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**Zhelizniak Anna Serhiivna,**

Postgraduate Student at the Department of Administrative Law,

Process and Administrative Activity, Dnipropetrovs'k State University of Internal Affairs

ORCID ID: 0009-0003-6586-6550

## THE STATE OF INSANITY OF THE SUBJECT OF AN ADMINISTRATIVE OFFENSE UNDER THE LAWS OF CERTAIN FOREIGN COUNTRIES

### СТАН НЕОСУДНОСТІ СУБ'ЄКТА АДМІНІСТРАТИВНОГО ПРАВОПОРУШЕННЯ ЗА ЗАКОНОДАВСТВОМ ОКРЕМИХ ЗАРУБІЖНИХ ДЕРЖАВ

*The article characterizes the insanity of the subject of an administrative offense under the laws of certain foreign countries. The author emphasizes the uncertainty of the ways of development of the institute of administrative responsibility in Ukraine and the urgent need for its improvement. The author emphasizes the importance of taking into account the positive experience of the "young democracies" to assess the possibilities of its further implementation in Ukraine – the Republic of Moldova, the Republic of Latvia, and the Republic of Lithuania. The author concludes that national legislative acts have both common (extreme necessity, necessary defense, insanity) and distinctive circumstances. Of interest is the wide range of circumstances and conditions that make it impossible to incur administrative liability under Lithuanian law. The author establishes that foreign legislation contains a wide range of circumstances which differ in the details of the procedure for their application and the subjects covered by these provisions. The author gives a favorable assessment of this legislator's approach to enshrining a wide range of circumstances which exempt a person from administrative liability or exclude the unlawfulness of an act committed by him/her. The author emphasizes that the legislation of the states under consideration takes into account the reasons and conditions which led to the commission of an unlawful act as grounds for exemption from administrative liability. In particular, prostitution, drug addiction and committing an offense as a result of human trafficking or under physical/mental coercion deserve to be taken into account when qualifying related offenses. The author emphasizes the importance of improving the national legislation on administrative liability.*

**Keywords:** administrative responsibility, psychological state, psychological support, provision, improvement, insanity, foreign experience, causes and conditions.

*У статті проведено характеристику неосудності суб'єкта адміністративного правопорушення за законодавством окремих зарубіжних держав. Наголошено на невизначеності шляхів розвитку інституту адміністративної відповідальності в Україні та нагальній потребі його удосконалення. Зауважено на важливості врахування позитивного досвіду держав «молодої демократії» для оцінки можливостей його подальшого впровадження в Україні – Республіки Молдови, Латвійської Республіки, Литовської Республіки. Зроблено висновок про наявність у національних законодавчих актах як спільних (крайня необхідність, необхідна оборона, неосудність), так і відмінних обставин. Представляє інтерес широкий спектр обставин і умов, які унеможливають настання адміністративної відповідальності за литовським законодавством. Встановлено наявність у зарубіжному законодавстві широкого переліку обставин, які відрізняються деталізацією порядку їхнього застосування та суб'єктів на яких поширюється дія цих норм. Дано схвальну оцінку такому підходу законодавця до закріплення широкого переліку обставин, які звільняють особу від адміністративної відповідальності, або виключають протиправність вчиненого нею діяння. Зроблено акцент на врахуванні причин та умов, що спонукали до вчинення протиправного діяння як підстав для звільнення особи від адміністративної відповідальності в законодавстві розглянутих держав. Зокрема, проституція, наркоманія та вчинення правопорушення внаслідок торгівлі людьми або під фізичним/психічним примусом – заслуговують на врахування під час кваліфікації пов'язаних із ними протиправних діянь. Зосереджено увагу на важливості удосконалення вітчизняного законодавства про адміністративну відповідальність.*

**Ключові слова:** адміністративна відповідальність, психологічний стан, психологічна підтримка, забезпечення, удосконалення, неосудність, зарубіжний досвід, причини та умови.

**Statement of the problem.** Legislation of many countries of the world contains provisions defining the circumstances excluding legal liability for a person who has committed a wrongful act. These circumstances are most often divided into three groups: circumstances

that exclude the unlawfulness of an act (for example, extreme necessity); circumstances that exclude the person's guilt (state of insanity); circumstances that exclude the possibility of bringing a person to justice (violation of the time limits of proceedings).

When legislating the circumstances that exclude legal liability, legislators rely on different criteria for differentiating such circumstances, legal traditions and other conditions. At the same time, the consideration of such circumstances when qualifying an offense must comply with the provisions of international law, in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

In turn, the adaptation of domestic legislation on administrative offenses in the postwar period should provide for the optimization of circumstances that exclude administrative liability. First of all, this is due to the need to comply with European standards and requirements for the protection of human rights and freedoms in the course of proceedings on misdemeanors. The proposed amendments may contribute to a fairer and more efficient application of administrative tort rules, as well as improve the efficiency of the institution of administrative liability in general.

Thus, the study of circumstances that preclude administrative liability under the laws of foreign countries is of urgent importance and relevance.

**Analysis of research and publications.** Various issues related to the improvement of administrative liability in Ukraine are widely represented in the scientific works of domestic scholars. It is worth noting the scientific achievements of O.I. Bezpalova, E.F. Demskyi, R.A. Kaliuzhnyi, V.K. Kolpakov, O.V. Kuzmenko, B.O. Lohvynenko, D.M. Lukianets, R.M. Opatskyi, S.V. Petkov, S.O. Shatrava and many others.

At the same time, the complexity and diversity of scientific views on the issue of updating the legislation on administrative offenses in Ukraine makes it expedient to study the foreign experience of legislative consolidation of circumstances excluding administrative liability.

**The purpose of the article** is to characterize the state of insanity under the administrative legislation of certain foreign countries.

**Summary of the main material.** It should be noted that the states of the Anglo-American legal system do not recognize separate administrative legislation. Acts that are considered administrative offenses, customs violations or tax violations in Ukraine are classified as crimes or civil misdemeanors in the United States. On the other hand, in most countries of the continental group of legal systems, cases of administrative offenses fall within the scope of criminal law, i.e. such violations are considered crimes. Thus, A.M. Rubanenko notes that administrative offenses in Germany, Switzerland, Belgium, Italy and Portugal are a type of criminal offenses [1, p. 241]. Instead, for the states of the so-called "young democracy", it is more typical to preserve the institution of administrative responsibility. The positive experience of such states seems to us to be the most useful for

assessing the prospects for its further implementation in Ukraine.

Here we should agree with B.O. Lohvynenko and S.O. Ignatov that bringing national legislation in line with the standards of the European Union emphasizes Ukraine's European aspirations to become a full-fledged member of this economic and political association. Consequently, it is extremely important to properly adapt European practices into domestic legislation, the norms of which should be capable of implementation and not remain declarative [2, p. 266]. Thus, the main criterion for characterizing insanity as a circumstance excluding administrative liability should be the effectiveness of the relevant provisions from the point of view of law enforcement.

According to the Code of Offenses of the Republic of Moldova of 24.10.2008, the specifics of the application of circumstances that exclude administrative liability and the unlawful nature of the act are defined in Chapter Three of the Code. Circumstances that exclude the unlawful nature of the act and liability include insanity, necessary defense, extreme necessity, physical and/or mental coercion, reasonable risk and unforeseen event (Articles 19-25) [3].

Drawing an analogy with the Code of Ukraine on Administrative Offenses (hereinafter – the CUAO), we can note the existence of three circumstances already known to us under national law that exclude administrative liability - extreme necessity, necessary defense or insanity of the person who committed the administrative offense [4].

Instead, physical and/or mental coercion is of interest, which provides for exemption from administrative liability for committing an unlawful act as a result of physical influence that a person could not resist and could not be eliminated in any other way and/or as a result of mental coercion by threatening an immediate danger to him or her or another person that could not be eliminated in any other way [3]. This approach of the legislator to enshrining insanity as a circumstance exempting a person from administrative liability should be commended.

Next, we will consider the experience of the Republic of Latvia. Article 11 of the Law on Administrative Liability of 25.10.2018 defines the grounds for exemption from administrative liability. First of all, this applies to cases where an administrative offense committed by a person in specific circumstances did not pose a threat to the interests protected by law so that it could be punished (minor offense). In such cases, the authorized person or the court reprimands the person, which does not entail legal consequences. The next ground is the possibility of exemption from administrative liability when a person committed an unlawful act during the period when he or she became a victim of human trafficking and was forced to commit an administrative offense. Next, we are talking about

exemption from administrative liability for the use, manufacture, acquisition, storage, transportation or shipment of narcotic drugs, psychotropic substances, precursors or psychoactive substances or products containing them, the circulation of which is prohibited or restricted. The condition is the voluntary surrender of such substances by the person or voluntary application to a medical institution for medical care in connection with the unauthorized use of these substances. A person engaged in prostitution may be exempted from administrative liability for offenses in the field of combating prostitution if he or she agrees to receive social rehabilitation services.

Here it is interesting to pay attention to the grounds that prompted an individual to commit an unlawful act. Prostitution, drug addiction and committing an offense as a result of human trafficking deserve to be taken into account when qualifying related offenses.

In addition, according to Article 12 of the Law, an individual who, at the time of committing an administrative offense, was in a state of insanity, i.e., due to a mental disorder or mental retardation, could not realize his or her activities or control behavior, shall not be held administratively liable [5].

The third state whose legislation on administrative liability will be studied is the Republic of Lithuania. The Code of Administrative Offenses of the Republic of Lithuania dated 25.06.2015 provides for a wide range of circumstances that exclude administrative liability. Thus, Article 10 of the Code provides for the innocence of a person who, when committing an act prohibited by this Code, due to a mental disorder, could not realize its essence or control his/her actions. Also, a person who has been recognized by a court as insane is not liable for an administrative offense under this Code [6].

It is also worth mentioning Article 11 of the Code, which establishes liability for an administrative offense committed under the influence of alcohol, drugs, psychotropic or other psychoactive substances. The provisions of the article provide for the exemption

from administrative liability of a person who was against his/her will in a state of alcoholic, narcotic, psychotropic or other psychoactive intoxication and as a result could not fully realize the consequences of his/her actions and control them. moreover, unless otherwise provided by a separate article of this Code, a person is recognized as drunk if his/her blood alcohol content is 0.41 ppm or more [6].

It should be emphasized that according to the Code of Administrative Offenses, being intoxicated most often entails more aggravated consequences for the person who committed the administrative offense, rather than the possibility of exemption from liability [4].

**Conclusions.** To summarize, we should agree with B.O. Lohvynenko about the inconsistency of the provisions of the Code of Administrative Offenses with modern realities. This is due to the constant expansion of the areas of application of administrative and tort legislation, the dynamic nature of legal norms, and the diversity of social relations protected by law. Despite numerous amendments and additions, the CUAO remains one of the most difficult domestic codified acts to study [7, p. 4]. Thus, the legislative activity on updating the institution of administrative responsibility in Ukraine should be carried out taking into account the positive experience of the European countries under consideration. Here we need to focus on a clear definition of all the circumstances and reasons that allow a person to be considered insane.

Our characterization of insanity under the administrative legislation of certain foreign countries made it possible to identify the following key points:

- 1) the presence in national legislative acts of provisions on the criteria of insanity of a person as a subject of an offense, which are common with the national ones;
- 2) a broader understanding of the essence of a person's insanity;
- 3) taking into account the causes and conditions, including physical and mental pressure during the commission of an unlawful act.

#### BIBLIOGRAPHY:

1. Рубаненко А.М. Зарубіжний досвід адміністративної відповідальності іноземців та осіб без громадянства. *Наукові записки. Серія: Право*. 2022. № 12. С. 238-242.
2. Логвиненко Б.О., Ігнатов С.О. Проблемні аспекти адміністративної відповідальності за вчинення булінгу (цькування). *Порівняльно-аналітичне право*. 2018. № 6. С. 266-268.
3. Codul Contravențional al Republicii Moldova. Cod № 218 din 24.10.2008. URL: [https://www.legis.md/cautare/getResults?doc\\_id=90654&lang=ro](https://www.legis.md/cautare/getResults?doc_id=90654&lang=ro) (дата звернення 14.01.2024).
4. Кодекс України про адміністративні правопорушення (статті 1 – 212-24): Закон України від 07.12.1984 № 8073-X. URL: <https://zakon.rada.gov.ua/laws/show/80731-10#Text> (дата звернення 15.01.2024).
5. Law on Administrative Liability from 25.10.2018. Legal acts of the Republic of Latvia URL: <https://likumi.lv/ta/en/en/id/303007> (дата звернення 15.01.2024).
6. Lietuvos Respublikos administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas. № XII-1869 25.06.2015. URL: <https://www.e-tar.lt/portal/en/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b/nudDXDUdec> (дата звернення 17.01.2024).
7. Логвиненко Б.О. Медичний огляд (обстеження) у справах про адміністративні правопорушення: метод. рек. / Б.О. Логвиненко. Дніпро: ДДУВС, 2023. 64 с.