REVISITING THE DEVELOPMENT OF THE INSTITUTE OF ADMINISTRATIVE LIABILITY OF UKRAINE IN THE LIGHT OF CHANGES IN THE MODEL FOR THE CLASSIFICATION OF CRIMINAL OFFENCES

Volodymyr Haraschuk, Yaroslav Mudryi National Law University,
Nataliya Matyukhina, Yaroslav Mudryi National Law University
Valentyna Zui, Yaroslav Mudryi National Law University
Iryna Ihnatchenko, Yaroslav Mudryi National Law University

ABSTRACT

The article focuses on the development of administrative responsibility in Ukraine in the light of changes in the model of classification of criminal violations. The emphasis is placed on the existing gaps in the mechanism of legal regulation of administrative responsibility and their analysis through the prism of the new realities of the system of legal responsibility, in which the crime is not the only criminal violation. It emphasizes the problem of the overload of the Code of Ukraine on Administrative Offenses, the presence there in a large number of "atypical" corpus delicate, which by their nature have criminal or other nature, highlights issues relating to the review of the list of types of penalties applied to persons for committing administrative offenses. A number of other issues are explored. The idea of the emergence of the necessity and at the same time favorable conditions for the revision of the expediency of the existence of compulsory jurisdiction in the framework of administrative type of legal responsibility, due to the emergence along with the traditional judicial procedure of bringing to criminal responsibility a special simplified judicial procedure for criminal offenses (according to the provisions of law and with the consent of participants in the process). On the basis of the study of the provisions of the Criminal Code and the Code of Ukraine on Administrative Offenses it grounds the thesis that the reform which changed the model of classification of criminal violations was actually conducted without taking into account all the features of the national system of legal responsibility, which does not allow to talk about its completeness. At the same time, it is underlined that the introduction of the institute of criminal offences actually contributes to the elimination of many gaps in the current legislation on administrative infractions.

Keywords: Administrative Offence, Criminal Infraction, Administrative Liability, Criminal Liability, System of Legal Liability of Ukraine.

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

INTRODUCTION

Introduction to the system of tort legislation of Ukraine criminal infraction as an "*intermediate*" stage between a crime and an administrative offense objectively puts forward requirements for the revision of the existing model of administrative liability. And although the debate on the appropriateness of the adoption of the above innovation among domestic legal experts continues to this day, the fact that Ukraine today already lives in the realities of the updated system of legal liability is quite difficult to argue with. In this paper we do not aim to assess the legislative reform that has seriously changed the approach to the classification of criminal offenses. This topic has already been discussed in sufficient detail in the scientific space in recent years (Tatsiy et al., 2019; Krasnytsky & Horpyniuk, 2014). The center of our attention will be the problems of development of administrative liability as an independent type of legal liability in the light of the abovementioned fundamental transformation of criminal liability.

It should be noted that the interest in the reform of administrative liability in Ukraine is not new. Discussion around the provisions of the next proposed Draft version of the new Code of Ukraine on Administrative Offenses became a kind of national tradition long before the adoption of the Law of Ukraine *"On Introduction of the Amendments to Certain Legislative Acts of Ukraine on the Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences"*. However, unlike the criminal liability, which is in the state of permanent, but still a real reform (as evidenced not only by the introduction of a new classification of criminal offenses, but also by the adoption of the previous CC of Ukraine, work on the new version of the CC of Ukraine and other innovations), the comprehensive optimization of administrative liability is still limited to the level of discussions and not systemic legislative initiatives.

A lack of political will of the legislator and lack of a consolidated approach in scientific circles actually leaves the legislation on administrative liability in a "*conserved*" state, not allowing providing effective regulation of dynamic and changing by its nature public relations of administrative and tort sphere. And given the significant amount of public relations protected by administrative liability, it is difficult to talk about achieving positive results from the reforms aimed at the Europeanization of public administration in Ukraine, without a proper transformation of the national model of administrative liability. Moreover, taking into account the identity of a number of features of criminal and administrative liability, which has historically developed in post-Soviet countries, we are convinced that the reason for the numerous criticisms by Ukrainian scientists and representatives of the legal profession of criminal infractions is related not only to gaps in legal drafting methodology (which, of course, exist). Not the least of which is the realization of the objectives of humanization of legal liability and optimization of activity of law enforcement agencies, as we see it, cannot be achieved because of the obsolescence of namely the Code of Ukraine on Administrative Offenses, which we will focus on more than once in the paper.

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

RESULT AND DISCUSSION

The Issue of Overloading the Code of Ukraine on Administrative Offenses or What to Start With

Before conducting an assessment of the directions of development of administrative-tort legislation it is necessary to pay attention to the main gaps inherent in the existing mechanism of functioning of administrative liability in Ukraine. And taking into account the intersectoral specificity of the selected for the study problem, we propose to focus on the gaps in the national mechanism of administrative liability, which existed before the relevant changes in the Criminal Code of Ukraine, in the light of the new realities of legal liability system, in which the crime is not the only the act punishable under criminal law.

As has already been noted earlier, the issues related to the optimization of administrative liability in Ukraine have been studied in the science quite extensively. Therefore, in this work we will pay attention to those of them, which, in our opinion, are most closely related to the investigated subjects. So, even before the adoption of the Law of Ukraine *"On Amendments to Certain Legislative Acts of Ukraine on the Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences"* (Law of Ukraine No. 2617-VIII, 2019), the scientific community has repeatedly drawn attention to the content of the Code of Ukraine on Administrative Offences atypical corpus delicti, which by their nature have criminal or other nature. In particular, I. Holosnichenko notes that the standards of the special part of the Code of Ukraine on Administrative Offences in force up to now cover offenses that are not related to the sphere of administration. As an example, the scientist cites the offenses provided for in the articles: 173 "*Petty hooliganism*"; 51 "*Petty theft of another's property*"; 45 *"Evasion of examination and preventive treatment of persons with venereal disease";* 42-1 *"Production, procurement, sale of agricultural products containing chemical preparations in excess of maximum allowable concentration levels"* and others. According to the scholar, these offenses are not administrative, since the relations protected by the above standards have nothing to do with public administration or local self-government. But it is also not a crime, as they do not bear a great public danger (Holosnichenko, 2014). Such judgments are shared by a number of other public administration scholars. In particular, it is argued that the artificial combination of offences in the field of public administration and offences of general criminal nature (petty theft, petty hooliganism, etc.) or civil-law (unauthorized occupation of a land plot, fare evasion, violation of rules of providing telecommunications services, etc.) in a codified act does not correspond to the European concepts in the field of administrative-tort legislation. Such torts are not directly related to the sphere of public administration. They do not encroach on administrative legal relations, are not under the jurisdiction of public administration bodies and do not "fit" into the modern paradigm of administrative liability (Krapyvynyi, 2017). Analysis of the current Code of Ukraine on Administrative Offences allows us to conclude about the presence of dozens of compositions of administrative offences of the so-called *"non-administrative nature"*.

Gaps in the existing system of punishments in the sphere of administrative liability. Ways to solve them in the light of a new model of legal liability, including criminal offences

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

It should be noted that the outlined trend of a significant mass of social relations protected by the Code of Ukraine on Administrative Offences, which is mainly a legacy of the Soviet model of legal regulation, not only leads to a decrease in the effectiveness of implementation of the functions of administrative liability, due to the overload of the Code of Ukraine on Administrative Offences. In certain cases, the non-standard domestic approach to building a system of legal liability directly leads to violations of the standards of human rights and freedoms outlined by the European legislation. In particular, according to the decisions of the European Court of Human Rights, classifying a deed as a crime or another type of offense depends not only on its place in the national legal system, but also on the nature of the offense and the degree of limitation of human rights and freedoms, which are determined by the type of penalty imposed (punishment). A fairly striking example here is the attitude of the ECHR to the presence of administrative detention as a punishment for committing an administrative offense in the legislation of Ukraine. The fact is that under EU law, detention as a punishment is considered a form of imprisonment and is understood as a measure of criminal nature, which, in turn, requires the provision of the full range of procedural rights of the accused, which the criminal legislation contains (questioning of witnesses, free legal aid, etc.). From the content of Recommendation No. R (91) 1 of the Committee of Ministers to member states on administrative sanctions as of 13 February (Law of Ukraine, 1991), it is clear that administrative measures which are a necessary consequence of a criminal conviction, as well as disciplinary sanctions applied within an administrative authority or within an organized professional activity, are not considered to be administrative sanctions. The relevant position was reflected in the decision of the European Court of Human Rights in the illustrative case of Engel and Others v. the Netherlands in 1976, in which it was noted that the Court's control would be illusory if it did not take into account the severity of the punishment that the accused risked experiencing. "*In a society subscribing to the rule of law, there belong to the criminal sphere deprivations of liberty liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental"* (paragraph 82) (Decision of the European Court of Human Rights in the case of Engel and others v. the Netherlands, 1976). In the case of Gurepka v. Ukraine (No. 2), the ECHR pointed out that the administrative detention of up to 15 days, could not be considered "*minor*" (paragraph 33) (Decision of the European Court of Human Rights in the case of Gurepka v. Ukraine, 2010). It follows that even when it comes not to the application to the offender of sanctions in the form of administrative detention, but only about this possibility, the relevant cases should always be considered by the court for compliance with all the requirements of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

We emphasize that the solution to the problem of consideration of cases on administrative offences in cases which, in the understanding of the ECHR, should be considered in accordance with the requirements for criminal proceedings, it would seem, with the appearance of a criminal offence in the legislation of Ukraine, can be solved by transferring such elements of offences from the Code of Ukraine on Administrative Offences to the Criminal Code. This concept had been repeatedly emphasized by the proponents of the idea of introducing criminal offenses into the national legislation even before the Law of Ukraine "*On Amendments to Certain Legislative Acts of Ukraine on the Simplification of Pre-Trial Investigation of Certain*

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

Categories of Criminal Offenses" was adopted. However, the problem turned out to be much broader. First, the main purpose of introducing criminal offenses was precisely the humanization of criminal liability and optimization of the activities of criminal justice authorities. As for itself, the "*mechanical transfer*" of a number of administrative offenses to the Criminal Code of Ukraine in terms of the tasks is ineffective and requires a more serious restructuring of the criminal and administrative-tort legislation. In addition, in fact each (previously administrative punishable act) requires a personal approach with respect to the adjustment of the measure of punishment to the realities of criminal liability. And the problem here is not in ensuring such "*transit*" with the help of legal techniques, but in the very expediency of choosing the method of "*increasing*" the guarantees of respect for human rights and freedoms - by increasing the level of public threat of the offence. Can this be considered as humanization, if we are talking about the criminalization of dozens of corpus delicate of administrative offenses? Secondly, the relationship of the majority of corpus delicate, defined by researchers (see above), as those that have a criminal nature can (should) be referred to "*criminal offenses",* in our opinion, just more tend to extrajudicial procedure of bringing to responsibility, which is ensured within the framework of the administrative liability. We would remind that the promptness of detection and response of authorities to offences, which allows to ensure the optimal expenditure of public resources in relation to and in connection with the low level of social harm of such acts and, consequently, the list of penalties for their commission, is one of the main features (and principles) of the institute of administrative liability. Here it is important to make a remark. We are talking about not those administrative offenses, for the commitment of which the current legislation provides for a measure of punishment in the form of an administrative fine. In this case, we just encounter a classic case, when a deed by the level of public danger (which is confirmed by enshrining in the legislation a relatively strict punishment) has criminal nature, but is referred by the legislator to the acts of punishable under administrative law.

It should be noted that we share the views on the need to exclude administrative detention, confiscation and compensatory seizure of property as types of penalties from the Code of Ukraine on Administrative Offences (for more details ref. Tatsiy et al., 2017). In this case, the solution to the problem of "*overloading*" of the Code of Ukraine on Administrative Offences we see less in the criminalization of certain elements of administrative offenses (although in some cases this is even necessary), but in the revision of the very legislative approach to the construction of the structure of the Code and presentation of its definitions of offenses. So, in our opinion, a number of corpus delicate, protecting actually the same public relations, should be combined. For example, art. 1884. (Failure to comply with the legitimate requirements of the central executive body, which implements the state policy in the field of labor protection) entails the imposition of a fine on workers from six to ten untaxed minimum incomes of citizens and on officials-from thirty to one hundred untaxed minimum incomes of citizens (Fedotova, 2016). At the same time, art. 1886 (Failure to comply with the lawful requirements of officials of the central executive body that implements state policy on supervision and control over the observance of labor legislation, or creating obstacles to the activities of this body) provides for a fine on officials of fifty to one hundred untaxed minimum incomes of citizens (Fedotova, 2016). Given the nature of the similarity of public relations, which in both cases are related to the violation of legal requirements of an official in the field of labor protection, as well as the minor

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

difference in punishment for committing a deed, it remains unclear why two separate offences were introduced that infringe on the same public relations. And such examples, in our opinion, in the Code of Ukraine on Administrative Offences are dozens.

Look at the problem of court jurisdiction within the boundaries of administrative liability through the prism and in the light of changes associated with the introduction of the institute of criminal infraction in the Ukrainian model of legal liability.

Another problem, which, in our opinion, has significantly worsened in connection with the "*separation*" of criminal liability in Ukraine into two types, is the presence in the Code of Ukraine on Administrative Offences of acts of the so-called "*court jurisdiction*", which require a special procedure of investigation and consideration, which at present within the current legislation is not implemented in full (Tatsiy et al., 2017). As an example of gaps in legal drafting methodology related to this issue is the lack of a provision on the mandatory participation of the prosecution side in the judicial consideration of cases on administrative offenses. We should recall, to date, national legislation provides only for the possibility of such participation. In particular, in accordance with article 250 of the Code of Ukraine on Administrative Offences of Ukraine "*Prosecutor, deputy prosecutor, exercising supervision over the observance and proper application of laws in proceedings on cases of administrative offences has the right: to initiate proceedings on a case of an administrative offence; to familiarize with case materials; to verify the legality of actions of bodies (officials) in proceedings on the case; to participate in the proceedings; to file petitions; to give opinions on issues arising during the consideration of the case; to check the correctness of application by the relevant bodies (officials) of measures of influence for administrative offences; to make submissions, appeal against the decision on a complaint on a case of an administrative offence, as well as perform other actions stipulated by law"* (Law of Ukraine No. 8073-X, 1984). Part two of the article provides for mandatory participation of a prosecutor in court proceedings only during the consideration of cases on three compositions of administrative offences (ref. article 250). The practice shows that quite a number of cases are considered even without the participation of an official, by whose decision the protocol on an administrative offence was drawn up, who, in addition, according to its procedural and legal status, cannot perform the functions of public prosecution. At the same time, cases of prosecution by a prosecutor during court proceedings on cases of administrative offences are extremely rare. This order of things gives reason to claim that the judge simultaneously exercises the powers of justice and prosecution, violates the principle of impartiality of the court, the adversarial system, etc., which, indeed, makes it difficult to ensure the rights of citizens to a fair and impartial consideration of the case. An indication of the relevant problem in the national legislation of States is the ECHR case of Karelin v. Russia, in which the Court found a violation of article 6 of the Convention in connection with the non-participation in proceedings before a court of general jurisdiction of a prosecutor or other representative of the prosecution (Decision of the European Court of Human Rights in the case of Karelin v. Russian Federation, 2016). Despite the fact that the above decision was made in respect of the Russian Federation, it is also relevant for the current legislation of Ukraine.

In the light of changes in the model of classification of criminal offences, expediency of availability of court jurisdiction within the framework of administrative liability, which has

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

already been considered debatable and outdated (Kurylo & Bilya, 2010) by a number of specialists in scientific circles, (whose position we share), raises doubts. We propose for greater clarity to consider this issue in the framework of "*before and after*" the introduction of the institute of criminal infractions.

So, before the reform associated with the introduction of criminal offenses into the national system of legal liability public relations protected by criminal and administrative types of legal liability, by the nature of implementation of legal sanctions had three independent law enforcement processes:

1. Mandatory legal process with the provision of the widest guarantees of protection of the rights and freedoms of a person brought to responsibility, which is conditioned by the possibility of application of the most severe restrictions on the rights and freedoms, among all penalties - criminal liability (crime);
2. Operational economic mainly extrajudicial procedure of implementation of responsibility measures, with the lack of provision of enhanced guarantees for the protection of the rights and freedoms of the person involved in the proceedings on the offence, due to the small level of restrictions on the rights and freedoms of offenders provided for by penalties - administrative liability (delinquency);
3. Simplified legal process that does not fully meet the standards and principles of justice - administrative liability (delinquency).

After the introduction of criminal offenses into the national system of legal liability, the above model is supplemented by:

Mandatory legal process with the provision of a fairly wide level of guarantees for the protection of rights and freedoms of a person brought to responsibility, which is due to the possibility of application to a person not so severe (as in the case of a crime), but rather severe (in comparison with an administrative offense) limitations of rights and freedoms, established by the measure of punishment - criminal liability (infraction). The possibility of a simplified legal process (in cases provided for by law and with the consent of process participants).

Let's consider the procedural order for bringing a person to liability for committing a criminal offence in the context of the proposed classification. The existence of a simplified legal process is evidenced by the provision of paragraph 1 of Article 302 of the CPC of Ukraine (Application of the prosecutor for consideration of the indictment in simplified proceedings): "*Having established during the court investigation that the accused has unconditionally acknowledged his guilt, does not challenge the circumstances established by the court investigation and agrees to the examination of the indictment in his absence, and the victim, the representative of the legal entity, The prosecutor has the right to send an indictment to the court, in which he states a petition for its review under an abbreviated procedure without a court examination in the court session"* (Law of Ukraine No. 4651-VI, 2013). In addition, from the "*classical*" procedural order for disclosure, investigation and consideration of a case in court on the commission of a crime, cases of criminal offenses have many features. These may include differences related to the establishment of special time limits for investigation of criminal offenses (according to the CPC pre-trial investigation must be completed within 72 hours; and within 20 days - if the suspect does not admit guilt or there is a need for additional investigative (search) actions; the criminal offense was committed by a minor; an expanded list of procedural sources of evidence in criminal proceedings on criminal offenses, which cannot be used in

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

criminal proceedings (see Article 2981 Law of Ukraine No. 4651-VI, 2013); the impossibility of application of house arrest, bail, detention as the most severe measures in the system of preventive measures (see Articles 176, 299 Law of Ukraine No. 4651-VI, 2013); lack of possibility of conducting covert investigative actions during the pre-trial investigation of criminal offenses (see Article 246 Law of Ukraine No. 4651-VI, 2013), etc. The listed and other not named features of the procedural order for consideration of cases of criminal offenses allow speaking about the presence of a sufficiently wide level of guarantees of protection of rights and freedoms of a person, while maintaining the quality of promptness in comparison with the procedural features of the investigation of crimes.

It should be noted that the parallel existence of actually four law-enforcement judicial processes in the system of public relations protected by criminal and administrative types of legal liability unreasonably complicates the judicial system. And although the creation of a new law-enforcement procedure (for criminal offenses) has not expanded the scope of protected public relations, we consider unnecessary the existence of a simplified, but mandatory judicial procedure within the framework of administrative court proceedings, in the presence of "intermediate" procedure for criminal offenses. In this case, we see the following scheme as appropriate: proceedings on offenses should be held in court (that is, with an increased level of guarantees of protection of rights and freedoms) if the measure of punishment provided for the commission of an act is high enough. But if the measure of punishment is high enough - the level of public danger is not insignificant, which means that an action should not be defined by the state as administratively punishable. If the measure of punishment is not high enough, then there is no need for a complicated procedure to guarantee the protection of rights and freedoms provided for in the framework of court proceedings.

The Issue of Court Jurisdiction of the Institute of Administrative Liability. Two Solutions for One Issue

From our point of view, two ways of developing the legislation on administrative responsibility in the context of solving the problem associated with "court jurisdiction" seem appropriate.

1. Revisiting the expediency of the very existence of mandatory "court jurisdiction" in the Code of Ukraine on Administrative Offences. Reorientation of the role of courts in proceedings on administrative offenses as an additional appeal instance (along with the administrative procedure of appeal);
2. Reconsideration of the expediency of finding a significant number of administrative offences subject to judicial review within the boundaries of administrative liability in view of the existing mandatory judicial procedure with broader guarantees of protection of the rights and freedoms of an individual and at the same time preserving the quality of promptness of criminal proceedings in the national legislation. In fact, it is a question of minimizing the statutory cases of judicial review of cases of administrative offenses.

Here are some examples. Thus, the current Code of Ukraine on Administrative Offences establishes the judicial order for consideration of cases with respect to committing the acts specified in part 2 of article 89 (cruel treatment of animals). Taking into account that the law provides administrative proceedings for the violations specified in part 1 of the above article (222 Code of Ukraine on Administrative Offences), and one of the possible punishments in part

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

2 is an administrative detention (art. 89) (which, as we have already found, requires a high level of guarantees), we consider it appropriate to criminalize this action by including the signs of disposition of part 2 of article 89 of the Code of Ukraine on Administrative Offences into a similar criminal offence, set out in article 299 (cruel treatment of animals) of the CC of Ukraine with the appropriate adjustment of the punishment. At the same time, for example, the decision on bringing to administrative liability for "*Contempt of court or the Constitutional Court of Ukraine*" (article 1853 of the Code of Ukraine on Administrative Offences), fairly lies exactly within the administrative liability and court jurisdiction, since the judge directly within the scope of court proceedings, in the course of which the offence is committed. At this, the act under examination does not possess a significant level of public danger, which is characteristic for its recognition as a criminal offence, and among the types of penalties, as in the above example, part 2 of the article also provides the administrative detention. In this case, as we have seen it, the solution lies in the plane of changing the approach to the legislator's definition of the list of types of punishment for administrative offenses provided for in part 2 of the article 1853. In addition, it should be noted that in respect of many compositions of administrative offences, which are currently considered in court, can be provided for administrative procedure of bringing to liability. The following can be singled out among such offences: Art. 155-1 (Violation of the order of payment); Art. 164-5 (Storage or transportation of alcoholic beverages or tobacco products, which do not have excise tax stamps of the established sample); Art. 189-3. (Illegal manufacture, sale or use of state assay stamps) and many others. Certainly, within the framework of this work we will not consider in detail each corpus delicate on the appropriateness of finding within the limits of the court jurisdiction an administrative type of liability. This is the topic of a separate study. Our goal was to demonstrate the basic principle and instrument of optimization.

CONCLUSION

Summarizing the above analysis of the transformation of the system of legal liability in Ukraine associated with changes in the legislative approach to the classification of criminal offenses, we note the following. As we have seen it, the primary objective in the introduction of the institute of criminal offenses was to humanize criminal liability, increase the guarantees of protection of rights and freedoms in criminal proceedings, optimization of the criminal justice system (and to some extent this has been achieved). However, it should be noted that the reform was actually conducted without taking into account all the features of the system of legal liability, which does not allow talking about its completion. Criminal infractions could and can nowadays become a real intermediate stage between a crime and an administrative offence, contribute to the solution of many gaps of the outdated Code of Ukraine on Administrative Offences. At the same time, without a corresponding transformation of administrative liability, the promising reform on the introduction of the category of criminal offenses risks remaining an inovation on the division of punishable acts into crimes (non-serious, serious, especially serious) and "*crimes of very low seriousness"* (criminal infractions). Lack of understanding of the presence of a close relationship between criminal and administrative liability in the mechanism of legal regulation, as well as the legislator's vision of the final result (type) of the transformed national model of legal liability, no willingness to address the issue comprehensively, with

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

simultaneous reforming all types of legal liability, does not allow providing qualitative improvement of legal regulation of the studied sphere of public relations. The modern approach to reform, which includes conceptual transformation without a conceptual and clear understanding of the place, tasks, role and scope of each type of legal liability, inevitably leads to the transfer of the process of Europeanization of Ukrainian legislation in the mode of permanent, with the need of constantly "*sticking plaster solutions*." We are convinced that the definition of theoretically justified directions of further development of legal institute is the primary and at the same time one of the central elements of the reform process of any sphere, including the sphere of legal liability.

Among the trends of development of the modern institute of administrative liability we see the following:

1. Defining a conceptual and holistic approach to the development of administrative liability before the start of conceptual legislative changes.
2. To revise the existing approach to the structure of the Code of Ukraine on Administrative Offences and its definitions of offences in favor of combining compositions that protect similar social relations and are characterized by the actual identity of the measure of punishment.
3. The solution to the problem of the existence of compulsory judicial order within the institute of administrative liability through either: a) revision of the expediency of the very existence of compulsory judicial order within the institute of administrative liability. Reorientation of the court's role in the proceedings on administrative offences as an additional appeal instance (along with the administrative procedure of appeal); b) minimizing the cases of compulsory judicial review of cases on administrative offences provided for in the Code of Ukraine on Administrative Offences by both criminalizing certain types of administrative offences to be considered by the court and replacing the judicial order for the administrative procedure of others. At the same time, some of the administrative offences currently being considered in court should be left unchanged.
4. Revising the appropriateness of the existence within the institute of administrative liability of atypical punishment measures, such as administrative detention, etc.
5. Optimization of administrative procedures for bringing to administrative liability, etc.imperfection and incompleteness of the constitutional provisions on determining the legal status of land resources, including the conceptual principles of land re-privatization, and violation of the principle of equality enshrined in the Constitution of Ukraine.

The effectiveness of legislation on land circulation and management in the field of land relations largely depends on the quality of the legislative process. Regulatory acts should ensure thesolution of a number of legal, economic, social and environmental problems, eliminate unfair and criminal schemes and machinations from the sphere of land relations, limit the concentration of land in private ownership, protect healthy competition, and promote equal land ownership by all citizens of Ukraine.

REFERENCES

Fedotova, G. V. (2016). Criteria of differentiation of a criminal offence from a crime and an administrative offence. *Scientific Bulletin of Uzhgorod National University. Series: Pravo, 38*(2), 91-94.

Holosnichenko, I. P. (2014). To the problem of the introduction of criminal infraction in Ukraine and its delimitation from an administrative offense. *Sociology Law, 1*(1), 80-83.

Krapyvnyi, E. (2017). Harmonization of the legislation on administrative liability with the EU standards and the

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11

practice of the ECHR: Report. *Information bulletin on the reform of law enforcement agencies in Ukraine.*

Krasnytsky, I., & Horpyniuk, O. (2019). Introduction of criminal offenses: Analysis of changes in legislation. *Criminal and criminal procedural legislation in the context of the reform of criminal justice: Materials of the scientific and practical seminar.* Lviv State University of Internal Affairs.

Kurylo, O., & Bilya, S. (2010). Failures of legal regulation of court proceedings on administrative offences. *The Bulletin of the Supreme Court of Ukraine. - No. 8,* 43-48.

Law of Ukraine. (1984). *Code of Ukraine on administrative offences No. 8073-X.* Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10#Text

Law of Ukraine. (1991). *Recommendation No. R (91) 1 of the Committee of Ministers of the Council of Europe to member states concerning administrative sanctions.* Retrieved from http://pravo.org.ua/files/zarub_zakon/Rec_1991.pdf

Law of Ukraine. (2013). *Criminal procedure code of Ukraine No. 4651-VI.* Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text

Law of Ukraine. (2019). *On introduction of the amendments to certain legislative acts of Ukraine on the simplification of pre-trial investigation of certain categories of criminal offences No. 2617-VIII.* Retrieved from https://zakon.rada.gov.ua/laws/show/2617-19#Text

Legislation. (1976). *Decision of the European court of human rights in the case of Engel and others v. the Netherlands (Application No. 5100/71).* Retrieved from: http://search.ligazakon.ua/l_doc2.nsf/link1/SO2825.html

Legislation. (2010). *Decision of the European court of human rights in the case of Gurepka v. Ukraine (N 2) (Application No. 38789/04).* Retrieved from: http://zakon5.rada.gov.ua/laws/show/974_565

Legislation. (2016). *Decision of the European court of human rights in the case of Karelin v. Russian Federation. (Application No. 926/08).* Retrieved from: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB002&n=480232#09991467599028334

Tatsiy, V. Y., Hetman A. P., & Baulin Y. V. (2019). Conceptual bases of the new revision of the criminal code of Ukraine. *Materials of the International Scientific Conference October 17-19, Kharkiv*, 500.

Tatsiy, V.Y, Tyutyugin, V. I., Kaplina, O. V., Shylo, O. G., & Harashchuk, V. M. (2017). Basic conceptual framework of the draft law on amendments to certain legislative acts of Ukraine regarding the introduction of the institute of criminal infractions. *Bulletin of the Criminal Law Association of Ukraine, 2*(9), 301-315.

Citation Information: Haraschuk, V., Matyukhina, N., Zui, V., & Ihnatchenko, I. (2021). Revisiting the development of the institute of administrative liability of Ukraine in the light of changes in the model for the classification of criminal offences. *Journal of Legal, Ethical and Regulatory Issues, 24*(S5), 1-11