

Essence and structure of the settling of public offenses

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Abstract. The article deals with the concept, content and features of public misconduct. It has been determined that a misdemeanor is a guilty, intentional act or inaction of a person that is contrary to established norms of public conduct and leads to negative moral and material consequences. The following features are characteristic of a misdemeanor: unlawfulness; guiltiness; action or inaction; object of attack; subject of misconduct; guilt; causal link between act or inactivity and negative moral and material consequences.

It is emphasized that the elements of the public misconduct are the object, the objective side, the subject, the subjective side. In addition, it was found that the composition of specific offenses ensures the same application of the law, the proper qualification of misconduct, and also guarantees the prevention of unjustified bringing of a person to administrative liability.

Key words: *administrative responsibility, Code of Ukraine on Administrative Offences, state authorities, public misconduct, composition of the offense.*

Problem statement

Public legal relations in the state are crucial for its existence. Of course, sometimes there are cases of violation of the established mechanism of interaction of different subjects – public misdeeds are committed. And then there is a necessity of compulsory return of relations in the legal direction and the punishment of the guilty in incidents. The modern theory of administrative law sets its task to determine the legal nature of public violations, the subject structure and their correlation with other types of offenses.

The replacement of the terms "administrative offense" and "administrative liability" for "public offense" and "public liability" has great theoretical and practical significance. The basis for the administrative activities of public authorities for accountability of misconduct should be the current Code of Ukraine on administrative offences.

Analysis of recent researches and publications. The questions of administrative delicacy and administrative responsibility were studied in the works of V.B Averyanov, N.O. Armash, D.M. Bahraha, K.S. Belsky, Yu.P. Bytiak, S.M. Bratusya, I.P. Golosnychenko,

E.V. Dodin, L.V. Koval, A.T. Komzyuk, V.M. Kudryavtseva, D.M. Lukyanets, S.V. Petkov, S.G. Stetsenko, V.A. Tarkhova, Yu.S. Shemshuchenko and many others.

Formulation of the purposes of the article. The purpose of the article is to clarify

the nature and characteristics of public misconduct structure.

Presenting of the main material. In the theory of law, there are constitutional, disciplinary, administrative, material, tax, civil-legal misconducts. In addition, today scientists have a special group of financial offenses. Generally, offenses are regulated by the norms of the administrative, financial and other branches of law. For example, violation of the rules of fire safety; illegal use of special technical means of secret reception of information; recently – violation of customs rules: non-delivery to the customs of goods and documents for control, damage to customs warehouses, unloading, issuing and use of imported goods without the permission of the customs, breach of transit obligations.

So, today the division of public misconduct in the social and political sphere in which they are committed is more relevant. There was already a transfer of norms from the Code of Ukraine on Administrative Offenses (further - CUoAO) [1] to the Customs Code of Ukraine. But these offenses are called administrative and customs offenses, while it is a question of customs misconduct. This process is appropriate to call a transfer. Transfer of norms is shifting of norms from one normative act to another. At the moment, such a transition is necessary. It will make possible to avoid collisions, duplications and significantly reduce the number of normative acts that regulate the legal relationship in various spheres of public life.

It is of fundamental importance to systematize legislation on public health. The structure and content of the Medical Code are given in the studies of S.V. Petkov, S.G. Stetsenko and others. Leading scientists and practitioners emphasize the need of creation of the Road Transport Code and the Registration Code. The main difference between the updated legislation will be its compliance to modern standards and algorithms of the theory of law. Thus, in the structure of each normative act it is necessary to adhere to the principle of norm renewal, that is, the hypothesis, disposition and sanction will be in one codification act. Separate developments of this direction in systematization of administrative legislation in the form of its codification, have repeatedly

been mentioned in the works of leading and young scientists [2].

The model of public-legal relations, based on the axioms of building relations between the authorities and citizens, defines misconduct as a guilty, intentional action, inaction of the person, which is in contrary to the established norms of public behavior and leads to negative moral and material consequences. Based on the above definition, we can distinguish the following signs of a public misconduct: wrongfulness; guiltiness; action or inaction; object of attack; subject of misconduct; penalty; causal link between act or inactivity and negative moral and material consequences.

It is necessary to distinguish groups of misconduct by certain features, to divide it into species, but it must be remembered that a number of features that attribute errors to one or another species can intersect each other. The misconduct can be both insignificant and have great negative consequences. For example, passing the road in an unidentified location, the person actually made a small road offence, but suddenly seeing the pedestrian, the driver of the car began a sharp braking and, unable to cope with driving he crashed into oncoming vehicle.

Therefore, it is expedient to classify offenses by their objective and subjective features, namely: for the publicity that it had: it became known to a small number of persons, or a large group of persons, or became widely publicized; in the form of property of a material object: state, non-state in communal or private property; in what conditions an unlawful act was committed: during celebrations, during mass events or during sport events. You can consider these events or conditions as aggravating or mitigating the fault of the person who committed the offense.

However, the main area for the division of offenses should be the sphere of social relations to which they belong: medical, sanitary-epidemiological, public order protection, etc. There is no contradiction in this classification system. It is simple, understandable, consistent with the axioms of the theory of law and sociology; one law (code) regulating social relations in a certain sphere; one agency, the activity of which is regulated by one law (without implementing

regulations, instructions, statutes, etc.). A clear hierarchy of laws and implementing regulations will provide an opportunity to optimize the national legal system.

Misdemeanor is a fact of reality. The composition of the offense is a logical construction, a legal concept of it, which reflects the essential peculiarities of real phenomena, meaning certain anti-social phenomena. The legislator does not create signs of misconduct, but only selects essential, distinctive and makes structure for them. The logical concept is fixed in the law and becomes obligatory. The list of features in it is necessary and sufficient condition for qualifying an act as a misdemeanor. A real act is only considered an offense when it contains all the signs prescribed by law, the absence of at least one of them means the absence of a structure in general [3, p. 215].

Elements of the offense are the object, the objective side, the subject, the subjective side. The object of a misdemeanor is on what is aimed at. The object of the misdemeanor, as well as any offense, is social relations. Defined actions are therefore called anti-social and prohibited, because they cause damage to existing social relations. Recognition of the last as object of the offense helps to reveal the social nature of the offense, the moral nature of legal liability [4, p. 56-58].

The problem of determining the object of administrative misconduct today concerns not only the science of administrative law and closely related criminal law science, but also the theory of state and law, where the object of the offense is ambiguously determined. The majority of scientists dealing with administrative problems characterize the object of administrative abuse as the administrative relations protected by administrative law, which are subject to an administrative offense.

In connection to this, the object of offense has one of the central places in the research of domestic and foreign scientists. M. O. Korzhanskyi considers that the establishment of signs of the object of misconduct has an important practical significance for legal qualification. The object of the offense is determined by the nature of social harm, as well as those social values that are protected by a specific legal norm [5, p. 173-174].

The classification of objects of misconduct is of a great importance. It is the classification that makes it possible to more clearly define the object of each act, its place in the general system of relations protected by administrative sanctions, its value. Depending on the degree of generalization, the level of abstraction distinguishes general, generic, specific and direct object of misconduct. However, the classification of objects of misconduct, the final result of which is to obtain concepts such as: "general object", "generic object", "specific object", "direct object", formulated to contrary to the basic logical rules of separation. The lack of proper logical and methodological justification, in turn, leads to logical errors in the construction of the corresponding definitions.

In our opinion, it is necessary to consider issues related to the definition of an object and the classification of its constituents from the position of definition of the object of the offense. In this case, the general object of the offense is social relations. The generic object is highlighted in the sphere of social life in which it is committed. Specific object can be distinguished according to this number of factors related to the characteristics of the objects of committing the offense, and in our case of misconduct: public morality, health of citizens, property, etc. – all factors affect the nature of the misdemeanor. An important factor for classification and, consequently, for regulation of the relevant authorities are the probable consequences that could lead to misconduct.

The objective side of a misdemeanor is that in what a misdemeanor is revealed outside, the corresponding behavior of a person, the consequences of damage to the object of the attack; it is the appropriate process of action for a specified time. The objective side is characterized by the following signs: an act (action or inaction); harmful consequences of misconduct; causal relation between the act and socially harmful consequences. These are mandatory signs of misconduct. Along with them there are optional (non-binding) signs of the objective side of the offense – place, method, time, means, circumstances of committing a misdemeanor.

Act is action or inaction, volitional actions. Action is an active person's behavior.

Inaction is the passive behavior of a person, failure to perform the corresponding duties, which is entrusted to it by the relevant legal and other normative acts. The harmful consequences of a public misconduct are those negative changes that occur, are inflicted on the object of the attack, and relationships which are protected [6, p. 23-26].

The legislator identifies two groups of harmful consequences of misconduct: material and formal. Therefore, offenses are identified as with the material composition and with a formal composition. Misconduct with the material composition is such offenses, for the objective side of which the law requires the establishment of not only the facts of the act, but also harmful consequences. Misdemeanors with a formal composition are such offenses, for the objective side of which the law requires the establishment of only the fact of the actual act. The harmful effects of these offenses, although they may come, but they are outside of the scope of the misconduct. It should be noted that most of the misdemeanors are with a formal composition.

The causal connection between the act and the socially harmful consequences that has arisen is established only in the misconduct of the material composition. The reason is a necessary condition for the occurrence of the consequences, without it the occurrence of effect is impossible. It must precede the consequences in time and, most importantly, must cause this consequence.

The analysis of the relevant articles of the CUoAO gives an opportunity to conclude that the subject of a misdemeanor is a convicted person who has reached a certain age and committed the offense described in the law. Thus, the subject of the offense is the one who committed it. The subject itself as a real existent person is not included. The composition contains only some of the features that this person is characterized by. The subjective side is the fault, that is, the mental attitude of the perpetrator to his act and the harmful consequences of the act. Guilt is a necessary condition of responsibility.

Conclusion

Based on the foregoing, should be made conclusions that the model of public-legal relations, based on the axioms of building relations between the authorities and citizens, defines misconduct as guilty, deliberate action, inaction of the person, which is to contrary to the established norms of public behavior and leads to negative moral and material consequences. For a public misconduct, the

If in the actions of the person the guilt is not installed, and the harmful effects are the result of accidental circumstances – there is no subjective side, no misconduct, no responsibility.

Accordingly, a misdemeanor is recognized as committed intentionally, if the person who committed it was aware of the unlawful nature of its action or inaction, foresaw its harmful consequences and wished them or deliberately allowed the onset of these consequences. In the past, it was widely believed that in administrative law, unlike in criminal law, fault is not always a mandatory element. To a certain extent, it was an uncritical perception of the views of pre-revolutionary Russian scholars who believed that administrative penalties could be applied regardless of fault. Consequently, the subjective side of the offense is related to the mental state of a person who committed it [7, p. 50-51].

Specifically, the human form of action is a volitional action, and in fact only an action in the human meaning of the word, that is, a conscious act aimed at the realization of a certain purpose. In most cases, the formulation of a misdemeanor implies that it is carried out in the form of intent. Instead, the motive and purpose of committing a misdemeanor are optional signs of the subjective side of the offense. The motive is understood as the internal awareness of the person which he was guided by during the commission of a misdemeanor. The purpose is an unlawful result, the result of which a person seeks to achieve by a misdemeanor. The motive and purpose most often are not included in the offense, although in some cases only the commission of an act with a certain motive or purpose constitutes the offense. Some articles of CUoAO provide for the responsibility for committing actions in the absence of a specific purpose. In some articles of the CUoAO, the motive and purpose of the misdemeanor are not named, but are implied.

following features are typical: unlawfulness; guiltiness; action or inaction; object of attack; subject of misconduct; penalty; causal connection between act or inactivity and negative moral and material consequences.

Elements of a public misconduct are the object, the objective side, the subject, the subjective side. Composition of specific misconduct has an important function, since it establishes legal grounds for legal liability and provides for the possibility of applying administrative measures. They ensure same application of the law, the correct qualification of misconduct, guarantee the prevention of unjustified bringing of administrative action against citizens, limit the responsibility of the offender by what was committed.

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