



33. Code of Ukraine on Administrative Offenses: Law of Ukraine dated December 7, 1984, No. 8073-X // Bulletin of the Verkhovna Rada of Ukraine. – 1984. – No. 51. – Art. 1122.

34. On Approval of the Procedure for the Medical Examination and Medical Examination of Persons Abuse of Narcotic Drugs or Psychotropic Substances: Order of the Ministry of Health and the Ministry of Internal Affairs of Ukraine of 16.06.1998, № 158/417 [Electron resource]. – Access mode: http://www.moz.gov.ua/ua/portal/dn_19980616_158.html

35. Instruction on the procedure for the detection and registration of persons who illegally use narcotic drugs or psychotropic substances: the order of the Ministry of Health, Ministry of Internal Affairs, the Prosecutor General's Office, Ministry of Justice of Ukraine of 10.10.1997, № 306/680/21/66/5 // Official Bulletin of Ukraine. – 1997. – No. 48. – Art. 440.

36. About the organization in the Security Service of Ukraine to identify those, who are illegally using narcotic drugs or psychotropic substances: an order of the Central Administration of the Security Service of Ukraine dated March 4, 2013, No. 88 // Official Bulletin of Ukraine. – 2013. – No. 28 – Art. 968.

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REASONS FOR ADMINISTRATIVE AND DELICT RELATIONS: FEATURES AND CLASSIFICATION

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SUMMARY

An attempt has been made in the article to highlight the peculiarities of the reasons for administrative and delict relations in the sphere of natural resources use and conservation, as a result it has been emphasized, that the last ones can cause man-made changes in natural resources state, be an obstacle to obtain cultural, economic and social benefits, and violate the rules of natural resources use and conservation. In addition, the classification of these reasons according to individual criteria has been made, namely: an object; level of causing of man-made environmental changes; the blocking degree of necessary economic, social and cultural benefits society obtaining, etc.

Key words: reasons for administrative and delict relations, administrative and legal relations, administrative and delict relations, natural resources use and conservation.

ОСНОВАНИЯ ВОЗНИКНОВЕНИЯ АДМИНИСТРАТИВНО-ДЕЛИКТНЫХ ОТНОШЕНИЙ: ОСОБЕННОСТИ И КЛАССИФИКАЦИЯ

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АННОТАЦИЯ

В данной статье предпринята попытка выделить особенности оснований административно-деликтных отношений в сфере использования и охраны природных ресурсов, в результате чего выделена их особенность вызывать техногенные изменения в состоянии природных ресурсов, способность быть препятствием для получения культурных, экономических и социальных благ обществом и нарушать правила использования и охраны природных ресурсов. Кроме того, классифицированы указанные причин по отдельным критериям, а именно, по объекту; уровню причинения техногенных изменений окружающей среды; степени блокировки получения необходимых экономических, социальных и культурных благ обществом и тому подобное.

Ключевые слова: основания административно-деликтных отношений, административно-правовые отношения, административно-деликтные отношения, использование и охрана природных ресурсов.



REZUMAT

Acest articol încearcă să evidențieze caracteristici ale bazelor de relații administrative și de prejudiciu în domeniul utilizării și protecției resurselor naturale, ca urmare a care a fost alocat, astfel încât acestea dispun ca ceea ce au în capacitatea lor de a provoca schimbări provocate de om în starea resurselor naturale, pentru a fi un obstacol pentru culturale, economice și sociale ale societății și încalcă normele de utilizare și protecție a resurselor naturale. În plus, clasificarea acestor cauze a fost efectuată în funcție de anumite criterii, și anume: obiectul; care provoacă modificări provocate de om în mediul înconjurător; gradul de blocare a primirii beneficiilor economice, sociale și culturale necesare ale societății și altele asemenea.

Cuvinte cheie: bazele relațiilor administrative-delicte, relațiile administrativ-juridice, relațiile administrative-tort, utilizarea și protecția resurselor naturale.

Statement of the problem. Any social relations are the result of certain actions or events occurring in society. The administrative and delict relation in the sphere of natural resources use and conservation, the updating of which is preceded by separate reasons, are no exception. However, despite all its scientific and practical significance, defining the concept of “the reasons for administrative and delict relations” and establishing its place, it should be noted that the last one has not acquired a legislative expression. The Code of Ukraine on Administrative Offenses [4], as well as other administrative acts [1; 2; 3; 5; 6] do not allow to clearly identify this administrative and legal phenomenon.

The relevance of the research topic. Legal studies of the origin of administrative and delict relations in the sphere of natural resources use and conservation, directly or indirectly, have been carried out by such scholars. as V. Hurzhii, V. Denisenko, V. Knish, L. Koval, V. Kolpakov, V. Kurilo, S. Matchuck, S. Podlinuv, M. Sambor, O. Stukalenko, O. Kharytonova, O. Shemiakov, E. Shulga, M. Shulga and others. However, research of the classification of legal basis for administrative and delict relations in the sphere of use and of natural resources use and conservation has not been done.

Status of research of the article is to investigate and distinguish the basis peculiarities for administrative and delict relations in the sphere of natural resources use and conservation.

Presentation of the main material. Studying the classification of the basis for administrative and delict relations in the sphere of natural resources use and conservation, it should be noted. that they, as well as the general basis [8, p. 122 - 132] have two sides, firstly legal one, which are the requirements of administrative and delict norms and procedure for their activation, which, in turn, implements its own legislative vocation (direct

execution of an administrative delict, that infringes on the established order of conservation and use of all existing depleting environmental components, basic purpose of which from material point of view is to provide the society with all necessary benefits through direct mental and physical activity of specific people involved in their use) and factual, that is illegal act that has demonstration in rules violation of natural resources use and conservation.

In addition, it should be noted that the reasons for administrative and delict relation are not any legal facts, but only those resulting from the person's will who intentionally perform any act or inaction, expressed in violation of the law rule requirements, which foresees the administrative liability, as well as delicts of law enforcement [7, p. 34-36]. That is, the basis for administrative and delict relations in the sphere of natural resources use and conservation will be only the delict, which is based on the person's will, who intentionally perform any act or inaction, expressed in violation of the law rule requirements, as to the proper use and conservation of natural resources. For example, requirements violation of Art. 47 The Code of Ukraine on Administrative Offenses (further – CUonAO) [4] concerning violation of the right of state ownership of natural resources. Administrative and delict relations in this case will occur from the moment of an illegal encroachment on state ownership of natural resources. The physical activity of a person will result in a violation of the law, thus intensifying administrative and delict relations.

That is, the rules violation of natural resources use and conservation is any administrative delict in the sphere of nature use, which by its nature can cause technogenic changes in the qualitative and quantitative properties of natural resources and may be an obstacle for society to obtain appropriate cultural, economic and aesthetic benefits. Taking

this into account, some of their types should be considered.

According to V. Knysch, all administrative violations in the sphere of environmental protection and natural resources use can be classified, depending on the object of the infringement: land, underground, water, forest, vegetation, atmospheric misconduct and misdemeanors directed against the animal world. The following can be attributed to administrative land violations: damage and pollution of agricultural and other lands (Article 52 CUonAO); violation of the rules of land use (Article 53 CUonAO), illegal land occupation (Article 531 CUonAO); the land cadaster concealing or distorting (Article 532 of the CUonAO); untimely return of temporarily occupied land or not bringing it to a state suitable for the intended use (Article 54 of the CUonAO), etc. Misdemeanors in the sphere of underground ecosystems include violation of the rules requirements for natural resources conservation (Article 57 CUonAO); the rules and requirements violation for conducting works on the geological study of the underground system (Article 58 CUonAO). Water violations include the rules violation of water resources conservation (Article 59 CUonAO); the requirements violation for the protection of territorial and internal marine waters from pollution and littering (Article 591 CUonAO); the rules violation of water use (Article 60 CUonAO), etc. Administrative forest and plant law breaking includes: violation of the established procedure for using the forestry fund, timber harvesting and exporting, resin harvesting (Article 64 CUonAO); illegal deforestation, damage and destruction of forest crops and young trees (Article 65 CUonAO); illegal dry vegetation or its residues burning (Article 771 CUonAO); legislation violation on plant protection (Article 831 of the CUonAO), etc. Offenses that encroach on the animal world are the rules violations of animal world objects



use (Article 85 CUonAO); producing and selling of prohibited tools for animal or plant world objects extraction (Article 851 CUonAO); the rules violation of whaling (Article 86 CUonAO), etc. Administrative atmospheric violations include the procedure violations for the pollutants emission into the atmosphere or the influence of physical and biological factors (Article 78 CUonAO); violation of the activity order aimed at artificial changes in the state of the atmosphere and atmospheric phenomena (Article 781 CUonAO); non-compliance with the requirements for the protection of atmospheric air at the enterprises and facilities operation (Article 79 CUonAO), etc [9, p. 68].

In our opinion, apart from the classification of the rules violation of natural resources use and conservation according to the object, it is advisable to allocate them according to the criterion of the level of causing man-made environmental changes, the blocking degree of necessary economic, social and cultural benefits society obtaining, and separately to distinguish such a criterion of classification as delicts, which violate procedural aspects of regime rules in this sphere according to the form of guilt.

In accordance with the first criterion, administrative delicts in the sphere of all existing depleting environmental components use and conservation, the main purpose of which from the material point of view is to provide society with necessary benefits, through the direct mental and physical activity of specific people involved in their use should be divided into the way of causing man-made changes:

1) directly causing man-made environmental changes (for example, agricultural and other lands damage and contamination (Article 52 CUonAO), the rules violation of land use (Article 53 CUonAO), the rules violation of water use (Article 60 CUonAO); the order violations of polluting substances emission into the atmosphere or the influence of physical and biological factors (Article 78 CUonAO); the rules violation of the animal world objects use (Article 85 CUonAO), and others) [4];

2) indirectly causing man-made environmental changes, but does not exclude such an act in the future: failure to comply with the requirements as

to the protection of atmospheric air at the enterprises and facilities operation (Article 79 CUonAO); producing and selling of prohibited tools for animal or plant world objects extraction (Article 851 CUonAO); illegal deforestation, damage and destruction of forest crops and young trees (Article 65 CUonAO); the requirements violation for the protection of territorial and internal marine waters from pollution and littering (Article 591 CUonAO), etc.) [4].

Administrative misdemeanors as the basis for the delict relations occurrence in the sphere of natural resources use and conservation should be classified according to the blocking degree of necessary benefits society obtaining and depending on the object, that is harmed. Such groups are encroachment on the blocking of land, underground, water, forest and vegetation, atmospheric benefits obtaining and benefits associated with the animal world.

The delicts that violate the procedural aspects of the regime rules in the sphere all existing depleting environmental components use and conservation, the main purpose of which from the material point of view is to provide society with necessary benefits, through the direct mental and physical activity of specific people involved in their use should be divided into: 1) intentional, committed in order to satisfy their own useful motive (illegal land plot occupation, the land cadastral concealing or distorting); 2) careless, that is, under the influence of various life factors (the requirements violation of fire safety in forests, damage to hayfields and pastures on state forest fund lands); 3) mixed, that is, those that can be committed both intentionally for the satisfaction of own useful motive, and from the negligence under the influence of various life factors (the rules violation of whaling, non-compliance with the requirements for the protection of atmospheric air at the enterprises and facilities operation, the rules and requirements violation for conducting works on the geological study of the underground system).

An analysis of the articles content of Chapter 7 of the CUonAO [4] allows us to give concrete examples of the basis for administrative and delict relations, which by its nature can cause man-made environmental changes and an obstacle

to the society in obtaining the necessary benefits, that is, the rules violation for natural resources use and conservation.

The basis for administrative and delict relations, activating: Art. 52 CUonAO is committed intentionally to satisfy own useful motive of agricultural and other land damaging, their pollution by chemical and radioactive substances, oil and petroleum products, untreated sewage, industrial and other wastes, as well as failure to take measures to control weeds; Art. 53 is intentional or careless use of land not in accordance with intended purpose, non-compliance with the environmental protection regime of land use, placement, design, construction, objects commissioning, that negatively affect the land state, improper exploitation, anti-erosion hydraulic structures and protective forest plantations destruction or damage; Art. 63 is intentional use of state forest fund land plots for uprooting, building, wood processing, warehousing, etc. to satisfy own useful motive without proper permission to use these land plots; Art. 65 is intentional or careless destruction or damage of the field-protective forest bands, protective forest plantations along the banks of rivers, canals, around water objects, hydraulic structures, road bands, railways and other protective forest plantations; Art. 70 is intentional or involuntary careless hay mowing and cattle grazing in forests and on state forest fund lands, not covered by forest, illegal harvesting of wild fruits, nuts, mushrooms, berries, etc. in the areas, where it is forbidden or permitted only for forest tickets; Art. 77-1 is intentional or careless burning of stubble, meadows, pastures, areas with steppe, wetland and other natural vegetation, vegetation or its remains and fallen leaves on agricultural lands, in road bands and railways, in parks, other green plantations and lawns in settlements without permission of the state control bodies in the sphere of environmental protection or in the terms violation of such permission, as well as a person's measures disuse, who has received a permission for burning such vegetation or its remains and fallen leaves, for timely their extinguishing; Art. 83-1 is intentional or careless:

1) the distribution of harmful organisms as a result of violation of agricultural and other purposes plants growing technologies;



2) ecologically unjustified plant protection implementation; Art. 85 is intentional or negligent rules violation of hunting (hunting without permission, in prohibited places, at prohibited times, using prohibited tools or methods, hinting for prohibited animals, dogs admission into hunting areas without supervision, hunting with established hunting procedure violation for a certain territory (region, hunting households, etc.); Art. 91 is intentional conducting within the territories and objects of the nature reserve fund, their protection zones, as well as territories reserved for the next heritage, forbidden economic and other activities, the violation of regime requirements of these territories and objects, etc.

Mentioned basis belong to all types of basis classification for administrative and delict relations, namely, intentional and negligent, an encroachment on the blocking of land, underground, water, forest and vegetation, atmospheric benefits acquisition and benefits associated with the animal world, directly or indirectly cause technogenic environmental changes and so on. However, the unifying object is the object of illegal encroachment, namely the social relations that arise in connection with natural resources use and conservation.

Conclusions. The reasons for administrative and delict relations in the sphere of natural resources use and conservation should be classified according to the following criteria: to the object; to the criterion of level of causing of man-made environmental changes; the blocking degree of necessary economic, social and cultural benefits society obtaining; delicts, that violate procedural aspects of regime rules in this sphere according to the form of guilt.

The features of the basis for administrative and delict relations is by its nature can cause technogenic changes in natural resources properties, may be an obstacle for society to obtain cultural, economic and social benefits, and violate the rules of natural resources use and conservation. Consequently, the reasons for administrative and delict relations in the sphere of natural resources use and conservation should be sought in the hypothesis of each specific administrative and delict norm, whereby mentioned norms should be united according to their

own, appropriate object, which serve the public relations in the sphere of natural resources use and the conservation.

References:

1. Про адміністративні правопорушення / Кодекс України // Відомості Верховної Ради Української РСР (ВВР) 1984, додаток до № 51, Ст. 1122.
2. Кодекс адміністративного судочинства України / Кодекс України // Відомості Верховної Ради України (ВВР), 2005, № 35-36, № 37, Ст.446.
3. Про національну поліцію / Закон України // Відомості Верховної Ради (ВВР), 2015, № 40-41, Ст. 379.
4. Про надра / Кодекс України // Відомості Верховної Ради України (ВВР), 1994, № 36, Ст. 340.
5. Земельний Кодекс України / Кодекс України // Відомості Верховної Ради України (ВВР), 2002, № 3-4, Ст.27.
6. ЗУ «Про охорону навколишнього середовища» / Закон України // Відомості Верховної Ради України (ВВР), 1991, № 41, Ст.546.
7. Гуржій А. В. Теоретико-правові засади визначення підстав адміністративної відповідальності / А. В. Гуржій // Науковий вісник Дніпропетровського державного університету внутрішніх справ. – 2011. – № 3. – 122-132 с.
8. Денисенко В. В. Теория административно-деликтных отношений: дисс. доктора юрид. наук: 12.00.014 / Денисенко В. В. – СПб., 2002. – 342 с.
9. Книш В. І. Особливості адміністративної відповідальності за вчинення правопорушень у галузі охорони навколишнього природного середовища та раціонального використання природних ресурсів / В. І. Книш // Право і Безпека. – 2011. – № 1. – 68-71 с.

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