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PECULIARITIES OF ADMINISTRATIVE LIABILITY FOR VIOLATION OF INTELLECTUAL PROPERTY LEGISLATION

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INTRODUCTION

An integral part of public administration in the field of intellectual property is the establishment of administrative liability for the commission of relevant administrative offenses and ensuring the implementation of its activities. The reason for the allocation of administrative liability for violations of legislation in the field of intellectual property are those processes that take place in the material and spiritual life of society. Objectively, the need to overcome the current stage of development of the domestic community of violations of intellectual property rights is due primarily to the need to ensure the legitimate rights and interests of the owners of these rights, as well as the creation of conditions for the development of the Ukrainian economy, compliance with the law on fair competition in entrepreneurship and the promotion of intellectual creative work. Indeed, in order for intellectual property to really play a significant role in the life of society and ensure its development, a reliable system of its legal protection, including administrative and legal protection, and effective protection is necessary. We are confident that the problem of administrative liability for violating intellectual property rights in modern conditions requires a deeper, more comprehensive, complex and comparative analysis in order to identify its features. That is why in Ukraine there is an urgent need for urgent use of both legislative and enforcement measures for the creation of a holistic effective system of protection and protection of intellectual property, an important place in which administrative coercion is called for and one of its types – administrative liability for violating the legislation in the field of intellectual property.

We are convinced that the urgency of issues related to the development of conceptual foundations of administrative liability for violating the legislation in the field of intellectual property is not in doubt. Moreover, the role of administrative liability in Ukraine in recent years has increased significantly. This, as rightly noted in the legal literature, was

the consequence, first of all, of the nature of the criminal policy of our state, associated with the decriminalization of certain criminal acts and their transfer into administrative offenses. Moreover, creating a market economy and building a legal democratic state radically change socio-economic relations in Ukraine, the role and significance of many social and legal institutions.

1. Administrative offense in the field of intellectual property as the basis for administrative liability

The basis for the use of administrative liability for violation of intellectual property rights is a homogeneous group of administrative offenses – administrative offenses in the field of intellectual property. They have similar features that stem from the features of the sphere of human life in which they are committed, allowing them to be distinguished from other offenses. We believe that without a clear understanding of the concept of an administrative offense in the field of intellectual property, effective solution of the tasks of public administration in the field of intellectual property will be impossible.

Art. 9 of the Code of Ukraine on Administrative Offenses (hereinafter – CUAO) defines an administrative offense as an unlawful, guilty (intentional or negligent) act or omission that infringes on public order, property, rights and freedoms of citizens, on the established procedure of management and for which the law provides for administrative liability[1]. Objective signs of an administrative offense are its social harm, wrongfulness and punishment, and subjective – guilty and subjectivity.

The first significant feature of administrative offenses in the field of intellectual property is their social harm, which consists in violating the right of intellectual property and causing damage (material and non-material) or creating the threat of causing it to subjects of those social relations that have developed over the use of the results of intellectual creative activity and are protected by the law on administrative liability. The public harm of an administrative offense means that it is harmed by certain social relations, which are protected by legal norms: state and public order, property, rights and freedoms of citizens, established procedure of administration. This damage can be either material or

[1] Кодекс України про адміністративні правопорушення : Закон України від 7 грудня 1984 р. № 8073-X. URL.: http://www.zakon.rada.gov.ua/go/80731-10.

otherwise (moral, organizational, etc.). The action or inaction of the subject causes or threatens to cause damage to the objects of administrative and legal protection, in this case it is an infringement of the right of intellectual property, for example, to the right of authorship or the right to a trade mark (a sign for goods and services). Public harm in these cases is an objective feature of such offenses and a real violation of the relations of intellectual property rights, representing "the destruction of social in the object of the misdemeanor – the relationship of rights to objects of intellectual property" [2].

Wrongfulness, as a sign of an administrative offense in the field of intellectual property, implies a direct reference to this in the law. Administrative wrongfulness is closely linked to social harm and is an objective manifestation of the actual harmfulness of an act for public relations in the field of intellectual property and its legal assessment[3]. Exemption of administrative wrongfulness as a mandatory feature of an administrative offense is a concrete expression of the principle of legality in administrative law, since only the person who committed a socially harmful act is subject to administrative liability.

Another mandatory feature of administrative offenses in the field of intellectual property, which appears at the time of the commission of the offense and reflects its internal psychological content, is the presence of guilt. Thus, an administrative offense is not only socially harmful, illegal, but also a guilty act, that is, that which is the result of the manifestation of the will and mind of the offender. Guilty involves the presence of a person's own mental attitude to the relevant act and its consequences[4]. An important legal significance are the forms of guilt. Acting intentionally, the perpetrator realizes the unlawful nature of his/her act, foresaw and wishes (direct intent) or knowingly admits (implicit intent) the onset of harmful consequences. An administrative offense may be committed by negligence.

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[2] Селіваненко В. В. Форми порушення та захист прав суспільства на об'єкти інтелектуальної власності у сфері охорони здоров'я. *Часопис Київського університету права.* 2013. № 3. С. 223–228. С. 223.

[3] Письменський Є. О. Реалізація кримінально-правової політики шляхом криміналізації та декриміналізації: аналіз поточних законодавчих ініціатив. *Часопис Київського університету права.* 2015. № 1. С. 230–234. С. 231.

[4] Венгер Ю. В. Вина як суб'єктивна підстава адміністративної відповідальності юридичної особи за вчинене правопорушення у сфері стандартизації. *Науковий вісник Міжнародного гуманітарного університету. Серія : Юриспруденція.* 2015. Вип. 13(1). С. 85-87. С. 85.

An important feature of an administrative offense in the field of intellectual property is its administrative punishment, which is understood as the threat of the use of punishment for this offense, as appropriate, contained in administrative and legal sanctions. A specific act may be recognized as an administrative offense only if the law provides for administrative liability for its commission[5]. Administrative misconduct is characterized by an internal sign – wrongfulness.

Thus, the state of administrative punishment is a measure of administrative prevention, since it does not entail negative consequences for the offender, but only serves as a preventive function.

Without an administrative sanction it is impossible to fight against any offenses[6]. However, this does not mean that the non-punitive sanction must necessarily be imposed to a person who committed an act formulated in the disposition of a particular article. A person recognized as an offender may be exempted from administrative liability. In some cases, the presence of all signs of an administrative offense in an act of a person does not mean that this act automatically entails the administrative liability provided by the CUAO. Penalty as a sign of administrative offense is stipulated by the sanction of Art. 51-2 of CUAO in the form of a specific type of penalty: fine and confiscation of illegally manufactured products and equipment and materials intended for its manufacture. In some cases, especially in cases of extreme necessity, the presence of all signs of an administrative offense may not entail the emergence of administrative liability. With regard to intellectual property, the extreme need may be manifested in the following cases: in the case of the use of a patented formula of the invention without the consent of the patent holder for the creation of a medicinal product necessary for the preservation of human life and health (groups of people). At the same time, urgency does not allow using procedures for obtaining a permit from a patent holder or a compulsory license.

And the last sign of this type of administrative offenses is their subjectivity. Administrative offenses in the field of intellectual property are acts committed by the actor of the offense, since not every person who has committed a socially harmful administrative offensive act is subject to

[5] Чишко К. О. Адміністративно-правова кваліфікація та кваліфікація адміністративного правопорушення (проступку): поняття, ознаки, передумови. *Вісник Харківського національного університету внутрішніх справ.* 2015. Вип. 3. С. 150–158. С. 153.

[6] Колпаков В. К. Фактичні ознаки та юридичний склад адміністративного проступку: поняття та розмежування. *Вісник Запорізького національного університету. Юридичні науки.* 2016. № 3. С. 160–70. С. 165.

administrative liability[7]. He/she must be aware of her actions and manage them, reach a certain age, and so on. The notion of subjectivity of administrative offenses in the field of intellectual property is important in the context of the development of the theory of administrative misconduct, the improvement of administrative and jurisdictional activity to prevent them, as well as ensuring the coherence of administrative coercion with the nature of the relevant offenses.

The legal characteristic of the subjectivity of administrative offenses in the field of intellectual property allows to determine the socio-legal essence of their subjects, to identify the causes and conditions that promote the development of administrative delicacy in the field of intellectual property[8], after all, the correct definition of the legal status of the actor of this administrative offense, the establishment of a level and directions of his/her professional training, social, property status, as well as personal interests and preferences contributes to a complete and objective assessment of administrative offenses committed by members of relations in the field studied.

The peculiarity of administrative legislation on intellectual property is that its rules provide for administrative liability for the commission of illegal actions on intellectual property objects, as well as the protection of property interests of subjects of intellectual property right whose rights are violated by such actions. Due to the fact that legal relations regarding certain objects of intellectual property are regulated by special laws, in the conduct of an administrative case, it is necessary to follow the provisions of that special law, which provides protection of personal non-property and property rights of authors and their successors, as well as rights of performers, producers of phonograms and videograms and broadcasting organizations and inventors' rights.

Thus, in order to qualify for an administrative offense in the field of intellectual property, it is necessary to have clearly expressed its features. From a practical point of view, there is a more detailed regulation of the range of objects in respect of which the offenses are committed and for which the offense subject is administratively liable. In connection with

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[7] Фролов О. С., Васильєв І. В. Зміст та обсяг концепту «суб'єкт адміністративного правопорушення». *Держава і право. Юридичні і політичні науки.* 2014. Вип. 66. С. 105–117. С. 107–108.

[8] Світличний О. П., Слюсаренко С. В., Тандир О. В. Захист прав суб'єктів права інтелектуальної власності адміністративним законодавством : монографія. Київ : НУБіП України, 2015. 181 с. С. 91.

offenses that violate intellectual property objects, one can identify a range of issues in relation to which human rights activities are carried out. First of all we are talking about disputes related to the refusal to issue security document on third party's objections regarding its issuance, security document invalidation etc. Typically, these issues are resolved administratively or in court. They are considered in specially created entities of public administration, which are responsible for the protection and enforcement of intellectual property rights. Such entity is the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine, and in particular its body, which resolves disputes related to issuance of security documents and their invalidation – Appeals Chamber.

2. Legal structure of administrative offenses in the field of intellectual property

All warehouses of administrative violations in the field of intellectual property (Articles 51-2, 107-1, 156-3 (in part concerning intellectual property objects), 164-3, 164-6, 164-7, 164-6, 164-7, 164-6, 164-7, 8, 164-9, 164-13) are characterized by such elements as objective evidence (they are the totality of the generic object and the objective side of the composition of these administrative offenses), as well as subjective features (a set of relevant entities and the subjective side).

Characteristics of the objective signs of the composition of administrative offenses in the field of intellectual property should begin with the disclosure of their generic object – what the offender perpetrators and why it causes or may cause harm. The legislator placed the stocks of these socially harmful acts into three different chapters (6, 9 and 12) of the law on administrative liability. But it is obvious that the generic objects of the administrative offenses listed in Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9, 164-13 CUAO go beyond the boundaries of the generic objects of the administrative offenses encroachment on property (Article 51-2), administrative offenses in agriculture and violations of veterinary and sanitary rules (Article 107-1) and administrative offenses in the field of trade, public catering, sphere services, branches of finance and entrepreneurial activities (Articles 156-3 (in so far as they relate to intellectual property objects), 164-3, 164-6, 164- 7, 164-8, 164-9 and 164-13).

In our opinion, these administrative offenses have their own unique generic object – public relations of intellectual property taken under the protection of the law on administrative liability.

The objective side of the warehouses of administrative offenses in the field of intellectual property is a set of features that characterize the violation of intellectual property rights as an outwardly expressed behavior. In particular, the unlawful act in Art. 51-2 CUAO is defined as "illegal use of the object of intellectual property rights (literary or artistic work, their performance, phonograms, transmission of broadcasting organization, computer program, etc.), assignment of authorship to such object or other intentional violation of rights on the object of intellectual property rights".

In the CUAO, illegal acts in the field of intellectual property are defined as "violation of rights" (Article 51-2), "violations of requirements established by law" (Article 156-3), "unfair competition" (Article 164-3), "violation conditions" (Article 164-7), "illegal distribution" (Article 164-9), "violation of the law" (Article 164-13). An analysis of the dispositions of the aforementioned articles convinces that administrative offenses can be committed by action, but since the wording "another intentional violation" (Article 51-2) contains an inexhaustible list of acts, the question arises about the possibility of committing these offenses and by way of inaction[9].

In the disposition of the articles under investigation, the domestic legislator, using the notion of "illegal use", as well as illegal "demonstration", "distribution", etc., reveals their content without mentioning a complete or even partial list of those unlawful actions that should be considered illegal. In order to find out the same meaning mentioned in the above-mentioned Articles of the Code of Conduct, the concepts of characterizing unlawful acts should necessarily refer to the corresponding special laws. At the same time, it must be taken into account that for each group of objects of intellectual property the legislator establishes the appropriate types of violations. Thus, ways to violate the rights to the results of literary and artistic activities are specified in the laws "On Copyright and Related Rights" and "On the Distribution of Copies of Audiovisual, Phonograms, Videograms, Software, Databases". Regarding

[9] Самбор М. А., Самбор А. М. Інші та подібні дії як елемент складу адміністративного правопорушення та його вплив на кваліфікацію діяння як адміністративного проступку. *Науковий вісник Дніпропетровського державного університету внутрішніх справ.* 2014. № 3. С. 143–160. С. 151.

the results of scientific and technical creativity, the possible violations of their rights are fixed in the laws “On the Protection of Rights to Inventions and Utility Models”, “On Protection of Rights to Industrial Designs”, “On Protection of Rights to Integrated Circuits’ Topographies”, “On Protection of Rights on plant varieties”,“On tribal affairs in animal husbandry”. Ways of unlawful use of the results of individualization of goods (services) and their producers are regulated by the laws of Ukraine “On the protection of rights to marks for goods and services” and “On the protection of rights to indicate the origin of goods.”

The analysis of the relevant articles of the special laws on the protection of intellectual property rights leads to the conclusion that the objective side of the composition of administrative offenses in the field of intellectual property is not limited to the acts specified in the law, but should be taken in the broader sense, which causes certain difficulties in their practical use. The legislator left an open list of possible violations of intellectual property rights, which allows for the use of these articles in various factual circumstances of the commission of administrative offenses. It is also evident that in practice the violation of the intellectual property rights of different objects has different economic, social and legal consequences, and therefore the degree of their social harm is different. On this basis, there is a need for differentiation of administrative liability depending on the object of intellectual property.

Subjective features of the composition of administrative offenses in the field of intellectual property (Articles 51-2, 107-1, 156-3 (in so far as they relate to intellectual property objects), 164-3, 164-6, 164- 7, 164-8, 164-9 and 164-13 of the CUAO) represent the unity of the actor and the subjective side, and their specificity is determined by the peculiarities of the actor of these offenses, elements of which are various objects of intellectual property actively used in economic activity by enterprises and organizations.

The current administrative law does not provide a general definition of the actor of an administrative offense and does not use such a term. The analysis of the relevant articles of the CUAO, including illegal acts in the field of intellectual property, allows us to conclude that it is a convicted person who has reached a certain age and fulfilled the part of the administrative offense described in the law.

It should be noted that the current CUAO recognizes the actor of the misdemeanor solely an individual. This, in particular, is evidenced by normatively fixed features. Yes, Art. 12 of the CUAO sets the age after

which the administrative liability comes (16 years); Art. 20 of the CUAO provides for the obligatory sign of the actor of his/her sanity; Art. 33 of the CUAO requires, when imposing a penalty, to take into account the offender's personality; Art. 256 of the CUAO requires that the protocol on administrative offenses compulsorily contain information on the identity of the offender, and also indicates the obligation of the offender to sign the protocol; Art. 268 of the CUAO establishes for those who have committed misconduct, the right to speak in their own language, etc.

It is hard to imagine that the listed rates are for legal entities. Moreover, Art. 27 of the CUAO determines that a fine is a monetary fine imposed on citizens and officials for administrative offenses. Analyzing the peculiarities of the administrative liability of individuals, one can distinguish the following types of actors of the administrative offense: general, special and special.

The second subjective feature of the composition of administrative offenses in the field of intellectual property is their subjective aspect, which, by the science of administrative law, is defined as the internal part of administrative offenses, which encompasses the mental attitude of the person to the socially harmful act that it is committed and its consequences[10]. The subjective part, in turn, has mandatory and optional features. A compulsory sign of the subjective part of administrative offenses is the fault. The practical significance of its finding in administrative offenses in the field of intellectual property is the need to prove the deliberate infliction of damage to the right of intellectual property, and the analysis of the disposition of these articles allows us to conclude that there is an unconditional deliberate violation of intellectual property rights. Intention can be direct (when the person was aware of the socially harmful nature of his/her act, envisaged its socially harmful consequences and wished for their onset), or indirect (if the person was aware of the socially harmful nature of his/her act, envisaged its socially harmful consequences, and although he/she did not want it, he deliberately assumed their offensive). Consequently, the guilty person during the violation of intellectual property rights realized that he/she illegally used objects of intellectual property rights, assigns authorship to them or otherwise

[10] Мельничук Н. Ю., Сьома М. Еволюція категорій правопорушення та адміністративна відповідальність. *Наукові записки Львівського університету бізнесу та права.* 2014. № 12. С. 60–64. С. 60.

violates the right of intellectual property, envisaged the possibility of pecuniary damage and wished or tolerated such consequences.

Optional features of the subjective part of the administrative offenses in the field of intellectual property are the motive and purpose of the guilty person. It should be noted that the motive and purpose of violation of intellectual property rights in the dispositions of Art. Art. 51-2, 107-1, 156-3 (insofar as it relates to intellectual property objects), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO by the legislator provided, and therefore they are not obligatory signs of these administrative offenses and do not affect their qualification. We support the opinion of some researchers that a violation of intellectual property rights may come from various but necessarily mercenary motives: profit, appointment, for glory, etc. For example, plagiarism may be carried out in order to enter into a creative union, defend a dissertation, etc.

That is, the guilty person in violation of intellectual property rights realized that he illegally uses objects of intellectual property rights, assigns authorship to such objects or otherwise deliberately violates the rights to intellectual property objects, envisaged the possibility of causing pecuniary damage and wished or allowed these consequences[11]. Forecast of socially harmful consequences means the presentation of the guilty person, at least in general terms, about the harm that will be caused by his/her actions. For example, in the manufacture of counterfeit printed products, the guilty person may not know exactly who and in what size the damage does. If the necessity of only knowing about an act is indisputable, the actor may treat carelessly the consequences of this offense.

Thus, mandatory indications of administrative offenses in the field of intellectual property are their social harm (it is manifested in causing harm to or in the creation of the threat of public relations in the field of intellectual property), administrative unlawfulness (illegal lawfulness of illegal acts in the field of intellectual property, enshrined in the law on administrative liability), punitive (the threat of administrative influence imposed by the law on administrative liability for the commission of such an administrative offense) and subjectity (commitment of an unlawful act by the actor of an administrative offense in the field of intellectual property).

[11] Шоптенко С. С. Зміст і стадії провадження в справах про адміністративні право порушення. *Науковий вісник Харківського державного університету. Серія : Юридичні науки.* 2017. Випуск 5. Т. 2. С. 74–77. С. 75.

3. Mechanism of realization of measures of administrative liability for infringements in the field of intellectual property in Ukraine

The implementation of administrative liability for violations in the field of intellectual property is carried out in the form of enforcement, that is, the power of authorized agents, which consists in applying administrative law to specific facts of committing legally significant actions. In this case, enforcement involves the implementation by the authorized state authorities and officials of the actions foreseen by law to bring the perpetrators of intellectual property offenses to administrative liability.

Analysis of the current legislation allows us to speak about the existence of two types of proceedings in cases of administrative violations in the field of intellectual property: the use of administrative penalties to individuals under the rules of the CUAO and the use of administrative penalties to legal entities, which the CUAO is not regulated. And if the use of administrative penalties to individuals, despite the existence of certain legal gaps, is still regulated in detail by the CUAO, then the imposition of penalties on legal entities is unsystematized. Moreover, the use of penalties for violation of different legal norms has, accordingly, some differences in the order of imposing penalties. However, for the above-mentioned groups of subjects of administrative offense, proceedings concerning such offenses have certain common features. Therefore, the following stages of the proceedings in cases of administrative violations are traditionally distinguished: a violation of an administrative offense; consideration of a case concerning an administrative offense and ruling-making; appeal and appeal against a ruling on an administrative offense; execution of a ruling, imposing of administrative penalty[12].

Such system of stages is also inherent in proceedings in administrative offenses in the area of intellectual property, taking into account the specifics of the syllables of the corresponding administrative offenses.

The first stage – the prosecution of an administrative offense in the field of intellectual property – consists of three following stages: the official registration by the authorized body (official) of the actual data on the violation of intellectual property rights, the official activity of the authorized bodies to clarify the circumstances of the offense and drafting the protocol. Much of the researchers agree with the fact that the initial

[12] Шоптенко С. С. Зміст і стадії провадження в справах про адміністративні право порушення. *Науковий вісник Харківського державного університету. Серія : Юридичні науки.* 2017. Випуск 5. Т. 2. С. 74–77. С. 75.

stage of proceedings in administrative offenses is in existence. In the opinion of the aforementioned authors, the first stage of proceedings in cases of administrative offenses begins with the drafting of the protocol and is called the stage of initiation of a case concerning an administrative offense. The second stage of the stage of infringement proceedings in cases of violations in the field of intellectual property is related to the official activities of authorized agents to clarify the circumstances of the offense. It is often associated with the use of administrative-procedural safeguards.

The second stage – the consideration of the case on an administrative offense in the field of intellectual property – is aimed at analyzing the actions conducted by a judge within the specified stage for solving the tasks of proceedings in cases of administrative violations in the field of intellectual property. At this stage, there are four stages that have specific goals and objectives and are characterized by a certain logical sequence and completion: preparation for consideration of the case; substantive consideration of the case; making and execution of a ruling in a case; announcement of the ruling. According to Art. 221 CUAO, cases on administrative offenses, stipulated by Art. Art. 51-2, 107-1; 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO are considered by the court. That is why, after the completion of the first stage of writing the minutes for the case materials in the manner specified in Art. 257 of the CUAO are sent for further consideration to the relevant court.

At the first, preparatory stage, the judge, to whom the case has been received, clarifies the issues specified in Art. 278 of the CUAO: whether it belongs to the competence of the consideration of the case (as chapter 17 of the CUAO review of cases on administrative offenses within the jurisdiction of 46, the validation of determining jurisdiction is important for the timely and proper resolution of each case); whether the protocol and other materials of the case about an administrative offense have been correctly drawn up (improper registration of the protocol on violation of the rights to the object of intellectual property and other materials of the case testifies to insufficiently complete investigation of the event of the offense and the person who committed it).

One of the main procedural documents when considering a case about an administrative offense, including violation of rights to an object of intellectual property rights, is a protocol. Practice shows that often the cases are without persons brought to administrative liability, they have no data on call witnesses and victims, violated the terms of consideration, not

specified information about physical evidence, possible disqualification and rejection, denial person being imposed to administrative proceedings or his/her representative or counsel. All this results in the loss of information that may be of importance to the supervisory authority in verifying the correctness of the ruling made by the court.

The adoption of one of the resolutions provided for in Part 1 of Art. 284 of the CUAO is the culmination of the stage of consideration of a case[13]. A resolution on imposing an administrative penalty shall be made in the event that the materials of the case prove the guilt of a person in committing an administrative offense, unless there are circumstances that exclude administrative liability and there are no grounds for dismissing a person from administrative liability. Determination of the type of penalty is carried out within the limits established by Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, in exact compliance with the legislation on administrative violations and taking into account the principles of legislation on administrative offenses. In particular, for violation of intellectual property rights by the legislator in the sanction of Art. 51-2 of the CUAO provides for the imposition of a fine of ten to two hundred non-taxable minimum incomes of citizens with the confiscation of illegally manufactured products and equipment and materials intended for their manufacture. The disadvantage of the practice of imposing fines on this category of cases is the lack of a methodology for calculating the amount of fines for violation of the rights to the object of intellectual property.

The significance of the resolution to impose administrative penalties is due to the fact that this act occupies a special place among the acts issued in the course of proceedings. It is the decision that implements the judge's resolution to enforce the penalty. The resolution to impose an administrative penalty generates legal obligations both for the offender and for the state authorities regarding its implementation.

In the end, the final stage of this stage is the announcement of the ruling[14]. It should be noted that in practice, only the resolution part of the

[13] Михайлов Р. І. Окремі питання удосконалення законодавства щодо виконання постанов про накладення адміністративних стягнень. *Проблеми правознавства та правоохоронної діяльності.* 2015. № 1. С. 22–27. С. 23.

[14] Строцький Р. Є. Поняття та особливості провадження щодо виконання постанов у справах про адміністративні правопорушення. *Науковий вісник Львівського державного університету внутрішніх справ. серія юридична.* 2014. Вип. 3. С. 175–187. С. 180.

resolution is rarely announced, which is a violation of the norms of Art. 285 of the CUAO because it should be announced in full immediately after the case is completed. It is also necessary to conduct all procedural actions provided for by the administrative law.

One of the tasks of the proceedings in cases of administrative offenses, stipulated by Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, is identifying the causes and conditions conducive to the commission of these offenses. The court, when considering a case about an administrative offense in the field of intellectual property, establishes the specific reasons and conditions that facilitate the commission of the said offenses and makes a request to the relevant organizations and officials to take measures to eliminate these reasons and conditions.

At the next stage – the stage of reviewing the rulings in the case of administrative violations in the field of intellectual property – an analysis of procedural actions aimed at restoring the violated rights of protected citizens is marked by the optional nature of this stage of proceedings in cases of violation of intellectual property rights.

The reason for the revision of the ruling in the case is Art. 55 of the Constitution of Ukraine, which guarantees every person the right to appeal to the relevant authorities and to appeal against decisions and actions of state authorities. The implementation of these constitutional norms in the legislation is carried out through the creation of special procedural institutions, among others, and the stage of reviewing the rulings adopted in the administrative proceeding.

The final stage of proceedings in cases of administrative offenses, stipulated by Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, is the stage of execution of the resolution on imposing an administrative penalty, the general provisions of which are laid down in Section V of the CUAO. Its tasks in relation to this category of cases are to ensure the implementation of the issued resolution, protection of legal rights and interests of individuals and legal entities in the field of intellectual property, prevention of administrative offenses provided for in Art. Art. 51-2, 107-1, 156-3 (insofar as it relates to intellectual property objects), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, and crimes stipulated by art. Art. 176, 177, 203-1, 229, 231 and 232 of the Criminal Code of Ukraine (the last two articles in relation to illegal gathering for the purpose of use or use, as well as disclosure of information

constituting commercial secrets). During this stage, the specific administrative-procedural legal relations, which differ from the legal relations characteristic of other stages, the object and the subject structure, are drawn up.

For violation of the rights to the object of intellectual property rights, the basic penalty is a fine. Art. 27 of the CUAO defines a fine as a cash penalty. The disadvantage of the practice of applying fines to this category of cases is the lack of a methodology for calculating fines for violating intellectual property rights. The legislator has set the following limits for the amount of fines: from ten to two hundred non-taxable minimum incomes of citizens – but under what circumstances one or another amount applies, what factors influence its size is not clear. Note that the actor of the offense provided for in art. 51-2 of the CUAO, may be both an individual and an official – and, of course, an official should be punished more severely than a physical one. It should be noted that even in the Criminal Code of Ukraine the amounts of fines are differentiated. Therefore, in our opinion, the position of T. O. Kolomoyets, who suggests in the perspective administrative legislation to provide a differentiated approach to determining the amount of fines depending on the person to whom it is imposed: for individuals, for officials and individuals-business entities, for legal entities[15].

CONCLUSIONS

The establishment of administrative liability for the commitment of administrative offenses in the field of intellectual property is an integral part of public administration, since the successful resolution of the problem of administrative and legal protection of intellectual property rights depends not only on the effectiveness of the implementation of the tasks of public administration in this area, but also on the preservation and enhancement of intellectual capital of our country, the growth of its international authority, the degree of development of its civilization, and in the end, and the level of democracy in Ukrainian society. Administrative liability for violation of the rights to the object of intellectual property rights can be defined as the implementation of an administrative-legal sanction, which appears in the imposition by the

[15] Коломоєць Т. О. Адміністративно-процесуальне право – самостійна галузь національного права (в аспекті пошуку нової моделі предмету адміністративного права України). *Публічне право.* 2016. № 1. С. 27–34. С. 28.

court to the guilty person who committed an administrative offense in the field of intellectual property, the punishment provided by the CUAO, in accordance with the procedure established by law. The only generic object of these administrative offenses is a group of social relations of intellectual property, which are protected by the law on administrative liability. The subject of this group of public relations are objects of intellectual property. Subjective features of administrative offenses of this group are represented by their actor, and the subjective side is characterized by the fact that they are committed only intentionally.

Traditionally they distinguish the following stages of proceedings on administrative offenses: initiation the case of an administrative offense (it consists of three stages: official registration by the authorized body (official) evidence of infringement of intellectual property rights, the official activities of the competent authorities to find out the circumstances of the offense and drafting a protocol); proceedings on administrative violations and taking action (at this stage should be divided into four stages: preparation for trial; the merits, making and execution of ruling, announcement of the ruling); appeal and protest against a ruling on an administrative offense; execution of a ruling, imposing of administrative penalty.

SUMMARY

The article deals with description of peculiarities of administrative liability for violation of legislation in the field of intellectual property. The definition of administrative liability for violation of intellectual property rights has been proposed. The basis of use of administrative liability for violation of intellectual property rights has been established. The composition of administrative offenses in the field of intellectual property and their objective and subjective features have been determined. The unique generic object of these administrative offenses has been disclosed. The objective signs of administrative offenses in the field of intellectual property have been singled out. Subjective signs of administrative violations of this group have been studied. The essence of the mechanism of realization of administrative liability for infringements in the field of intellectual property is established and the stages of proceedings in cases of administrative violations in the field of intellectual property have been established: the initiation of a case concerning an administrative offense; hearing the case about an administrative offense and a ruling (preparation for hearing case, hearing the case in fact, the

making and execution of a ruling in a case, the announcement of a ruling); appeal and protest against a ruling on an administrative offense; execution of a ruling, use of administrative penalty.

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