

UDC 342.924(091)+“312”(045)  
10.18372/2306-1472.68.10923

Ivan Borodin<sup>1</sup>  
Oksana Myronets<sup>2</sup>

## ADMINISTRATIVE LIABILITY OF LEGAL ENTITIES: HISTORY AND PRESENT

National Aviation University  
1, Kosmonavta Komarova Avenue, 03680, Kyiv, Ukraine  
E-mails: <sup>1</sup>tidp\_kaf\_nau@mail.ru; <sup>2</sup>o.m.myronets@ukr.net

### Abstract

**Purpose:** Legal entities are capable to accumulate much more financial, material, intellectual resources to achieve their goals than a natural person. It is important to develop theoretical fundamentals that are necessary for understanding of administrative liability of legal entities and make propositions to improve current legislation about administrative liability of legal entities, a mechanism of its implementation and systematization of legislation in this area. **Methods:** General scientific, philosophical and specially-legal methods of scientific research have been used. Theoretical and legal framework of an institute of administrative liability of legal entities, preconditions of legislative regulation of administrative liability of legal entities have been investigated with the help of general scientific and philosophical methods. A system analysis method has been used for the analysis of modern administrative legislation, scientific works to determine a concept of “administrative liability of legal entities.” A dogmatic method was valuable to formulate the conclusions and recommendations of practical character within the research issues. **Results:** It is shown that the legislation about administrative liability of legal entities is in the forming stage, and there are two possible ways of its systematization. It was stressed that both of them are connected with a necessity to bring contradictions about regulation of legal liability of legal entities into line with constitutional norms. It was concluded that a legal entity should be recognized as a subject of administrative liability. **Discussion:** Administrative liability of legal entities is intended to withstand offences, protect legal rights and interests of citizens, the state, legal entities, established administrative order, and also provide renewal of broken rights and compensation for losses resulting from an offence, give onerous consequences of organizational and material character for offenders. The development of a concept of “administrative liability of legal entities” and its implementation is an important topic for the future research.

**Keywords:** administrative liability; bodies of public administration; harmful consequences; legal entity; natural person; regulation.

### 1. Introduction

The article gives an opportunity to get complete information about administrative liability of legal entities in Ukraine. Results of the investigation may be used in practice during applying of administrative legal norms by courts, bodies of administrative jurisdiction and legal entities.

To understand legal essence of legal entities as subjects of administrative liability administrative doctrine has to solve the following tasks: to determine similarities and differences between administrative liability of legal entities and natural persons; to analyze normative legal acts that establish and regulate administrative liability of legal entities in Ukraine; to investigate connections

between different regulatory legal acts with the aim to determine main directions of improvement and systematization of legislation about administrative liability of legal entities; to determine grounds of implementation of administrative liability of legal entities.

### 2. Analysis of the latest researches and publications

The scientific and theoretical basis of the research consists of scientific works of national and foreign scientists. In particular, treatises of following researchers have been used: V.B. Averyanov, D.M. Bahrah, Y.P. Bytyak, I.L. Borodin, I.P. Holosnichenko, V.I. Dymchenko, Y.V. Dodin,

L.V. Koval, S.V. Kivalov, Y.M. Kozlov, A.T. Komziuk, B.M. Lazariev, D.M. Lukyanets, M.S. Maleyin, V.I. Novosiolov, V.F. Opryshko, V.I. Remniiov, I.S. Samoschenk, M.S. Studenykyna, V.A. Tarhov, Y.M. Trubetskyi, Y.S. Shemshuchenko, O.M. Yakuba and others.

### 3. Research tasks

The task of this paper is to develop theoretical fundamentals that are necessary for understanding of administrative liability of legal entities and make propositions to improve current legislation about administrative liability of legal entities, a mechanism of its implementation and systematization of legislation in this area.

### 4. Research results

The possibility of administrative liability of legal entities has been never denied by scientists in the sphere of administrative law. According to history it is clearly possible to track stages of origin and development of works about administrative liability of legal entities in national science and lawmaking practice.

The first phase is connected with the origin and determination of administrative liability of legal entities in Ukraine. During that time lawmakers adopted many normative acts, which established administrative liability of legal entities. For example, the Decree of the Council of People's Commissars of the Union of Soviet Socialist Republics (hereafter is USSR) on 17.10.1921 "On requisition and confiscation of property of individuals and associations." It is also needed to mention the Administrative Code of Ukrainian Soviet Socialist Republic (hereafter is Ukrainian SSR). The chapter 3 of this normative legal act consists of two subchapters. The first is called "Measures of administrative influence that are applied for breach of obligatory resolutions," the second has the title "Measures of administrative influence that are used for infrequent breach of law." The rules of the first provided administrative liability of natural persons, the rules of the second provided liability of natural persons and legal entities [1].

Also, administrative liability of legal entities was mentioned in the chapter 4 of the Administrative Code of the Ukrainian SSR where a legal entity has been defined as a subject of administrative liability. Provisions of the chapter 5 establishes the kind of administrative penalty as making with money of an

obliged person, and provided administrative offences for commission of which the penalty was applied. The article 162 of the chapter 5 establishes: "Amount of money spent to perform necessary works to remove negligence is collected from individuals and organizations on money of with these works have been made in judicial order." Also, such an administrative penalty as confiscation could be used to a legal entity in accordance with the subchapter 4 of the chapter 6 of the Administrative Code of Ukrainian SSR [1].

The second phase began from the decree of the Presidium of the Verkhovna Rada of Ukrainian SSR in June 21, 1961 "On further limitation of fines implementation imposed according to administrative order [2]." This Decree determined fines according to administrative order in relation to enterprises, institutions, organizations emphasized that administrative liability of legal entities must be replaced by personal liability of their chiefs and officials. At that time it was a reasonable decision, because the implementation of economic sanctions by bodies of state power in relation to public enterprises not always interested in final results of their activity was ineffective.

By limitation of legal entities' administrative liability implementation the decree raised the question of effectiveness and expediency of its future implementation. The vast majority of scientists accepted existence of administrative liability of legal entities. "Administrative liability of organizations" of V.I. Dymchenko should be called as the comprehensive investigation of this question at that time [3].

The third stage includes acceptance of the Fundamentals of Legislation of the USSR and the Federal Republics on Administrative Offences [4], and then on the basis of the mentioned document the Code of Ukrainian SSR on Administrative Offences was adopted. These normative regulations did not deny possibility of administrative liability, moreover the Decree of the Presidium of the Verkhovna Rada of Ukrainian SSR in February 19, 1981 separately emphasized that entry into force of the Fundamentals of Legislation about Administrative Offences did not affect on acting legislative documents about liability of legal entities in administrative order [5]. At the same the Code of Ukrainian SSR about Administrative Offences established that liability only for natural persons. Such a subjective composition may be considered as

one of criteria to distinguish administrative and civil liability from each other.

The fourth stage can be fully called as a Ukrainian phase. The development of legal instituts in Ukraine is closely related with evolution of public relations, changes in the economic and political structure of a society, and national legislation that began after independence of Ukraine.

According to Petrova I.G., in the development of the institute of administrative liability of legal entities it is possible to distinguish three phases: the first phase is from 1917 to 1961, the second phase is from 1961 to 1991, the third phase is from 1991 to the present [6].

The most important attribute of administrative liability of legal entities is implementation of administrative penalties to legal entities for administrative offences [7].

The main features of administrative liability of legal entities are almost the same as attributes of this type of liability of natural persons. A legal entity as an individual may get administrative liability after commission of an administrative misconduct (an offence), i.e. an illegitimate, guilty, socially harmful breach of rules that are conducted by a state.

Comparing an administrative offence made by a legal entity and by a natural person, to our mind, they have some differences. This is one of the reasons that legal rules about liability of legal entities have not been included into the Code of Ukraine about Administrative Offences. They are connected just with a nature of an offender, a subject of a misconduct and a subjective side of an offence.

So, for example, D.N. Bahrah supposes that a ground of administrative liability is an administrative offence (a tort). The scientist proposes to divide it into two types of administrative offences that are guilty, made by a natural person, and administrative violations made without guilt by a legal entity [8]. As a precondition for such a classification he mentions a number of normative acts of Russian Federation, for example, the Customs Code, which provides administrative liability not only for legal entities but also for all subjects of entrepreneurship not counting guilt [9].

The grounds for legal liability of legal entities are presence a system of legal regulations, which introduce administrative liability (a normative basis), a fact of an offence (an actual basis) and an act (a document) of a competent subject to impose specific penalties (a procedural basis) [10]. According to Parnenko V.S., determination of

grounds to determine a legal entity as a subject of administrative misconducts on the level of legislation in the Code of Ukraine about Administrative Offences will stop the present scientific discussions, allow timely and efficiently counteraction of administrative offences [11].

Imposition of administrative penalties on legal entities leads to the origin of negative financial or organizational consequences for them. This attribute coincides with a similar attribute of individuals' administrative liability, although types of penalties are different. For example, types of financial penalties that are used just to legal entities begin to be more various.

Specificity of administrative liability of legal entities is connected with peculiarities of a legal nature of a legal entity as a member of legal relations.

Common attributes of administrative liability of legal entities and natural persons emphasize those particularities, differences that are inherent to administrative liability of legal entities.

First of all, a subject of this liability is a legal entity i.e. a social formation that has one important attribute which distinguishes it among others. This feature is legal personality that is ability to have rights and assume certain legal duties, and thus to be a subject of not just public, but also legal relations. Legal capacity of a legal entity comes from its formation i.e. state registration (entry in the state register) and stops from its termination by liquidation or reorganization since the exclusion from the state register.

Analysis of the current legislation gives the possibility to insist that in Ukraine legal entities have special legal capacity, a particularity of which is the fact that it is limited by a purpose, objectives of activity that are defined in the moment of creation of a legal entity and documented in its constituent documents

A purpose of activity is one of the classification criteria of legal entities. There are three groups of them: an enterprise that has a purpose to get profit; public associations (political parties and public organizations) that have an aim to meet political, social, cultural and other needs of citizens; institutions are legal entities that have been established by a state and have a purpose to implement its functions.

However, in current legislation of Ukraine there are particularities that are quite connected with the mentioned classification and origin from special

capacity. There is a group of offences that can be made only by a legal entity that belongs to one specific types. Thus, the Law of Ukraine “On Public Associations” established types of administrative misconducts that may be made only by political parties and public organizations. Accordingly only organization or enterprises may get liability for such misconducts, and in no case institution, that is reflection of a category “specific legal personality of legal entities” of civil law in administrative law.

According to scientists, a tendency to recognize general legal capacity of legal entities that is equal to legal capacity of a human has been developing in the world [12]. This approach, in our opinion, will help to optimize liability of individuals and entities, improve the current legislation in this sphere and practice of its implementation.

Secondly, existence of legal capacity of legal entities does not create automatically a mechanism that would provide an opportunity for them to participate in legal relations directly. A legal entity is the holistic collective entity, and it implements inherent rights and duties by making definite actions by specific individuals that give consequences for the whole collective.

Thirdly, the penalties that are implemented to legal entities in case of bringing them to administrative liability have negative consequences not only directly to the collective formation as to the subject of liability, but also are indirectly transferred to the founders of this formation. This is because offences that are made by the legal entity as usual have to facilitate achievement of its goal, and the achievement of this goal has to satisfy interests of individual founders. Enforcement of penalties to legal entities gives its founders certain direct and indirect losses.

It should also be noted that maximum efficiency of administrative liability of legal entities is achieved by its combination with administrative liability of individuals, especially officials. In this combination the first provides exclusion of negative consequences of an offence, and the second creates negative consequences for a direct culprit.

In many countries, legal entities may be authorized not only for administrative violations, but also crimes committed by their managers (or employees) in some cases [13]. The existence of corporate criminal liability is a well known phenomenon in Belgium, Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, Romania, Slovakia, Spain, United Kingdom of Great

Britain and Northern Ireland [14]. In Poland the absence of criminal liability of legal persons does not exclude the possibility of civil liability for damage or administrative liability of legal entities [14].

In Italy the administrative liability of legal entities by crimes committed by a person who has functions of representation, administration or management entity, is the third type of liability, as this person acts in the interest of legal entities [15].

According to mentioned above nowadays the understanding of administrative liability has been changed from “nothing more than the civil liability of public servants and administrative bodies” [16] to the independent subtype of juridical liability.

Consideration of these features confirms existence of administrative liability of legal entities as one of the subtypes of legal liability. History of development of administrative liability of legal entities in Ukraine, current legislation on this issue allow to determine characteristics and particularities of this type of legal liability, which has all the main features of administrative liability.

In Ukrainian law this type of liability has existed since the days of New Economic Policy (NEP). During its existence it had many changes and transformations but was always seen as a form of coercion as an instrument of state administration. There is especially important role of this tool in a sphere of economic activities administration because enforcement of administrative penalties significantly affects on a state of subjects of entrepreneurship. It should also be noted that maximum efficiency is achieved through combination of administrative liability of legal entities and natural persons, especially officials.

In the sphere of science of administrative law it is accepted to speak about a system of normative legal acts that establish administrative liability. Administrative liability of individuals is regulated by different statutory acts, and the Code of Ukraine about Administrative Offences has the central place among them.

Combination of current legislative acts that regulate administrative liability of legal entities may be made according to two ways.

One of them proposes to include normative acts about administrative liability of legal entities to the Code of Ukraine about Administrative Offences, but not as a formal inclusion of several compositions of offences, a subject of which is a legal entity, to its Special Part as it has been made in the new bill of

the Code. Changes and amendments have to change the Code of Ukraine about Administrative Offences from a center of a system of regulations concerning administrative liability of individuals to the center of the system of regulations about administrative liability in general. It is obligatory to determine a mechanism of administrative penalties enforcement by settlement of a procedure of proceedings on cases of administrative offences made by legal entities.

Another one proposes to combine regulations that regulate administrative liability of legal entities into a separate system around its own center. To make it a separate law of general character that would contain all fundamentals about administrative liability of legal entities should be developed and passed.

Nowadays the second way, in our opinion, is more appropriate. Firstly, it will help to make a number of general provisions concerning administrative liability of legal entities, but does not require a simultaneous codification of all of directly established liability of legal entities rules of the Special part that have already been tested in practice

Secondly, the new law may contain warnings from spreading to administrative liability of legal entities of the rules of the Code of Ukraine about Administrative Offences in accordance with the rule established by Article 2 of the Code. Such a clause will reduce the probability of confusion in concepts and competition of norms.

Thirdly, the development and adoption of a small regulation seems to be an easier task than the codification of all of rules about administrative liability of legal entities by including them into the Code of Ukraine about Administrative Offences, that in addition to the aforementioned development will also require detailed coordination of new and present rules.

Fourthly, adoption of a separate law about administrative liability of legal entities does not exclude the possibility of the future codification and inclusion of stated therein provisions to the Code. This code may be the Code of Ukraine about Administrative Offences or a special Code about Administrative Liability of Legal Entities. The law will allow to conduct such a codification more efficiently and carefully, conducting the previous approbation of new fundamental provisions before including them into the single fundamental act.

Fundamentals of legislation about administrative liability of legal entities in Ukraine may be such a regulation. This law should not be large by its

volume and should pay attention only to fundamental positions.

Bringing present regulations about legal liability of legal entities into line with requirements of the Constitution of Ukraine will have practical importance to form a legislative system concerning the investigated question regardless of the way of its creation. In accordance with the Basic Law of the state an act may be considered as a misconduct and administrative liability for it may be established only by the law. Nowadays the mentioned liability in some cases is determined by executive legal acts, and it contradicts the established in the Constitution of Ukraine provision.

## 5. Conclusions

Summarising mentioned above, it should be noted that the legislation about administrative liability of legal entities is in the forming stage. It is not yet a single integrated system, but there are two possible ways of its systematization. Both of them are connected with a necessity to bring contradictions about regulation of legal liability of legal entities into line with constitutional norms. Regardless of a systematization method the law should recognize a legal entity as a subject of administrative liability.

Solving of this problem will give an opportunity for authorized to impose administrative liability on legal entities bodies to have more critical and objective attitude to the complex of executive legal acts on the matter. Legislative determination of a procedure to impose legal entities to administrative liability is one of the first tasks solving of which will allow excluding a number of problems in the jurisdictional activity.

## References

[1] Administrative Code of the Ukrainian SSR. – Kharkiv: Ukrainian SSR People's Commissariat Legal Publishing, 1928. 130 p.

[2] Decree of the Presidium of the Verkhovna Rada the USSR "On further limitation of fines implementation imposed according to administrative order". Bulletin of the Verkhovna Rada of the USSR 1961, Number 35, p. 368.

[3] *Dymchenko V.I.* Administrative liability of organizations. Author's ref. of thesis...candid.leg. science. 12.00.07. Perm, 1982. – 17 p. (in Russian)

[4] Fundamentals of Legislation of the USSR and the Union Republics on Administrative Offences. Bulletin of the Verkhovna Rada of the USSR 1980, Number 44, p. 909. (in Russian)

[5] Decree of the Presidium of the Supreme Soviet of the USSR "On the order of entry into force of the Fundamentals of Legislation of the USSR and the Union Republics on Administrative Offences". Bulletin of the Supreme Soviet of the USSR 1981, Number 8, p. 178. (in Russian).

[6] Petrova I.G. Development of an institute of administrative liability of legal entities on the territory of Ukraine. Scientific Journal of International Humanitarian University. Jurisprudence 2013, Volume 1, Number 6-1, pp. 179-182, p. 179.

[7] Slubskyy I.Y. A concept of administrative liability of legal entities: legal analysis. Bulletin HNUVS 2011, Number 4 (55), pp. 280-289, p. 287.

[8] Bahrah D.N. Administrative law. – Moskva: BEK, 1997. – 368 p. (in Russian)

[9] Customs Code of Russian Federation. Bulletin of the Congress of People's Deputies of the Supreme Council of Russian Federation 1993, Number 31, p. 1224 (in Russian)

[10] Vikhrova V.S. Administrative responsibility of individuals and legal entities of the European Union in Ukraine. Author's ref. of thesis...candid. leg. science. 12.00.07. Kyiv, 2015. 16 p., p. 9.

[11] Parnenko V.S. Legal entities as independent subjects of administrative liability. Scientific Bulletin of Dnipropetrovsk National University of Internal Affairs 2013, Number 3, pp. 231-238, p. 237.

[12] Stefaniuk V., Holosnichenko I., Mykheyenko M. Institute of administrative liability of legal entities: problems of theory and practice. Pravo Ukrainy 1999, Number 9, pp. 6-9.

[13] Liability of Legal Persons for Corruption in Eastern Europe and Central Asia. Report of OECD Anti-Corruption Network for Eastern Europe and Central Asia. – Paris, 2015. 90 p., p. 12.

[14] Chance Clifford. Corporate Liability in Europe. London: Clifford Chance LLP, 2012. 47 p., p.p. 3, 7, 10, 13, 16, 20, 23, 26, 29, 32, 35, 38.

[15] Fabrizio Cugia di Sant'Orsola, Silvia Giampaolo. Liability of Entities in Italy: Was It not Societas Delinquere Non Potest? New Journal of European Criminal Law 2011, Vol. 2, Issue 1, pp. 59-74, p. 65.

[16] Carol Rhian Harlow. Administrative liability: a comparative study of French and English law. Thesis for the degree of Ph.D. London, 1979. 360 p., p. 9.

Received 15 May 2016

**І.Л. Бородин, О.М. Миронець**

**Адміністративна відповідальність юридичних осіб: історія і сучасність.**

Національний авіаційний університет, проспект Космонавта Комарова, 1, Київ, Україна, 03680

E-Mails: tidp\_kaf\_nau@mail.ru, o.m.myronets@ukr.net

**Мета:** Юридичні особи здатні акумулювати значно більші фінансові, матеріальні, інтелектуальні ресурси для досягнення своєї мети, ніж окрема фізична особа. Важливою є розробка теоретичних основ, необхідних для розуміння адміністративної відповідальності юридичних осіб і внесення пропозицій щодо удосконалення чинного законодавства про адміністративну відповідальність юридичних осіб, механізму її застосування, систематизації законодавства в цій сфері. **Методи:** Було використано загальнонаукові, філософські та спеціально-правові методи наукового дослідження. За допомогою загальнонаукових та філософських методів досліджено теоретико-правові засади інституту адміністративної відповідальності юридичних осіб, передумови законодавчого регулювання адміністративної відповідальності юридичних осіб. Метод системного аналізу використано для аналізу сучасного адміністративного законодавства, наукових праць щодо визначення поняття «адміністративна відповідальність юридичних осіб». Догматичний метод був цінним при формулюванні висновків і рекомендацій практичного характеру в межах проблематики дослідження. **Результати:** Вказано, що законодавство про адміністративну відповідальність юридичних осіб перебуває в процесі становлення, запропоновано два можливі шляхи його систематизації. Зауважено, що обидва вони пов'язані з необхідністю усунення неузгодженості у врегулюванні адміністративної відповідальності юридичних осіб з конституційними нормами. Зроблено висновок, що законодавчо слід визнати юридичну особу суб'єктом адміністративної відповідальності. **Обговорення:** Адміністративна відповідальність юридичних осіб покликана протистояти правопорушенням, захищати законні права та інтереси громадян, держави, юридичних осіб, встановлений порядок управління, а також забезпечувати відновлення порушених прав та відшкодування втрат, що виникли в результаті правопорушень, тягти для правопорушника обтяжливі наслідки організаційного та матеріального характеру. Розробка концепції «адміністративної відповідальності юридичних осіб» і її реалізація є важливою темою для майбутніх досліджень.

**Ключові слова:** адміністративна відповідальність; нормативний акт; органи публічного управління; фізична особа; шкідливі наслідки; юридична особа.

**И.Л. Бородин, О.Н. Миронец**

**Административная ответственность юридических лиц: история и современность.**

Национальный авиационный университет, проспект Космонавта Комарова, 1, Киев, Украина, 03680

E-Mails: tidp\_kaf\_nau@mail.ru, o.m.myronets@ukr.net

**Цель:** Юридические лица способны аккумулировать значительно большие финансовые, материальные, интеллектуальные ресурсы для достижения своей цели нежели отдельное физическое лицо. Важными являются разработка теоретических основ, необходимых для понимания административной ответственности юридических лиц, и внесение предложений по совершенствованию действующего законодательства об административной ответственности юридических лиц, механизме ее применения, систематизации законодательства в этой сфере. **Методы:** Были использовано общенаучные, философские и специально-правовые методы научного исследования. С помощью общенаучных и философских методов исследованы теоретико-правовые основы института административной ответственности юридических лиц, предпосылки законодательного регулирования административной ответственности юридических лиц. Метод системного анализа использовано для анализа современного административного законодательства, научных работ по определению понятия «административная ответственность юридических лиц». Догматический метод был ценным при формулирование выводов и рекомендаций практического характера в рамках проблематики исследования. **Результаты:** Указано, что законодательство об административной ответственности юридических лиц находится в процессе становления, предложено два возможных пути его систематизации. Замечено, что оба они связаны с необходимостью устранения несогласованности в урегулировании административной ответственности юридических лиц с конституционными нормами. Сделан вывод, что законодательно следует признать юридическое лицо субъектом административной ответственности. **Обсуждение:** Административная ответственность юридических лиц имеет целью противостоять правонарушениям, защищать законные права и интересы граждан, государства, юридических лиц, установленный порядок управления, а также обеспечивать возобновление нарушенных прав и возмещение ущерба, возникшего в результате правонарушений, предусматривать для правонарушителя отягчающие последствия организационного и материального характера. Разработка концепции «административной ответственности юридических лиц» и ее реализация является важной темой для будущих исследований.

**Ключевые слова:** административная ответственность; негативные последствия; нормативный акт; органы публичного управления; физическое лицо; юридическое лицо.

**Borodin Ivan.** Doctor of Juridical Sciences. Professor.

Department of Theory and History of State and Law of Educational and Research Institute of Law of National Aviation University, Kyiv, Ukraine.

Education: Kyiv Higher School of Ministry of Internal Affairs of the Union of Soviet Socialist Republics named after F.E Dzerdzynsky, Kyiv, Ukraine (1984).

Research area: legal means of protection of rights and freedoms of a human and a citizen in Ukraine; problems of administrative procedure.

E-mail: tidp\_kaf\_nau@mail.ru

**Myronets Oksana.** Senior Lecturer.

Department of Theory and History of State and Law of Educational and Research Institute of Law of National Aviation University, Kyiv, Ukraine.

Education: National Aviation University, Kyiv, Ukraine (2006).

Research area: theoretical and legal aspects of functions of administrative law.

E-mail: o.m.myronets@ukr.net