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SPECIFIC ASPECTS OF THE LEGAL CAPACITY OF ENTITIES IN ADMINISTRATIVE-DELICT RELATIONS

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Summary

In this article, the analysis of certain aspects of the legal personality of legal entities in administrative-tort relations is made, by analyzing the historical experience of the formation of administrative law in Ukraine. An attempt is being made to identify the common and distinctive features of the elements of administrative legal personality of legal entities of private law and legal entities of public law. Special attention is paid to the fact that legal entities of public law are characterized by a dual character, due to the fact they can act both as a subject of an administrative offense, and as a subject of administrative responsibility. The article determines the degree of realization of the legal personality of legal persons of public law in administrative and tort relations.

Key words: administrative and tort relations, administrative delinquency, legal entities of public law, legal entities of private law, legal capacity of legal entities, administrative legal capacity of legal entities.

ОТДЕЛЬНЫЕ АСПЕКТЫ ПРАВОСУБЪЕКТНОСТИ ЮРИДИЧЕСКИХ ЛИЦ В АДМИНИСТРАТИВНО-ДЕЛИКТНЫХ ОТНОШЕНИЯХ

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Аннотация

В статье исследованы отельные аспекты правосубъектности юридических лиц в административно-деликтных отношениях. Проанализирован исторический опыт становления и развития административного права в Украине. Сделана попытка выявить общие и отличительные черты элементов административной правосубъектности юридических лиц частного права и юридических лиц публичного права. Обращено внимание на то, что юридические лица публичного права характеризуются двойственным характером, то есть могут выступать как в качестве субъекта административного правонарушения в лице должностных лиц, так и субъектом административной ответственности. Определена степень реализации правосубъектности юридических лиц публичного права в административно-деликтных отношениях.

Ключевые слова: административно-деликтные отношения, административный проступок, юридическое лицо публичного права, юридическое лицо частного права, правосубъектность юридических лиц, административная правосубъектность юридических лиц.

Nowadays, the existence of administrative liability of legal entities in Ukraine is a fact of legal reality, although the degree of ordering of these relationships is much smaller in comparison with the administrative liability of individuals [1, p. 211]. In fact, there is a wide array of legal acts that proclaim the legal entities of private law as subjects of administrative and tort relations, such as the law of Ukraine: "About the responsibility of enterprises, institutions and organizations for violations in the sphere of urban planning", "About the exclusive maritime (economic) zone of Ukraine", "About ensuring the sanitary and epidemiological well-being of the population", "About banks and banking activities", "About fire safety" etc. However, despite a large number of regulatory acts, today it is still impossible to talk about their orderliness and systematization.

On the other hand, during the period of development of democratic transformations in Ukraine and European integration processes, the legal status of legal entities of public law regarding administrative offenses, remains legal, although not fully open-ended. A separate aspect is their "two-tiered" character, namely the opportunity to act as a subject of an administrative offense through officials and the subject of responsibility for his commission [2, p. 153–156]. The first ones are represented by the state authorities, authorized through their representatives to exercise administrative and jurisdictional powers, detect violations, suspend them and impose measures of administrative responsibility.

The legal literature has repeatedly paid attention to the fact that there is no direct legislative consolidation in the Code of Ukraine on administrative violations (CUAV) of a legal person by the subject of an administrative offense, and, consequently, administrative and tort relations. However, there are currently a wide range of legal acts which regulate the administrative liability of legal entities, in addition even art. 14-2 of CUAV proclaim the administrative responsibility of legal entities and individuals "in case of committing an offense in the field of ensuring road safety, recorded in an automatic mode, if a vehicle is registered there".

A separate issue is the legal status of a legal entity of public law as a subject of administrative-delictrelations. In the science of administrative law, it has long been thought that in the administrative-tort relations the subjects

of an administrative offense can not be persons who are endowed with powers of authority [3, p. 158], which was explained by the fact that after the revolution of 1917, administrative justice began to be recognized as a manifestation of the "bourgeois institute" [4], due to what the mentioned institution was actually eliminated, with the possibility of challenging unlawful administrative acts solely to the administrative body, which was higher in the hierarchical structure [5, p. 29]. This situation significantly influenced the development of Soviet science of administrative law "during the subordination of the law-enforcement system to the functions of executive power", the echo of which left a mark on the current state of science of administrative law.

It should be noted that the current state of economic and social transformations affects the development of administrative law, and thus tells us about the need for qualitative democratic, human centered transformations, including the full legal recognition of legal entities of public law not only by the subjects of administrative responsibility, but also administrative offense. To do this, the first step should be to analyze their legal status.

For determination of the legal status of legal entities, as well as individuals it is necessary to have signs of legal personality, which, is characterized by certain features. For this category of subjects of administrative-legal relations does not have such a practical significance separation of structural elements of legal personality as for individuals. This is explained by the fact that legal capacity occurs simultaneously with the moment of registration of a legal entity. In addition, it should be noted that the content of the legal personality of this category of subjects and the nature of its implementation depends on their structure and form of ownership.

In describing the legal personality of legal entities, A. Zelesko in the structure of the latter identifies such elements as: "legal capacity" and "capacity" [6, p. 20].

In contrast, Y. Ilynitska rightly considers it unacceptable to erect the features of public law entities only in the presence of subjective rights and obligations [7, p. 329].

Maintaining this position, O. Pundor, goes further and justifies the presence of such an element in legal entities as "administrative delicacy" [8, p. 61], without the presence of which we can not talk about her ability to be the subject of legal relationships to the fullest. In addition, it should be noted that delicacy in this case acts as an independent element of the legal personality of legal entities.

An important question arises "what is the difference between the legal status of legal entities of private law from legal entities of public law in administrative-delict relations?". Considering that the legal personality of legal persons of public law, in contrast to the legal entities of private law in administrative-tort relations, is somewhat more complex in content, R. Mironyuk proposes to allocate the following elements: a) administrative and tort capacity, which the author defines as the competence to draw up a protocol on administrative violation ting, registration of the case, its consideration, the decision in the case, and ensure its implementation, taking other measures to ensure enforcement proceedings; b) administrative and tort activity, understood as a complex of powers for the implementation of the aforementioned competence, which is the realization of the rights granted on behalf of the state and the community and the fulfilment of the duties assigned to them; c) a guarantee of realization of the authorized powers that is the availability of means for the exercise of powers and protection of an official in the event of the lawful exercise of such powers; d) the responsibility for violation of the conditions, procedure and method of realization of the authorized powers (administrative and disciplinary responsibility) [9, p. 70]. In general, agreeing with the opinion of the author, it should be noted that the last two elements do not need to be isolated in separate components of the legal status of a legal entity of public law, thus differentiating them from the ability and capacity to act, the components of which, in our opinion, they are.

We believe that the degree of realization of the legal entities of public law is manifested through such features as: 1) belonging to the system of state authorities; 2) a combination of signs of legal entities and individuals; 3) the existence of a wide range of legal restrictions for civil servants and employees of local self-government bodies; 4) special procedure for imposing penalties on civil servants and officials of local self-government bodies in case of violation of their rights, freedoms and legitimate interests of citizens.

The main difference between the two subjects of administrative and tort relations is the specificity and content of the legal personality of legal persons of public law (state or local government bodies), which is determined by the presence of the authority in the last authority, and their prosecution Through their officials. In addition, legal entities of public law are also of a dual nature and can act not only as subjects of an administrative offense and the subject of management. Administrative power can be interpreted in the legal aspect as, the right, the ability or ability of the subject of management relations (the individual, group) to exercise a targeted influence on another entity of the relationship, subordinate control and change its behavior to subjugate the will of other people, Issue acts, carry out organizational work [10]. In this case, the legal person of public law is inherent in all the components of the state organization: personnel, organizational structure, material means, information, connected in a single dynamic entity with the help of the authorities, the presence of which is necessary for the implementation of functions entrusted to them by the executive authorities and local self-government.

It should be emphasized that the legal entities of public law-subjects of administrative-delict relations should be subjected to the most essential requirement, taking into account the interests of citizens and legal entities, which, predominantly determine the subject structure of administrative-legal relations, precisely they are directed to the bulk of powerful orders. This problem in the legislation has been reflected and is solved in the following way: firstly, the state service is based on the rule of law, that is, the provision

of the priority of human and citizen rights and freedoms in accordance with the Constitution of Ukraine (ch. 1 p. 1 of the Law of Ukraine about Civil Service). Integrity – the orientation of the actions of a civil servant in defense of public interests and the refusal of a civil servant from the prevalence of private interests during the exercise of his powers; patriotism – devotion and faithful service to the Ukrainian people, etc.; secondly, one of the main duties of a civil servant is the following: respect for the person's honor and dignity, non-admission of violation of human and civil rights and freedoms; compliance with the requirements of legislation in the field of prevention and counteraction to corruption; preventing the emergence of a real, potential conflict of interest during the civil service; to provide public information within the limits specified by law, etc. (art. 8 of the Law of Ukraine about Civil Service).

Naturally, by giving legal entities of public law represented by civil servants by authorities, both the state and citizens have the right to raise the increased requirements for recruitment for public service. In this regard, the legislator has foreseen a number of restrictions, in which a citizen can not be accepted into civil service or stay on it in cases:

– lack of citizenship or presence of foreign;

– period of age limits up to 18, or after 65 years;

– lack of proper educational level, according to the category of posts;

– the presence of family or close ties with the management of the unit;

– political bias;

– absence or limited capacity;

– the existence of an unpaid or unclaimed conviction for an intentional crime;

– depriving the court of the right to engage in activities related to the exercise of state functions, or to hold respective positions;

– redressing the administrative penalty for corruption or corruption-related offenses;

– not passing a special check or not giving consent to its conduct;

– cash under the prohibition established by the Law of Ukraine "On the Purge of Power".

It should be noted at the same time that the legislator did not put forward similar requirements to officials of local self-government bodies (the Law on Services in local self-government bodies), limited only to:

– complete incapacity of the person, thus giving the opportunity to become employees of persons with limited capacity;

– the existence of a conviction for committing an intentional crime not repaid in the manner prescribed by law;

– impossibility of direct submission to relatives;

– by deprivation of the court's right to hold positions in state authorities and their apparatus or in local self-government bodies within the established term.

Legal personality of legal entities is a necessary element for the determination of their participant in administrative and tort relations and includes such obligatory elements as "legal capacity", "capacity" and "delicacy". However, if legal entities of private law in administrative-delict relations act solely as a subject of an administrative offense, legal entities of public law are characterized by a bilateral nature and the presence of authority. They can act as both the subject of administrative responsibility and the subject, committing the offense through officials.

The degree of realization of the legal personality of legal entities of public law, manifested through such features as: 1) belonging to the system of state authorities; 2) a combination of signs of legal entities and individuals; 3) the existence of a wide range of legal restrictions for civil servants and employees of local self-government bodies; 4) special procedure for imposing penalties on civil servants and officials of local self-government bodies in case of violation of their rights, freedoms and legitimate interests of citizens.

Legal persons of public law as subjects of administrative-delict relations are not equal in order to the requirements relating to them, under the legal status in the presence of the same administrative and jurisdictional powers in administrative and tort relations regarding the imposition of administrative penalties.

The current status of the legal status of legal entities of public and private law as subjects of administrative-delict relations is an echo of its long service of the state centered, command-administrative model of management of the Soviet period. Therefore, in the light of significant economic and social transformations, a new democratic, human-centered paradigm of administrative law is needed that will help Ukraine become a real democratic transformation.

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