

УДК 342.95:328.185

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## **Some aspects of administrative responsibility for administrative offenses related to corruption**

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*The article analyzes the issues of administrative responsibility for administrative offenses related to corruption. A detailed analysis of the legal nature of these offenses. The attention is focused on the problematic issues of enforcement in this area. «Conflict of interest» are considered the definition of the concept. The circle of entities that must submit information about the property.*

**Keywords:** *corruption, administrative responsibility, conflict of interest declaration.*

In view of the reform process in Ukraine on corruption issues remain unresolved in the legislative and institutional level to bring the person to administrative responsibility for administrative violations

related to corruption. Corruption – one of the most dangerous for society and state events. It undermines the authority of the state apparatus, discredits his work, destroys the basic principles on which rests any democracy, the principles of equality of citizens before the law, fairness, impartiality, justice, protection of human law enforcement agencies from various unlawful acts and the officials and others. In addition, state corruption has significant economic and political damage, seriously hampers the progressive development of society. Corruption in Ukraine brings almost zero potential effectiveness of any economic and social programs of the state, the impact of management decisions [1, p. 9]. For proper legislative regulation of public relations in the sphere of corruption particular urgency is the need to interpret legal definitions for the proper enforcement of the current Code of Ukraine on Administrative Offences (hereinafter – the CAO).

Problems associated with social relations arising in the area of corruption, are analysed well-known scientists such as V. I. Benedik, Y. P. Bytyak, V. M. Garashchuk, S. M. Klimova, V. V. Luneyev, V. V. Martynovsky, V. Ya. Nastyuk, O. E. Panfilov, N. B. Pisarenko, M. I. Havronyuk and others. Legal regulation of administrative proceedings on corruption is defined in the Administrative Code, the Tax Code, the Law of Ukraine «On Prevention of Corruption» and others. Administrative liability is incurred, provided that the offense does not have the degree of social harm, which would require the use of criminal responsibility [2, p. 13].

It should be noted that the administrative offense of corruption – it's an act that does not contain evidence of corruption, but violates statutory requirements, prohibitions and restrictions on which the law establishes administrative responsibility. Today is urgent investigation of administrative responsibility for committing administrative offenses governed by Articles 172<sup>6</sup>, 172<sup>7</sup> CAO.

First of all, we should consider the violations of the order of filing. According to CAO breach of the declaration identified with the untimely filing. Article 172<sup>6</sup> of the Code of Ukraine on Administrative Offences provides for liability for violation of financial control, namely, p. 1 – delayed filing of the person authorized to perform state functions or local government (entails a fine of fifty to one hundred times minimum income); p. 2 – failure or late notification of opening

foreign currency accounts in a banking institution or a non-resident of significant changes in economic status (entails a fine of one hundred to two hundred untaxed minimum incomes); p. 3 – action provided for in the first or second, if committed by a person who for years has been subjected to administrative penalty for the same offense (punishable by a fine of one hundred to three hundred untaxed minimum incomes with confiscation of income or fees and with disqualification occupy certain positions or engage in certain activities for a period of one year). That disposition is formulated so that the untimely (late) submission of the declaration forms a prolonged form of abuse – submission of infringement period (delay representation).

Late filing – is its submission after the deadline. According to Part 1 of Art. 45 of the Law of Ukraine «On Prevention of Corruption», the persons referred to in paragraph 1, sub-paragraph «a» of paragraph 2 of Article 3 of this law, are obliged to annually submit by April 1 by filling out the official website of the National Agency of the declaration of the person authorized to perform state functions or local government over the past year according to the form established by the National agency. That is considered a timely filing for the period from 1 January to 1 April of each year. The subject of the offenses in this article are persons under the first and second paragraph of Article 45 of the Law of Ukraine «On Prevention of Corruption» must submit a declaration of the person authorized to perform state functions or local government [3].

As for declaring false information current version of Article 172<sup>6</sup> CAO does not provide for administrative liability for knowingly submitting false information in the declaration of property, income, expenses and financial obligations. Now that this offense criminalized for it and set criminal penalties for centuries. 366<sup>1</sup> of the Criminal Code of Ukraine. Therefore, when deciding on bringing a person to administrative liability for knowingly submitting false information in the declaration of property, income, expenses and financial obligations must proceed from the fact that according to the claim. 6 Part 1 Art. 247 CAO proceedings of an administrative offense can not be started, and started shall be closed in the event of cancellation of the act that establishes administrative responsibility.

As for the definition of conflict of interest with the following. Legal regulation of conflict of interest made by legislative acts of Ukraine and international legal acts: Labor Code of Ukraine of 10.12.1971 (As amended), which limit family collaboration in the enterprise, institution, organization (art. 25<sup>1</sup>); Code of Ukraine on Administrative Offences of 12.07.1984 (As amended), which established administrative liability for failing to report a conflict of interest (art. 172<sup>7</sup>); The Law of Ukraine «On Prevention of Corruption» of 14 October 2014 № 1700-VII [3]; The Law of Ukraine «On civil service» 30.03.2015 № 2490 [4] and others.

The issue of conflict of interest is regulated by subordinate regulatory acts, including: the tender procedure for vacancies of civil servants, approved by the Cabinet of Ministers of Ukraine of 15.02.2002 Number 169 [5] General rules of conduct for public officials, approved by Order of the National Agency Ukraine on Civil service of 04.08.2010 214 number [6]. In addition, measures of prevention and settlement of conflicts of interest provided for in international instruments, including: the United Nations Convention against Corruption was on 31.10.2003 [7].

The definition of «conflict of interest» contained in the Law of Ukraine «On Prevention of Corruption» of 14 October 2014 № 1700-VII, which provides differentiation potential and actual conflicts of interest. In Art. 1 of the Act defines the term private interest – any interest in property or moral person, including due personal, family, or other pozasluzhbovymy friendly relationship with natural or legal persons, including those arising from membership or activities in civic, political, religious or other organizations; real conflict of interest – a conflict between private interest entity and its officers or representative powers that affect the objectivity or impartiality of decisions or to commit or non committing acts while performing these powers [3].

A property interest – the interest in maintaining or increasing the quality of real and personal property of the person or people close to her. Non interest – interest aimed at satisfying personal physical (biological), spiritual, moral, cultural, social or other non-material needs. A conflict of interest can occur not only when the said conflict

has actually affected the objectivity or impartiality of decisions (committing or non committing acts), but when it could potentially affect them.

According to Part 1 of Art. 65 of the Law of Ukraine «On Prevention of Corruption» from 10.14.2014 № 1700-VII for corruption or corruption-related offenses persons referred ch. 1, Art. 3 hereof, brought to criminal, administrative, civil and disciplinary responsibility in accordance with the law [3].

Criminal liability for violation of the current legislation on conflict of interest is not installed. Administrative liability established by each type of administrative offense under article 172<sup>7</sup> CAO «Violation requirements for prevention and settlement of conflict of interest»: p. 1 – face failure in cases prescribed by law and order of that it has a real conflict of interest; p. 2 – actions or decisions in a real conflict of interest; ch. 3 steps provided for in the first or second committed by a person who for years has been subjected to administrative penalty for the same violation. In this article, the real conflict of interest should understand the conflict between private interest entity and its officers or representative powers that affect the objectivity or impartiality of decisions or to commit or non committing acting in the exercise of these powers [3].

The subject of the offenses in this article are the persons referred to in items 1 and 2 of Article 3 of the Law of Ukraine «On prevention of corruption». But other violations of the current legislation on conflict of interest constitutes a breach of discipline, the commission of which can be applied disciplinary action as prescribed by law.

As for the close circle of persons having to provide information about their assets and expenditures. In Art. 1 of the Law of Ukraine «On Prevention of Corruption» of 14 October 2014 № 1700-VII provides that close person – a person who live together, connected by common life and mutual rights and obligations of the parties specified in Article 3 of this Act (other than those reciprocal rights and obligations of the entity which does not have the character of family), including persons who live together but are not married, and – regardless of these conditions – husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, brother, sister, grandfather, grandmother, grandfather, great-grandmother, grandson,

granddaughter, grandson, granddaughter, son, daughter, father, mother-in-law, father-in-law, mother-in-law, adoptive parent or adopted child, guardian or trustee, a person who is in the custody or guardianship of the said subject. The legal definition of the term «close relatives» clearly establishes the degree of relationship under which individuals are considered close, regardless of whether they live together or not. The term «close person» is used to determine the possibility (or ban) on the direct subordination of the right to accept gifts without restrictions and more. It should be noted that not considered close persons who although living together and share a life, but not in the nature of family relations [3].

Thus, the necessary conditions for referring people to a close is the presence of the essential characteristics: 1) a common residence; 2) connectedness common life; 3) the existence of reciprocal rights and obligations of the entities referred to in Article 3 of this Law. The absence of even one of these symptoms indicates that the person is not a person close to the specified subject.

Persons authorized to perform state functions or local government, set out in Part 1 of Art. 3 of the Law of Ukraine «On prevention of corruption». These include: a) the President of Ukraine, Verkhovna Rada of Ukraine, his First Deputy and Deputy Prime Minister of Ukraine, First Vice Prime Minister of Ukraine, Vice Prime Minister of Ukraine, ministers, other leaders central authorities which are not members of the Cabinet of Ministers of Ukraine and their deputies, the Chairman of the security Service of Ukraine, the prosecutor General of Ukraine, the National bank of Ukraine, the President and other members of the Accounting Chamber, the Commissioner of the Verkhovna Rada of Ukraine on human rights, Parliament Speaker ARC, Chairman of the Autonomous Republic of Crimea; b) people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of local councils and village, town and city mayors; c) civil servants and officials of local government; d) military officials of the Armed Forces of Ukraine, State Service for Special Communications and Information Protection of Ukraine and other established under the laws of military units, except for military conscripts; e) The judges of the Constitutional Court of Ukraine, other professional judges, members of the disciplin-

ary inspectors High Qualification Commission of Judges of Ukraine, officials of the Secretariat of the Commission, the President, Vice-Presidents, Secretaries of sections of the High Council of Justice, and other members of the High Council of Justice, people's assessors and jurors (in the discharge of these functions); f) persons privates and officers of the State Penitentiary Service, Tax police entities and officers of civil protection units, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine; g) The officers and staff of the prosecutor's office, the Security Service of Ukraine, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine, diplomatic service, state forest protection, state protection of natural areas, the central executive body that ensures the formation and implementation of state tax policy and public policy in the state customs; h) members of the National Agency for prevention of corruption; i) members of the Central Election Commission; j) the police; k) officials and officials of other state authorities, authorities of the Autonomous Republic of Crimea. In addition, for purposes of this Act to persons authorized to perform state functions or local government officials equated legal entities of public law [3].

So, based on the above, we can conclude that there is legislation in many conflicts which require urgent solution, and so further scientific research on this issue is necessary. Seeds of Hope is a clear definition of the legal technique of administrative liability for corruption.

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**Деякі аспекти адміністративної відповідальності за адміністративні  
правопорушення, пов'язані з корупцією**

*На сьогодні корупція в Україні як антисоціальне явище зводить практично нанівець потенційну ефективність будь-яких економічних та соціальних програм держави, результативність управлінських рішень. З метою належного нормативного впорядкування суспільних відносин у сфері корупції особливої актуальності набуває необхідність тлумачення законодавчих дефініцій щодо корупції задля належного правозастосування норм чинного Кодексу України про адміністративні правопорушення.*

*Наразі актуальним є дослідження адміністративної відповідальності за вчинення адміністративних правопорушень, які пов'язані з корупцією. З цього приводу у статті детально розглядається юридична природа зазначених правопорушень.*

*Правове регулювання адміністративної відповідальності у сфері корупції визначається в КУпАП, Податковому кодексі, Законі України «Про запобігання корупції» та ін. Адміністративна відповідальність настає за умови, що правопорушення не має такого ступеня суспільної шкоди, який вимагав би застосування кримінальної відповідальності.*

*Адміністративне правопорушення, пов'язане з корупцією, — це діяння, що не містить ознак корупції, але порушує встановлені законом вимоги, заборони та обмеження, за яке законом встановлено адміністративну відповідальність.*

*У статті увага приділяється порушенню порядку подання декларацій. Відповідно до КУпАП порушення порядку подання декларацій ототожнюється із несвоєчасним поданням декларації. Несвоєчасне подання декларації — це її подання після закінчення встановленого строку.*

*Однією із базових категорій у корупційних діяннях є «конфлікт інтересів». Правовою основою конфлікту інтересів є акти законодавства*



України та міжнародно-правові акти. Відповідно до Закону України «Про запобігання корупції» конфлікт інтересів поділяється на два види — потенційний та реальний.

За вчинення корупційних або пов'язаних з корупцією правопорушень особи притягаються до кримінальної, адміністративної, цивільно-правової та дисциплінарної відповідальності у встановленому законом порядку. Однак слід зазначити, що у чинному законодавстві не встановлена кримінальна відповідальність за порушення вимог щодо конфлікту інтересів, а передбачається адміністративна відповідальність за порушення вимог щодо запобігання та врегулювання конфлікту інтересів.

У статті визначається поняття «близькі особи», а також встановлюються умови віднесення осіб до близьких. Звертається увага, що відсутність хоча б однієї із умов віднесення осіб до близьких свідчить про те, що особа не є близькою особою для конкретного суб'єкта.

Отже, виходячи з вищезазначеного, можна дійти висновку, що наразі в законодавстві існує багато колізій, які потребують нагального вирішення, а тому подальші наукові розвідки з цієї проблематики є необхідними.

**Ключові слова:** корупція, адміністративна відповідальність, конфлікт інтересів, декларація.

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#### **Некоторые аспекты административной ответственности за административные правонарушения, связанные с коррупцией**

Анализируются вопросы административной ответственности за административные правонарушения, связанные с коррупцией. Детально рассмотрена юридическая природа указанных правонарушений. Акцентируется внимание на проблемных вопросах правоприменения в этой сфере. Рассмотрена дефиниция понятия «конфликт интересов». Определен круг субъектов, которые должны подавать информацию об имуществе.

**Ключевые слова:** коррупция, административная ответственность, конфликт интересов, декларация.