

ADMINISTRATIVE LIABILITY FOR VIOLATION OF LEGISLATION IN THE FIELD OF VOLUNTEERING

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Annotation. The article analyzes the peculiarities of administrative liability for violating legislation in the field of volunteer activities. It is established that administrative liability is one of the forms of legal liability, providing for a negative response of the state, represented by its authorized bodies, to an administrative offense (misdemeanor), imposing an administrative penalty as determined by law on the guilty subject. The author examines the main grounds for administrative liability in the field of volunteer activities, and as a result, it is established that the Law “On Volunteer Activities” does not regulate this issue in detail, unlike the provisions of the Law “On Charitable Activities and Charitable Organizations”.

The author establishes that the main administrative offenses in the field of volunteer activities are those enshrined in Chapter 12 of the Code of Administrative Offenses, i.e., those provided for in Articles 155-166²⁸ of the Code of Administrative Offenses. Additionally, there are categories of administrative offenses in the field of taxation and financial reporting provided for in Articles 155¹, 163¹ and 163¹⁶ of the Code of Administrative Offenses. Furthermore, administrative liability of entities in the field of volunteer activities may also arise in case of violation of customs rules, as provided for in Article 472 of the Customs Code of Ukraine.

Having analyzed the main statistical indicators of the detection of administrative offenses under Articles 155-166²⁸ of the Code of Administrative Offenses, as well as the individuals who committed them, it was found that there is a tendency to increase their number. At the same time, the number of cases of administrative offenses under Article 472 of the CCU has significantly decreased since the beginning of the full-scale invasion, which may be due to the difficulty of detecting this category of offenses, especially in border regions.

Key words: administrative liability, administrative offense, administrative penalty, charitable organizations, volunteer activities.

1. Introduction.

After the beginning of the full-scale invasion of Ukraine, volunteer movements in our country have significantly intensified to provide humanitarian, medical and other types of assistance to military personnel, internally displaced persons and victims of Russian aggression. At the same time, as in any field, there is abuse of the opportunities provided by the status of a volunteer, and therefore the issue of bringing the perpetrators to legal responsibility, including administrative responsibility, becomes relevant. Despite the fact that Article 13 of the Law of Ukraine “On Volunteer Activity” provides for liability for violating legislation in the field of volunteer activity, this provision is a reference, which requires additional research of other legislative acts.

2. Analysis of scientific publications.

Certain aspects of administrative liability for violating legislation in the field of volunteer activity have been the subject of research by some domestic scholars, among whom we can single out the works

of such scholars as K. M. Gurtova, N. O. Derkachova, I. V. Maziy, V. S. Sirko, and others. However, so far, the scientific literature has not presented a single comprehensive study of administrative liability for violating legislation in the field of volunteer activities, and this is the reason for the relevance of our article.

3. The aim of the work.

The aim of the work is to study administrative liability for violating legislation in the field of volunteer activity from the perspective of analyzing statistical data of the National Police of Ukraine in the field under study.

4. Review and discussion.

The Law of Ukraine "On Volunteer Activity" is the main legislative act that regulates relations arising in the field of volunteer activity in Ukraine. According to Article 13 of the Law, volunteers, institutions and organizations that engage volunteers in their activities, as well as recipients of volunteer assistance, are liable in accordance with the law. In addition, similar provisions are enshrined in part four of Article 5 of the said legislative act [1].

A more extensive list of forms of legal liability for violations in the field of charitable activities is provided in Article 27 of the Law of Ukraine "On Charitable Activities and Charitable Organizations". The provisions of this rule stipulate that subjects of charitable liability, officials of executive authorities and local self-government bodies bear civil, administrative, disciplinary and criminal liability [2].

In the legal scientific and educational general theoretical literature, there is no unanimity of views regarding the necessary grounds for legal liability. From the point of view of L. I. Kalenichenko, legal liability is a negative measure provided for by law and implemented in a procedural form by specially authorized subjects, which is applied to the subjects of an offense in the presence of legally defined grounds [3, p. 16].

One of the forms of legal liability is administrative liability, which acts as a specific form of negative response by the state represented by authorized bodies to the relevant category of unlawful acts (primarily administrative offenses), and the perpetrators of these offenses must answer to the authorized state body for their illegal actions and incur administrative penalties in the forms and manner prescribed by law [4, p. 175].

Pursuant to Article 9 of the Code of Ukraine on Administrative Offenses (hereinafter - the Code), an administrative offense (misdemeanor) is an unlawful, culpable act that encroaches on public order, the rights and freedoms of citizens, property, and the established management procedure, for which the current legislation provides for administrative liability. At the same time, the condition for bringing to administrative liability is that they should not form the elements of a criminal offense by their nature [5].

When studying the issues of administrative liability in the field of volunteering, they can be committed in various industries, including trade, services, catering, business and finance, which are enshrined in a separate section of the CUAO, namely Chapter 12 of the Code (Articles 155-166²⁸ of the CUAO) [5]. According to the statistics provided on the official web portal of the National Police of Ukraine, in 2023, the police revealed the facts of committing 41,324 administrative offenses under the above articles, as well as 34,856 persons who committed them. At the same time, in 2019, this figure was significantly lower – 25,827 detected administrative offenses and 21,412 persons who committed them [6].

The dynamics of administrative offenses under Articles 155-166²⁸ of the Code of Administrative Offenses is shown in more detail in Figure 1.

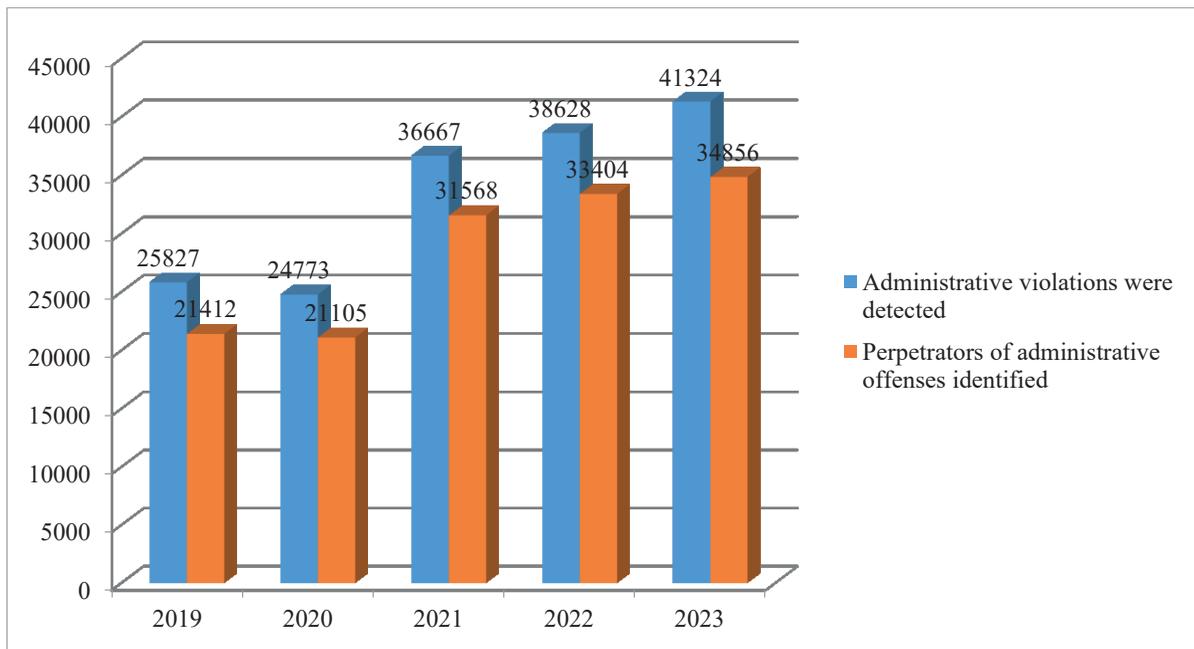


Fig. 1. Indicators of administrative offenses under Articles 155-166²⁸ of the Code of Administrative Offenses (2019-2023) [6].

An analysis of the information presented in Figure 1 shows that since 2021, there has been a significant increase in the detection of administrative offenses under Articles 155-166²⁸ of the Code of Administrative Offenses. Thus, in 2021, the number of detected administrative violations increased by more than 10 thousand cases and continues to increase under martial law in 2022-2023. Given that in the temporarily occupied territories and areas of active hostilities it is virtually impossible to detect and record the facts of offenses (latent offenses), it can be argued that these indicators are based on data from the territories controlled by the Government of Ukraine. Also, these figures may have been influenced by the intensification of volunteer activity at the beginning of the full-scale invasion of Ukraine by Russia.

In addition, the statistics provided cannot clearly determine the number of administrative offenses committed by volunteer organizations, which makes it impossible to formulate and analyze an objective situation in the field under study.

Article 27 of the Law of Ukraine "On Charitable Activities and Charitable Organizations" provides that the grounds for bringing charitable organizations to liability, which is carried out exclusively upon request of the state registrar of the authorized body for state registration or other interested persons, are as follows: use of income or assets of a charitable organization in violation of the requirements for charitable activities established by law for twelve months or more; inability to ensure the independent liquidation or reorganization of a charitable organization in cases established by the provisions of the legislation or the charter; conviction of authorized persons of a charitable organization for committing a criminal offense, liability for which is provided for in Article 111¹ of the Criminal Code of Ukraine [2].

Pursuant to Articles 7 and 23 of the Law of Ukraine 'On Charitable Activities and Charitable Organisations', the following entities may be held legally liable: persons who hold public charity fundraisers in favour of a charitable organisation on their own behalf in case of violation of the terms of the agreement (contract) or the procedure for using donations as defined by the provisions of such agreement; persons who make public charitable collections for the benefit of other beneficiaries, except for charitable organisations, to benefactors and beneficiaries in case of breach of contract; members of governing bodies of charitable organisations to the charitable organisation [2].

In addition, volunteer organisations with the status of a legal entity are obliged to comply with the requirements of tax legislation, for violation of which authorised tax authorities may draw up a protocol

on administrative offences under the following articles: violation of the procedure for making payments in the field of trade, catering and services established by law (Article 155¹ of the Code of Administrative Offences); violation of the procedure for keeping tax records, providing audit reports (Article 163¹ of the Code of Administrative Offences); violation of the procedure for disclosure of financial statements or consolidated statements (Article 163¹⁶ of the Code of Administrative Offences) [5].

According to the analysis of court rulings on administrative offences issued by the courts based on the results of consideration of administrative offences under Articles 155¹, 163¹ and 163¹⁶ of the Code of Administrative Offences, 7,494 cases were considered in 2023 [7].

More detailed information is provided in Table 1.

Table 1
Cases on administrative offences under Articles 155¹, 163¹ and 163¹⁶ of the Code of Administrative Offences (2019-2023)

	ст. 155 ¹ CoAO	ст. 163 ¹ CoAO	ст. 163 ¹⁶ CoAO
2019	4274	1168	1237
2020	4837	1534	1624
2021	4756	1248	2047
2022	2837	1439	1734
2023	4146	1527	1821

Source: compiled by the author based on [7].

Taking into account the data presented in Table 1, it can be stated that, in general, the rate of administrative offences and identification of perpetrators of such offences remains stable. Despite the existence of small changes in such indicators, there is no clear upward or downward trend.

Administrative liability is also provided for in the case of an offence under Article 472 of the Customs Code of Ukraine (hereinafter - the CCU), namely for failure to declare goods and vehicles for commercial purposes [8]. After analysing the information provided in the Unified State Register of Court Decisions, it was found that in 2023, courts issued only 201 decisions in cases of administrative offences under Article 472 of the CCU, although in 2019, 1094 such cases were considered [7].

The above information is presented in more detail in Figure 2.

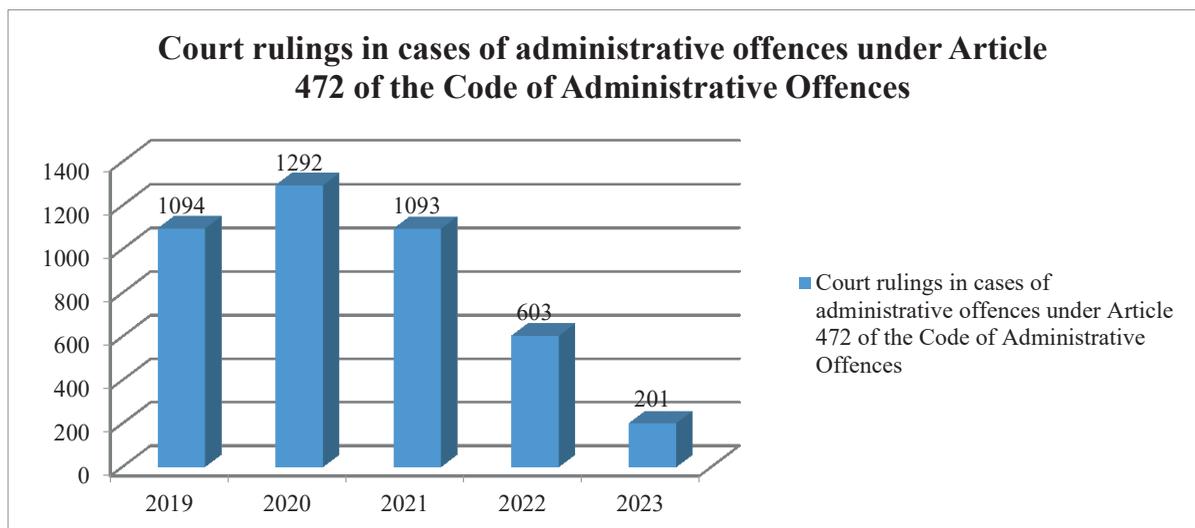


Fig. 2. The number of cases of administrative offences under Article 472 of the CCU considered by courts (2019-2023) [7]

The analysis of the information presented in Figure 2 makes it possible to conclude that, starting in 2019-2021, the overall rate of consideration of cases on administrative offences for failure to declare goods and vehicles for commercial purposes under Article 472 of the Customs Code of Ukraine was at the same level. However, since the start of the full-scale invasion, the number of cases of administrative offences in this category has significantly decreased, which can be justified by the introduction of stricter control measures and penalties for the relevant violation.

5. Conclusions.

Thus, administrative liability in the field of volunteering is a negative response of the authorized state authorities to the commission of a certain unlawful act, namely an administrative offense (misdemeanor), which results in an administrative penalty imposed on the guilty party as defined by the law.

After analyzing the statistical information for 2019-2023 posted on the official web portal of the National Police of Ukraine, it was found that there is a gradual increase in administrative offenses in this area. A slight decrease in the rates of detection and prosecution of perpetrators has been observed only since 2022, due to military operations on the territory of Ukraine, overload of law enforcement agencies and difficulties in detecting offenses in certain areas, including border areas.

Improvement of the legislation on bringing to administrative responsibility in the field of volunteer activity is possible only after a detailed analysis of this category of cases and can become the basis for further research.

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