator or the relevant permitting authority of the compliance of the material and technical base of the business entity with the requirements of the legislation» approved by the Cabinet of Ministers of Ukraine 07.12. 2016 № 922.

When providing household services, there are cases when such services may not meet the requirements of standards, norms and rules. In this case, the guilty person must bear the responsibility provided by the provisions of Art. 168-1 KU-PA. The main direct object of offenses in the field of consumer services is regulated by law the order of economic activity, which must meet the requirements of standards, norms and rules.

The objective side of the offense under Art. 168-1 of the Code of Administrative Offenses, is to provide services to citizens-consumers who do not meet the requirements of standards, norms and rules established by relevant legislation.

Thus, «administrative offense in the field of consumer services» should be considered as an unlawful culpable (intentional or negligent) act or omission of business entities that encroach on the established order in the field of consumer services. This definition provides a social assessment of the offense as an act that encroaches on the objects of illegal encroachment, which in particular include violations of the rules of household services, violation of the order of economic activity and violation of standards, norms and rules in the provision of household services.

Conclusions and prospects.

The analysis of administrative liability for violation of legislation in the field of domestic services revealed that the subject of an administrative offense under Art. Art. 155, 155-1, 155-2, 156-1, 164, 168-1 of the Code of Administrative Offenses are citizens who have reached the age of 16 and special entities (classifying features are required to qualify the actions of the latter).

The analysis of the norms of these articles indicates that in the norms of certain articles of the Code of Administrative Offenses, there are no special instructions that indicate that the subject of administrative liability are special subjects. These include both officials of enterprises in the field of household services, and individuals – business entities. According to Art. 14 of the Code of Administrative Offenses, officials are subject to administrative liability for administrative offenses related to non-compliance with the established rules in the field of protection of governance, state and public order, nature, public health and other rules, the implementation of which is part of their duties. However, the disadvantage of Art. 156-1 of the Code of Administrative Offenses is that the provisions of this article do not directly establish the responsibility of the official. As for the liability of individuals – business entities for violations of legislation in the field of consumer services, the absence of an individual as a business entity for violation of the statutory procedure for settlements in the field of services (155-1 KUpAP), is a shortcoming of the Administrative Code. This approach of the legislator to the formation of the norms of these articles

is a shortcoming of the legislator and can cause legal errors in the practice of authorized bodies and their officials in case of prosecution for violating the rules of these articles KUpAP.

In the issue of bringing to justice individuals – business entities should be based on the fact that the general definition of this person is contained in subparagraph 3.8.1 of paragraph 3.8 of Art. 3 Classification of organizational and legal forms of management DK 002: 2004, approved by the order of the State Committee of Ukraine for Technical Regulation and Consumer Policy of May 28, 2004 № 97. According to the order, an entrepreneur is a natural person who is a citizen of Ukraine, foreign citizen, person without citizenship, carrying out business activities.

Based on the study, it was found that administrative offenses in the provision of household services are heterogeneous in their direction, cause harm or threaten to cause public relations, which are the object of misdemeanor, which allows them to be classified as objects of encroachment on:

- a) offenses in the field of domestic services (Article 155, Article 155-2, Article 156-1);
- b) offenses in the field of settlements in the provision of household services (Articles 155-1);
- c) offenses in the field of economic activity of household services (Article 164);
- d) offenses in the field of household services that do not meet the requirements of standards, norms and rules (Articles 168-1).

In addition to the general subject, the subject of administrative liability for violation of legislation in the field of household services are officials and individuals –business entities, which

makes it possible to distinguish the following categories of subjects of administrative liability:

- 1) citizens (natural sane person), employees in the field of household services (Article 155; part one of Article 155-1; Article 155-2; Article 156-1;
- 2) officials (Article 155; part one of Article 155-1; Article 155-2; Article 168-1;
- 3) natural persons – subjects of entrepreneurial activity (Articles 155; Articles 155-2; Articles 156-1; Articles 164; Articles 168-1) of the Code of Administrative Offenses.

In order to improve the administrative-tort legislation, it is expedient to differentiate between administrative and legal norms that establish administrative liability in the field of consumer protection and provision of services. A sign that distinguishes such responsibility may be the separation of services in the field of trade from household services (their types).

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**О.П. Світличний & А.Р. Трохименко (2021). ЗАГАЛЬНА ХАРАКТЕРИСТИКА
ЗЛОЧИНІВ ЗА ПОРУШЕННЯ ЗАКОНОДАВСТВА У СФЕРІ ПОБУТОВИХ ПОСЛУГ.**

Право. Людина. Довкілля, 12(1): 158-165. <https://doi.org/10.31548/law2021.01.018>.

Анотація. У статті проаналізовано сучасний стан законодавства, яке передбачає адміністративну відповідальність за порушення при наданні побутових послуг в Україні. Звертається увага на те, що основним джерелом норм, що встановлюють адміністративну відповідальність, є Кодекс України про адміністративні правопорушення. Поняття адміністративного проступку розкривається шляхом визначення його основних характеристик.

Встановлено, що адміністративні правопорушення, об'єктом яких є суспільні відносини у сфері побутових послуг, містяться в главі 12 «Адміністративні правопорушення в торгівлі, громадському харчуванні, послугах, фінансах та бізнесі» (статті 155, 155-1, 155 -2, 156-1, 164) та глави 13 «Адміністративні правопорушення у галузі стандартизації, якості продукції, метрології та сертифікації» (ст. 168-1) Кодексу України про адміністративні правопорушення.

Адміністративні правопорушення у сфері побутових послуг аналізуються за структурою його складу, що містить об'єкт, об'єктивну сторону, суб'єкт та суб'єктивну сторону, які в сукупності визначають склад адміністративного правопорушення (проступку). Проаналізовано аналіз окремих складових структури адміністративного правопорушення. Підкреслюється, що аналізовані таким чином адміністративні делікти сприятимуть цілісному систематичному викладу суттєвих характеристик адміністративних правопорушень та адміністративної відповідальності за порушення законодавства у сфері побутових послуг, що дало підставу встановити, що окрім загального суб'єкту, мають місце і суб'єкти адміністративної відповідальності фізичні особи – суб'єкти господарювання.

З метою вдосконалення адміністративно-деліктного законодавства пропонується розмежувати адміністративно-правові норми, що встановлюють адміністративну відповідальність у сфері захисту прав споживачів та надання побутових послуг.

Ключові слова: законодавство, побудові послуги, порушення, адміністративна відповідальність