

SUBJECT OF ADMINISTRATIVE OFFENCE IN FIELD OF ILLEGAL USE OF ITEMS OF INTELLECTUAL PROPERTY RIGHT

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The article deals with the research of subjects of administrative offence in the field of the illegal use of items of intellectual property right. With the aim of the improvement of the administrative code the suggestions are contributed about making changes to chapter 2 of the Code of Administrative Offences of Ukraine.

Subjects of administrative offence, items of intellectual property right, administrative code, improvement of legislation.

Administrative responsibility is a major social element of protection of items of intellectual property right. In accordance with article 9 of the Code of Administrative Offences of Ukraine the administrative offence (trespass) is an illegal, guilty (willful or careless) activity or inactivity, that encroaches on a public order, property, rights and freedoms of citizens, on the set order of management and for which administrative responsibility is statutory.

A subject of administrative delict is an abstract concept that is out of time and space, and a person who physically exists and inflicts harm (or can inflict harm objectively) to the object of encroachment due to his illegal acts. However, a subject as a really existent person does not enter into the complement of offence. The complement of administrative offence contains only elements by which this person is characterized.

A question of decision of status of general and special features of subject of administrative offences in the field of the illegal use of items of intellectual

property right traditionally is a research subject of scientists of administrative law. To them, in particular, such national researchers applied as G. V. Korchevny, O. P. Orluk, M. V. Pushkar, O. P. Svitlychny, O. Sh. homahashvili and others.

The subject of administrative offence according to the current Code of Administrative Offences of Ukraine is a physical responsible person who attained sixteen years age in the moment of committing of the administrative offence. All features of the complement, that characterize an individual subject, it is possible to divide into two groups: general and special (as well as subjects are usually divided into general and special). The general and special features of subject are belonged to the complement of administrative offence. First ones pertain to any subject.

Special features are such features which show peculiarities of legal provision of subjects of offence. The special subject is a person who can be acknowledged as a subject of concrete administrative offence, and consequently brought to administrative responsibility if he has not only features of general subject, but certain additional features. In particular such additional features can be: citizenship; age; presence of status of public servant or certain job title; state of health or physiology state of person; profession; sphere of professional activity; the fact of lodgment with certain rights, duties or fact of divestment of right or its absence; a fact of the previous bringing of a person to administrative responsibility; special legal status, some other features. A legislator, thus, aims to define responsibility of different categories of citizens, create conditions for individual influence on offenders, what stipulated including their special features to the law.

As from the point of view of theory and practice of administrative law for bringing a person to administrative responsibility there must be a complement of administrative offence – a complex of subjective and objective features in the presence of which the administrative responsibility of concrete subject is possible.

In our opinion, one of such features is a terminological determination of subject of administrative offence in the norms of the articles of the administrative code. As a problem of terminological determination of subject has a large practical importance and influences on possibility of bringing of a person to responsibility, on violation of administrative realization, we consider that with the aim of settlement of legal collisions in relation to the determination of subject of administrative offence of intellectual property rights, it is reasonable to carry out the legal analysis of the articles of the Code of Administrative Offences of Ukraine.

We would like to note that in the norms of articles 51-2, 164-3, 164- 6, 164-13 it is not marked in of the Code of Administrative Offences of Ukraine who is a subject of offence, while according to article 156-3, a subject of offence is citizens, officials of advertiser and/or distributor, and according to part 2 of article 164-9 of the Code of Administrative Offences of Ukraine is a person.

If we analyse the subject of administrative offence envisaged by articles 51-2, 164-3 of the Code of Administrative Offences of Ukraine then the subject of offence according to this article is a citizen, a citizen who is a performer of entrepreneurial activities who carry on business without creation of legal entity, officials of enterprises, organizations and establishments of all forms of ownership.

The subject of offence according to article 164- 6 of the Code of Administrative Offences of Ukraine can be persons who do not have a state certification on a right for distribution and demonstration of films. So, the subject of offence can be a citizen, citizen who is a performer of entrepreneurial activities and an official.

Despite the legislator in part 2 of article 164-9 of the Code of Administrative Offences of Ukraine under the subject of administrative offence uses a term "person", it gives an opportunity to assume that under

the subject of administrative offence it should understand a citizen, a citizen - performer of entrepreneurial activities and an official.

Thus, the necessity of the only approach to the use of identical terms in the administrative legislation and unification of it in the Code of Administrative Offences of Ukraine is confirmed. And for avoidance of misunderstanding in application of the separate articles of the Special part of the Code of Administrative Offences of Ukraine we offer to set legislatively a concept of a citizen - performer of entrepreneurial activities in article 13-1 "Responsibility of citizen - performer of entrepreneurial activities" and to expound it in a such way: citizens who are performers of entrepreneurial activities, as participants of economic relations are subject to administrative responsibility for administrative offences on grounds and in the order, for which the responsibility is statutory.