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RESTRICTIVE AND PUNITIVE FUNCTIONS OF ADMINISTRATIVE AND TORT LAW AS A GUARANTEE OF SECURITY AND PROTECTION OF HUMAN AND CITIZEN RIGHTS

Abstract. *The article reveals the content of restrictive and punitive functions of administrative and tort law and determines their place in the general system of functions of law. It is noted that the restrictive and punitive functions of administrative and tort law are closely interrelated. Even a special part of Code of Ukraine on Administrative Offenses (CUAO) is constructed in such a way that in its articles simultaneously the prohibition and sanction in the form of administrative penalty for its violation are recorded. The article states that the difference between the restrictive and punitive function of law is that: 1) the purpose of restrictive function is to remove from the practice of socially dangerous relationships by imposing prohibitions and other restrictions, while the purpose of punitive function is the application to the person of the measure of legal liability (deprivations of moral, property and organizational nature), which is proportional to the degree and nature of the public danger of the wrongful act committed by him; 2) the legal means of implementation of restrictive functions are prohibitions and other restrictions, while means of carrying out punitive functions are measures of legal responsibility (penalties and other sanctions); 3) the consequence of the implementation of the restrictive function is to preserve the regime of detaining persons from unlawful acts (law order), while the consequence of the implementation of a punitive function is the fact that the perpetrator felt the force of state coercion and was or is legally responsible.*

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Introduction.

The upheaval and updating of the provisions of the doctrine of administrative law has given modern scholars a number of conceptual tasks that are related to: the definition of a system of administrative law that would correspond to the realities of the present days and respond promptly to changes taking place in the life of society; clarification of the subject of administrative-legal regulation, which is important for determining the place and role of administrative law in the system of law of Ukraine and for determining its synergetic properties as a branch of law; the development of legal instruments that would create conditions for effective administrative and legal regulation of social relations and ensure the implementation and protection of human and citizen rights and freedoms, etc. One of these conceptual tasks is to define the functions of administrative and administrative and tort law.

The solution to this problem is complicated by the fact that law science offers a wide range of opinions on the concepts of “function”, “the function of law”, as well as the system of law functions and criteria for its development. The question of defining the functions of law and their classification is one of the main in the modern theory of state and law.

Violating the question of the development of the national legal system as a whole or its particular elements, there is a definite problem of defining the functions of law.

The solution of this problem is intended not only to reveal the essence of the right or the role of each of its elements in the general system, but also to determine the goals, means, forms of legal influence on social relations. Administrative and tort law in the status of a legal institute of administrative law is one of the elements of the national system of law, and therefore the disclosure of its essence, the role in the general system of law, the specificity of legal influence on social relations is impossible without defining its functions.

History of the development of administrative law knows cases where the functions of administrative law were replaced by the functions of government and executive power. This distorted the perception in society of the importance and role of administrative law, which in the middle of the twentieth century began to serve not the needs and aspirations of society, but the needs of the state with a vivid prevalence of the interests of the state over the interests of society and the individual. With the transition to a human centered concept of administrative law, there was a need for a correlation between the functions of administrative law, the revision and upheaval of its system, and, at the same time, the need to revise the meaning and place of administrative and tort law in the system of law of Ukraine. From this point of view, the exclusive scientific significance acquires a comprehensive analysis of the sources that laid the foundation for the contemporary understanding and development of the system of functions of law, administrative law and administrative and tort law.

Describing the state of scientific development of issues of the functions of administrative and tort law in modern legal science, it should be noted that in the professional literature there are no complex works devoted to the functions of administrative and tort law. Existing works are, firstly, contradictory in content, and secondly, do not take into account the specifics of the subject, objectives and legal means of administrative and tort law regulation. There is an urgent need for the development of the theory of functions of administrative and tort law and the disclosure of the content of its functions as restrictive and punitive.

1. Restrictive and punitive functions in the system of functions of administrative and tort law of Ukraine.

Administrative and tort law is considered in legal literature in three hypostasis - as a legal institution, as a science and as an educational discipline. Each of the listed statuses of administrative and tort law has its own list of functions, which reveal its functional purpose in the system of law of Ukraine, in the system of legal knowledge and system of educational disciplines, which are studied in institutions of higher education of legal orientation. Administrative-tort functions are included in the general system of functions of law, which includes four levels.

To the first (highest) level of the system of functions of law are the following legal functions of law - regulatory-static, regulatory-procedural (regulatory-dynamic), regulatory-security, regulatory-protective functions.

This level is characterized by the fact that all the norms of law exercise a regulatory influence on social relations, therefore, it emphasizes in the name of the functions of law its regulatory orientation. These types of functions are allocated depending on the method and objectives of legal regulation:

1) regulatory-static function is in consolidating the rights and responsibilities of individuals, the legal status of legal persons, the system of public administration bodies, the system of courts, etc.;

2) the regulatory-procedural (regulatory-dynamic) function is in securing the implementation of the rights and responsibilities of individuals, the powers of the public administration bodies in the public service sphere, the procedure for making administrative decisions in the system of public administration bodies, the procedure for the conclusion of an administrative contract, etc.;

3) regulatory-security function achieves its manifestation in the establishment of a list of prohibitions and other restrictions, as well as the imposition of sanctions for violating established prohibitions and restrictions;

4) regulatory-protective function achieves its manifestation in securing the procedural way for considering a public dispute or offense.

Of the four listed functions of the law of the first level, administrative and tort law externally implements only three - regulatory-static, regulatory-security and regulatory-protective functions. At the same time, within the system of law, administrative and tort law implements protective and regulatory-protective functions.

The second level of the system of functions of law includes the legal functions of the branches of law and legal institutions. These functions detail the functions of the right of the first (highest) level. Installation, stimulating, restrictive, preventive, control, punitive, compensatory, law-restorative, procedural, and others functions can be identified among them. Each branch of law or legal institution may have its own set of functions, which detail the features of the manifestation of regulatory-static, regulatory-dynamic, regulatory-security and regulatory-protective functions. The allocation of such functions helps to disclose the features of sectoral legal regulation or legal regulation better at the level of a separate legal institution.

The third level of the system of functions of law includes the educational function. The peculiarity of this function is manifested in the fact that it is neither a legal nor a social function of law. At the same time, it occupies an important place in the system of functions of law, because it is realized by all elements of the system of law. Not an exception in this sense is administrative and tort law.

The fourth level of the system of functions of law includes the functions of legal norms (for example, the function of state orientation, state evaluation, target and motivational functions). These functions are inherent in any rule of law, and therefore they give a general idea of the purposefulness of all legal norms.

Among the functions of administrative and tort law, which reveal the specifics of its legal regulation, one should distinguish: the constituent, restrictive, preventive, punitive, compensatory, restorative, procedural and educational. Consequently, restrictive and punitive functions are part of a system of functions that reveal the specifics of administrative and tort law.

Restrictive and punitive functions are closely interrelated. Even a special part of CUAO is constructed in such a way that in its articles simultaneously the prohibition and sanction in the form of administrative penalty for its violation are recorded.

At the same time, the distinction of the restrictive function from the punitive function of law is in the following:

– the purpose of the restrictive function is to remove socially dangerous relationships from practice by imposing prohibitions and other restrictions, while the purpose of a punitive function is to apply to a person legal liability (deprivation of moral, property and organizational nature), which is proportional to the degree and nature of the public danger committed by her unlawful deed;

– legal means of implementation of restrictive functions are prohibitions and other restrictions, while measures for the implementation of punitive functions are measures of legal liability (penalties, fees and other sanctions);

– the consequence of the implementation of the restrictive function is to preserve the regime of detaining persons from unlawful acts (law and order), whereas the consequence of the implementation of a punitive function is the fact that the perpetrator felt the force of state coercion and was or is legally responsible.

2. Restrictive function of administrative and tort law: content and its features

If the legal literature mentions the existence of a restrictive function, it usually refers to the legal functions of law (Popovich, 2015), however, sometimes its status in the system of functions of law is specified and called “non-essential legal function of law” (Borisov, Vitruk, Granat, Marchenko et al., 2002 ; Radko, 2009) or referred to the types of security functions and are called “security-limiting function of law” (Gafurova, 2004 ; Oczytsia, 2008). However, in all of the above-mentioned works, the authors mainly concerned with the problems of classification of the functions of law and paid less attention to the disclosure of their content. The limiting function in such works was not a direct subject of the study, and therefore was not characterized by the specificity of its featuring in real life and its comparative characteristic with other functions of law was not offered.

For example, in the legal literature, the idea that the main disadvantage of almost all works devoted to the limiting function of law is the fact that it is identified with punitive and protective functions of law. Only some authors consider restrictive function as an independent function or sub-function of the law. However, so far, in the general theory of law (and branch legal sciences), there has not been a more or less clear idea of the restrictive function, its nature, main properties, structure, content, forms of implementation, place and role in the legal system of society, the importance law enforcement agencies in the implementation of this function (Novikov, 2004).

M. Marchenko explains the expediency of the allocation of restrictive functions in the system of functions of law in the following way and reveals its content. The presence of a limiting function in law is due to its purpose of being a regulator of social relations. And to regulate means to dictate behaviors that should fit the interests of certain social groups, classes, individuals and society as a whole. Therefore, the actions of some subjects of law did not violate the rights and interests of others, so that relations in society evolved more reasonably and did not cause opposition, the law establishes certain restrictions for subjects of social relations. Thus ceases and warns of permissiveness, anarchy and arbitrariness. These restrictions are fixed in prohibitive, binding norms and in other legal orders. In the opinion of M. Marchenko, the restrictive function, in spite of the primary negative character, ultimately gives a positive social result, because of this quality law acts as the guarantor of stability and justice in society, the most important tool of law and order and the realization of citizens' rights (Borisov, Vitruk, Granat, Marchenko et al., 2002)

Firstly, M. Marchenko does not specify the purpose that determines the existence of a limiting function in the system of functions of the law. Such a goal is “prevention of permissiveness, anarchy and arbitrariness”, “elimination of obstacles to the commission of offenses” or “the creation of conditions under which the actions of some subjects of law did not violate the rights and interests of others?”. We believe that the purpose of the legal regulation of the restrictive function should be more clearly defined and, for example, it should be noted that the purpose is to remove socially dangerous relationships from practice by imposing prohibitions and other restrictions. Proposed by M. Marchenko, the characteristic of restrictive function is declarative and can be equally successfully used in describing preventive or law enforcement function.

Secondly, M. Marchenko partially reveals the legal means by which the restrictive function is implemented today: 1) prohibitive norms, 2) binding norms, 3) other legal requirements. There are no problems of a theoretical or practical nature with prohibitive norms, since they are traditionally considered as the main legal means that ensures the implementation of the restrictive function. Unfortunately, M. Marchenko does not disclose the content of obligatory norms and other legal requirements that could be considered as legal remedies of restrictive function, and therefore it is not known whether the author distinguishes between two concepts of “commitment” and “duties”, and which unilateral imperatives

should be attributed to restrictions, and which are not. From examples borrowed from the Constitution of the Russian Federation, it is clear that Marchenko referred to the restrictive norms all the norms in which a one-sided ultimatum form contains a requirement, the key words and phrases in which there is: "no one may not" (for example, Article 5 , 27, 28, 29 of the Constitution of Ukraine,1996), "shall not" (for example, Article 13 of the Constitution of Ukraine,1996), "may not" (Articles 15, 22, 24, 25 of the Constitution of Ukraine, 1996), "it is prohibited (forbidden)" (Article 15, 17 of the Constitution of Ukraine,1996), "not allowed" (Article 22 of the Constitution of Ukraine,1996), etc. At the same time many questions arise to other norms of the Constitution of Ukraine(1996), where the word "duty" is used. It is difficult to determine whether such rules are restrictive in these cases. For example, Art. 3 of the Constitution of Ukraine(1996) stipulates that the establishment and safeguarding of human rights and freedoms is the main duty of the state, Art. 16 of the Constitution of Ukraine (1996) states that ensuring the ecological safety and maintaining the ecological balance on the territory of Ukraine, overcoming the consequences of the Chernobyl catastrophe - a disaster of a planetary scale, preservation of the gene pool of the Ukrainian people is the responsibility of the state, Art. 27 of the Constitution of Ukraine(1996) stipulates that the duty of the state is to protect human life, and so on.

For example, M. Novikov (2004) also draws attention to this, and states that the most difficult is the question of assigning responsibilities to the methods of implementing a restrictive function and to legal restrictions. Legal restrictions in the literature are fairly associated with the restriction of permits, the imposition of prohibitions and additional positive obligations. Novikov(2004) also drew attention to a few important points that, in our opinion, should be taken into account when describing the limiting function of law.

1. It is noted that the restrictive function occupies a relatively independent, autonomous place in the system of functions of law, it reflects the most important aspect, the role and social purpose of law in the legal system of society. The specificity of this function is primarily due to the peculiarity of the tasks for which it is directed (Novikov, 2004). Unfortunately, the more detailed analysis of the works of M. Novikov shows that the expression "relatively independent, autonomous place" means that the restrictive function refers to "non-essential legal functions of law". That is, the "autonomy" of the restrictive function is explained only by the peculiarity of the tasks for which it is directed, and the "relative autonomy" - its membership in the group of "non-essential legal functions of law".

2. M. Novikov(2004) states that under the restrictive function of law one should understand such a separate direction of legal influence on consciousness, will and behavior of people, which is aimed at establishing the necessary law and order. Unfortunately, the scientist, like M. Marchenko, proposes, firstly, disassociate in its content definition, which uses concepts that, in its turn, require clarification or interpretation of their content – "rule of law", "necessary law and order" and secondly, a declarative definition, which with the same success can be used to characterize other functions of law.

3. Novikov (2004) proposes to allocate the following methods for the implementation of the restrictive function of law - prohibition, suspension, termination, duties. Unfortunately, the author has mixed up the restrictions (as a way of legal regulation), duties (as a measure of proper behavior of the person), suspension and termination (as measures of administrative coercion, which by their nature are sanctions). This conclusion reduces the value of the work of the scientist, since suspension and termination is a consequence of the non-fulfillment of prohibitions and other restrictions established by the current legislation. Emphasizing the fact that a restrictive function cannot be identified with a punitive function, M. Novikov himself contradicts, characterizing the content of the restrictive function through the analysis of legal sanctions, which relate to measures of administrative coercion, namely, measures of administrative termination.

At the same time, we agree with M. Novikov (2004) that the classical means of implementation (the author uses the term "method of implementation") of the restrictive function of law are prohibitions. The ratio of the prohibition and the legal limit can be expressed as follows: "Any prohibition is a restriction, but not any restriction in the field of law is a prohibition." That is, the notion of "restriction" is general, and the notion of "prohibition" is specific. The prohibition is only one of the forms of legal limitation (Novikov, 2004). With other means of implementation the restrictive function of law (duties, suspension and termination) proposed by M. Novikov (2004), we cannot agree, because, as it has already been noted, the author involves to the content of the restrictive function the categories that characterize and reveal the content of other functions of law.

Therefore, the question to which legal means, besides prohibitions, can be allocated in characterizing the restrictive function of law remains unanswered. In our opinion, the following should be attributed to the legal means of restrictive function of law:

1) prohibitions fixed in the current legislation in the form of offenses. Such prohibitions are widespread within the framework of criminal law and administrative and tort law;

2) prohibitions are presented in the current legislation in the form of one-way rulings using the words "prohibited" or "forbidden". Such prohibitions are widespread within the constitutional law;

3) restrictions, fixed in the current legislation in the form of one-way rulings with the use of words and phrases "not allowed", "no one may", "shall not", "may not", etc. Such prohibitions are also widespread within the constitutional law.

Restrictions that sometimes arise when applying legal sanctions or other coercive measures are a side-effects of their application, since the main purpose of such measures is to prevent possible harmful effects of an unlawful act or emergency, or to terminate an offending offense, or punishment of a person who committed an illegal act. The use of all these measures is always accompanied by restrictions on the rights and freedoms of a person or group of persons. Such restrictions have no relation to the limiting function of law, and therefore will not be considered within the limits of this paragraph.

4. Novikov (2004) notes that the restrictive function of law must be distinguished from other functions of law on the legal and factual grounds, the nature of legal acts of the subjects, means and methods of their implementation, objectives and purposes, as well as general social and legal consequences. With this thesis the author agrees completely, but, as it has been repeatedly noted, M. Novikov(2004) himself often identifies the content of some functions with the meaning of other functions of law. We want to offer the results of comparative analysis of restrictive and punitive functions of law later when the content of the punitive function of administrative and tort law is directly disclosed.

Based on the above-mentioned analysis, we can draw the following conclusion. The restrictive function of administrative and tort law is to maintain the rule of law in the country by imposing prohibitions and other restrictions on socially dangerous relationships.

At the same time, the system of prohibitions contained in the Special Part of the CUAO needs to be improved. Almost all the scientists who are trying to analyze homogeneous administrative offenses draw attention to this fact, since the heads of the Special Part of CUAO are built not for one, but for two or more criteria.

For example, V. Berdnik (2012) , when describing offenses that are entitled to consider administrative commissions, noticed that the heads of the Special part of the CUAO sometimes combine not only one, but two or more general objects of encroachment. For example, Chapter 7 of CUAO combines two general objects of encroachment - public relations in the field of nature conservation and the use of natural resources and public relations in the protection of cultural heritage. The scientist suggests that the legislator did not distinguish between administrative offenses that encroach on social relations in relation to the protection of cultural heritage in a separate chapter, since CUAO provides for only two components of offenses in this area (Articles 92 and 92-1 of the CUAO (Berdnik, 2012)). There should be a single criterion for the construction of prohibitions in the Special Part of CUAO. This is due to the following factors.

Firstly, for convenience of use, ordinary citizens and persons authorized to apply administrative tort standards in their activities. The person who first searches qualifying signs of an administrative offense registered in CUAO will be able to quickly find the required article by excluding the logical thinking. If administrative offenses are posted on the chapters of the Special Part of CUAO on one criterion, then finding one particular specific offense in it will not be difficult.

For example, in CUAO there is an article that provides for administrative responsibility for the sale of tickets to the final matches of the UEFA Champions League or the UEFA Women's Champions League for 2017/2018 season by an unauthorized person. The question arises: “In what chapter of the Special Part of CUAO shall it be searched?”

This article is absent in Chapter 12 of the CUAO, which is called “Administrative Offenses in the Field of Trade, Catering, Services, Finance and Business”. It is also absent in Chapter 15 of CUAO “Administrative offenses that violate the established order of management”. For unknown reasons, the legislator placed it in Chapter 6 of the Code of

Administrative Offenses “Administrative offenses that infringe on property” (Article 51-3). That is, the classification of administrative mistakes, which was used in the formation of the Special Part of CUAO, was developed in the mid-80's of the twentieth century, and therefore does not correspond to modern realities to the fullest. For thirty years, social life in Ukraine has changed significantly, new social relations have emerged, which did not know about the 80's of the last century. Therefore, it is sometimes difficult for the legislator to determine which heading of the Special Part of the CUAO administrative offense is to be fixed with.

Secondly, the existence of a single criterion for placing prohibitions in CUAO is necessary for the construction of an internally agreed structure of a legal act.

Which structure of the Special Part of CUAO could offered today? We believe that among the headings of the Special Part of CUAO there shall be:

– a chapter devoted to administrative misconduct that encroaches on the personal rights and freedoms of man and citizen. Such a chapter should include, for example, non-payment of alimony (Article 183-1 of CUAO), failure by parents or their substitutes, responsibilities for the upbringing of children (Article 184 of CUAO), violation of the procedure for maintaining the State Register of voters, the procedure for submitting information about voters to the bodies of the State register of voters, election commissions, the procedure for compiling and submitting lists of voters, lists of citizens of Ukraine eligible to participate in the referendum, and the use of such lists (Article 212-7 of the Code of Administrative Offenses), violation of the citizen's right to get acquainted with State Register of Voters, with a list of voters, a list of citizens who have the right to participate in the referendum (Article 212-8 of CUAO);

– the chapter “Administrative offenses in the field of economic activity”. For example, today Chapter 12 of CUAO is called “Administrative Offenses in the Field of Trade, Catering, Services, Finance and Entrepreneurship”;

– the chapter “Administrative offenses against the environment”. For example, today Chapter 7 of the CUAO combines environmental offenses (in the field of nature conservation and the use of natural resources) and infringements on cultural heritage;

– the chapter “Administrative Offenses in Occupational Safety and Health”. The valid CUAO contains a similar chapter (Chapter 5);

– the chapter “Administrative misconduct against traffic safety and operation of transport”. Most of the administrative offenses affecting the safety of traffic and the operation of transport are contained in Chapter 10 “Administrative Offenses in Transport, Railways and Communications”;

– the chapter “Administrative Misconducts in the field of Urban Development”. Today, the most offenses committed in the field of urban planning are contained in Chapter 8 “Administrative Offenses in Industry, Construction and Use of Fuel and Energy Resources”, etc..

The proposed structure of the Special Part of CUAO does not claim to be exceptional, but the modern structure of the Special Part needs revision and improvement, which can only be done by codification of administrative and tort law.

The problem of determining the system of administrative offenses is complicated by the fact that in the Criminal Procedure Code of Ukraine the institute of criminal misconduct was established. Today, there is no consensus among scholars, firstly, regarding the meaningful definition of this concept, and secondly, regarding the ratio of administrative misconduct and criminal misconduct, and thirdly, which of the existing administrative offenses can be recognized as criminal offenses and, on the basis of this, removed from CUAO. Stating against the existence of the institution of criminal offenses in the system of law of Ukraine, we believe that their existence can be significantly affected by the number and content of administrative offenses. These changes will also affect other system-forming categories of administrative law - the subject of administrative and tort law, the content of administrative and tort law, the procedure for bringing to justice, etc., that is, all the important legal phenomena that underlie this study and are still underlying administrative and tort legal regulation.

3. The punitive function of administrative and tort law: the content and features

Let's consider in more detail the content and peculiarities of the implementation of the punitive function of administrative and tort law.

In legal literature, they usually mention the existence of a punitive function in the form of a kind (sub-function) of the guard function of law (Abramov, 2006; Pyrozhkova, 2017; Radko, 2009; Shcherbyna, 2009). In separate scientific works punitive function is distinguished among types of power and preventive functions (Sitar, 2009). Most of the punitive function is said within the science of criminal law, but the representatives of this science were limited only to the study of punitive function as one of the functions of punishment (Zubkov, 2002; Struchkov,1978; Shargorodsky, 1973). Even in these isolated works, the content of punitive function is revealed in part, that is, without systematic analysis of the content and manifestation of this function in real life.

The discussions of representatives of criminal law, which have been debating for a long time, and they are debating today about the fact that the punishment is a punishment or its content. The former argued that punishment should be understood as judgement the perpetrator of suffering and deprivation (Belyaev,1963; Karpets, 1973), the latter argued that the punishment was not the purpose of judgement, it is the essence of judgement, since the assertion that punishment is a reason for judgement would mean that punishment is an end in itself (Noah, 1973; Struchkov,1978). In addition, some representatives of the first group of scholars emphasized that causing the perpetrator of suffering and deprivation is carried out as a rebate for the crime committed by him (Belyaev, 1963). Today, such a radical approach to determining the purpose of punishment is not used in scientific literature, since the use of punishment or judgement should not be construed as retaliation by the state for disobedience.

If today we get acquainted with the provisions of the Criminal Code of Ukraine (2001), then we will notice that the first point of view has won, because Part 2 of Art. 50 of the Code stipulates that the punishment is aimed not only at judgement, but also the correction of convicts, as well as the prevention of the commission of new crimes both by convicted and other persons. If you turn to the provisions of Art. 23 of CUAO, then we will notice that at the time of the adoption of the Code, the second point of view prevailed in science and society. Therefore, today the administrative and tort law stipulates that the administrative penalty is used to educate the person who committed an administrative offense, as well as in order to prevent the commission of new offenses by the perpetrator himself and other persons. Despite this, we are convinced that punishment (judgement) is one of the main purposes of applying administrative penalties.

Let's consider the specifics of the punitive function of law, depending on the goals it achieves, the legal means it involves to achieve the goal, and the result that should come after its implementation.

Firstly, the main purpose of punitive function is to apply to a person legal liability (deprivation of moral, property and organizational nature), which is proportional to the degree and nature of the public danger of the wrongful act committed by him. When describing the purpose of the punitive function of administrative and tort law two important principles of administrative liability should be mentioned – expediency and inevitability. It is these principles that help to understand the peculiarity of the goal pursued by the punitive function of administrative and tort law in the course of its implementation. Thus, the principle of expediency of administrative liability requires the correspondence between the chosen measure of influence on the offender and the degree and nature of the public danger of an administrative offense. The principle of inevitability of administrative liability implies the inevitability of administrative liability for a person who committed an administrative offense. The inevitability of administrative liability largely depends on the established work of law enforcement agencies and the professionalism of employees who are empowered to bring to justice and apply sanctions. An administrative offense, which the state has not reacted, causes serious damage to the rule of law. After all, the impunity of the offender encourages him to commit new offenses and gives a negative example to other volatile individuals (Mykolenko, 2010).

Secondly, the legal means for the implementation of the criminal function of administrative and tort law are administrative penalties. The system of administrative penalties today needs improvement, but unfortunately, a number of ways of such improvement are presented in scientific works and bills - from the abandonment of only two types of administrative penalties (warning and fine) in this system to a significant expansion of the list of penalties, among which it is proposed to foresee, for example, cancellation of a license for a certain type of economic activity, cancellation of a certificate (certificate), prohibition of a political party, forcible dissolution (liquidation) of unions of citizens, etc.

Over the past ten years, the system of administrative penalties has been supplemented with new sanctions - public works (2008), penalty points (2015), deprivation of the right to occupy certain positions or engage in certain activities (2015), arrest with detention at guardhouse (2015), publicly useful works (2017). As it could be seen, the system of administrative charges is dynamic. This suggests that legislators and academics are in search of a "perfect" system of administrative responsibility measures that would generally contribute to counteracting unlawful acts in our society. It is also amazing that the system does not remove the charges that have long been outdated and do not correspond to the realities of the present. It is a question of the paid extraction of an item that became either an instrument of committing or the direct object of an administrative offense and corrective labor.

For example, the content of the payment for the removal of an object consists of three interdependent actions: a) the forced removal of an object from the offender; b) implementation of this subject in a specially established order; c) transfer of the proceeds to the former owner, with the exception of expenses for the implementation of the seized object. The mechanism of realization of this administrative penalty is such that it has a minimum of criminal, educational and preventive value, but creates additional conditions for corruption schemes and abuses by the state authorities involved in the procedure for the implementation of the paid extraction of the subject.

In the mid-80s, when CUAO was adopted, it was anticipated that corrective labor would be one of the rigorous administrative penalties. After all, it is imposed on persons who committed administrative offenses with an increased level of social danger, and consists of a long-term coercive influence on the material interests of the offender and the educational effect of the labor collective. For example, today corrective labor is foreseen for committing minor abduction of someone else's property (Article 51 of CUAO), petty hooliganism (Article 173 of CUAO), the dissemination of false rumors (Article 173-1 of CUAO), malicious disobedience to the lawful order or the requirement of a policeman, a member of the public formation of protection of public order and state border, serviceman (Article 185 of CUAO), public appeals for non-fulfillment of the requirements of the police officer or officer of the Military Service of Law and Order in the Armed Forces of Ukraine (Article 185-7 of CUAO) and other unlawful acts. At the same time, firstly, there are significant restrictions on the application of this penalty, since in Ukraine a large proportion of the unemployed and incapable, and secondly, the correctional work lost the social significance that had in the Soviet period, when simultaneously influenced the moral sphere the offender on the part of the labor collective and on its financial sphere by the state.

At the same time, different legal opinions can be found in the legal literature on the development of the system of administrative fines in Ukraine. For example, O. Dulina(2015) believes that the system of administrative fines in the current legislation of Ukraine on administrative responsibility should be, firstly, diversified, that is to say, contain so many administrative penalties that would give an opportunity to alternative choice for

administrative authorities, and secondly, the size or the term of administrative penalty must correspond to the degree of public danger of an unlawful act (Dulina,2015).

Partly we agree with this statement, since the actual existence of an alternative demonstrates the flexibility of administrative and tort law, which, with the help of a large range of legal means, reaches its goals, one of which is the punishment of the offender. But today, Art. 24 of CUAO fixes an overly ramped system of penalties, which effectiveness in achieving the goals of administrative and tort law regulation sometimes reduces to zero. It is:

1) warning (which is provided in separate articles of the Special Part of CUAO, and hence its application is minimized);

2) fine (which is the most widespread and effective penalty today);

3) penalty points (which have not got their distribution and the effectiveness of which can be discussed only after a large-scale introduction into law enforcement of technical means for fixing offenses);

4) a charge for the removal of an object that became an instrument of committing or a direct object of an administrative offense (the legislator attempts to unsuccessfully rehabilitate this recovery of Soviet times, but it has exhausted all its criminal and educational opportunities);

5) confiscation: an object that became an instrument of committing or a direct object of an administrative offense; money received as a result of the commission of an administrative offense (has areas where it is widely and effectively applied, but in practice those authorized bodies are often abusing this penalty, which grossly violates the rights and freedoms of person and citizen);

6) deprivation of the special right granted to the citizen in the form of deprivation of the right to drive vehicles or the right to hunt (this is a sufficiently effective legal remedy for administrative and tort law, since it not only punishes the offender, but also carries out a preventive influence on behavior);

7) deprivation of the right to occupy certain positions or engage in certain activities (this is a new charge for administrative and tort law, and the relevance of its attachment to CUAO is questionable);

8) public works (the levy, which is quite widespread and effective in European countries, has not yet become widespread and effective in Ukraine due to the lack of clear mechanisms for its implementation);

9) correctional works (this charge has lost its relevance for administrative and tort law in the 90's of the last century, but the legislator leaves it in the system of administrative penalties);

10) socially useful work (is new for the system of administrative penalties, and therefore about its effectiveness to speak in advance);

11) administrative arrest (if petty hooliganism and similar administrative offenses with an increased degree of public danger remain within the limits of administrative and tort law, then administrative arrest should be left in the system of administrative penalties);

12) arrest with detention at the guardhouse (the presence of a specific group of offenses in the CUAO, namely, military offenses, requires the availability of specific means of responding to their commission).

In general, this problem deserves consideration within the framework of separate research work. At the same time, the above analysis allows us to conclude that the following administrative penalties are effective only if they are fully in line with the principle of observance of human and civil rights and freedoms: 1) a fine; 2) deprivation of the special right granted to the given citizen (rights of deiving vehicles, rights of hunting); 3) administrative arrest; 4) arrest with detention at the guardhouse.

In this regard, the opinion of O. Stukalenko (2008) is right, which states that in order to improve the system of administrative penalties in the field of land relations, it is necessary to:

– review the current system of administrative charges, removing from it those ones, the actual possibility of application of which is absent at all today, and replace them with charges, the application of which will be really effective;

– revise and harmonize with the requirements of present-day property of administrative penalties that have existed for a long time and which will continue to have a predominant role (for example, to unify the method of determining the size of administrative fines, to reconsider their size in the context of reducing the material well-being of the population), (Stukalenko, 2008).

Thus, the system of administrative penalties is characterized by tendencies towards the constant expansion of its arsenal and is not characterized by tendencies for optimization of existing administrative sanctions, although there are all necessary preconditions for this.

When characterizing the measures of the punitive function of administrative and tort law, we want to draw attention to one more aspect. For example, L. Bagriy-Shakhmatov, in describing the functions of the criminal law, notes that punitive function is not only in the implementation of punishment, but also other criminal and law measures (Bagriy-Shakhmatov, 1996). These are compulsory measures of a medical nature, special confiscation and compulsory measures of educational nature.

That is, L. Bagriy-Shakhmatov (1996) refers not only to punishment to legal measures for the implementation of the punitive function of the criminal law, but also other criminal coercive measures that apply to offenders.

If we turn to the provisions of CUAO, then we will notice that such coercive measures are also provided for in the administrative and tort law. These are measures of influence applicable to minors (Article 24-1 of CUAO), referral to the program for a person who committed domestic violence or gender-based violence (Article 39-1 of CUAO), as

well as imposing on the offender a duty to compensate the caused property damage (Article 40 of CUAO). At the same time, the main objective of consolidation of measures in the administrative and tort law envisaged by Articles 24-1 and 39-1 of the Code of Administrative Offenses and the main purpose of their implementation is to educate individuals in the spirit of precise and steady observance of the Constitution and laws of Ukraine, respect for rights, honor and the dignity of other citizens, to the rules of cohabitation, diligent fulfillment of their duties and responsibility to society. Therefore, it is appropriate to consider these measures in the context of disclosing the contents of the educational function of administrative and tort law. The main purpose of consolidation in the administrative and tort legislation of the measure provided for in Article 40 of CUAO, and the main purpose of its implementation, is the compensation for damage caused by the commission of an administrative offense. Therefore, this measure should be considered in the context of disclosing the content of the compensation function of administrative and tort law.

Y. Pyrozhkova, offers a controversial definition of the punitive function of administrative law. He believes that punitive function is manifested, firstly, in the establishment of sanctions for administrative offenses, and secondly, in the strict definition of administrative and legal prohibitions, and thirdly, in the prescribed guarding legal facts, etc. (Pyrozhkova, 2017). We agree that the punitive function has its featuring in the establishment of sanctions for administrative offenses, and if we recognize the fact that administrative sanctions, which apply to legal entities, are also measures of administrative responsibility. If, however, it is confined exclusively to the provisions of the CUAO, the punitive function is featured solely in the establishment of administrative penalties, whereas other sanctions provided by the CUAO do not have any relation to it (Articles 24-1, 39-1 and 40 of CUAO). Prohibitions, as already emphasized above, are means of implementing a restrictive function and they need not to be included in the content of the punitive function of administrative and tort law.

Thirdly, the consequence of the implementation of the punitive function of administrative and tort law is the fact that the offender felt the force of state coercion and was or is under administrative punishment. For example, O. Krevsun (2016), when describing the punitive function of punishment, notes that its implementation is closely connected with the fact that the court appointed a certain type of punishment and its immediate occupation, since by imposing punishment on the perpetrator, the state thereby punishes him for a committed act.

Based on the above analysis, we can draw the following conclusion. The punitive function of administrative and tort law is the establishment of a system of administrative penalties, as well as their application to a person who committed an administrative offense, in such a way that the imposed administrative penalty corresponded to the degree and nature of the public danger of an offender committed by a person.

Conclusions.

It is substantiated that the functions of administrative and tort law, which reveal the specifics of its legal regulation, include: constitutional, restrictive, preventive, punitive, compensatory, restorative, procedural and educational function. It was established that the restrictive function of administrative and tort law is to preserve the rule of law in the country by imposing prohibitions and other restrictions on socially dangerous relations.

It is proved that the punitive function of administrative and tort law is to establish a system of administrative penalties, as well as their application to the person who committed an administrative offense, in such a way that the imposed administrative penalty corresponds to the degree and nature of the public danger of the wrongful act committed by him. To the legal means of punitive function of law one should include the system of administrative penalties, provided by the current legislation. It is emphasized that the difference of the restrictive function from the punitive function of the law is in the following:

- the purpose of restrictive function is to remove socially dangerous relationships from practice by imposing prohibitions and other restrictions, while the purpose of a punitive function is to apply to a person legal liability (deprivation of moral, property and organizational nature), which is proportional to the degree and nature of the public danger of the wrongful act committed by it;

- legal means of implementation restrictive functions are prohibitions and other restrictions, while measures for the implementation of punitive functions are measures of legal liability (penalties and other sanctions);

- consequence of the implementation of the restrictive function is to maintain the way of detaining persons from unlawful acts (the regime of law and order), whereas the consequence of the implementation of a punitive function is the fact that the offender felt the force of state coercion and was or is legally responsible.

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