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CLASSIFICATION OF ADMINISTRATIVE OFFENSES FOR DRIVING VEHICLES

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SUMMARY

The article is devoted to the actual problem – theoretical and legal research classification of administrative offenses for driving vehicles. Author on the basis of analysis of the norms of administrative law defines the criteria for the classification of offenses for vehicle management which can give the most complete view of such offenses and to determine their place in the system of administrative violations in general. The author also brings practical classification of the investigated types of offenses that encourages the proper qualification of offenses and equitable application of administrative responsibility in the legal relations, ensuring the rights of citizens in imposing of administrative penalties.

Key words: classification of offenses, the classification criteria, administrative responsibility, the administrative offense, the vehicle.

АННОТАЦИЯ

Статья посвящена актуальной проблеме – теоретико-правовому исследованию классификации административных правонарушений при управлении транспортными средствами. Автор на основании анализа норм административного законодательства определяет критерии классификации правонарушений при управлении транспортными средствами, которые могут дать наиболее полное представление о таких правонарушениях и определить их место в системе административных правонарушений в общем. Также автор приводит практическое значение классификации исследуемого вида правонарушений, что способствует правильной квалификации правонарушений и справедливому применению административной ответственности в правоотношениях, обеспечению прав граждан при наложении административных взысканий.

Ключевые слова: классификация правонарушений, критерии классификации, административная ответственность, административное правонарушение, транспортное средство.

Statement of the Problem. Relationships as a complex legal phenomenon do not exclude the existence of participants' behavior of such relationships, which conflicts with a rule of law which in legal terms is called offense. M.N. Marchenko says that in any society offense is a social and legal antithesis of lawful behavior [1, p. 409].

Unlawful behavior of participants of legal relationships can be very diverse; the scope of its regulation is covered by standards in various areas of law and entails different legal consequences.

In turn administrative offences is a large group of illegal behavior, they are quite diverse, divided into certain categories with specific features, and not the last place is taken by administrative offenses related to driving vehicles, which must be clearly analyzed, defined and divided into certain groups according to some criteria.

State of research. The issues of classification of unlawful behavior of participants of legal relationships have been studied by N.V. Alexandrova, A.I. Bepalova, M.N. Vovchuk, I.L. Zinchenko, S.A. Kirichenko, A.I. Mykolenko, I.I. Ogorodnikova, S.G. Pepeliaeva, and others.

However, these studies are more related to general classification of administrative offenses or crimes without providing criteria for the classification of offenses for driving vehicles.

Research methods that have been used is the method of analysis, synthesis, comparative legal method and others, that are necessary means to obtain scientific results.

The aim of the paper is a theoretical study and analysis based on scientific publications, national legislation and application features of offenses for driving vehicles and developing on its basis the criteria for the classification of this type of administrative offenses.

The main material. For scientific and practical goals different classifications of offenses are established. The most common is the division of offenses according to the degree of public danger into crimes and misdemeanors (administrative, disciplinary, and civil) [2, p. 239-240] [3, p. 309-310].

M.M. Vovchuk indicates that the huge diversity and significant distribution of administrative offenses determine both the importance of their scientific classification and the implementation of scientific research concerning their

properties on its basis. At the same time M.M. Vovchuk points out that research efforts in this field do not satisfy social needs, do not offer unimpeachable conclusions on effective structuring criteria for administrative offenses and building systematic approaches to deal with them [4, p. 48].

The need to classify administrative violations is evident in the views of I.I. Ogorodnikova, who draws attention to the fact that a clear classification of offenses in the field of taxation will clarify the situation and settle possible differences between the relevant sections of the Code of Ukraine on Administrative Offences and the Tax Code of Ukraine.

From our point of view, it is necessary to research the classification of administrative offenses related to driving vehicles which has both practical and theoretical importance so as to clarify the legal nature of the researched phenomenon. The classification is necessary: for holistic understanding of the structure of unlawful acts connected with driving vehicles and for which the law provides administrative liability; for clarifying the specifics of certain offenses; understanding particular features of the procedural order of bringing to administrative responsibility and so on.

Using classification methods of scientific knowledge contributes to the solution of various research tasks, allows to reveal new relationships and dependencies between already known objects, summarizes preliminary findings of relevant research and forms new views on their basis.

As a philosophical category classification (from Lat. *Classis* – category, class and *facio* – I do, I make), is a splitting multiplicity (class) of objects into sub multiplicity (subclasses) on certain characteristics. In scientific classification object's properties are in a functional relationship with its position in the defined system [6, p. 259].

There are no meaningful differences of classification in legal science, in which the term classification refers to the system of subordinate concepts (classes of objects) of a given area of knowledge or human activity, which is used as a means to establish links between these concepts or classes of objects. Scientific classification expresses the system of laws inherent in the relevant field of reality. In the field of law the most famous is the classification of branches of legislation and right, laws and regulations, governmental institutions, branches of legal science, etc [7, p. 115]. The authors of the Russian law encyclopedia indicate that the classification of crimes is a division of the totality of crimes into various groups according to their inherent characteristics [8, p. 275].

Thus, we conclude that the classification of administrative offenses for driving vehicles is a division of this type of crimes into separate subtypes by some inherent characteristics that determines their place in the system of administrative offenses.

The reasons for any classification should be based on features that are the most essential and specific for these objects.

Russian scientist V. Anisimov investigating the problems of the classification of administrative offenses concluded that the possibilities of the classification of administrative offenses

and those signs by which they can be combined into groups (classes) are quite broad, misdemeanors include in their objective and subjective properties many signs by which they can be classified. In this case, the researcher notes, properly chosen classification of administrative offenses can display patterns of development of classified objects [9].

Classification of administrative offenses is both in current legislation and is the result of scientific researches.

In particular, legislated classification of administrative offenses is found in the Code of Ukraine on Administrative Offences [10] in which the rules of Special part divide administrative offenses in the types (classification groups) done by the legislator depending on generic object of an assault.

Our attention is drawn to administrative offenses for driving vehicles, which are the most common among all other administrative offenses. M.M. Vovchuk notes that the feature of the application of administrative proceedings institute in the transport sector is that the dispositions of many legal rules as in criminal law, are blanket so while using them, one should apply to different modes and sources of technical nature, to the content of specific technical standards that establish rules of operation and use by various modes of transport, also there are mixed so-called technical and legal standards in this area. Therefore, from M.M. Vovchuk's point of view the use of these circumstances as the classification criteria has both practical and theoretical importance [4, p. 52].

The special part of the Code of Ukraine on Administrative Offences [10] contains Chapter 10, entitled «Administrative transport Offences, in the area of road management and communication» (Art. 109 – Art. 148-5); however, not all offenses specified in the section are offenses for driving. From our point of view the studied offenses are offenses covered by Art. 109-142, Art. 188-28 of the Code of Ukraine on Administrative Offences.

I would also like to note that Art. 127 of the Air Code of Ukraine sets financial sanctions applicable to legal persons – subjects of aviation, which from our point of view are actually an administrative penalty for the offenses related to driving air vehicles, but the given norm of the law comprises formulations of offenses of the studied type.

As we noted above, the list of offenses for driving vehicles is quite large and diverse and they can be classified depending on various reasons.

Thus, based on the common properties (attributes) of administrative offenses, offenses for driving vehicles can be classified according to.

The form of fault (subjective side of offences) into intentional and careless offences. Intentional offenses are those committed by the person who was aware of the nature of the wrongful act or inaction, foresaw its harmful effects and wanted them or consciously permitted the occurrence of these effects. And careless ones are offenses committed by the person who predicted the possibility of harmful consequences of their actions or inaction, but thoughtlessly expected to prevent them or did not foresee the possibility of occurrence of such effects, though, had to and could predict them.

An example of committing intentional offenses for driving a vehicle may be offenses provided by Art. 122-4, 124-1, 130, 133-1 of the Code of Ukraine on Administrative Offences, but careless offenses are provided by Art. 125. Some offenses can be characterized both by intentional and careless form of guilt – Art. 120, 121, 121-2 etc.

The form of guilt does not matter for the qualification of offenses, but it is taken into account during the individualization of administrative penalties (Art. 33 of the Code of Ukraine on Administrative Offences) and affects its severity.

Administrative offenses for driving vehicles can be divided into formal – there are no harmful material losses and material – with the result of the commission of which there is material damage.

The majority of administrative offenses for driving vehicles are formal, the example of the offense with some material losses is damage done to the covering of the runway and steering tracks, disabling of the equipment, which is located at the airport or outside it, used for the purpose of an aircraft taking-off, landing and air traffic in general, the offenses are provided by Art. 117, 119, 124 of the Code of Ukraine on Administrative Offences.

Thus, we believe that the reference to material consequences, both in the report on administrative offenses and in the resolution in which a person is brought to administrative liability is mandatory, and in the absence of such designation the report will not meet the requirements of Art. 256 of the Code of Ukraine on Administrative Offences. For example, in cases of administrative offenses provided by Art. 124 of the Code of Ukraine on Administrative Offences, very often people address the insurance company in order to receive insurance payment for damage of the vehicle and give as the proof the resolution on administrative offenses, whereas insurance companies refuse to pay referring to the fact that it is impossible to understand from the content of the resolution what vehicles were damaged since there is no indication of that.

We agree with the opinion of A.I Mykolenko [11, p. 48] and M.M Vovchuk [4, p. 52], who express the position of the possibility of division of administrative offenses according to the degree of public danger.

The very degree of public danger (gravity) of the offense defines the severity of penalties for its commission, establishes peculiarities of proceedings and bringing people to administrative liability. The specified will be consistent with the position of the European Court of Human Rights in the case «Gurepko against Ukraine» (items 50-55 of the Resolution from 06.09.2005) where the court stated that there was no doubt that due to the severity of the sanction the case on administrative offense in its essence was criminal, but the administrative penalty was actually criminal in nature with all the guarantees of Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms, 1950. That is, the European Court in fact attributes (equates) a separate group of offenses to crimes according to the degree of public danger.

So, from our point of view administrative offenses of high degree of public danger can be distinguished depending on this

criterion – these are offenses for which administrative penalty is provided in the form of administrative detention, a fine, which exceeds the average salary in Ukraine, deprivation of a special right (Art. 124, 122-5, 130 of the Code of Ukraine on Administrative Offences); administrative offenses with an average degree of public danger – offenses for which all other administrative penalties are provided, considering a penalty less than the average salary in Ukraine, except for warning (Art. 121-1 122, 122-4 of the Code of Ukraine on Administrative Offences); administrative offenses with a minor degree of public danger – offenses for which administrative penalty in the form of warning is provided (Art. 125 of the Code of Ukraine on Administrative Offences).

Depending on the body that investigates the case on administrative violations for driving vehicles they can be divided into:

offenses investigated by administrative commissions (Art. 136, (for committing violations by the road transport), Art. 138 of the Code of Ukraine on Administrative Offences);

by regional, district, city courts (judges) (part 2 of Art. 112, part 4 and 7 of Art. 121, part 4 of Art. 122, Art. 122-2, 122-4, 122-5, part 2 and 3 of Art. 123, Art. 124, part 4 of Art. 127, Art. 127-1, Art. 130, part 3 of Art. 133, Art. 135-1, 139, part 4 of Art. 140, Art. 188-28 of the Code of Ukraine on Administrative Offences);

by enforcement bodies (police) (part 1-4, 6 of Art. 109, Art. 110, part 3 of Art. 114, part 1 of Art. 115, Art. 116-2, part 2 of Art. 117, part 1-2 of Art. 119, part 1-3, 5-6 of Art. 121, Art. 121-1, 121-2, part 1-3 of Art. 122, part 1 of Art. 123, Art. 124-1 – 126, part 1-3 of Art. 127, Art. 128-129, part 1-2, 5 of Art. 133, part 3, 6, 8-11 of Art. 133-1, part 2 of Art. 135, Art. 136 (except for violations by road transport), Art. 137, part 1-3 of Art. 140 of the Code of Ukraine on Administrative Offences);

by the central executive authorities which are responsible for implementing of the government policy on supervision and control over the observance of legislation on fire safety and technogenic safety, (Art. 120 of the Code of Ukraine on Administrative Offences);

by the authorities of railway transport (Art. 109, 110, part 1 of Art. 120, part 1 of Art. 133, part 1 of Art. 134, section 2 of Art. 135, Art. 136 of the Code of Ukraine on Administrative Offences);

by the authorities of Marine and River Transport (Art. 114, 115, 116, 116-1, 116-2, 116-3, 117, 118, part 1 of Art. 120, part 3 of Art. 129, part 5-6 of Art. 130, part 2 of Art. 133, part 1 of Art. 134, section 10 of Art. 135, Art. 136 of the Code of Ukraine on Administrative Offences);

by the central executive authorities on civil aviation matters (Art. 111, part 1 of Art. 112, Art. 113, part 2 of Art. 120 of the Code of Ukraine on Administrative Offences, Art. 127 of The Air Code of Ukraine);

by authorities of road transport and electric transport (trolley, tram) (Art. 119, part 5 of Art. 133, part 1-2, 4-5, 7 of Art. 133-1, Art. 133-2, part 2 of Art. 134, sections 6,8 of Art. 135 of the Code of Ukraine on Administrative Offences);

by Military Traffic Safety Inspectorate of Military Police of the Armed Forces of Ukraine (part 1, 4-5 of Art. 121, Art. 121-1, part 1-3 of Art. 122, part 1 of Art. 123, Art. 124-1 – 126, Art. 132-1 of the Code of Ukraine on Administrative Offences);

This division of offenses defines jurisdiction of cases on administrative violations for driving vehicles, since in practice there are situations when the body (an official) investigates cases on administrative offenses and brings people to administrative liability when they do not have the authority to review such cases, or the authority (an official) who made the protocol on administrative offense sends it to «incompetent authority» which leads to case investigation delay, closing of cases in connection with the expiration term of bringing the case to justice and others. For example, administrative material according to part 3 of Art. 122 of the Code of Ukraine on Administrative Offences by judge's ruling of Donetsk Kuibyshev District Court from 06.06.2011 [12] was sent to the traffic patrol service company of The State Auto Inspectorate of the Inspectorate of traffic patrol service at the headquarter of the Ministry of Internal Affairs of Ukraine in Zaporizhzhya region, which is competent to investigate this category of cases, because the investigation of administrative cases on traffic violations according to Part 1-3 Art. 122 of the Code of Ukraine on Administrative Offences are within the jurisdiction of the authority of internal affairs (police).

Considering the peculiarities of offenses for driving vehicles in the system of administrative offenses, we can classify them depending on the character of legal relations in the sphere of driving vehicles and divide them into offenses which are committed in the connection with driving vehicles and the offenses related to driving.

The offenses of the first group are those which are committed by a person (the offender) during the direct driving of a vehicle (the concept driving has been mentioned before) (Art. 121, 121-1, 122, 124, 130 etc.).

The second group includes offenses that are derived from driving vehicles, in which the person who committed the offense does not drive a vehicle, but such offenses cannot exist without driving vehicles by others. (Art. 109, 110, 112, 114 of the Code of Ukraine on Administrative Offences).

Such classification significantly expands the entire group of administrative violations for driving vehicles within the system of administrative offenses without limitation of driving a vehicle by the offender. At the same time the derived offenses are very similar, occur in one sphere, and come for violation of the rules of driving, so they are investigated and considered by one and the same bodies (officials), in this connection, from our point of view it is appropriate to refer them to a group of offenses for driving vehicles.

Depending on the type of vehicles, offenses can be divided into offenses committed in the connection with running rail, sea, river, road, air and electric transport vehicles. This division enables to define the sphere, in which the offenses are committed, violated branch rules, and taking into account the peculiarities of specific legal relations, determine the order of proceedings on such cases, competence of investigating bodies

(officials), and that in its turn contributes to the complete and objective establishment of the truth on such cases.

Proceeding from the fact who was the subject to have committed administrative offenses for driving a vehicle, they can be divided into offenses committed by the driver of the vehicle or offenses committed by another participant of a certain traffic transport type – a person who is responsible for the vehicular traffic and that allows to individualize punishment and determine the sanction that shall be applied to the offender.

Conclusions:

- the classification of administrative offenses for driving vehicles is a division of this type of crime into separate subtypes by certain inherent characteristics that determines their place in the system of administrative offenses;

- numerous criteria can be identified to classify administrative offenses for driving vehicles (depending on the traffic rules infringed by a participant, objects of the offense, etc.), however, the given criteria can give us a complete picture of the phenomenon, regulate discrepancies in legislation and law enforcement activities;

- the classification of administrative offenses for driving vehicles contributes to the identification of the most significant features of the mentioned kind of offenses, their proper qualification and equitable bringing to administrative liability in general, which is impossible without appropriate scientific researches and changes in the current legislation.

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