PUBLIC DANGER AND WRONGFULNESS AS IMPORTANT SIGNS OF ADMINISTRATIVE OFFENCES RELATED TO UNAUTHORIZED OCCUPATION OF A LAND PLOT

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ABSTRACT

Description: The purpose of the article is to study public danger and wrongfulness as the main signs of administrative offense related to unauthorized occupation of a land plot.

Methodology: The methodological basis of the study is dialectical-materialistic and formal-logical methods of scientific knowledge and general scientific and special methods based on them. This allowed researching the problem in the unity of its social content and legal form.

The results of the study: On the basis of the analysis of scientific views of scientists and the norms of the current legislation of Ukraine, the characteristic of such signs of administrative offense related to unauthorized occupation of the land plot, as public danger and wrongfulness have been examined. Practical implications. Having taken note of the analysis of legal acts adopted during the studied period we can conclude that the assertion of the Soviet authorities was accompanied by the increased criminal liability for violations in the area of land use.

Value/originality: It has been stated that public danger of the offense directly affects the severity of punishment. In turn, such a sign as wrongfulness indicates the inability to apply law analogy, that is, precludes the possibility of bringing a person to administrative liability, if the act committed is not directly enshrined in administrative law.

Keywords: Administrative Misconduct, Responsibility, Social Danger, Illegality, Wrongfulness, Land Plot, Unauthorized Occupation.

INTRODUCTION

Ukraine has announced, with independence, a course on building of a democratic, law-based State, the main responsibility of which is to assert and protect the rights and freedoms of an individual and a citizen. The ownership to land acquired and exercised by citizens, legal entities and directly by the State in accordance with the law is an important right among other ones. This is explained by the fact that land is the main national wealth, which is under special protection of the State (Article 14 of the Constitution of Ukraine). At the same time, administrative responsibility is among the basic methods of such protection, which is the most

efficient and effective way of responding to land violations. As is known, the actual reason for bringing a person to administrative responsibility is commitment of administrative offense.

According to the analysis of the practice of law enforcement activity, the institute of administrative responsibility for offenses in the area of land relations is one of the most effective methods of legal counteraction to unauthorized occupation of land. It allows to achieve maximum results with minimum waste of time, effort and energy of law enforcement agencies; to harmonize efforts of public authorities and the public; to ensure the most rational combination of punitive and educational measures to influence offenders. In other words, the institute of administrative responsibility provides the State with mobile and effective means of fulfilling its requirements to both individuals and legal entities, and therefore improving its content is an effective tool for development of legal tools of the State.

MATERIALS AND METHODS

The methodological basis of the study is dialectical-materialistic and formal-logical methods of scientific knowledge and general scientific and special methods based on them. This allowed to research the problem of its social content and legal form in unity. The comparative legal and formal legal methods were used during the analysis of the laws and regulations, which govern the issue under consideration. The method of formal logic as well as structural method made it possible to examine public danger and wrongfulness as the main signs of administrative offense related to unauthorized occupation of a land plot. Historical and legal method provided an opportunity to highlight the evolution of scientific views on the specific issues. The method of systematic analysis made it possible to identify the most significant features of the studied offense. Based on the integrated syntheses approach conclusions and suggestions on the topic of the study have been formulated.

Some problematic issues of administrative responsibility for the unauthorized occupation of a land plot in were considered by such scientists as: Bakhrakh (1989), Kolpakov (2008) & Holosnichenko (1991). However, despite the considerable amount of the research conducted, it should be noted that to date there is no comprehensive study in the legal literature devoted to such important signs of administrative misconduct for unauthorized occupation of a land plot as public danger and wrongfulness.

RESULTS AND DISCUSSION

First of all, it should be noted that the basis for bringing a person to administrative responsibility is the commitment of administrative offense, which means unlawful, guilty (intentional or negligent) act or omission that encroaches on public order, property, rights and freedoms of citizens, on the established order of administration and for which the law provides for administrative responsibility.

The analysis of the current version of Art. 9 of the Code of Administrative Offenses of Ukraine (Law of Ukraine, 1984), as well as of the scientific literature, give the grounds to distinguish the following signs of administrative offense:

1. Social danger;
2. Unlawfulness;
3. Guilt;

4. Punishability.

Thus, any administrative misconduct, including the unauthorized occupation of a land plot, is characterized by social danger. At the same time, this feature is interpreted ambiguously in scientific literature. However, two scientific approaches can be clearly distinguished: the first group of scientists believes that administrative misconduct is socially dangerous; the second one is confident that it is socially harmful. We suggest to considerer these approaches in more detail.

Holosnichenko (1991), who considers administrative offences socially dangerous because they harm public relations, belongs to the representatives of the first approach. The author provides a linguistic interpretation of the term "*dangerous*", which means harmful, capable of causing, causing harm to support this conclusion. This approach is also supported by Halagan (1970) and Opryshko (1986), who state that, from the sociological point of view, administrative offenses are socially dangerous acts, since they negatively affect public relations. The differentiation of administrative liability from other types of legal liability is carried out according to the degree of social danger.

At the same time, in recent years, the opposite has been justified in administrative science, according to which administrative offences are socially harmful. For example, according to Bakhrakh (1989), administrative offense is not socially dangerous unlike criminal offense. Moreover, the application of sanctions for their commission occurs in the process of administrative activity. Kolpakov (2008) proves that administrative offense is new and special type of offense, based on the conclusions; he believes that it has its unique features and doesn't have (or lost) genetic relations with crime. The main argument in favor of the analyzed concept, according to its authors, is in Articles 10, 11 of the Code of Administrative Offenses of Ukraine, based on an analysis of which it is clear that when committing an administrative offense intentionally or negligently, the legislator speaks about the occurrence of harmful consequences as a result of a certain act or omission.

In our view, such an argument is insufficient, since the legislator mentions neither public danger nor public harm among the features of administrative offence, in particular in Article 9 of the Code of Administrative Offenses. For comparison, Article 2 of the Criminal Code of Ukraine clearly states that the basis for criminal responsibility is the commission by a person of socially dangerous act, which contains the features of crime. Concerning such a sign as public danger, which is also enshrined in Article 11 of the Criminal Code of Ukraine, we can say the following: a crime is a socially dangerous act (act or omission) committed by the subject of crime under this Code. Thus, unlike the Code of Administrative Offenses, the Criminal Code of Ukraine establishes such a sign of unlawful acts as social danger at the legislative level.

The analysis of the scientific literature, both in administrative and criminal law, leads to the conclusion that administrative offense is characterized by such a feature as social danger. In this case, the degree of public danger distinguishes them from crimes. There are several arguments to support this conclusion. Firstly, the institution of criminal proceedings is not as closely connected with public danger as with the detection of signs of a crime in each case. Indeed, the analysis of law enforcement activities shows that committing a crime, as well as committing an administrative offense, leads to the occurrence of certain negative consequences, which are assessed by the State as socially dangerous. In doing so, the objective properties of social danger manifest themselves in the fact that they exist in reality, beyond our consciousness,

whether they are known or not. Accordingly, public danger of an administrative offense consists of all elements of its legal composition and the consequences of unlawful acts (Lukianets, 2001).

Secondly, administrative offense differs from crime by the degree of public danger. Sometimes, a distinction between administrative and criminal liability which is envisaged for certain offenses, can be drawn only on this basis. Unauthorized occupation of a land plot belongs to such offenses as its commission, depending on the degree of public danger of the damage caused, can entail both administrative (Article 53-1 of the Code of Administrative Offenses) and criminal liability (Article 197-1 of the Criminal Code of Ukraine).

It should be noted, that not all scientists and practitioners consider the amount of damage caused, established in the note to Article 197-1 of the Criminal Code of Ukraine, as objective. The evidence for it is the Law *"On Amendments to Certain Legislative Acts of Ukraine on the Amounts of Penalties and Qualification of Crimes and Administrative Offenses"*. Its authors proposed to solve the problem of correlation of punishments (penalties) with the amount of the damage caused by introducing amendments to Paragraph 22.5, Article 22 of the Law of Ukraine *"On Personal Income Tax*" (which has already expired), as well as to the sanctions and notes of certain articles of the Criminal Code of Ukraine and the Code of Administrative Offenses. The purpose of such changes is to harmonize the existing system of penalties provided for in the Criminal Code of Ukraine and the Code of Administrative Offenses by amending the notes and sanctions of some articles, adjusting the size of sanctions to the level which is adequate to the material damage caused. The analysis of the provisions of this Law makes it possible to conclude that it is based on the principle of social justice, according to which each sanction must correspond to the degree of public danger enshrined in the Law and be consistent with the sanctions provided for committing other crimes and administrative offenses of the same degree.

We consider some of the provisions enshrined in the analyzed legal act to be groundless and premature, generally backing it. In particular, this concerns the proposal to amend Article 1971 of the Criminal Code of Ukraine, according to which the damage caused to land resources is considered significant if it exceeds the taxable minimum of citizens' income at 300 times or more. In our opinion, such an approach may complicate the situation in the area of protection of the rights and legitimate interests of landowners, since it will not make it possible to prosecute a significant number of offenders. Certainly, the authors of the law have solved this problem to some extent by increasing the amount of the fine provided for in Article 53-1 of the Code of Administrative Offenses (for citizens it is between 50 and 100 times the personal income-tax allowance). At the same time, increasing responsibility does not always have a positive effect on reducing the number of offenses. In this regard, the State policy in this area should not be limited solely to the increase of penalties, especially since the problem of compensation for the damage caused to land resources can be successfully resolved in order provided for in Article 40 of the Code of Administrative Offenses and relevant articles of the Civil Code of Ukraine.

Wrongfulness is an important feature of any administrative offense, since it indicates a prohibition of the relevant act or omission by administrative law in order to prevent causing harm and, in the case of non-compliance, causes the imposition of an administrative penalty on the guilty person. As Tarkhov & Matvieiev (1956) correctly states, any act becomes illegal only when it violates a specific legal norm. It should be noted that in the scientific literature, scientists have justified their own concept of wrongfulness of administrative offense in the area of land relations. Its essence lies in the fact that such offense contradicts the legal regulations concerning the rational use and protection of land resources, impede the implementation of land reform, the

exercise of rights and legitimate interests of land owners and land users, violate the established order of land management as the national wealth of Ukraine (Milimko, 2009). Naturally, such a broad understanding of wrongfulness of administrative offense has the right to exist. At the same time, it is impossible to agree that committing such an offense impedes the implementation of land reform, since, in our opinion, the changes in the dynamics of offenses in the analyzed area can only lead to the improvement of measures aimed at their administrative and legal counteraction and preventive influence on offenders.

Therefore, wrongfulness of an unauthorized occupation of a land plot is that such actions of citizens or officials are recognized as an administrative offense, for which the administrative responsibility is provided. Along with establishing administrative responsibility for the unauthorized occupation of land, the legislator simultaneously made a significant step towards decriminalizing such actions. We propose to study this aspect more detail. It is known that decriminalization can be accomplished in two ways:

1. By recognizing the legitimacy of certain conduct for which legal liability has previously been established;
2. By recognizing the possibility and expediency of responding to such behavior not in the form of criminal punishment, but by applying alternative types of social response (administrative or civil liability).

As we can see, in order to decriminalize the unauthorized occupation of a land plot, a second method was chosen, namely, the use of an alternative method of social response, which is administrative responsibility. At the same time, a very important requirement was not taken into account in this process: the argumentation of decriminalization must be stronger than the justification for the need to establish criminal responsibility, since otherwise society may perceive it not as a change in the form of social control but as an absolute permissiveness of a previously forbidden behavior. As a consequence, since the adoption of the new Criminal Code of Ukraine, which initially did not provide for criminal liability for unauthorized occupation of a land plot, administrative responsibility for such actions ranked first among other administrative offenses.

At the same time, as it was noted above, the implementation of alternative methods of social response may not provide criminal prohibitions for one or another act, or decriminalize them only partially. Given this feature, as well as the annual increase in the number of administrative cases concerning unauthorized occupation of a land plot, in 2007 the legislator increased responsibility for the analyzed offenses (Verkhovna Rada of Ukraine, 2007). In particular, on January 11, 2007, the Law of Ukraine *"On Amendments to Certain Legislative Acts of Ukraine on Strengthening Responsibility for Illegal Occupation of a Land Plot*" introduced amendments to the Criminal Code of Ukraine aimed at partially criminalizing these offenses. In our opinion, such steps taken by the legislator are quite justified since: firstly, the possibility of applying the measures of administrative liability unauthorized occupation of a land plot was retained; secondly, the social effectiveness of non-criminal measures that ensure the proper rule of law in the analyzed area is enhanced. Thus, there was a significant improvement in the content of the principle of inevitability of responsibility (Law of Ukraine, 2007).

CONCLUSION

Administrative liability is a type of legal liability applied by the competent authorities on the grounds and in accordance with the established rules of administrative law to the subjects who have committed administrative offense.

In our view, the following definition of administrative offense should be enshrined in legislation: it is the unlawful, guilty (intentional or negligent) action (act or omission), envisaged in this Code, committed by the object of an offense.

In concluding the scientific study, it should be noted that public danger and wrongfulness are undoubtedly one of the most important signs of administrative offense for the unauthorized occupation of a land plot. Thus, public danger of administrative misconduct in the area of land use reflects how harmful the actions of the respective entities were and how they affected the other entities in the land legal relationship. Administrative offense is socially dangerous, not socially harmful. It is by the degree of social danger that a distinction can be drawn between administrative and criminal liability, which is provided for the unauthorized occupation of a land plot. It is this sign of the offense that affects the severity of the punishment for the offender. In turn, the sign of wrongfulness indicates the impossibility of applying the analogy of the law, that is, it excludes the possibility of bringing a person to administrative responsibility, if the act committed is not directly enshrined in administrative law.

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