

## SOME LEGAL ASPECTS OF THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND CRIMINAL OFFENSES

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*In the context of Ukraine's legal system reform and the introduction of the criminal offense institution, the paper offers a thorough scientific and legal examination of the connection between administrative and criminal offenses. The growth of national legal theories regarding torts is examined, and the provisions of the Ukrainian Criminal Code and the Code of Administrative Offenses are examined in light of contemporary legislative developments.*

*It has been demonstrated that while criminal and administrative offenses share a common legal basis, they differ in terms of the severity of the public danger, the nature of the legal ramifications, the process for prosecuting the offender, and the kinds of sanctions. The reasons for their difference are given special emphasis; these include the degree of public risk posed by the conduct, the type of legal culpability, the procedural form of consideration of the case, and the implications for the individual's legal position.*

*A number of issues with law enforcement were noted, including the possibility of breaking the concept of legal certainty, the evaluative nature of the category of «social hazard,» and the duplication of offenses in the Criminal Code of Ukraine and the Code of Administrative Offenses. Typical instances of reclassification of acts were examined at the applied level, which poses challenges for law enforcement organizations.*

*A clear normative distinction between administrative and criminal violations, the resolution of conflicts, and the harmonization of national law with European standards were the goals of the suggested legislative improvement directions. It was underlined how important it is to maintain the co-*

*herence of law enforcement procedures and raise the degree of legal certainty.*

*Keywords: administrative offense, criminal offense, crime, legal liability, tort, law enforcement agencies, criminal law, administrative law*

The current stage of development of the legal system of Ukraine is characterized by active transformation processes, caused by both internal reforms and the need to harmonize national legislation with European standards. One of the key areas of such changes was the renewal of approaches to the classification of offenses, in particular, the introduction of the institution of a criminal offense as an independent type of criminal offense. This innovation is aimed at humanizing criminal liability, optimizing the criminal process and relieving the burden on the judicial system.

At the same time, an extensive system of administrative and tort norms enshrined in the Code of Ukraine on Administrative Offenses continues to function in national law. The presence of two categories that are close in legal nature – administrative offenses and criminal offenses – makes the problem of their clear distinction urgent. In practice, this issue becomes particularly important in connection with cases of competition of norms, duplication of offenses, and the possibility of different legal qualifications of the same act.

The relevance of the study is due to the need to ensure the principle of legal certainty, prevent arbitrary application of legal norms

and guarantee human rights and freedoms in the process of bringing to legal responsibility. The vagueness of the boundaries between administrative and criminal offenses can lead to violations of individual rights, in particular in terms of the scope of procedural guarantees, the type and severity of sanctions, as well as legal consequences [1].

The purpose of the article is a comprehensive analysis of the legal nature of administrative offenses and criminal offenses, determining the criteria for their differentiation, as well as identifying problems in law enforcement and formulating proposals for improving legislation.

To achieve the goal, the following tasks have been identified: to investigate the regulatory and legal principles of regulating the relevant offenses; to analyze their common and distinctive features; to determine the key criteria for differentiation; to characterize the problems that arise in law enforcement practice; to outline areas for improving legislation.

The methodological basis of the study is formed by general scientific and special legal methods, in particular formal-legal, comparative-legal, system-structural and legal analysis methods. Their application allowed for a comprehensive study of the issues of the correlation between administrative and criminal offenses.

In scientific research, attention is drawn to the fact that when analyzing the relationship between such categories as “administrative offense” and “administrative misconduct (delict)”, it is necessary to take into account the influence of established approaches to legal understanding. In particular, O. Panasyuk emphasized that the modern perception of these concepts is largely formed under the influence of legal concepts of the Soviet period, which are still reflected in public consciousness [2, p. 84].

The normative consolidation of the term “misdemeanor” is contained in Art. 9 of the Code of Ukraine on Administrative Offenses, where an administrative offense (misdemeanor) is defined as an unlawful, guilty act or omission (intentional or negligent) that encroaches on public order, rights and freedoms of citizens, property or the established procedure for

management, for which administrative liability is provided [3]. Despite the formal identification of these concepts in the law, in the doctrine they are not completely identical: the category of administrative offense has a broader meaning and covers all types of illegal behavior in the field of public administration, while the offense is its specific form.

As V. Sereda rightly notes, the administrative law of Ukraine has been in a state of profound changes in recent years: the concept of the relationship between the state and the individual is being transformed, the legislation is being updated, and developments in the field of administrative justice are being introduced [4, p. 7]. This, in turn, makes the issue of clarifying the conceptual apparatus and rethinking the content of administrative tort categories relevant.

An analysis of the scientific literature shows that one of the most debatable features of an offense is its material characteristic – social danger or harmfulness. O. Panasyuk drew attention to the lack of a unified approach to determining which of these features is decisive for an administrative offense, emphasizing that this problem has remained unresolved since the middle of the twentieth century [2, p. 85]. In the modern theory of administrative law, various concepts have been formed that interpret the relationship between these categories in different ways.

It is obvious that any offense is negative in nature, since it is associated with causing harm or creating a threat to public relations. At the same time, none of the existing theoretical models has received sufficient normative consolidation in Ukrainian legislation, which complicates the formation of a unified approach to understanding the essence of public danger and harmfulness.

In this regard, it is important to study the above categories through the prism of their dialectical relationship, taking into account modern achievements of legal science, as well as related fields of knowledge, in particular sociology and the theory of state and law.

It should also be noted that in modern legal science there is no unity in the interpretation of the very concept of «offense», which is due to different approaches to determining its

features and content. In general, an offense is considered as an unlawful, culpable, socially harmful (or dangerous) act of a person with tortious capacity, which entails legal liability and contradicts the requirements of legal norms.

The key features of an offense include: violation of the norms of the Constitution and laws of Ukraine; the presence of guilt in the form of intent or negligence; causing harm or creating a threat to the state, society or an individual; the volitional nature of behavior, manifested in the form of action or inaction; as well as the presence of a tortious subject capable of bearing legal liability.

A person is recognized as an offender only if he is tortious and guilty of committing an unlawful act. In this case, guilt can manifest itself in the form of intent or negligence. An intentional offense occurs when a person is aware of the illegality of his actions, foresees their negative consequences and wishes or knowingly allows them to occur. A negligent form of guilt is characterized by the fact that a person either frivolously expects to avoid harmful consequences, or does not foresee them, although he should and could have done so.

The absence of at least one of the elements of the offense excludes the possibility of recognizing the act as an offense. Depending on the degree of public danger, offenses are divided into crimes and misdemeanors.

A misdemeanor as a type of offense is characterized by a lower level of public danger and does not cause significant harm to interests protected by law. Accordingly, the procedure for bringing such acts to justice is simplified, which is determined by a number of factors.

In particular, such factors include the obviousness of the commission of the offense and the identification of the offender; the possibility of applying sanctions without significant interference in the person's usual way of life; and the presence of conditions for reconciliation of the parties, in particular in the case of compensation for the damage caused. In such situations, the offender, as a rule, admits his guilt, does not deny the evidence and contributes to the resolution of the conflict.

The legislation of Ukraine provides for several procedures for considering cases of

misdemeanors, which differ depending on the nature of the act and the circumstances of its commission. In this case, legal liability is possible only if there is a full set of elements of the offense, which serves as a factual basis for its application, while the legal basis is the relevant norm of law.

Structurally, the composition of the offense includes four elements: the subject, the object, the subjective and objective parties. The subject is a tort-capable individual or legal entity who has reached the age established by law and is sane. The object is social relations, social values, rights and freedoms that are encroached upon by the unlawful act.

The subjective side characterizes the internal attitude of the person to the act and includes such elements as guilt, motive and goal. The most significant among them is guilt, which reflects the mental attitude of the offender to his own behavior and its consequences.

The objective side reflects the external manifestation of the offense and covers the act itself (action or inaction), its consequences, the cause-and-effect relationship between them, as well as the conditions, method and means of committing the offense [5].

The factual grounds for administrative liability are determined by the exact composition of administrative offenses – unlawful, culpable actions or inactions that encroach on the general order, freedoms, rights and property of other persons, on certain established procedures of management. For these offenses, the subject bears administrative liability, but only on the condition that the nature of these violations does not exceed the limit established by the laws that determine criminal liability (Article 9 of the Code of Administrative Offenses) [1].

The factual grounds for bringing an offender to criminal liability are the commission by a person of acts or inactions dangerous to society. The offense must have all the components of a crime that are provided for by the criminal legislation of Ukraine. That is, it is an illegal act that, by its characteristics and degree of severity, poses a high danger to society and the country. In this case, the offender is subject to appropriate punishment measures (Article 2 of the Criminal Code of Ukraine) [6].

The main guideline for distinguishing between an administrative offense and a criminal offense is the legal category of public danger. Under such conditions, its parts should be taken into account: the quantitative factor (repetition, relapses), degree. Administrative offenses differ from criminal offenses in a lower degree of public danger. The former, in turn, do not cause great harm to society, as is the case with a criminal offense.

In modern law enforcement practice, the issue of distinguishing between administrative offenses and criminal offenses remains one of the most complex and debatable. This is due to both the imperfection of regulatory regulation and the lack of a unified approach to interpreting individual legal categories [7].

First of all, a significant problem is the duplication of offenses in the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine. In a number of cases, acts that are homogeneous in objective terms can be classified as administrative or criminal depending on additional criteria, in particular the amount of damage, the method of commission or repetition. This situation creates the prerequisites for the unequal application of legal norms and increases the risk of subjectivity on the part of authorized bodies.

The second significant problem is the evaluative nature of the category of public danger. The lack of clear legislative criteria for its definition leads to different interpretations of the same acts. This is especially true in cases where the boundary between an administrative offense and a criminal offense is minimal, which complicates the correct qualification of the act [8].

The problem of reclassification of offenses during the proceedings requires special attention. In practice, situations often arise when an act initially qualified as administrative is later recognized as a criminal offense or vice versa. This may be due to the establishment of new circumstances or a different approach to assessing existing facts. Such instability of legal qualification negatively affects the protection of a person's rights, in particular the right to defense and a fair trial [9].

Another problem is the differences in procedural guarantees. Criminal proceedings

provide for a much broader scope of a person's rights (the right to a defense attorney, the presumption of innocence in the broad sense, strict standards of proof) than administrative proceedings. In the event of an incorrect qualification of an act, a person may be deprived of the proper level of procedural protection.

Another significant challenge is the lack of uniformity in judicial practice. Different courts may approach the qualification of similar offenses differently, which undermines the principle of legal certainty and predictability of law enforcement. In this context, the practice of the Supreme Court plays an important role, but even it does not always ensure complete unification of approaches.

No less important is the problem of the correlation of administrative and criminal liability in the light of the principle of non bis in idem (prohibition of double prosecution for the same offense). In cases where one act may fall under the characteristics of both an administrative and a criminal offense, there is a risk of a double response by the state, which contradicts both national legislation and the practice of the European Court of Human Rights [10].

In addition, the issue of the efficiency of case review procedures is problematic. Administrative proceedings are often characterized by simplification, which, on the one hand, ensures efficiency, but on the other hand, can lead to a superficial examination of the circumstances of the case. In turn, criminal proceedings for misdemeanors, despite simplified procedures, still remain more formalized and lengthy.

Thus, the existing problems of law enforcement indicate the need to improve legislative regulation, clearly define the criteria for distinguishing between administrative and criminal offenses, and ensure the unity of judicial practice. Resolving these issues is an important condition for increasing the efficiency of the legal system and guaranteeing human rights and freedoms.

Conclusions. Thus, the conducted research gives grounds to assert that the correlation of administrative offenses and criminal offenses is a complex multi-level legal problem, which is at the intersection of administrative and criminal

law. The introduction of the institution of criminal offense became an important stage in the reform of the national legal system, aimed at humanizing criminal liability and increasing the efficiency of justice, but at the same time exacerbated the problem of distinguishing torts of different legal nature.

It was established that administrative offenses and criminal offenses have common features, in particular, illegality, guilt, encroachment on protected social relations and the presence of state coercion as a consequence of their commission. At the same time, they differ in the degree of social danger, the nature and severity of sanctions, the procedure for bringing to justice, as well as legal consequences for the individual.

It is substantiated that the key criterion for distinguishing the above-mentioned offenses is the degree of public danger of the act, however, its evaluative nature causes significant difficulties in law enforcement. Additional criteria are the type of legal liability, the procedural form of proceedings, and the nature of the consequences for the legal status of the person.

The study revealed a number of problems in law enforcement practice, including: duplication of offenses in the Code of Administrative Offenses and the Criminal Code of Ukraine, the possibility of ambiguous qualification of acts, the lack of clear legislative guidelines for distinction, different levels of procedural guarantees, and the lack of unity of judicial practice. Special attention is paid to the risks of violating the principle of legal certainty and the prohibition of double jeopardy (*non bis in idem*).

In view of the above, the need for further improvement of Ukrainian legislation in the direction of a clear normative distinction between administrative offenses and criminal offenses is proven. In particular, it is advisable to: specify the criteria for public danger, eliminate duplication of legal norms, unify approaches to the qualification of offenses, and ensure the unity of judicial practice by generalizing the positions of the Supreme Court.

An important direction of development is also the harmonization of national legislation with European standards, in particular the

practice of the European Court of Human Rights, which will contribute to strengthening the guarantees of human rights and freedoms in the field of bringing to legal responsibility.

Thus, effective resolution of the problems of the correlation of administrative and criminal offenses is a necessary condition for improving the quality of law enforcement, ensuring the principle of the rule of law, and forming a stable and predictable legal system.

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#### **ДЕЯКІ ПРАВОВІ АСПЕКТИ СПІВВІДНОШЕННЯ МІЖ АДМІНІСТРАТИВНИМИ ТА КРИМІНАЛЬНИМИ ПРОСТУПКАМИ**

*У контексті реформування правової системи України та запровадження інституту кримінального проступків, у статті пропонується ґрунтовне науково-правове дослідження зв'язку між адміністративними та кримінальними проступками. Розглянуто розвиток національних правових теорій щодо деліктів, а також положення Кримінального кодексу України та Кодексу про адміністративні правопорушення у світлі сучасних законодавчих розробок.*

*Було продемонстровано, що хоча кримінальні та адміністративні проступки мають спіль-*

*ну правову основу, вони відрізняються за тяжкістю суспільної небезпеки, характером правових наслідків, процедурою притягнення правопорушника до відповідальності та видами санкцій. Особливу увагу приділено причинам їхньої різниці; до них належать ступінь суспільного ризику, що створюється діянням, вид юридичної вини, процесуальна форма розгляду справи та наслідки для правового становища особи.*

*Було відзначено низку проблем із правозастосуванням, зокрема можливість порушення концепції правової визначеності, оціночний характер категорії «соціальна небезпека» та дублювання правопорушень у Кримінальному кодексі України та Кодексі про адміністративні правопорушення. Типові випадки перекваліфікації діянь були розглянуті на прикладному рівні, що створює труднощі для правоохоронних організацій.*

*Чітке нормативне розмежування між адміністративними та кримінальними проступками, вирішення конфліктів та гармонізація національного законодавства з європейськими стандартами були цілями запропонованих напрямків удосконалення законодавства. Було підкреслено важливість підтримки узгодженості процедур правоохоронної діяльності та підвищення ступеня правової визначеності.*

**Ключові слова:** адміністративний проступок, кримінальний проступок, правопорушення, злочин, юридична відповідальність, делікт, правоохоронні органи, кримінальне право, адміністративне право.