

PRECONDITIONS OF ADMINISTRATIVE RESPONSIBILITY: DOCTRINAL ISSUES

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Abstract. A thorough analysis of liability for administrative offence is not possible without clear understanding of its preconditions. The problem of preconditions for administrative responsibility is directly related to administrative delictization of offenses, effectiveness of the fight against delict, prominent state policy in the field of law enforcement and law order. In this aspect, the role of the preconditions for administrative responsibility is a lot more important because they formulate proper foundations for achieving its general objectives. Thus, they determine the effectiveness of administrative responsibility at sectoral and general social levels. The importance of the definition is due to the urgent needs of rule-making and law enforcement practice, the effectiveness of which directly depends on how reasonable and appropriate each administrative delict norm is. Unfortunately, despite all its scientific and practical significance, the issue of preconditions for administrative liability has not been resolved yet. Therefore, there is a need to form unified, consistent scientific approach to understanding the grounds for administrative liability. To this end, the article provides a critical analysis of the basic doctrinal concepts of the preconditions of administrative responsibility. A wide range of social, economic, technical and other factors that determine the effectiveness of administrative responsibility, its current state, its dynamics and prospects for its development have been studied. Discovered the role of these factors in creating a favorable socio-economic and information-technical environment for the implementation of the main tasks of administrative responsibility, in particular: offences prevention, reliable protection of public relations and education of citizens in the spirit of law. The author concluded the scientific and practical expediency of the systematic study of the preconditions for establishing administrative responsibility (preconditions for administrative delictization) and the preconditions for the effectiveness of administrative responsibility.

Keywords: preconditions delict, administrative offense, administrative responsibility, the grounds of administrative responsibility, administrative delictization.

INTRODUCTION

A comprehensive consideration of liability for administrative offenses cannot be carried out without clear definition of its preconditions. The effectiveness of administrative liability (both at the level of application of certain administrative delict norms and at the level of the administrative law institution) depends on many preconditions, starting with the quality of legislation and ending with the level of authorized jurisdiction objects training.

The question on preconditions of liability for administrative offenses are closely related to the issues of rule-making, law enforcement, judicial proceedings, control, supervision, as well as executive and administrative activities. Their importance is stipulated by the huge social importance of such tasks like „protection of the rights and freedoms of citizens, property, constitutional order of Ukraine, rights and legitimate interests of enterprises, institutions and organizations, law and order, strengthening the rule of law, crime prevention, educating citizens in the spirit of precision and strict observance of the Constitution and Laws of Ukraine, respect for the rights, honor and dignity of other citizens, the rules of coexistence, conscientious performance of their duties, responsibility to society” (see: Article 1 of the Code of Ukraine on Administrative Offenses – hereinafter: CUonAO). Influencing the effectiveness of administrative and legal protection of wide range of public relations, they determine the objective state of functioning and development in many spheres of public life. Unfortunately, despite their undeniable importance, the issues of preconditions for liability of administrative offenses remain unexplored.

LITERATURE REVIEW

It would seem that the gap within the legal regulation of the preconditions for administrative responsibility should be filled by a doctrinal concept based on the compromise of scientific opinions and consolidated position of the legal community. However, indeed this is not the case at all. In the theory of administrative law there is no single approach to understanding the preconditions of administrative liability, their content and classification. Moreover, a huge breadth characterizes the palette of scientific views on the preconditions of administrative responsibility. Some few of other administrative and legal phenomena have received such a large number of contradictory definitions, assessments and interpretations by the lawyers of today. Either some few other concepts are interpreted so differently through reference, educational and scientific literature.

For example, in the context of analysis of special features of the subject of administrative delict A. Sydoruk formulated the thesis that “the main prerequisite for the onset of administrative liability of a person who has committed a harmful act is reaching a certain age (Sydoruk, 2018). From our point of view, this thesis can hardly be considered as completely justified. Even if we consider the preconditions of administrative liability at the level of a single offense, the age of the offender can be attributed to them under no circumstances. After all, in the theory of administrative law, reaching the age of administrative responsibility is recognized as mandatory feature of the offense and integral part of its legal structure. The absence of this feature excludes the possibility of qualifying the offense as an administrative

delict, hence the possibility of bringing a person to administrative responsibility. Therefore, reaching a certain age is direct condition of liability for administrative offense.

Instead, the preconditions in the domestic dictionary literature are understood as “a condition that must be fulfilled before other things can happen or be done” (Oxford, 2010) and “preconditions of existence, origin, functioning, etc. of something” (Busel, 2005). Taking into account this way of understanding, the age of the offender cannot be considered as precondition for administrative liability. Reaching a certain age does not establish preliminary, favorable conditions of liability for the offense committed by him. In fact, it is a direct and necessary condition for its occurrence.

For the same reason, it seems impossible to agree with K. Godueva and K. Chumak, according to whom, precondition of liability for an administrative offense, should be considered as follows: “determined fact of committing offense (predicate act)” (Godueva and Chumak, 2017). It is quite obvious that in this case the predicate act is being constructive (read an integral) feature of the objective side of administrative offense. The commission of such an act is necessary condition for the qualification of administrative offense. In other words, the predicate act does not promote administrative liability and does not create favorable circumstances for it. It is a direct factor in its occurrence, without which the responsibility is impossible.

1. BASIC APPROACHES TO UNDERSTANDING THE PRECONDITIONS OF ADMINISTRATIVE LIABILITY

The following examples clearly illustrate wide diversity and divergence of scientific views on the phenomenon of preconditions of administrative responsibility. Representatives of administrative and legal science mostly differ in their vision of number and typology. They understand nature of preconditions differently, and interpret their meaning in various ways.

The scientific position of I. Koterlin seems to be very original, from the point of view that “the necessity is an objective precondition of responsibility, while the subjective precondition of responsibility is connected with the presence of will and corresponding moral principles” (Koterlin, 2010). Although this statement is somewhat abstract (in fact, it reveals the general philosophical aspect of human responsibility to society), it is worth noting in terms of distinguishing between objective and subjective preconditions of administrative responsibility. It is obvious that the commission of administrative offense (as a factual basis for administrative liability) can be influenced by a wide range of objective and subjective factors, ranging from low level of individual legal awareness and ending with criminal’s possession of certain technical means. In relation to administrative liability for a particular offense, these factors can be thought as objective and subjective preconditions, which, in its turn, keeping in mind their different nature, deserve some particular study.

However, far from all attempts to consider the preconditions of liability for administrative offense through the prism of objective and subjective categories may be observed quite successful. A clear example is the reasoning of N. Serdiuk, who refers substantive law to the objective preconditions of administrative liability, which consolidate the composition of misdemeanors, and administrative procedure legislation, as well as the fact of the

offense (Serdiuk, 2005). It is impossible to agree with such a notion of the preconditions of liability for an administrative offense. After all, the material and procedural provisions of administrative delict law are the legal basis of administrative liability, without which the latter is generally impossible. These are not preliminary, but direct conditions for the onset of administrative liability for particular offense; these are its legal grounds and the core element of its mechanism.

There is hardly the need to dispute about the actual encroachment. Its consideration as precondition (not a grounding) for administrative liability is contrary to its fundamental principles: legality, lawfulness, reasonableness, and so on. The scientific approach, according to which the basis of legal liability is not being so much the fact of delict, but the relevant procedural document, containing sprouts of pernicious idea with the possibility of coercion without factual grounds. This concept subconsciously orients the subject of administrative jurisdiction to the fact, that proving the involvement of a person into the commission of a delict is something optional and secondary, whereas the main thing is to make a decision on the case, and this in itself will be sufficient foundation for punishment (Gurzhi, 2013).

On the background of the above-mentioned, scientific position of N. Serdiuk seems insufficiently convincing and open to criticism. In general, in our opinion, the consideration of the preconditions of administrative liability for a particular offense (i. e. on the level of a single accident) is difficult to recognize as productive, both from theoretical and practical points of view. It goes without saying that it provokes some interest, but only in terms of psychological and behavioral aspects of individual existence within society (development of his legal consciousness, formation of his values, influence of physiological, psychological and other factors upon his behavior, etc.).

Much more important for achieving the goals of administrative responsibility is the analysis of its preconditions on general institutional level or on the level of certain types of offenses. This analysis involves study of wide range of social, economic, technical and other factors that determine functioning of the institution for administrative responsibility, its current state, its level of efficiency, dynamics and prospects for its development. The study of these factors, as well as their impact on liability for administrative offenses plays significant role in creating favorable socio-economic and informational-technical environment for the implementation of the main tasks of this institution, in particular, to combat administrative delinquency, reliable protection of public relations from unlawful encroachments, education of citizens in the spirit of law and the like.

In the context of considering the preconditions of administrative liability on general institutional level (level of certain types of offenses), special attention should be paid to two aspects of this issue: first, the preconditions for establishing administrative liability for mandatory rules of behavior violation (preconditions for administrative delict); secondly, the prerequisites for effectiveness of institution in general and within particular areas of public life (preconditions for the effectiveness of administrative responsibility).

2. PRECONDITIONS FOR ADMINISTRATIVE INTRODUCTION OF ADMINISTRATIVE LIABILITY (PREREQUISITES FOR ADMINISTRATIVE DELICTIZATION OF OFFENCE)

Preconditions for administrative delictization of offenses cover a system of factors that determine the need to protect and defend certain range of public relations through sanctions of administrative delict rules. In other words, it is a prerequisite for the introduction of administrative liability for certain illegal acts. Right in this aspect A. Gurzhiy considers the preconditions of administrative liability, emphasizing the socio-economic factors of administrative delict of motor transport offenses. As the author quite rightly emphasizes: "To assess real scale, determine trends in development, determine impact on modern society and economy of negative social phenomenon, it should be analyzed by the social and economic parameters only... Socio-economic characteristics of crime determines the strategic objectives, choice ways of their implementation, the amount and structure of related costs. Even minor miscalculations in assessing the socio-economic parameters of delict are priced quite highly. Most of them result in unreliable forecasting, low quality of planned activities and, as a consequence, poor efficiency of their implementation" (Gurzhiy, 2011).

It is difficult to disagree with this opinion. Firstly, basing upon the calculation of economic and demographic consequences of offenses, the conclusion should be made about their social danger, the validity of protection on corresponding public relations by administrative-delict sanctions, the importance of establishing/ strengthening responsibility for their certain types. Only on those grounds, it is possible to develop an effective program to combat delict, in particular, in terms of measures for preventing administrative offenses.

Nevertheless, as history and modernity show, the range of prerequisites for administrative liability (administrative delict) application into practice is not limited to social and economic preconditions. Sometimes the establishment of administrative responsibility for certain actions takes into account public morality, the course of public policy and some other factors. For example, such a violation as petty hooliganism (Article 173 of the CUonAO) does not cause socio-demographic or economic harm either on the level of a single delict or on the scale of society. The objective need for its delictization is stipulated by requirements of morality, ethics and aesthetics based on the ideas of mutual respect and polite behavior in public places. In its turn, the origins of establishing responsibility for the production and promotion of St. George's (guard) ribbon (Article 173-3 of the CUonAO) lie in the historical and political plane.

It goes without saying, that the political and moral-ethical preconditions of administrative responsibility needs careful and thorough studies, since in some cases they contribute to the administrative delictization of offenses, the assignment of administrative penalties, the expansion or narrowing of the subject of administrative and delict protection. However, unfortunately, the representatives of this science branch do not pay proper attention to them, but focusing on the consideration of socio-economic preconditions of responsibility for administrative offenses. In this case, almost always just statistical indicators are proposed as an object of scientific analysis: economic losses, demographic processes, etc. (Yushkova, 2013; Tropina, 2012). Questions about the nature, roots and significance of the

preconditions for the introduction of administrative liability within domestic legal literature are not currently covered.

3. PRECONDITIONS FOR THE EFFECTIVENESS OF ADMINISTRATIVE LIABILITY

The above applies equally to the preconditions for the effectiveness of administrative liability. For all its undeniable importance, the relevant issues are traditionally outside the „field of view” of modern researchers. Although efficiency (as the ratio between the result achieved and the resources used) is the main criterion for determining social role and importance of administrative responsibility, neither the effectiveness of this institution nor its preconditions have ever been subjected to thorough scientific analysis.

In this regard, we consider it appropriate to refer to the general theory of law, in particular, to those of its provisions, relating to the effectiveness of legal regulation. Considering effectiveness of legal regulation in two aspects (as “the relationship between the actual results and objectives of establishing (sanctioning) the rule of law” and as “the relationship between the results of legal regulation, as well as costs and efforts to implement it”), representatives of general law state it due to a wide variety of factors (preconditions).

In particular, as general social prerequisites for the effectiveness of legal regulation P. Rabinovych defines: compliance of the norm with objective laws (normality) of existence and development of man and society; compliance of the norm with the specific historical conditions of its functioning, the real possibilities of its implementation (material, spiritual, temporal, personnel, etc.); compliance of the norm with the real needs and interests of those subjects, the relations between which it should regulate, reflect and take into account; compliance of the legal norm of the state of legal consciousness and morality, the level of general culture, public opinion of the mentioned subjects; compliance of legal norm with the conclusions of those sciences (social, natural, technical) that „subjectively” study the objects that are in the field of legal regulation; compliance of the legal norm with the general laws of purposeful organization and self-organization of systemic phenomena.

At the same time, to the legal (special-social) preconditions of the effectiveness of the legal norm, this scientist includes legal consolidation of the dominant needs of society; substantive certainty of the activity of the law-making body; definition of the boundaries of legal regulation; conditionality of law-making activity by objective conditions of society development; change in the scope and type of legal regulation; features of lawmaking as a result of the creative process; systematic legislation; quality of legislation; perfection of legal technique; clear definition of types of legal liability that occurs for violation of regulations, the mechanism of its implementation (Rabinovych, 2007).

From the point of view of the founder of the morality of law theory, the American researcher L. Fuller (Lon Luvois Fuller) considers morality as an important prerequisite for the effectiveness of law. As the author emphasizes: “Any deviation from the principles of internal morality of law is an insult to personal dignity. To judge person’s actions based on unpublished or retroactive laws, or to order a person to perform some impossible action is to demonstrate complete disregard for the capacity on self-determination. Conversely, if the idea that a person is incapable of responsible actions, legal morality loses its grounds for

existence. Under such conditions, the application of unpublished or retroactive laws to it is not even an insult, because there is nothing to insult here. Even the term “judge” becomes inappropriate here: a person is no longer judged, but is being influenced upon (Fuller, 1969).

In turn, O. Kurakin identifies purely psychological preconditions for effectiveness of legal regulation; a person in his/her behavior is guided not only by legal requirements, but also their own interests, established views, ideas, emotions, experiences, feelings. Therefore, if these features coincide in many individuals, the psychological factor becomes general and it becomes a prerequisite for the effectiveness of legal regulation associated with the psychotype of a social group and the prevailing views within it (Kurakin, 2015).

Some authors distinguish between objective and subjective prerequisites for the effectiveness of legal regulation. Moreover, if the objective prerequisites they include general social factors (socio-economic system, management system, existing forms of ownership), then under the subjective preconditions they are proposed to understand the following: scientific validity of legal regulation, timeliness of lawmaking, improvement of existing legislation, stability of legal regulation, clarity of legal requirements, active functioning of law enforcement agencies, etc. (Stadnik, 2019).

In addition, in special literature there is also a thesis that one of the prerequisites for the effectiveness of legal regulation is the level of knowledge of legal requirements by legal entities. This thesis is based upon the fact that the implementation of the rule of law by a particular entity is usually more effective in cases where the entity is quite aware of its content. After all, ignorance of legal norms makes it impossible for them to be systematically, consistently and properly implemented (Perepeliuk, 2016).

Based on the analysis of these approaches, it can be stated that the vast majority of them have a proper theoretical basis and reveal the most important aspects of the prerequisites for effectiveness of legal regulation. Each of them is a significant contribution to the formation of comprehensive picture of the prerequisites for the effectiveness of law, as well as its individual branches and institutions. However, before proceeding to their consideration within the context of the effectiveness of the institution of administrative responsibility, we have to make some comments.

First, if we consider the effectiveness of legal regulation in conventional sense (that is, as the degree of realization of its goals, as well as the ratio of its results to the costs incurred), its connection with the morality of law is not always traceable. After all, from the point of view of achieving the goals set by the subject of creation (sanctioning) of objective law, morality may or may not be a factor influencing efficiency. World history knows many examples when laws, far from the requirements of morality, have successfully solved the problems of the present moment. Conversely, laws completely „imbued” with the ideas of morality and humanism did not always achieve the goal. In particular, this applies to laws aimed at combating delict. After all, a successful fight against crime is possible only on the grounds of compromise between the norms of morality and the social need to use coercion.

Secondly, the above-mentioned classification of the preconditions for the effectiveness of legal regulation into objective (general social factors) and subjective (related to the processes of lawmaking and law enforcement) is methodologically unfounded. The fact is that such phenomena of legal reality as the development of legislation, stability of legal regulation, the

rule of law exist independently of the will and idea of the individual. In this sense, they are as objective as general social factors: socio-economic system, management system, forms of ownership, etc. If we consider the categories of objective/subjective in the broadest sense (i. e. through the prism of independence/dependence on humanity in the whole), then in this approach, any social, economic, legal and other factors of the effectiveness of law will be considered as subjective, because they are all nothing but a manifestation of social lifetime.

Thirdly, we consider it inexpedient to separate preconditions into independent group related to the psychology of society and individual social groups. In the sociological aspect, social psychology is considered as an element of social consciousness, i. e.: a set of ideas, theories, views, thoughts, feelings, beliefs, emotions, moods, which reflect nature, material life of society and the entire system of social relationships. Since public consciousness is considered as general social prerequisite for the effectiveness of legal regulation, then, obviously, social psychology should be considered in the same quality.

Similarly, it is not necessary to single out into separate group a factor like the level of legal knowledge of legal entities. As an element of public legal awareness, this factor belongs to the legal prerequisites for the effectiveness of legal regulation.

Finally, the vast majority of scientific classifications do not take into account the influence of state and political factors on the effectiveness of legal regulation. Meanwhile, the state, as a political organization of power, endowed with monopoly for creation of objective law, it acts as its sole creator and guarantor of its binding force. With the help of law, the state implements its external and internal functions, outlines its goals and activities (i.e., determines public policy), regulates public relations, ensures their stability, protection and defense. Thus, the content, direction, quality and effectiveness of law are largely determined by the state, its ideology, policy, activities, system of institutions and other state and political factors. The above-mentioned allows us to consider these factors as extremely important and independent group of preconditions for the effectiveness of legal regulation.

CONCLUSION

Taking into account these comments, we can identify the following main groups of preconditions for effectiveness of legal regulation:

general social preconditions: the state of socio-economic and scientific-technical development, social consciousness (social psychology and social ideology), social morality, spiritual and cultural development of society, the level of social responsibility;

state and political preconditions: political course of the state, official ideology, efficiency of mechanisms of public administration, orientation of political will of the top state leadership;

legal preconditions: validity and quality of legal regulation, the state of legal system and system of legislation, the development of legislation, the effectiveness of mechanisms for rule-making and law enforcement; the level of legal awareness (legal knowledge and legal culture) of the population, the professional level of the subjects involved into the processes of creation and implementation of law, etc.

It should be borne in mind that these factors have positive impact on legal regulation (they increase its effectiveness) only if at a certain historical stage of their existence, status

and level of development they meet the objectives of legal regulation and contribute to their achievement. The absence of these factors, as well as their „dissonance” with the objective processes of development of objective law, its principles, assignments and forms of implementation does not just fail to contribute to the effectiveness of legal regulation, but on the contrary they hinder it. In other words, the prerequisites for the effectiveness of legal regulation in relation to the latter can be manifested in both positive and neutral or even negative qualities.

Nevertheless, from the point of view of legal science, which focuses on the development of legal system, building the legal state and the establishing legal values, the positive aspect of the preconditions for effectiveness of legal regulation is of paramount importance. The study of the preconditions for effectiveness of legal regulation should not be an end in itself. Its purpose is not just to find out the range of factors that determine the effectiveness of legal regulation, but to ensure that these factors are taken into account when establishing and implementing objective law in order to ensure their most effective organizational impact on public relations. Bearing this mind, the prerequisites for effectiveness of legal regulation are considered by us, firstly, in a positive aspect (i. e. as prerequisites for high efficiency of legal regulation).

Thus, summarizing modern approaches to understanding the preconditions of legal regulation (in particular, on the level of institution of administrative liability) prerequisites of liability for administrative offenses can be defined as a set of generally social, political and legal phenomena and processes that create favorable conditions for establishing and effective implementing of administrative responsibility.

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