



Correlation of Legal Concepts of Administrative Procedure and Administrative Liability in the Sphere of Urban Planning*

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Abstract.

The purpose of the research is to identify the correlation between legal concepts of administrative Procedure and administrative liability in the sphere of urban planning. Main content. The regulatory basis for imposing administrative sanctions in the specified sphere consists of violating legislation, building regulations, standards, rules, etc. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method, as well as methods of analysis and synthesis. Conclusions. It is noted that the mechanism of bringing to administrative liability is based on a considerable number of legislative acts, building codes, standards, and rules, and this fact makes it much more challenging to understand this set of rules and contributes to their violation. Emphasis is placed on the fact that many offences in urban planning activities are detected during state architectural and construction control and supervision. Disclosed are some positions of the Supreme Court regarding the consideration and resolution of disputes related to appeals against resolutions on acceptable imposition. Peculiarities of implementation of norms of the institution of administrative liability in the sphere of urban planning activities for offenders of variable status have been revealed.

Keywords: Administrative Liability; Administrative Procedure; Urban Planning Activity; Legislation; Urban Planning Offense

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Korelasi Konsep Hukum Tata Usaha dan Kewajiban Administrasi Dalam Lingkup Tata Kota

Abstrak.

Tujuan dari penelitian ini adalah korelasi konsep hukum prosedur administrasi dan tanggung jawab administrasi di bidang tata kota. Isi utama dari dasar pengaturan untuk pengenaan sanksi administrasi di bidang tertentu terdiri dari pelanggaran undang-undang, peraturan bangunan, standar dan aturan, dll. Metodologi: Dasar metodologi penelitian disajikan sebagai analisis komparatif-hukum dan sistematis, metode hukum formal, metode interpretasi, metode hermeneutik serta metode analisis dan sintesis. Adapun hasil kesimpulan menyatakan bahwa perlu dicatat bahwa mekanisme membawa tanggung jawab administratif didasarkan pada sejumlah besar undang-undang legislatif, kode bangunan, standar dan aturan, dan fakta ini membuat semakin sulit untuk memahami seperangkat aturan ini dan berkontribusi pada pelanggarannya. Penekanan ditempatkan pada fakta bahwa sejumlah besar pelanggaran di bidang kegiatan perencanaan kota terdeteksi selama kontrol dan pengawasan arsitektur dan konstruksi negara. Diungkapkan beberapa sikap Mahkamah Agung mengenai pertimbangan dan penyelesaian sengketa terkait upaya banding terhadap putusan pengenaan denda. Keanehan penerapan norma lembaga tanggung jawab administratif di bidang kegiatan tata kota untuk pelanggar status variabel telah terungkap.

Kata kunci: Tanggung jawab administrative; Prosedur administrasi; Kegiatan tata kota; Legislasi; Pelanggaran tata kota

Соотношение правовых понятий административной процедуры и административной ответственности в сфере градостроительства

Аннотация:

Цель исследования - соотношение правовых понятий административной процедуры и административной ответственности в сфере градостроительства. Основное содержание. Нормативно-правовым основанием применения мер административного взыскания в указанной сфере является нарушение законодательства, строительных норм, норм и правил и др. Методология: Методологическую основу исследования составляют сравнительно-правовой и системный анализ, формально-правовой метод, метод интерпретации, герменевтический метод, а также методы анализа и синтеза. Выводы. Отмечается, что механизм привлечения к административной ответственности основан на огромном количестве законодательных актов, строительных норм, норм и правил, что значительно затрудняет понимание данного свода правил и способствует их нарушению. Акцентируется внимание на том, что большое количество правонарушений в сфере градостроительной деятельности выявляется в ходе государственного архитектурно-строительного контроля и надзора. Раскрыты некоторые позиции Верховного Суда относительно рассмотрения и разрешения споров, связанных с обжалованием постановлений о наложении штрафа. Выявлены особенности реализации норм института административной ответственности в сфере градостроительной деятельности для правонарушителей переменного статуса.

Ключевые слова: Административная ответственность; Административное производство; Градостроительная деятельность; Законодательство; Градостроительное правонарушение

A. INTRODUCTION

Modern challenges include the transformation of the institution of administrative liability in the sphere of urban planning, taking into account international standards and established court practices. But a new conceptual approach to the institution of administrative responsibility should be the basis for reforming the mentioned institution ([Leheza et al., 2022](#)).

Creation of a new paradigm involves the implementation of activities simultaneously along several vectors as well as a combination of the obtained results, in particular: a) rethinking of the basic scientific and theoretical principles of the institution of administrative liability (purpose, tasks, principles, subjects, etc.); b) inventory and codification of an extensive array of current administrative and tort legislation, taking into account theoretical developments of legal science in general and norms of administrative law and legislation regarding urban planning activities in particular.

The Procedure of applying norms of administrative liability in the sphere of urban planning activity to offenders is of a complex nature. Therefore, it combines two procedures: a procedure for using the general principles of imposition of administrative sanctions, which serves as a basis, and a particular procedure that involves considering the specifics of urban planning ([Bezpalova et al., 2021](#)).

Peculiarities of the legal mechanism for the application of means of administrative liability in urban planning are observed already at the stage of determining the legal basis for the application of administrative sanctions. The regulatory basis for imposing administrative sanctions in the specified sphere consists of violating legislation, building regulations, standards, rules, etc.

The current legislation's analysis indicates a large number of normative legal acts that determine the possibility of applying administrative sanctions. This presupposes the possession of special knowledge and creates additional conditions for offences. The specified problem can be solved by simplifying this system and unifying these norms in a specific codified act ([Buha et al., 2022](#)).

B. METHODS

The research is based on works of foreign and Ukrainian researchers regarding methodological approaches to understanding the relationship between the legal concepts of administrative Procedure and administrative liability in urban planning. With the help of the epistemological method, the essence of the relationship between the legal concepts of administrative

Procedure and administrative penalty in the sphere of urban planning has been clarified; thanks to the logical-semantic method, the conceptual apparatus has been deepened, and the essence of the relationship between the legal concepts of administrative Procedure and administrative liability in the sphere of urban planning has been determined. Furthermore, to get an idea of the peculiarities of administrative responsibility in urban planning over the past five years, we analyzed statistical data, which, unfortunately, are not based on all canons of statistical generalization since we did not have access to all blocks of information. However, the available data made it possible to analyze the correlation between legal concepts of administrative Procedure and administrative liability in urban planning.

C. RESULTS AND DISCUSSION

The legal regulation of planning issues in urban and rural territories of Ukraine can be an example of the complexity of legal law ([Halaburda et al., 2021](#)). The basis for imposition of administrative sanctions is presented as norms of current legislation - this is the first level: Code of Ukraine on administrative offences ([Law of Ukraine, 2005](#)), laws of Ukraine "On responsibility in the field of urban planning" ([Law of Ukraine, 1994](#)), "On regulation of urban planning activities" ([Law of Ukraine, 2011](#)) and others.

The second level violates the principal 22 state construction regulations (in the future referred to as the DBN) that regulate the specified issue, particularly DNB B.1-1-93. SMBD The Procedure for creating and maintaining urban planning cadastral settlements; DNB B.1-2-95. SMBD Composition, content, the Procedure for development, coordination, and approval of complex transport schemes for cities of Ukraine; DNB B.1-3-97. Composition, content, Procedure for development, coordination, and acceptance of general layouts of urban settlements; DNB B.1.1-6:2007. Composition, content, Procedure for development, coordination, and approval of regional planning schemes; DNB B.1.1-5:2007. Design, content, Procedure for development, coordination, and approval of the section of engineering and technical measures of civil protection (civil defense) in urban planning documentation; DNB B.1.1-7:2007 ([Kobrusieva et al., 2021](#)).

Composition, content, Procedure for development, coordination, and approval of village council territory planning schemes; DNB B 2.2-1:2008. Planning and constructing cities, towns, and functional territories of cemeteries, crematoria, and columbaria; design norms DNB B.1.1-4-2009.

Composition, content, Procedure for development, coordination, and approval of urban planning substantiation; DBN B.1.1—9:2009. Composition, content, Procedure for development, coordination, and acceptance of general layouts of rural-type settlements; DBN B.1.1—11:2011. Composition and content of planning schemes for the territory of the Autonomous Republic of Crimea and regions of Ukraine; DBN B.1.1—13:2012. Composition and content of urban planning documentation at the state and regional levels; DBN B.1.1—14:2012. Composition and content of the detailed territorial plan; DBN B.1.1—15:2012. Composition and content of the general settlement plan; DBN B.1.1—16:2013. Composition and scope of the urban cadaster and others.

There are also construction standards and regulations, etc. Therefore, today's requirements include harmonizing all these norms within the framework of a single normative act for ease of application ([Kolinko et al., 2021](#)). This requirement is also conditioned by Clause 8 of the Procedure for imposing fines for offenses in urban planning, approved by the resolution of the Cabinet of Ministers of Ukraine dated 06 April 1995. No. 244; according to these provisions, proceedings in a case of offences in the sphere of urban planning activities cannot be initiated, and initiated proceedings shall be subject to closure in the absence of event and body of the offense in the sphere of urban planning activities ([Law of Ukraine, 1995](#)).

The next feature of implementing norms of administrative liability in urban planning is applying criteria of various normative acts to offenders of different statuses ([Matviichuk et al., 2022](#)). Thus, the standards of the Law of Ukraine "On Liability for Offenses in the Field of Urban Development" No 208/94-VR ([Law of Ukraine, 1994](#)) are applied to legal entities and individual entrepreneurs (subjects of urban planning) for offenses in the sphere of urban planning. And to violate natural persons, the norms of Articles 96, 96—1, 188—42 of the Code of Ukraine on Administrative Offenses ([Law of Ukraine, 2005](#)) shall be applied.

The Procedure for imposition of administrative sanctions in the sphere of urban planning is complicated by the possibility of violating the norms of not only urban planning legislation but also standards in other areas of activity (for example, in the sphere of cultural heritage protection — when construction work is carried out on objects of the corresponding status). ([Tylchyk et al., 2022](#)). Thus, Art. Thus, Article 44 of the Law of Ukraine "On the Protection of Cultural Heritage" establishes the liability of legal entities for violations of the legislation on the protection of cultural heritage (for non-compliance with the requirements for security, preservation, maintenance, use, restoration,

rehabilitation of monuments, in particular, non-compliance with the conditions provided for in protection agreements, intentionally bringing monuments to a state of destruction, etc.) ([Law of Ukraine, 2000](#)).

Many offences in urban planning are detected while implementing measures to comply with legislation requirements in urban planning, building regulations, state standards, and rules during preparatory and construction works. Resolution of the Cabinet of Ministers of Ukraine dated 23 May 2011 No. 533 (hereinafter - the Resolution No. 533) defines the Procedure for carrying out these measures in the form of inspections (scheduled and unscheduled ones) ([Leheza et al., 2021](#)).

Clause 18 of the Resolution No. 533 stipulates the requirement that an official of the state architectural and construction control body sign the inspection act. The inspection was conducted by the head of the urban planning entity subject to state architectural and construction control (or by their authorized representative) on the last day of the inspection ([Law of Ukraine, 2000](#)). It should be noted that Clause 21 of the Resolution No 533 regulates only the situation when a person refuses to sign the inspection report and prescription ([Leheza, 2022](#)).

The Vagueness of some norms leads to an increase in lawsuits. And here the position of the Supreme Court was formed (hereinafter referred to as the SC) ([Leheza et al., 2020](#)). For example, an act drawn up in the absence of the plaintiff cannot be the basis for drawing up a protocol, prescription, and resolution on imposing a fine on the plaintiff, which violates the rights of the plaintiff, namely the right to be present during the inspection, to file objections to the inspection activities and to provide explanations about alleged violations (ruling of the Administrative Court of Cassation (hereinafter referred to as the ACC) SC in the case No 210/3059/17 (2-a/210/148/17) ([Law of Ukraine, 2019](#)).

Subclauses 3, 4, 5, clause 13 of Resolution No. 533 state the following rights an urban planning subject subjected to state architectural and construction control: to be present during implementation of the state architectural and construction control and, based on the results of the inspection, to receive and review the inspection report drawn up by the state architectural and construction control body; to submit in writing their explanations, comments or objections to the inspection report drawn up by the state architectural and construction control body based on the results of the inspection ([Law of Ukraine, 2019](#)).

Article 3 of the Law of Ukraine "On Liability for Offenses in the Field of

Urban Development" dated 14 October 1994. No 208/94-VR ([Law of Ukraine, 1994](#)) determines the list of bodies (persons) that have the right to consider cases of administrative violations in urban planning. The analysis of this article allows us to distinguish two subsystems in the system of such bodies, in particular:

- 1) The first subsystem of bodies is a set of bodies that have the right to consider cases of offences determined by the Law of Ukraine "On Liability for Offenses in the Field of Urban Development";
- 2) The second subsystem is a set of persons who have the right to impose fines on behalf of authorities following the requirements defined by the Law of Ukraine "On the Regulation of Urban Planning Activities" ([Law of Ukraine, 2011](#)).

Clause 15 The Procedure for imposing fines for offenses in the field of urban planning activities stipulates the requirement that the protocol on offenses in the field of urban planning activities and other materials shall be submitted to an official of the state architectural and construction control body authorized to consider the case of offenses in the field of urban planning activities for the purpose to resolve the issue of prosecution and imposition of a fine within three days after its imposition ([Law of Ukraine, 1995](#)).

The legislation regulates the Procedure for consideration of an administrative case in urban planning ([Leheza et al., 2022](#)). A review of such cases is carried out within fifteen days from receipt of the protocol on offences in urban planning activities and other case materials by the specified person ([Law of Ukraine, 1995](#)). Clause 16 of the Procedure mentioned above establishes the provision, and according to this provision, a case of an offence in the field of urban planning shall be considered by an official of the state architectural and construction control body, whose authority is to consider such cases ([Law of Ukraine, 1995](#)).

According to clause 22 of the Procedure for Imposing Fines for Offenses in the Field of Urban Planning, it is determined that, based on the results of the case review, an official of the state architectural and construction control body (whose powers include a review of such cases) shall adopt one of the following resolutions:

- 1) A resolution on imposing a fine for an offence in the field of urban planning (hereinafter - a resolution on imposing a fine);
- 2) Resolution on closing the case regarding the imposition of a fine for an

offense in the field of an urban planning activity (hereinafter referred to as the resolution on closing the case). ([Law of Ukraine, 1995](#))

Standards of Article 5 of the Law of Ukraine "On Liability for Offenses in the Field of Urban Development" dated 14 October 1994 (Law of Ukraine, 1994) correlate with the norms of clause 28 of the Procedure for imposing fines for offenses in the field of urban planning activities and establish the rule that the resolution can be appealed by the subject of urban planning, in respect of which it was issued, within fifteen days from the day of its issuance ([Leheza et al., 2022](#)).

Three appeal options are possible:

- 1) Appeal to court - within fifteen days from the date of its issuance with notification of such request to the state architectural and construction control body, the relevant resolution was issued by;
- 2) Appeal to the state architectural and construction control body the relevant resolution was issued - within fifteen days from the date of its issuance;
- 3) Appeal first to the state architectural and construction control body the relevant resolution was issued by, and then to the court.

As evidenced by the judicial practice of considering cases regarding appeals against resolutions of the State Architectural and Construction Inspection (SACI) (one of the bodies that can issue such solutions) on offences and imposition of fines in the field of urban planning, this may apply to various stages of construction, starting from the moment of the inspection (compilation of the SACI Protocol, issuance of a SACI resolution, etc.).

The legislation stipulates that all resolutions shall be recorded by making a record of them in the record book of such solutions ([Law of Ukraine, 1995](#)).

An essential component of the mechanism of imposition of administrative sanctions consists in implementing the resolution.

The legislation provides for two ways of implementing resolutions - voluntary or forced and following Clause 30 of the Procedure for imposing fines for offenses in urban planning, approved by the resolution of the Cabinet of Ministers of Ukraine dated 06 April 1995. No 244, the offender shall pay the fine within fifteen days from the delivery date or sending of such a resolution. After spending the penalty, the offender must provide a copy of the payment document certified by the bank, authorizing voluntary payment of the

acceptable amount in full to the state architectural and construction control body. This must be done within one day from the day of sufficient payment (except for paying the fine through an electronic cabinet) ([Law of Ukraine, 1995](#)).

Suppose the offender fails to pay the fine within fifteen days. In that case, the resolution on the imposition of the penalty is enforced by the bodies of the state executive service at the address of their location. Furthermore, all considered cases are stored in the archive of the state architectural and construction control body according to the prescribed manner - for five years.

D. CONCLUSIONS

An administrative Procedure is a structured, normatively established procedure for adopting administrative acts or concluding administrative-legal agreements (contracts) to solve specific cases in the field of public administration. Signs of an administrative process are as follows: it has a legal nature since the principles and rules defining managerial procedures are contained in prescriptions of normative legal acts; it includes norms regulating both activities of the subject of public administration and the behaviour of private individuals; it is aimed at the adoption of an administrative act by the subject of imperious managerial authority; it is used to solve a specific administrative case; it has the main purpose of ensuring effective implementation of rights of private individuals and preventing their violation; it entails occurrence of external consequences, that is, the application of procedural rules gives rise to rights and obligations of persons who are outside the public administration system; usually it has an undisputed nature, i.e. thanks to an administrative procedure positive management cases are resolved. An exception is a Procedure for consideration of complaints since decisions, actions, or inaction of subjects of public administration are appealed.

Considering all of the above, it can be concluded that the mechanism of imposition of administrative sanctions needs to be "modernized" considering established judicial practice and international standards. The creation of a more effective instrument of imposition of administrative sanctions will be facilitated by: a clear definition of the system of bodies that can consider cases of administrative offences; a clear description of the grounds for appealing resolutions on imposition of a fine for an offence in the field of urban planning activity or on closing the case concerning the imposition of a penalty for an offence in the area of urban planning activity, elimination of other gaps

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