DISCIPLINARY LIABILITY FOR PUBLIC ORDER RULE VIOLATION: DELICTOLOGICAL POSTULATES

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I. INTRODUCTION

The constitutional provision on the democratic and legal state orients the development of Ukraine in the direction of democracy and the rule of law. Consequently, the subsystem of legal norms, regulating homogeneous relations in the sphere of public and state maintenance of law and order, acquires special significance for the materialization of formal declarative norms about a democratic and legal state. Therefore, in accordance with the postulates of jurisprudence, it is relevant to justify the need to separate the rules (norms) of social (public) order and disciplinary responsibility for their violation from the branch of administrative legislation into a separate branch. At the same time, the primary task is to update and reform legislation based on the postulates and axioms of the theory of law.

A postulate, that means "condition" in Latin, is a statement, an assumption, which, when constructing a scientific theory, is taken without proof as initial statements or data in relation to the axioms. The

postulate has no proof, but follows from facts, systematic and practical (empirical) explanations. The difference between a postulate and an axiom is that an axiom is required not to conflict with other axioms, while obvious data can be recognized as a postulate. For example, the postulate is when the body falls to the ground, but the axiom is when the body falls to the ground due to gravity. When building a theory of the next level, the postulate of the basic theory can become the basis for other postulates and receive an explanation or evidence from a scientific point of view. Modern legislation in the countries of the Warsaw Pact in the post-Soviet space contains a complex of contradictions in the theory of law, which de facto are collisions not only in legislation, but also in the system of law, as well as in legal thinking.

Building relations between civil society and a democratic, social, legal, state is carried out on an equal partnership basis. This postulate is a message requiring the subject of administrative law to be limited to relations of state administration carried out

by executive authorities and local self-government bodies. Thus, the axiom is the assertion that the sphere of administrative responsibility for committing administrative offenses (malfeasance and administrative offenses) is limited to the offenses of civil servants and persons to whom functions in the sphere of public administration are delegated, endowed with power and managerial powers.

Considering the practical application of the postulates of tortology to disciplinary liability for violation of the rules of public order, we rely on the legislation of Ukraine as an example of rule-making conservatism, which led to the distortion of the matter of law and long-term socio-economic stagnation.

A. Clarification of the Subject of Protective Branches

Clarification of the subject of protective branches of law in the aspects of humanization, human-centrism, decriminalization of legal responsibility; rethinking of the concept and criteria for the

classification of offenses, their signs and compositions were considered by V.B. Averyanov, O.F. Andriyko, N.A. Armash, A.M. Bandurka, V.T. Belousov, A.S. Vasiliev, R.I. Kalyuzhny, L.V. Koval, A.M. Kolodiy, V.S. Kovalsky, A.T. Komzyuk, I.N. Kopotun, N.I. Korzhansky, A.I. Ostapenko, S.V. Petkov, D.V. Priymachenko, T.A. Protsenko, L.A. Savchenko, O.F. Skakun, E.Yu. Sobol, M.V. Zwick, A.N. Yarmysh, and others.

In Soviet legal science, dated to 1940, G.I. Petrov defined the relations of public administration as the subject of administrative law, dividing them in 1959 into horizontal and vertical. In 1949 S.S. Studenikin clarified them as a relationship of power and subordination, in which one of the parties is the ruling body of the state. In the 60-80s of the 20th Century Pakhomov, A.P. Klyushnichenko, R.S. Pavlovsky, and others reviewed them in the subject of administrative law as social relations between the holders of rights and obligations in the field of public administration in connection with executive and administrative activities.

The transition to a market economy and the constitutional proclamation of the construction of a democratic, social, legal state led to the emergence of new scientific ideas about the subject of administrative law. Since the early 1990s until today, L.V. Koval, A.S. Vasiliev, V.K. Kolpakov, V.B. Averyanov, and others include into the subject of administrative law relations the following: state and non-state administration, protection of public order, ensuring by the state apparatus of the realization of the rights and interests of citizens, public administration, the activities of executive authorities and administrative courts, the application of administrative coercion measures, internal organization, and activities of state bodies. V.C. Kolpakov limited the subject of administrative law to relations of administrative obligations.[1]

Yu.P. Bityak refers to the subject of administrative law as relations related to the

[1] A.V. Kuzmenko, I.D. Pastukh, M.V. Plugatir, M.V. Spivak, & V.V. Podvysotsky, Administrative Law: A Common Part, Multimedia Tutorial, National Academy of Internal Affairs (2017), *available at* https://arm.naiau.kiev.ua/books/adm_pravo_zch/index.html [in Ukrainian].

following: the activities of executive authorities; intra-organizational activities of state bodies, enterprises, institutions, and organizations; and management activities of local self-government bodies, the exercise by non-state actors of delegated powers of executive authorities, and the administration of justice in the form of administrative proceedings.[2]

However, public law regulation expresses the nature of society as a complex mobile social system of interaction between people connected by interests in the sphere of social production, distribution, exchange, consumption of material and spiritual benefits, determined by the needs of individuals and families in the process of implementing group, estate, class, and national relations, and setting the boundaries of behavior in such common interests with the help of social (non-legal and legal) norms. Every historical type of society is characterized by specific participants in social communication,

[2] Y.P. Bityak, V.M. Garashchuk, & V.V. Zuy, ADMINISTRATIVE LAW OF UKRAINE (2nd ed. 2013), at 19-21.

represented by individual and group subjects: individuals, families, estates, classes, social groups, strata, nationalities, people, nation, state, and other components. The main elements that determine the type and nature of society, as O.F. Skakun states, are property, labor, and family.[3]

In an extremely clear description of the public law space, contained in the monograph by A.M. Kolodyi "Principles of the Law of Ukraine," it indicates the vertical-administrative relations in the activities of the state, carried out according to the principles of hierarchy, administration and subordination, power-subordination, unequal legal status, general prohibition, imperative, and legal protection of the general interest.[4]

Accordingly, cooperative partnership of equal and mutually responsible subjects, civil society and a democratic rule of law respectively, objectifies a new systematic functional reality, in which the

[3] O.F. SKAKUN, THEORY OF STATE AND LAW (2010), at 78-79.
[4] A.M. KOLODIY, PRINCIPLES OF THE LAW OF UKRAINE: MONOGRAPH (1998), at 61-62.

provision of public order with the exclusive competence of state authorities is no longer possible. Therefore, the subject of administrative law must be limited to relations of public administration within the executive branch and local government, including the intra-organizational activities of their bodies.[5] One should not also introduce administrative court proceedings into administrative law, which is an integral part of legal proceedings.

B. The Purpose of the Article

The purpose of the article is to determine the optimal balance between the concepts of legal, criminal, and disciplinary responsibility in the field of public policy relations. Justification of the proposed optimization, which consists, first of all, in limiting the subject of administrative law to relations

[5] V. GALUNKO, P. DIKHTIEVSKY, A. KUZMENKO, S. STETSENKO, ET AL., ADMINISTRATIVE LAW OF UKRAINE (2018), at 28-29, 206-207, 284-324, 363-387. Code of Administrative Procedure of Ukraine, No. 2747-IV, July 6, 2005, Vedomosti of the Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/2747-15#Text, at 37. On the Judicial System and the Status of Judges: Law of Ukraine, No. 1402-VIII, June 2, 2016, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/1402-19#Text, at 545.

of public administration. Determination of the grounds and limits of administrative liability by offenses of officials and other authorized persons in the civil service in the exercise of their official (official) powers.[6] Given arguments in favor of the fact that other rules of conduct that are not included in the regulation of other basic codes for social and economic relations should be transformed into the norms of an independent basic code for the public policy sphere—the Code of Public Policy.

II. MATERIAL

A. Funding

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

[6] A. N. Kruglov, Legal Correlation of the Terms "Official" and "Official" in Ukraine, SCI. BULL. DNEPROPETROVSK ST. U. INT'L AFF. (2011), at 201-206.

B. Declaration of Conflicting Interests

Conflicting interests are absent.

C. Presentation of the Main Material

The type of civil society achieved in historical development is distinguished by a system of interaction within the legal framework of free and equal individuals (citizens) and their voluntarily formed associations, who are in a relationship of competition and solidarity, outside the direct intervention of the state, focused on creating real opportunities for the use of their rights and freedoms.[7] At the same time, civil society and the rule of law interact on the basis of an equal partnership, which means mutual responsibility for fulfilling their complex of social, including legal, duties, including ensuring and maintaining jointly developed and established rules of public order.

Accordingly, the subject bears legal responsibility for violation of the rules established in

[7] O.F. SKAKUN, THEORY OF STATE AND LAW (2010), at 29.

society. In jurisprudence, two methods of legal regulation are distinguished: imperative and dispositive. The dispositive method is used in legal relations of private law. And if the violation arises from the contractual relationship, then the liability of the parties may be provided for by the contract or the Civil Code of Ukraine.[8]

The movement towards human-centeredness and humanization of legal regulation in a civil society and a democratic rule of law is impossible without rethinking the concepts of administrative offense (misconduct) and administrative responsibility, its subject matter and limits,[9] as well as the sectoral delimitation of administrative law and law of public order.

Nowadays, the legal responsibility of officials for the commission of official (administrative) offenses is contained in the Criminal Code (Art. 364-370) of

[8] The Civil Code of Ukraine, No. 435-IV, January 16, 2003, Vedomosti of the Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/435-15#Text, at 40-44.
[9] S.V. PETKOVA, SCIENTIFIC AND PRACTICAL COMMENTARY OF THE CODE OF UKRAINE ON ADMINISTRATIVE OFFENSES (2020), at 66-72, 420-424.

section XVII “Criminal offenses in the field of official activities and professional activities related to the provision of public services”[10] and in the Code of Ukraine on Administrative Responsibility Article 1663 “Discrimination of entrepreneurs by the authorities and administration”[11] and articles of chapter 13-A “Administrative offenses related to corruption.”[12]

The degree of public danger is a line of separation not only for the definitions of "crime" and "misconduct" but also for legal responsibility for their commission. The presence of such a legal axiom forces us to search for a terminological designation of responsibility for a misdemeanor.

The imperative method is inherent in administrative and other legal relations of public law. Thus, responsibility for an offense (tort) in countries of the continental legal family is regulated by law. In Ukraine, responsibility for committing a crime as a

[10] Criminal Code (Art. 364-370) § XVII.
[11] Code of Ukraine on Administrative Responsibility Art. 1663.
[12] Ch. 13-A.