

**CLASSIFICATION OF MEASURES OF ADMINISTRATIVE COMPULSION  
AS INSTRUMENT OF INFLUENCE ON SITUATION OF PROTECTION OF  
INTELLECTUAL PROPERTY ITEMS**

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*The article examines the classification of measures of administrative compulsion as one of the effective instruments to provide lawfulness in the field of protection of intellectual property items.*

***Classification of measures of administrative compulsion, intellectual property items, legal responsibility.***

The application of measures of compulsion is a final stage of the activity of regulatory entities in the field of protection of intellectual property items and one of the effective measures to maintain law in this sphere.

In special literature the general questions of administrative compulsion are investigated thoroughly enough, that cannot be remarked about the questions of classification of measures of administrative compulsion for violation of legislation in the field of protection of intellectual property items, which did not get an unambiguous decision, regardless of their large practical and theoretical importance.

**The aim of the article** is to research classification of measures of administrative compulsion for violation of legislation in the field of protection of intellectual property items.

In administrative legal science the most acknowledged one is classification of measures of administrative compulsion, offered by M. I. Erokin, who took as basis of classification of these measures the aim of their

application, dividing them into three types: administrative preventing measures; measures of the administrative stopping; measures of administrative responsibility.

Without regard to the fact that in scientific literature there are the argued denials in relation to the certain types (groups) of the mentioned classification, however the majority of national scientists in the branch of administrative law are for dividing of administrative compulsion into the measures of prevention, stopping and administrative responsibility. We share the opinion, that such a division represents the law-enforcement intention of administrative compulsion most clearly.

With reference to the generally recognized practice of classification of measures of administrative compulsion, we also suggest to consider them in the field of protection of intellectual property items. The first group is formed by administrative preventing measures that have a preventive character. The matter of preventive influence of administrative preventing measures, as the scientists in the branch of administrative law justly note , firstly is not to let illegal behavior from the side of the concrete individuals; secondly, to remove the causes that further an offences, and to create conditions, that exclude illegal behavior. In other words, in the field of protection of intellectual property items such measures are the activities of the authorized state bodies and their officials that within the limits of their power apply administrative preventing measures, the order of application of which is regulated by a good deal of laws and other statutory acts.

To the administrative preventing measures in the field of protection of intellectual property items we refer: carrying out expert examination in accordance with the established procedure; licensing of the activities; state registration and record keeping; the state of compliance with the requirements of legislation by business entities of all forms of ownership; issuance of documents for realization of custom control and custom registration of goods; organization of checking of business entities for the

purpose of the observance of legislation; exercise of state supervision over compliance with the requirements of legislation by business entities of all forms of ownership; issuance to business entities compulsory instructions in relation to the removal of violations of legislation, detected during the conduct of verification of the activities of entities; bringing forward a motion about removal of the causes and conditions that further an offences.

Thus, administrative preventing measures is a complex of the measures, established by the government, which have organizational and legal character and another influence, that are used by the bodies of state authorities and their officials with the aim of prevention and detection of violations in the field of protection of intellectual property items.

The feature of these measures is that they are used on condition of the absence of unlawful acts and with the aim of prevention and detection of such. The considered circle of administrative preventing measures is not exhausted, at the same time they represent the most widespread measures which can be implemented in the field of protection of intellectual property items. The measures of administrative stopping are one of the most numerous and the most diverse of all the measures of administrative compulsion.

The mentioned group of measures of administrative compulsion is characterized, first of all, by the fact that their implementation is conditioned by the real illegal situation. They are directed to stop (interrupt) the certain situation (behavior), to establish the identity of a violator, to provide in future with the investigation of circumstances of the case and with application of administrative penalty to a violator. They do not have an aim to punish a violator.

Taking into account the peculiarity of protection of intellectual property items, the analysis of the current legislation and the practice of its realization all these let us determine a list of the measures of the administrative stopping

with general purpose, which are used by the regulatory entities in the sphere of protection of intellectual property items.

According to the current Code of Ukraine on administrative offenses, administrative responsibility are prescribed by article 51-2, articles 164-3, 164-6, 164-7, article 164-9 and article 164-13.

The administrative responsibility for violation of intellectual property items is also prescribed by article 479 of the Custom code of Ukraine. In addition, we fall in with views, that establishment by the legislator in part 2 of article 459 of the Custom code of Ukraine of administrative responsibility of officials of enterprises for violation of custom rules by enterprises, the sanctions of this article can be applied to business entities in the movement of goods across the customs border in the case of their violation of intellectual property rights.

Thus, the set of elements of offenses is used to all offences in the field of public law and is universally recognized in the science of administrative law, and that is why the absence of even one of the elements of offense makes impossible to bring a person to administrative responsibility. From the objective side the violation of rights to the items of intellectual property is characterized by the public danger related to the elements of offense, and the task of the Code on administrative offenses is, in particular, legal providing with protection, rights and legal interests of physical and legal persons, laws of Ukraine and other regulatory legal acts, and also prevention of administrative offenses.

The object of administrative offense are the material objects, concerning which public relations occur, that are protected by the norms of administrative law. An object can be of the essence for description of the performed act, for more exact subsumption of the offense.

The research of classification of measures of administrative compulsion in the field of protection of intellectual property items permits to define the administrative compulsion as a system of prescribed by the administrative

legal norms the measures of influence on consciousness and behavior of people with the aim of protection of rights of intellectual property subjects on the belonged to them items of intellectual property right by means of preventing and stopping of offences, and also by imposition of administrative penalties by courts (judges) upon guilty persons.