тура правоприменения; правосознание правонарушителя [6, с. 14]. Вариант, предложенный О. Рогачевой, выглядит более компактным, однако по содержанию принципиально не отличается от вышеперечисленного, что позволяет вести речь о существовании общепризнанных основных доктринальных подходов к видовому разнообразию и содержательному наполнению условий эффективности.

Полноценная оценка эффективности административных взысканий невозможна и без её количественных показателей, предназначенных для уяснения качественных характеристик административных взысканий, речь фактически должна идти о показателях и критериях эффективности. Критерии эффективности – это «способ решения, мысль, которая определяет отношения лица к предмету, признаку … человеческим знаниям» [1, с. 179], показатели свидетельствуют о развитии явления [3, с. 114]. Критерии характеризуют явление в целом, показатели – его сущность [3, с. 114], критерии – это позитивный результат (принципиальная схема решения вопроса), показатели – реальный результат (количественные реальные показатели). Применительно к критериям эффективности административных взысканий необходимо обратить внимание на: соразмерность (соответствие, адекватность) административных взысканий с характером административного проступка; способность административного взыскания комплексно (полиструктурно) воздействовать на правонарушителя (воспитание, превенция, наказание); возможность индивидуализации взыскания с учетом обстоятельств совершения проступка (его количественные, временные показатели и т.д.); возможность замены административного взыскания иным видом (что, к сожалению, в действующем законодательстве представлено не в полной мере и негативно влияет на использование их ресурса в полной мере). Для подтверждения того или иного критерия необходимо предоставление обобщенных показателей с использованием тех или иных уточняющих факторов, аккумулированных различными уполномоченными субъектами с различными временными, территориальными параметрами, что способствует выявлению позитивных и негативных тенденций в использовании ресурса административных взысканий как их системы в целом, так и каждого индивидуально.

Выводы. Таким образом, в условиях существенной активизации отечественных нормотворческих, в т.ч. кодификационного, процессов в административно-деликтной сфере при формировании обновленного правового базиса для системы административных взысканий как реакции государства на совершение многочисленных разнообразных административных проступков повышенное внимание должно уделяться исследованию эффективности таких взысканий как фактической их результативности, что будет способствовать поиску оптимальной правовой модели исследования ресурса каждого взыскания отдельно и всей их системы в целом. Исследование этого вопроса предполагает комплексный подход к нему как со стороны ученых-административистов (в аспекте формирования научного базиса), так и законодателя (в аспекте принятия совершенного законодательства об административных взысканиях, обеспечения его изменения) с акцентом их внимания к условиям, критериям и показателям такой эффективности.

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EFFICIENCY – AN INTEGRAL COMPONENT RESOURCE OF ADMINISTRATIVE PENALTIES ON UKRAINIAN LEGISLATION

ЭФФЕКТИВНОСТЬ – НЕОТЪЕМЛЕМАЯ СОСТАВЛЯЮЩАЯ РЕСУРСА АДМИНИСТРАТИВНЫХ ВЗЫСКАНИЙ ПО ЗАКОНОДАТЕЛЬСТВУ УКРАИНЫ

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In an article in a systematic form of analysis of the effectiveness of administrative penalties is implemented, their role and importance in the modern codified legislative process in administrative tort sphere in Ukraine are discussed.Attention to conditions, criteria, indicators of efficiency of administrative penalties, their analysis are given and suggestions of on expediency of their incorporation in current conditions to maximize resource of administrative penalties are formed.

Key words: administrative penalties, codification, criteria, parameters, conditions, efficiency.

У статті в систематизованому вигляді подається узагальнений аналіз ефективності адміністративних стягнень, обговорюється її роль і значення в сучасних правотворчих процесах в адміністративно-деліктній сфері в Україні, зроблено акцент на умовах, критеріях, показниках ефективності адміністративних стягнень, їх аналізі, формуються пропозиції щодо доцільності їх урахування в сучасних правотворчих реформаційних процесах для максимального використання ресурсу адміністративних стягнень.

Ключові слова: адміністративні стягнення, кодифікація, критерії, показники, умови, ефективність.

В статье в систематизированном виде подаётся обобщенный анализ эффективности административных взысканий, обосновывается ее роль и знание в современных правотворческих процессах в административно-деликтной сфере в Украине, сделан акцент на условиях, критериях, показателях эффективности административных взысканий, их анализе, формулируются предложения относительно целесообразности их учёта в современных правотворческих реформационных процессах для максимального использования ресурса административных взысканий.

Ключевые слова: административные взыскания, кодификация, критерии, показатели, условия, эффективность.

Statement of the problem. The cardinal revision of the main provisions of modern administrative and tort law in Ukraine, the optimization of the administrative jurisdiction of the subjects, the subjects of administrative responsibility, including official recognition as such by legal entities, simplifying procedures for handling administrative cases, the revision of types of administrative misconduct, including in the aspect of introducing the institution of criminal offenses and internal redistribution of offenses between the latter and administrative misconduct, suggest finding a new optimal system of administrative penalties as a response to the commission of the diversity of administrative offenses. The number and variety of administrative penalties to their potential, the legal basis for their use should be such as to ensure the adequacy of the State's response to the commission of a variety of administrative misconduct, the objectives of administrative responsibility. This requires the joint efforts of the concentration of legal scholars, especially lawyers in administrative law area, legal practitioners, lawmakers, taking into account historical rulemaking and enforcement practices; comparative legal research to determine the possible options for incorporating the positive and avoid the negative experience of foreign countries in the administrative tort rule-making and law enforcement in general, and on finding an optimal system of administrative penalties, in particular, to ensure efficient use of their resources. Necessary regulatory fix is not only a certain amount of administrative penalties (the focus should be on their system), but also the ability to leverage their resources – like the rest of their system, and each individual. From that, how effective is the application of administrative penalties will depend ultimately administrative tort law enforcement, combating and prevention of administrative violations in general.

Relevance of the topic. Activation of domestic rulemaking processes, focused on the development and adoption of a new modern codified administrative tort act requires to achieve a positive result the formation of an updated scientific basis, including and on finding an optimal system of administrative penalties to ensure the effective use of their resources. It is in this aspect, it seems necessary to in-depth scientific analysis of the properties of the resource efficiency of administrative penalties to its criteria, indicators, conditions, using existing general theoretical legal and industrial scientific developments, compiled by the results of law enforcement, the positive, the results of time-tested standards-related activities in the relevant field of foreign relations and the provisions of modern foreign administrative and legal doctrine. All of this ultimately contributes to the elucidation of the phenomenon of the effectiveness of administrative penalties to the formation of the doctrinal basis for the modern standard fastening bases its security. Unfortunately, the analysis of the provisions of the existing models of promising codified administrative tort rulemaking indicates a simplified approach to the settlement of the issue, preferential duplication of outdated provisions in the current legislation, which does not contribute to the efficient use of the resource administrative penalties – as their entire system and each individual. As a result – it is supposed to keep the same types of administrative penalties that were introduced in the twentieth century. and are not fully consistent with the goals of modern administrative penalties, the absence of types of administrative penalties, which could well be regarded as adequate to respond effectively to the wrongful acts of legal persons, sanctions, targeted at countering all variety of administrative violations with varying degrees of social harm, borrowing legacy of fragmented legal grounds for the application of administrative penalties, effectively excluding changes due to socio-economic processes in the country. To recognize such a situation cannot be justified – respectively, the current study is the phenomenon of the effectiveness of administrative penalties, the formation of the scientific basis for regulatory consolidate its foundations with the formulation of concrete proposals rulemaking and enforcement of content, which is the purpose of the article.

The main material of the study. The effectiveness of the domestic administrative and tort law science studied mainly in fragments or in relation to specific types of administrative penalties (for example, administrative fines (I.M. Veremeyenko work [1], M.Savvina [2], T.Kolomoets [1]), warnings (work J. Kurazova) [4]), or to an administrative enforcement in general. In the Russian legal and administrative science, there is a more fundamental approach to the study of efficiency, but with a focus on the broader scope of its activities. For example, Zaitsev examines the efficiency of production as a principle in cases of administrative offenses (for example, the district militia) [5] O. Rogacheva focuses on the efficiency of the administrative and tort law. [6] The effectiveness of administrative penalties, unfortunately, remains out of attention of scientists that can be considered a drawback of the modern national administrative and legal doctrine that needs to be addressed. Efficiency has traditionally been viewed as a property, the quality of a particular object, phenomenon, characterized by actually achieved the purpose of the previously defined objectives. In the science of law efficiency is seen in different ways, have identified a number of approaches to its definition: identification with the validity, effectiveness, feasibility, its connection with the intended purpose and use it for minimal cost, with the identification of optimal variant behaviors necessary to achieve the purpose, consideration as the best result for the intended purpose, and as the most useful result for society, etc. [2. 32, 3, p. 110]. For administrative penalties can be noted that their efficiency – the property, quality of life, is characterized by the actual achievement of objectives during their application. The efficiency is directly related to the quality characteristic of administrative penalties, which is determined by the results of enforcement. This relationship forms the qualitative characteristics of the plan (goals administrative penalty) and made (the actual result of the application). That is why it is reasonable to consider the effectiveness of administrative sanctions as the «degree of the objective set by the legislator» [2, p. 33-34]. The purpose of administrative penalties is to educate the person who committed the administrative offense, the general and special prevention, and punishment of the guilty person, respectively, to confirm the achievement of virtually all components of their goals. In this aspect seems quite possible the use of formulas proposed at the time of M. Sawin for administrative penalties, but in the future, and other perceived administrative law scientists in the study of the effectiveness of other administrative coercive measures [3], which is quite acceptable for administrative penalties as a whole: = P: C, where E – efficiency, P – Results, C – the target [2, p. 33, 3, p. 110].

However, you must understand that the use of this formula is «net effect» is not defined, it is «an abstraction, since the formation of the resource use of administrative penalties, also affects many positive and negative factors, which leads to the need for an integrated approach to the study of this issue» [3, p. 110]. In this context, it is appropriate to review the effectiveness of administrative penalties in several aspects (including the model proposed by O. Rogacheva) target, social, economic, psychological, [3, p. 11-12]. For example, the target aspect of the effectiveness of administrative penalties implies a focus on the ratio of their objectives and the results actually achieved. If the imposition of warnings as a form of administrative punishment involves education of a person who committed an administrative offense, prevention (general and specific), punishment of the guilty person, but in practice, the actual application of this kind of punishment (especially in the so-called «part-time» guilty party participation in administrative -tort case) is reduced to the direction of his copy of the decision on the application of administrative penalties, with no real effect of the use of public warning about the target aspect of the effectiveness of prevention as a form of administrative sanction is hardly appropriate to speak. Determination of the discussion and determination of the target determines the efficiency aspect of correctional work, especially taking into account the possibility of the lack of formalized labor relations a person found guilty of an administrative offense, which leads to the inability of the real use of this type of administrative punishment, and accordingly, the implementation of the target aspect of its effectiveness. The purpose of administrative penalties is complex, requires educational, preventive, punitive aspect, the actual achievement of it is due to the presence of many factors: the absolute certainty, stability, commonality of the legal grounds for applying administrative penalties, taking into account the subject of the administrative jurisdiction of all the circumstances of the case, the professionalism of the subject, etc.

Choosing one or another form of administrative punishment, the authorized person shall ensure the adequacy of the «rigor of foreclosure, the ratio of enduring moral and physical perpetrator» [7, p. 179] social harm he committed the act, suggesting the formation of this entity needs to refrain from committing administrative violations in the future and provide general preventive impact on all other subjects of public relations. In this aspect, it is reasonable to revise the current system of administrative penalties, the optimization of the number and species diversity with the need to bring them in line with the requirements of modernity and resource modification of each.

The social aspect of the effectiveness of administrative penalties implies a focus of attention on the «line of the whole system of administrative penalties, and each of them individually social interests» [6, p. 11], due to their orientation to reduce harmful social conflicts in the area of administrative tort relations. In this regard, it is appropriate to record the legislator is in the process of developing a new national provisions codified administrative tort act in the formation of the provisions setting forth the purpose of administrative penalties, administrative and general objectives of tort law: the protection of the rights and freedoms of citizens, property, constitutional order of Ukraine, the rights and legitimate interests of enterprises, institutions and organizations, the rule of law, strengthening the rule of law, crime prevention, education of citizens in the spirit of exact and strict compliance with the law, respect for human rights, honor and dignity of others, respect for the rules of living together, faithful performance of their duties, responsibilities to the state.

It is appropriate to focus on the economic aspect of the effectiveness of administrative penalties, which involves the use thereof while minimizing the use of organizational, material and time resources. Unfortunately, a significant aging of the legal basis of resource use of administrative penalties does not allow talking about the economic performance of most modern types of administrative penalties, and accordingly, their whole system. This fully relates to the prevention, the use of which is associated with minimal resource costs, but under-recognized potential of this type of foreclosure due to the majority of the imperfection of the legislative framework, in practice determines the minimum application of this type of administrative punishment and choice as a substitute for more expensive types of administrative penalties (in some cases these species, the ratio of which to perfect the administrative misconduct is not quite adequate.) A similar situation can be considered and related to the use of forced labor, when almost guaranteed execution of the decision involved more persons (employers), which imposes obligations, the performance of which, in turn, may depend on many factors, which ultimately affects the efficiency of forced labor as a form of administrative punishment.

Can be considered sufficiently costly procedure of execution of decisions to impose onerous exemption of administrative expulsion (though controversial is his assignment to administrative penalties at all, but it enshrined in Part 2 of Article 24 of the Administrative Code of Ukraine actually forms the basis for this), which leads to the question of the desirability of reviewing envisaged by such coercive measures as a species of administrative penalties in the future, or the need for a drastic modification of their resources while minimizing the cost of the state on their application. It is important not to forget about what should be cost-effective types of administrative penalties, which apply to both natural and legal persons.

Taking into account the thrust of administrative penalties, primarily educational and preventive aspect of it, it seems logical to talk about the psychological aspect of the effectiveness of administrative penalties. It should be remembered that this aspect of performance is complex in content, involves the exposure of a psychological nature, both in relation to the guilty person or to other persons, which involves a special and general prevention, education and guilty bystanders, «the formation of their active citizenship position, desire to voluntarily perform, observe, use or apply certain rules of law «[6, p. 12]. In this regard, the best result can be considered rulemaking to consolidate the use of the resource base of public works to their highest educational and comprehensive preventive resource. At the same time, improvements require legal grounds for applying the warning, fines, administrative detention, etc.

Assessment of the effectiveness of administrative penalties is to be achieved taking into account its conditions and criteria. Terms of efficiency – «this circumstance (or set of them), on the availability, changes that affect the effectiveness of itself, its level – the value of the coefficient of performance» [2, p. 43, 3, p. 111]. Terms traditionally divided into general and special. The former is quite possible include: general principles of accounting regulation in the formation of legislation on administrative penalties, compliance with the rules of legislative technique, awareness of the law on administrative offenses, the regime of law, etc. Under special conditions it is quite logical to talk about: a) the law on administrative penalties, which, unfortunately, significantly outdated in content, is characterized by fragmentation of the provisions regarding the use of the resource base fixing types of administrative penalties, sufficient volume and consists of numerous legislative acts (i.e. including the types of administrative penalties that apply to legal persons), which complicates the process of familiarization with it and use it, and b) is actually a dual situation prevailing today: the presence of obsolete codified act with the bases of the application of administrative penalties on individuals and many legislation with the bases of application of administrative sanctions on legal persons, that is, the lack of uniform legal basis of resource use of administrative penalties, and c) subjects of legal awareness about the law on administrative penalties, the level of which, unfortunately, cannot recognize the high, which, in turn, causes growth in the number of administrative offenses, their diversity, the general

inefficiency of state policy for the prevention and combating illegal, including administrative, offenses.

Activation is necessary career-oriented, the right to education, including specialist, working within the entire state using various forms and methods, involving diverse, including non-State actors. In addition, for the effectiveness of administrative penalties is quite logical to consider the efficiency of their application procedures that contribute to their emotional component to form individual legal orientation, which is possible only if the most rapid onset of response to the legal consequences of the wrongful act. Unfortunately, quite controversial in modern conditions is a question of efficiency of administrative procedures for the application of penalties, taking into account the contradictions, fragmented and outdated content of many of the existing administrative and tort law in Ukraine. Among these conditions further include: simplification of application procedures for penalties, which certainly has a place, but again, inadequate legislation does not allow her to talk about the existence of one hundred percent (for example, although provided with «simplified» procedure for the consideration of the case and the application at the scene of the offense, but there is no unified letterhead documentation to secure such cases, detailed regulation of the procedure, thereby increasing conflict situations such complicated procedures, etc.); consistency and flexibility of public policy regarding the use of the resource administrative penalties.

Unfortunately, it is impossible to recognize the effectiveness of these conditions in the Ukraine at the present stage of its development: the administrative tort standard-setting response legislator to changes in the socio-economic and political life of the state is far behind in time, which creates difficulties in enforcement. In addition, changes to the existing legislation is different «point» character, which reduces the efficiency of the administrative and tort law in general, confirms the need for the actual adoption of a new modern codified act, which would be secured in a systematic way using uniform resource base of administrative penalties.

By the terms of the effectiveness of administrative penalties include the authority and the bodies authorized to use them. In this aspect it is quite logical, given the numerous results of enforcement activities authorized bodies in the relevant field of public relations, the needs of modern times, is a modification of the subjects of the application of administrative penalties, the optimization of their number, the redistribution of their powers. As a result – the deprivation of such powers of administrative committees and executive committees at village, town and city councils, which are actually «got rid» themselves as such subjects, and redistribution of all administrative and jurisdictional powers between courts and public bodies operating on the principle of specialization (State Inspections , services, etc.).

In legal science, scientists mostly unanimous in defining the importance of the conditions of effectiveness, although the list of meaningful and purpose of these conditions repeatedly summoned fierce debate among legal scholars industry. From the above list of conditions for efficient agree M. Sawin, J. Veremeyenko, J. Kurazov. Several other forms of O. Rogacheva, offering to discuss your options, namely: state policy in the field of prevention, the prevention and suppression of administrative offenses, legal quality of the laws on administrative offenses, enforcement by authorized entities and the legal culture of law enforcement, justice of the offender [6 , p. 14]. Option proposed by O. Rogacheva looks more compact, but the content is not fundamentally different from the above, that allows to talk about the existence of universally recognized fundamental doctrinal approaches to species diversity and fleshing out the conditions of effectiveness.

A complete evaluation of the effectiveness of administrative penalties cannot be without its quantitative indicators designed to clarify the quality characteristics of administrative penalties, we actually have to go on indicators and performance criteria. Effectiveness criteria – a «way of solutions, the idea that defines the relationship of a person to the subject matter, the basis of human knowledge ...» [1, p. 179], the indicators show the development of the phenomenon [3, p. 114]. The criteria describe the phenomenon in general, the performance – its essence [3, p. 114], the criteria – this is a positive result (schematic solution of the problem), the indicators – the real result (quantitative real figures). With respect to the performance criteria of administrative penalties should be paid attention to: proportionality (compliance, adequacy) of administrative penalties to the nature of the administrative offense, the ability of an administrative penalty of complex (political culture) impact on the offender (education, prevention, punishment), the ability to customize penalties taking into account the circumstances of the offense (its quantitative timing, etc.), the possibility of replacing some form of administrative punishment (which, unfortunately, in the current legislation is not fully and adversely affect the use of their resources to the full.) To confirm this or that criterion requires the submission of the summary measures using those or other qualifying factor, accumulated various authorized entities with different temporal and territorial parameters, which helps to identify positive and negative trends in resource use of administrative penalties as their system as a whole and of each individually.

Conclusions. Thus, in substantially increasing domestic rule-making, including codification, processes in the administrative area of tort law in the formation of the updated basis for a system of administrative penalties as a response of the state to commit numerous various administrative offenses increased attention should be paid to the study of the effectiveness of such sanctions as their actual performance, which will facilitate the search for the optimal model of legal research resource for each collection separately and their whole system. The study of this question involves a holistic approach to it on the part of scientists in administrative law (in the aspect of the formation of the scientific basis), and the legislator (in the aspect of making the perfect the legislation on administrative penalties, to ensure its amendments), focusing their attention to the conditions, criteria and indicators, such efficiency.

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