



UDC 342.9

DOI: 10.31548/law2021.03.15

Administrative responsibility for violations in the field of natural environment protection

Serhii O. Kidalov*

PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Valeriia M. Snizhna

Legal Advisor
Financial company "Elit Finance"
03035, 2 Solomianska Sq., Kyiv, Ukraine

Article's History: Abstract

Received: 8.06.21

Revised: 19.07.21

Accepted: 15.08.21

The scientific work studies the features of administrative responsibility for violations in the field of natural environmental protection. It is investigated the issues, essence, features and measures of administrative coercion in the field of nature protection, the system and types of administrative penalties, the causes and conditions for committing violations in the field of ecology. In addition, in the scientific article, it is made an attempt to analyze the main mechanisms for prevention of the administrative violations in this area. Based on this analysis, the authors provide their own conclusions regarding the improvement of administrative and legal mechanism for natural environmental protection

Keywords: administrative violations, environmental protection, administrative and legal mechanism, elements of administrative violations, administrative coercion, administrative and legal measures

Suggested Citation:

Kidalov, S., & Snizhna, V. (2021). Peculiarities of legal regulation of ecotourism in Poland: Prospects for Ukraine. *Law. Human. Environment*, 12(3), 34-39.



*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

Introduction

Nature is of global economic, industrial and social importance. Today, unfortunately, there are global environmental problems in Ukraine. The ecological state shows a tendency to decline. This is reflected in the large climate changes, lack of clean drinking water, pollution of atmospheric air, soil, vegetation and the environment in general. Due to this, there is reason to assert that the problem of interaction between human and nature has recently become one of the most discussed and it attracts additional special relevance and interest among scientists.

Speaking about the importance of the concept of environmental safety in the field of administrative and legal relations, it should be noted that environmental safety is a generic object of administrative violations that encroach on the environment.

Public relations in the field of natural environmental protection have established themselves as one of the most important components of public relations. They arise between people and natural environment. These are the following special objects of environmental violations: water, land, air, etc.

Responsibility for administrative violations in the field of environmental protection is a necessary part of the legal support for the appropriate use of natural resources, restoration of environmental facilities and environmental protection. The formation of legislation in this area is developing due to the definition of a range of illegal actions that encroach on the procedure for using the natural resources, as well as the subjects of violations, and the establishment of responsibility for committing the violations.

The works of many domestic and foreign scientists were devoted to the study of this issue. For example: I.V. Aristova, Yu.P. Bityak, V.V. Galunko and V.I. Kurilo [1], L.A. Golovko, L.P. Kovalenko [2], T.A. Kolomoets [3], I.A. Kuyan [4], V.V. Ladychenko, etc.

The purpose of this scientific article is a comprehensive scientific analysis of the legal means established by administrative legislation in the field of natural environmental protection, their theoretical and practical issues when applied to the lawbreaker.

Results and Discussion

The concept of environmental administrative violation is revealed through its constituent elements: object, objective side, subject, subjective side. The object is the first definite element of the legal administrative violation. Under the object of administrative violation, it is implied the public relations in the field of public administration, regulated by the norms of administrative law and protected by the measures of administrative responsibility. The object of violation is divided into general (the entire set of public relations protected by law), generic (a set of homogeneous social relations) and direct (specific social relations that face with harm from certain violations) [5].

A certain and legally enshrined environmental legal order is the common object of environmental violations. It is based on the public attitude to rational use of natural resources and natural environmental protection [6].

According to the author, the environmental safety should be considered the generic object of administrative violations in

the field of natural environmental protection. A state that is safe for human life and health is the target object. The objective side of elements of an administrative violation is a system of signs provided for by the administrative-legal norm that characterizes the external side of legal violations. These are its components: the own illegal action – action or inaction; harmful consequences of an action, a causal relationship between an unlawful action and the resulting harmful consequences; time, place, conditions, ways and means of committing violation. These are the constituent elements of the objective side of environmental violation: wrongfulness of behavior (worsening or failure to comply with the requirements of environmental legislation); infliction or presence of a real threat of causing the environmental harm or violation of the legal rights of subjects of environmental law; a causal relationship between the wrongful behavior of a person and the harm caused [7].

It is worth noting that the onset of dangerous consequences is a mandatory sign of the objective side of material elements of violations, including the administrative violations in the field of natural environmental protection; such consequences are not provided for the formal elements of the onset of such consequences.

The subject is a delinquent individual or legal entity who has committed administrative violation. In accordance with the provisions of the Code of Ukraine on Administrative Violations (CUoAV) [8], the responsible individual entity aged 16 years is the subject of administrative responsibility. As for the

legal entities, they are not the subjects of administrative responsibility according to the general rule. However, at the legislative level, administrative responsibility is also established for legal entities. The intensive development of this type of responsibility began after the independence of Ukraine, and it was due to the growth of entrepreneurship and the formation of a market economy, which led to the formation of a significant number of legal entities based on the private ownership. Associations of citizens can also be subjects.

These are the main features of an individual entity-subject of an administrative responsibility: age, sanity, individual characteristics (service, professional status), citizenship status, belonging to the service, which is subject to disciplinary statutes, the status of a People's Deputy of Ukraine. Public officials are responsible for committing violations in the field of environmental safety, if the control over compliance with the relevant rules and their implementation is part of their official duties.

The subjective side of administrative violation in the field of environmental safety is a set of signs that characterize the subjective (mental) attitude of a person to the unlawful act committed by him/her and its negative consequences, namely guilt, motive and purpose of violations. The guilt is mandatory among them – the direct influence of mental attitude to the committed socially dangerous action (inaction) and its negative consequences [1].

These are the characteristic features of the subjective side: guilt, motive and purpose

of the violation. Guilt is the mental attitude of individual to the socially harmful action committed by him/her and its consequences, which manifests in the form of intent or negligence. The definition of these forms is contained in the Article 10 and 11 CUoAV [8]. The intent takes place when the subject (who committed it) is aware of the illegal nature of his action or inaction, implies and desires the occurrence of harmful consequences. In turn, intent can be direct – the violator consciously implies and desires the onset of harmful consequences, or indirect – the violator assumes the onset of consequences and consciously allows them. For example, the following actions are committed in the form of intent: forests are contaminated with wastes (Article 72 CUoAV) [8], mixing or disposal of wastes, and there is an appropriate technology for disposal in Ukraine, without a special permit (the Article 82-4 CUoAV) [8].

Administrative violation is recognized as committed through negligence, when the subject (who committed it) foresaw the possibility of harmful consequences of his unlawful action or inaction, but thoughtlessly counted on their prevention or did not foresee the possibility of such consequences, although he was able to and should have done that.

Since environmental administrative violations are quite diverse, the scientists have repeatedly classified them according to different criteria. The classification criterion for the object of encroachment is the most common.

It is worth noting that a separate group of administrative violations consists of violations relating to the property rights to

natural resources, in particular: violation of the state ownership of subsoil (Article 47 CUoAV) [8]; violation of the state ownership of water (Article 48 CUoAV) [8]; violation of the state ownership of forests (Article 49 CUoAV) [8]; violation of the state ownership of animal world (Article 50 CUoAV) [8]; unauthorized occupation of a land plot (Article 53-1 CUoAV) [8].

The presence of this group of administrative violations and the imposition of sanctions for their commission is due to the fact that the natural resources of Ukraine are the property of the people of Ukraine; on behalf of the people of Ukraine, the rights of the owner are exercised by the state authorities and local self-government authorities within the limits determined by the Constitution of Ukraine and legislation.

In addition, among the administrative environmental violations, it should be singled out those ones that violate the environmental rights of citizens. Thus, in accordance with the Article 9 of the Law of Ukraine “On Environmental Protection”, these are ones of the basic environmental rights of citizens: the right to free access to information about the state of natural environment (environmental information) and free receipt, use, distribution and storage of such information, except the restrictions established by law. Refusal to provide or untimely provision of complete and reliable environmental information upon request (provided for by law) entails the imposition of a fine on officials or public servants (Article 91-4 CUoAV) [8; 9]. According to the same criterion, other scientists group violations into the following groups:

- 1 – damage and pollution of agricultural and other lands;
- 2 – improper use of water resources;
- 3 – about forests and lands of the forest fund;
- 4 – about flora and fauna;
- 5 – related to the protection of atmospheric air;
- 6 – subsoil [10].

I.A. Kuyan [4] carried out the classification of environmental violations according to the content of value (good) protected by the norms of environmental law and administrative penalties; by the component of environment that is used or subjected to unlawful negative impact; by the source of negative impact, type of activity or substance used in the process of such activity and which is potentially hazardous to the environment. Using these criteria, the scientist singles out: a group of environmental administrative violations that infringe on environmental safety; that violate the environmental rights of citizens; a group of environmental violations that violate the requirements for the protection and use of environmental components (natural resources, objects, ecosystems).

According to the peculiarities of emergence of legal relations caused by the legal fact – an environmental administrative violation, I.A. Kuyan [4] singles out simple violations (arise due to the commission of administrative violation and end, as a rule, with the implementation of administrative sanction); permissive (licensed) (violations related to the conduct of environmentally significant activities in violation of the terms of permits for the use of natural resources); functional

(associated with the failure to fulfill specific duties that are the content of activity or are within the competence of public servant); contractual.

The classification of administrative violations can be made through their differentiation according to the normative act that establishes administrative responsibility: violations – responsibility for them is provided for by the Code of Administrative Violations of Ukraine [8], and violations – responsibility for them is provided for by other normative acts. According to the degree of social harmfulness: violations of an increased degree of social harmfulness; offense of minor social harmfulness; not malicious violations of the original character.

By the nature of sanctions: environmental administrative violations for which a fine is imposed; environmental administrative violations for which the objects of violations are confiscated; environmental administrative violations for which the deprivation of the right to engage in special activities is provided; environmental administrative violations for which the confiscation of instruments of violations is provided; environmental administrative violations for which it is provided the restriction, suspension, termination of the activity or operation of facilities.

According to the elements of administrative environmental violations: environmental administrative violations with material and formal elements. According to the criterion of classification of environmental administrative violations, there is an agency authorized to bring to administrative responsibility: environmental administrative

violations considered by: the administrative commissions; agencies of the National Police, agencies of state inspections and other agencies (officials) authorized by law; courts (judges).

Considering the subject elements, it can be distinguished three types of environmental violations:

- committed by the owners of natural resources;
- committed by nature users;
- committed by persons who are not the owners of natural resources or users of natural resources.

Thus, the author can classify administrative violations in the field of natural environmental protection with the help of the following things: the object of encroachment; differentiation according to the normative act, which establishes administrative responsibility; according to the degree of social harmfulness; by the nature of sanctions, by the elements of environmental administrative violations; agency authorized to bring to administrative responsibility; subject structure.

The causes and conditions for committing environmental violations can be divided into two group: subjective (i.e. circumstances arising from a person's desire to commit them) and objective, which include negative consequences for the nature of some achievements of science and technology.

Among the main objective reasons that give rise to such violations, it is possible to single out the following: social (shortcomings in legal education, lack of awareness of the population regarding the requirements

of current legislation), organizational (for example, lack of control over the land use), economic (lack of appropriate material interest in the rational use of natural resources) and legal (presence of gaps in the legislation, non-application of legal measures against lawbreakers). The following concepts determine subjectively the commission of violations in the field of natural environmental protection – legal nihilism; low level of ecological culture; the desire of individuals to neglect environmental regulations in order to increase production and make a profit; untimely detection and response to environmental violations by the law enforcement and regulatory authorities, their corruption, etc. These are the main reasons for such violations: gaps in the environmental legal awareness of citizens and officials (when a person considers natural resources inexhaustible and overestimates nature's ability to self-repair), indifference to the fate of nature and the desire to profit at its expense, etc.

Violations in the environmental sphere are committed in the vast majority for selfish motives (selfish, economic motive is not directly the cause of violation, but it creates conditions for the formation of defective psychology and anti-sociality).

According to the author's opinion, these are the main conditions for committing administrative environmental violations: the low level of funding for environmental protection measures and services, inconsistency in the work of authorized agencies, the lack of effective mechanism for public participation in the fight against environmental

violations, insufficient application of measures of responsibility against guilty persons, etc.

There are cases when the causes and conditions for committing administrative violations in the field of natural environmental protection can be detected immediately. In this case, the law enforcement officials should promptly respond to them. Otherwise, the causes and conditions can be revealed only after revealing the violation. Therefore, the employees of law enforcement agencies involved in the fight against environmental violations need to remember this and organize their work to disclose violations of environmental legislation based on the specific conditions of violations. As practice shows, the specific motives (for example, illegal cutting down of coniferous trees on the eve of the New Year holidays) are the dominant reason for violations of environmental legislation.

According to N.M. Nesterenko [11], the main reasons for committing environmental violations are divided into three groups: social (economic, psychological, cultural); organizational and legal; technological. The low ecological culture of population is the reason for committing social violations, and the author notes that natural resources are an inexhaustible source of income, therefore their use and protection do not need the state legal regulation [11].

L.P. Kovalenko [2] identifies the following reasons and conditions for committing violations in the field of natural environmental protection: organizational and economic circumstances; shortcomings in the legal

regulation of the activities of administrative and environmental authorities; shortcomings in the work of agencies that identify and consider cases of administrative violations; shortcomings in the mechanism of proceedings in cases of administrative violations; insufficient efficiency of proceedings in cases of administrative violations; weak educational influence of the procedure for considering cases and the decisions made on the imposition of administrative penalty; failure to ensure the reality of the execution of provisions; inadequacy of the imposed penalty to the committed violation; lack of stability and consistency in the administrative criminal practice; ignorance of administrative violations by the subjects of application of legislation; low authority of the law enforcement authorities (this is manifested in the insufficient number of voluntary execution of decisions, evasion of execution); drunkenness and drug addiction, etc.

Analysis of the legal literature on environmental issues shows that most scientists understand the administrative warning measures and measures for administrative termination and administrative penalties as the administrative and legal means aimed at combating violations of environmental standards.

Administrative warning measures are methods (determined by the norms of administrative law) of official physical or psychological influence of authorized state agencies (in some cases public organizations) on individuals and legal entities in the form of personal, property, organizational restrictions on their rights, freedoms and

interests in order to prevent and identify illegal actions, ensuring public order and public safety, preventing and localizing the consequences of emergency situations.

The peculiarity of these measures is included in the following a) they are applied in the case of absence of a wrongful act; b) they are applied to prevent, detect illegal actions, ensure public order and public safety, as well as prevent emergency situations [3].

These are the main goals of preventing administrative violations: limiting the effect of negative social phenomena and processes that are the causes and conditions for committing administrative violations; education of citizens in the spirit of strict observance of the requirements of legality, the formation of a high level of legal culture; influence on persons belonging to the risk group regarding the commission of administrative violations in order to reduce the likelihood of committing illegal actions by them.

Persuasion is another administrative measure in the field of ecology. These are the forms of persuasion: legal education; constant informing the population about changes in legislation; individual and mass educational work; social advertisement; encouragement and stimulation; instructing the owners or their authorized agencies of enterprises, institutions, organizations and citizens and business entities who are obliged to ensure the processing, recycling and timely disposal of waste that pollutes the environment. Prevention of environmental violations refers to measures to ensure environmental safety, which is a set of means defined by the legislator, used by specially authorized agencies

in the established procedural order with the aim to ensure environmental safety [12].

The author can refer the following concepts to preventive measures in the field of environmental protection: regulation of the conditions for the design, construction and reconstruction of enterprises and other facilities that affect or may affect the state of the environment; standardization and regulation in the field of environmental protection; measures to comply with environmental protection requirements when introducing discoveries, inventions, utility models, industrial designs, rationalization proposals, the use of new technology, imported equipment, technologies and systems, etc.

The study of practice of the police preventive activities in the field of environmental safety shows that the following moments are most frequently used: administrative detention; personal inspection; confiscation of illegally obtained things and instruments of violation; drawing up a protocol and other important legal documents.

The purpose of administrative detention of violators of the rules of environmental legislation is to stop their unlawful behavior and take the necessary measures to bring the perpetrators to administrative responsibility. Thus, when committing forest violations, rules of hunting, fishing and other violations of legislation on the protection and use of wildlife (if it is impossible to identify the personality of violator at the crime scene), the employees of specified departments (in order to draw up a protocol) may detain such persons and deliver them to the police or premises of local authorities.

In the field of natural environmental protection, it is customary to define the administrative compulsion as a method of influencing by the numerous and specially authorized agencies (officials) on the behavior of subjects, which consists in the negative consequences of a personal or organizational nature established by the administrative legal norms, aimed at correcting and re-educating violators, as well as the prevention of harmful effects on the environment and human health [13].

Administrative-precautionary measures in the system of measures of administrative coercion occupy an independent place, which is due to the performance of law enforcement functions and the own preventive focus. Unlike the measures of administrative restraint, they do not directly interrupt the violation, but warn and prevent its commission [14].

Consequently, the administrative and legal means for the prevention of administrative violations in the field of natural environmental protection (besides establishing the legal norms, rules, regulations and standards) include: state control over environmental protection; measures of persuasion; measures of administrative coercion used to prevent, suppress violations in the field of natural environmental protection and bring the perpetrators to administrative responsibility, as well as restorative measures.

Considering modern research, the author can conclude that the following concepts are the biggest problematic issues for creating an effective environmental protection mechanism: low information support, inconsistencies with modern legislation,

insufficient funding for environmental programs, the development of innovative technologies. These are the following most important directions in the development of human relations and the environment in developed countries: the use of a legal, scientifically based approach, the formation of "environmental consciousness" of citizens, the creation of a public environmental movement, the preservation or return of state ownership of natural resources [15].

Conclusions

Thus, summing up the results of this scientific study, it should be noted that the following general legal signs are inherent in an administrative violation in the field of environmental protection: action or inaction, that is, deeds, and not thoughts, desires or other similar manifestations of people's mental activity; antisocial orientation (some people identify this sign with social danger or social harmfulness); the wrongfulness of the specified action, which always encroaches on the generally binding rules established by a certain normative act; guilt (such an action as the manifestation of the will and consciousness of the individual should always be guilty, that is, committed intentionally or by negligence); administrative punishment – an unlawful, guilty action will be recognized as the administrative violation only when administrative responsibility is provided for by law for its commission.

As for the features of elements of environmental violations, they consist of: object – public relations in the field of natural environmental protection; subject – a

physical responsible person aged 16 years; the objective side – illegal behavior, causing harm to the environment or violation of the legal rights of subjects of environmental law; a causal relationship between the unlawful behavior of person and the harm caused, the subjective side – guilt, motive and purpose of committing a violation.

With regard to the causes and conditions for committing environmental violations, they can be divided into two groups: objective and subjective. It is possible to single out the main objective reasons that give rise to such violations: social, organizational, economic and legal ones. The following concepts stipulate subjectively the commission of violations in the field of environmental

protection: legal nihilism; low level of ecological culture; the desire of individuals to neglect environmental regulations in order to increase production and make a profit; untimely detection and response to environmental violations by law enforcement and regulatory authorities.

The following measures are applied among the main mechanisms for preventing administrative violations in the field of ecology: state control over environmental protection; measures of persuasion; measures of administrative coercion used to prevent, suppress violations in the field of natural environmental protection and bring the perpetrators to administrative responsibility, as well as restorative measures.

References

- [1] Galunko, V.V., Kurylo, V.I. & Koroied, S.O. (2015). *Administrative law of Ukraine. General administrative law*. Kherson: Galunka.
- [2] Kovalenko, L.P. (2003). *Administrative and legal measures to protect the natural environment*. Kharkiv: Dokuchaev Kharkiv National Agrarian University.
- [3] Kolomoets, T.O. (2008). *Administrative law of Ukraine*. Kyiv: Istyna.
- [4] Kuyan, I.A. (2001). *Administrative responsibility for environmental offenses*. Kyiv: National University of Life and Environmental Sciences of Ukraine.
- [5] Alforov, S.M., Vashchenko, S.V., Dolgoplova, M.M. & Kupin, A.P. (2011). *Administrative Law. General part*. Kyiv: Center for Educational Literature.
- [6] Zarzhytskyi, O.S. (2012). *Actual problems of legal support of environmental policy of Ukraine (theoretical aspects)*. Dnipro: National Mining University.
- [7] Kostytsky, V.V. (2021). *Ten theses on legal responsibility for environmental offenses*. Retrieved from <http://www.kostytsky.com.ua>.
- [8] Overkovska, T.K., & Opolska, N.M. (2020). *Legal responsibility for environmental offenses*. Vinnytsia: Vinnytsia National Agrarian University.
- [9] Zavalnyi, V.M. (2005). Administrative responsibility for environmental offenses – problematic issues. In *Materials of the scientific and practical conference of teachers, graduate students and students “Administrative law and process of the Sumy National University”* (p. 385). Sumy: Sumy National University.
- [10] Code of Ukraine on Administrative Offenses. (1984, December). Retrieved from <http://zakon3.rada.gov.ua/laws/show/80731-10>.
- [11] Nesterenko, N.M. (2011). *Administrative and legal principles of implementation of the ecological function of the state*. Kyiv: National University of Life and Environmental Sciences of Ukraine.
- [12] Bezsmertnyi, E.O. (1997). *Administrative preventive measures applied by internal affairs bodies*. Kharkiv: Dokuchaev Kharkiv National Agrarian University.
- [13] Melnyk, R.S. (2002). *Ensuring the legality of the application of measures of administrative coercion not related to responsibility*. Kharkiv: Dokuchaev Kharkiv National Agrarian University.
- [14] Komzyuk, A.T. (2002). *Measures of administrative coercion in law enforcement activities of the police: concepts, types and organizational and legal issues of implementation*. Kharkiv: National Academy of Internal Affairs.
- [15] Dragan, O.I. (2011). *Analysis of foreign experience of investment and innovation provision of state environmental protection*. Retrieved from http://archive.nbu.gov.ua/portal/soc_gum/Nrzd/2011_2/7.pdf.

Адміністративна відповідальність за правопорушення у сфері охорони навколишнього природного середовища

Сергій Олександрович Кідалов

Кандидат юридичних наук, доцент

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Валерія Миколаївна Сніжна

Юрисконсульт

Фінансова компанія «Еліт Фінанс»
03035, Солом'янська площа, 2, м. Київ, Україна

Анотація

У науковій роботі проводиться дослідження особливостей адміністративної відповідальності за правопорушення у сфері охорони навколишнього природного середовища. Досліджуються питання, сутності, особливостей та видів заходів адміністративного примусу в галузі охорони природи, система та види адміністративних стягнень, причини й умови здійснення правопорушень у сфері екології. Також, у науковій статті робиться спроба проаналізувати основні механізми попередження адміністративних правопорушень у цій сфері та на основі цього аналізу, автори надають власні висновки, щодо удосконалення адміністративно-правового механізму охорони навколишнього природного середовища

Ключові слова: адміністративні правопорушення, охорона навколишнього природного середовища, адміністративно-правовий механізм, склад адміністративних правопорушень, адміністративний примус, адміністративно-правові заходи
