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CURRENT STATE OF THE INSTITUTE OF ADMINISTRATIVE LIABILITY IN THE FIELD OF URBAN PLANNING

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Introdaction. The article uncovers the state of the institute of administrative liability in the field of urban planning considering current situation. The attention is focused on the main directions of transformation of development of administrative liability, the problems are described and the ways of their solution are proposed.

In connection with the implementation of various reforms, the existing urban construction relationships has radically changed and the new ones has emerged in the society, which are characterized by a tendency of growth. Therefore, considering new conditions and requirements, these relations require the introduction of new effective administrative and legal regulation. One of the important tools of this regulation is administrative liability in the field of urban planning, which helps to ensure compliance with the norms provided by law, state standards, construction codes, and rules.

The perspective directions of the evolution of the institute of administrative liability are the improvement of the system of administrative penalties by expanding their number and size and improving the system of subjects of responsibility.

Purpose and tasks. The purpose of the work is to determine the current state of scientific understanding of administrative liability in the field of urban planning on the basis of the analysis of theoretical foundations, regulatory system and practice, as well as to focus on the actual issues of its application in practice.

Results. It is proven that the institute of administrative liability in the field of urban planning undergoes transformation, but the scientific understanding of this process is not at the proper level.

Conclusions. In general, the institution of administrative liability in the field of urban planning requires substantial modernization, but not at the expense of making changes and additions to the current legislation, but on the basis of the creation of a new doctrine of understanding of administrative liability combined with the application of a systematic approach. All of the above will provide an opportunity for the creation of effective mechanisms for applying the institute of administrative liability in practice.

Keywords:city planning, construction, administrative liability, offense.

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СУЧАСНИЙ СТАН ІНСТИТУТУ АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ У СФЕРІ МІСТОБУДІВНОЇ ДІЯЛЬНОСТІ

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Проблема. В статті розкривається стан інституту адміністративної відповідальності у сфері містобудування із урахуванням реалій сьогодення. Звертається увага на основних напрямках трансформації розвитку адміністративної відповідальності, окреслюються проблеми та пропонуються шляхи їх вирішення.

В суспільстві у зв'язку із проведенням різноманітних реформ докорінно змінилися існуючи та з'явилися нові містобудівні правовідносини, яким притаманна тенденція зростання. Тому зазначені відносини, із урахуванням нових умов та вимог потребують запровадження нового ефективного адміністративно-правового регулювання.

Одним із важливих інструментарієм цього регулювання виступає адміністративна відповідальність у сфері містобудівної діяльності, яка сприяє забезпеченню виконання нормативів, передбачених законодавством, державними стандартами, будівельними нормами, і правилами.

Перспективними напрямками еволюціонування інституту адміністративної відповідальності є удосконалення системи адміністративних стягнень за рахунок розширення їх кількості та розмірів і удосконаленням системи суб'єктів відповідальності.

Мета та завдання. Мета роботи полягає в тому, щоб на підставі аналізу теоретичних засад, системи правового регулювання та практики визначити сучасний стан наукового розуміння адміністративної відповідальності у сфері містобудівної діяльності та акцентувати увагу на актуальних питаннях її застосування на практиці.

Результати. Обґрунтовано, що інститут адміністративної відповідальності у сфері містобудівної діяльності знаходиться у стані трансформації, але наукове осмислення даного процесу знаходиться на неналежному рівні.

Висновки. У цілому інститут адміністративної відповідальності у сфері містобудування потребує суттєвого модернізації, але не за рахунок внесення змін та доповнень у чинне законодавство, а на підставі створення нової доктрини розуміння адміністративної відповідальності у поєднанні із застосуванням системного підходу. Все вище зазначене дасть можливість створити ефективні механізми застосування інституту адміністративної відповідальності на практиці.

Ключові слова: містобудування, будівництво, адміністративна відповідальність, правопорушення.

Introduction. In modern conditions, construction is one of the leading spheres of economic activity. Construction accounts for 12.3% in terms of development of capital investments in 2017 [1]. Thus, according to the results of 2017, three regions became leaders in the growth rates of construction in Ukraine: Kirovohrad, Zhytomyr and Odessa.

As Lev Partskhaladze notes: "In general, construction volumes increased by 21% in Ukraine by the end of 2017. In particular, the construction product index amounted to 153.4% in the Kirovohrad region, 138.9% in the Zhytomyr region, 138.4% in the Odessa region, 130.1% in Kyiv. Among all regions of Ukraine, only Luhansk, Volyn and Sumy regions reduced construction rates compared to 2016 – their construction products indices amounted to 73%, 95.9% and 98.4%, respectively. According to the annual results, the construction of engineering facilities in the regions increased by 26.3%, and the construction of buildings increased by 16.1% [2].

The above data confirms the thesis that in connection with the implementation of various reforms, the existing urban construction relationships has radically changed and the new ones has emerged in the society, which are characterized by a tendency of growth. Therefore, considering new conditions and requirements, these relations require the introduction of new effective administrative and legal regulation.

And since urban planning is an important part of economic activity, the quality level of public life in Ukraine depends on the level of development and functioning of this activity, and in this regard, the state shall provide all the necessary conditions for the proper functioning and development of this area, particularly through the use of appropriate organizational measures and legal forms and methods in order to organize and direct the social relationships that arise during urban planning [4].

One of the important tools of this regulation is administrative liability in the field of urban planning, which helps to ensure compliance with the norms provided by law, state standards, construction codes, and rules. This is due to the fact that the very structure of administrative liability appeared to be the most convenient when creating tools, which allow the real and, most importantly, the efficient impact of state authorities on individuals [5]. There is currently a tendency of the transformation of legal and regulatory framework of relations in the field of urban planning, as well as the theoretic and doctrinal transformation of the administrative tort institute. It is well-known that administrative liability, which is one of the key tools for supporting the legal order and one of the most effective types of legal liability.

As evident from the practice, the number of offenses in the field of urban planning has recently increased as by the private entities and by the public authorities.

Such state of affairs is due to many factors of a diverse nature (economic, legal and others). The legal factors may include the following: Firstly, the institute of administrative liability is based on an outdated framework. For example, the Code of Ukraine on Administrative Offenses as of 07.12.1984 № 8073-X establishes principles for regulating relations that do not meet the present needs. Of course, the abovementioned code is constantly amended and supplemented, but the doctrine of regulation of tort relations has not changed.

And as a result, administrative liability for violations in the field of urban planning does not have the necessary level of efficiency and effectiveness, and therefore does not serve as a reliable guarantee of law and order for the subjects of urban development, as well as society. Secondly, there is no codified legislative instrument, which would consider the specifics of urban planning. This factor is a complex legal phenomenon that has different problem solving areas.

Thus, the following situation is observed in one of the deepest areas of the problem: at the scientific level, the scientists do not have a unanimous opinion about the need for the adoption of a code that would regulate relations in the field of urban planning. This state of affairs proves the lack of scientific research on the issue, and, consequently, the lack of sufficient scientific justification for the creation of the relevant code.

Table 1. Construction product indices by types (*percent to the previous year)*

	2011	2012	2013	2014	2015	2016	2017
Total	118,6	91,7	88,9	79,6	87,7	117,4	126,3
Buildings residential	101,0	92,4	110,4	103,5	98,9	117,8	116,3
Buildings non-residential	122,0	94,0	89,0	66,3	85,8	123,7	126,1
Engineering structures	122,1	90,2	83,3	79,7	83,7	114,0	131,7

Source: made by [3].

Analysis of recent researches and publications. Attention to the disclosure of the properties and key problems of the institute of administrative liability regarding general issues of administrative enforcement andstate control in various areas is focused in the works of many researchadministrators: Averyanov V.B. [8], Bandurka O.M. [9], Bakhrakh D.M. [10], Bytyak Y.P. [11], Kolomoyets T.O. [12], Kolpakov V.K. [13], Kuzmenko O.V. [13], Mykolenko O.I. [14] and others.

Some problems of administrative liability in the field of urban planning are researched in the works of modern lawyers: Kvasnitska O.O.[15], Savitsky O. V. [4], Semenko B.M. [16], Stukalenko O.V. [17] and other scientists.

But these scholars researched only narrowly specific issues, while there is no comprehensive study that would consider the present needs and international experience in this field.

Therefore, without undervaluing the importance of the research of the scholars, it should be noted that the features of application of administrative liability in the field of urban planning in Ukraine considering the present realities have not received proper scientific and legal understanding and require further theoretical research.

The main purpose of the article. To conduct an analysis of the current state of scientific understanding of administrative liability in the field of urban planning and to focus on the actual issues of its application in practice.

Results and discussion. Administrative liability in the field of urban planning is the most common form of legal liability and performs four main social functions, which may include:

- regulatory function, i.e. assistance in complying with the established order of planning and development of territories; executed construction works; implementation of reconstruction, overhaul and current repairs of construction objects, acceptance and commissioning, etc.;
- security function, which provides for the prevention of new misconduct in the field of urban planning;
- punitive function, i.e. assistance in punishing offenders in the field of urban planning, construction norms, standards and regulations;
- protective function that involves protection of rights, freedoms and interests of persons in the field of urban planning.

The realities of today include the urgent need for the transformation of the institute of administrative liability in the field of urban planning with the consideration of the European standards. To create a new doctrinal concept of administrative liability, it involves solving problems in several vectors. The first vector of scholars' activities involves rethinking of the basic scientific and theoretical foundations of the institute of administrative liability (purpose, tasks, principles, etc.) and as a consequence, the creation of a new doctrine

of administrative liability that would consider the needs of society.

The second vector of activity involves the "inventory" of a huge array of current administrative and tort laws. Given the theoretical developments of legal science in general and the norms of administrative law and legislation on urban planning, in particular.

The institute of administrative liability for violation of the norms of urban planning legislation is a complex legal phenomenon due to the fact that it combines the general features that are inherent in administrative liability, and the specific ones that are due to the specifics of urban planning. In order to create an effective mechanism for the transformation of the institute of administrative liability in the field of urban planning considering the present realities and needs, it is necessary to outline the range of problems faced by the institute of administrative liability and develop proposals for their solution, which requires a general research of the state of legislation in this field.

For example, when analyzing the current legislation on administrative liability in the field of urban planning, there is a steady tendency to disperse sources of administrative and tort regulations outside the Code of Ukraine on administrative violations, which does not contribute to the increase of the effectiveness of the practical application of the code and complicates the mechanism of qualification of certain misdemeanors. Thus, for the purpose of bringing to administrative responsibility in the field of urban planning, the following norms and regulations are applied, namely: The Code of Ukraine on Administrative Offenses of December 7, 1984 №. 8074-X (hereinafter referred to as the ALMC) [18]; the Laws of Ukraine "On Regulation of Urban Planning" dated February 17, 2011 No. 3038-VI [19]; "On Responsibility for Offenses in the Area of Urban Planning" dated 14.10.1994 № 208/94 [20]; "On Amending Certain Legislative Acts of Ukraine on Harsher Punishment and Improvement of State Regulation in the Field of Urban Planning" dated 22.12.2011 № 4220-VI [20]; Resolutions of the Cabinet of Ministers of Ukraine "Some Issues of the Activities of the State Architectural and Construction Bodies" № 671 dated August 19, 2015 [22]; the letter dated August 2, 2013, № 40-16-3790 "On the Reconstruction of Buildings and Structures and their Conservation" [23]; the letter dated July 30, 2013 № 40-19-3697 "On the Imposition of Penalties for Unauthorized Construction" [24]; the letter dated July 4, 2013 № 40-11-3218 "On the Procedure for Issuing a Permit for Construction Work" [24]; the letter dated 01.07.2013 № 40-16-3099 "On the Order of Commissioning of Illegally Built Individual (Manor) Residential Buildings, Garden, Country Houses, Additions to Them with a Total Area of up to 300 Square Meters Inclusive, Household (Private) Buildings and Structures, Additions to Them with a Total Area of up to 100 Square Meters Inclusive" [26] and others.

This problem is possible to overcome by both understanding of the actual state of the current situation existing in the field of urban planning and the objective assessment of the consequences of those processes that have taken place in the recent years considering the need to increase the responsibility of all participants in the process of urban planning and the process of decentralization of power.

To do this, it is necessary to disclose the legal nature of administrative liability in the field of urban planning and focus on the key components of this legal phenomenon (concept, grounds, liability subjects, control bodies, mechanism for bringing to administrative responsibility, sanctions for violation of established norms and requirements, etc.)

And it is necessary to begin with the definition of the very concept of "administrative liability" in general, and the concept of "administrative liability in the field of urban planning" in particular.

When analyzing the current tort law, it is possible to state the situation when the legislator uses the definition of "administrative

liability", but does not establish its legal term. The solution of this problem can be found in the development of the science of administrative law, but unfortunately, the scientists did not clearly decide on this issue.

There are some differences in the perception of the current definition of administrative liability.

We can presently speak only about the existence of certain concepts of administrative liability.

From the point of view of O. Mykolenko, the three main concepts of administrative liability prevail in the science of administrative law, namely:

- management concept;
- public service concept;
- human rights concept [27, p. 52-54].

Despite different perspectives on understanding of administrative liability, each of the presented concepts has some flaws and is not able to fully correspond to the present realities. To date, the human rights concept of administrative liability has dominated in the legislation. But international experience suggests changing priorities. Apparently, that because the law went a different way. For example, there is a clear trace of the application of the tendencies in the legislation that when administrative violations are detected, the mechanism of recommendations for the elimination of these offenses is initially applied and administrative sanctions are applied only in case of repeated violations and rejection of recommendations for their elimination.

The grounds for bringing to administrative liability are violations (misdemeanors).

Article 1 of the Law of Ukraine "On Liability for Offenses in the Field of Urban Planning" provides the definition of offenses in the field of urban planning [20]. Such offenses include unlawful acts (acts or omissions) of urban planning entities - legal entities and individuals - entrepreneurs, who led to the failure to fulfill or improper fulfillment of requirements established by law, building codes, state standards and rules. In other words, the legislation is limited only to the indication of a range of offenses in the field of urban planning without shifting to the definition of specific contents of misconduct, and this situation completely identifies the possibility to apply the tools to the institute of administrative liability and creates a perceived permissiveness of the perpetrator.

It is impossible to overlook one of the areas of the evolution of the institute of administrative liability, which is the transformation associated with the improvement of the system of administrative penalties by expanding their number and size. This is due to the fact that administrative penalties serve as a legal form for the implementation of administrative liability.

The next direction of transformation of the institute of administrative liability is the transformation related to the improvement of the system of liable parties. Thus, the Law of Ukraine "On Responsibility for Offenses in the Field of Urban Planning" as of 14.10.1994, № 208/94-BP, establishes a list of liable parties in the field of urban planning. The following liable parties, in accordance with Article 2 of the Law of Ukraine № 208/94-VR, include:

- subjects of city planning, carrying out designing of objects, examination of construction projects for the transfer of the design documentation to the customer for the execution of construction work on the construction site, drafted in violation of the requirements of legislation, urban planning documentation, source data for the design of urban planning, construction norms, state standards and regulations, including for the non-creation of an unhindered residential environment for persons with disabilities and other non-mobile population groups, the absence of water and heat meters, as well as understating of the consequence class (liability) of the construction facility;
- design organization;
- expert organization;
- subjects of urban planning, which are the customers of construction of objects (in the case of urban planning), or those who perform

the functions of the customer and the contractor at the same time;

- subjects of urban planning executing construction work;

- subjects of urban planning, which carry out economic activity on the construction of objects, which according to the consequence (liability) class belong to objects with average (CC2) and significant (CC3) consequences in the list of types of works determined by the Cabinet of Ministers of Ukraine, which are subject to licensing, or entrust performance of certain types of work to responsible contractors, who according to the legislation, must have a qualification certificate;

- subjects of urban planning, which produce building materials, products and constructions;

- subjects of urban planning involved in the state architectural and construction bodies before conducting inspections;

- enterprises providing technical specifications for the engineering support of the construction site [9].

When analyzing the list of liable parties in the field of urban planning, the legislator ignored the attention of such possible liable parties as those who carry out construction work on sites of the minor consequence class (CC1).

I would like to emphasize on the owners of residential buildings that are not included in the system of liable parties in the field of urban planning, but in practice they commit a large number of violations, but due to the fact that from the point of view of the legislator these risks are minor by the consequences class (CC1), they are not subject to liability. A clear definition of the liable parties allows establishing specific person (persons), to whom the administrative legal sanctions will be applied.

Now, let's turn to statistical information. According to the research materials of the analytical center of association of cities of Ukraine, there are now 25,500 buildings built in accordance with the projects of the first mass series of large panel, block and brick buildings with a total area of 72 million m2, i.e. 23% of urban housing needs to be restored through reconstruction and modernization. In many regions, housing is being in operation, which is more than half a century old. Thus, about 30% of residential buildings are built in the 1950s and earlier in Cherkassy, Kharkiv, Zaporozhye, Mykolaiv regions. 18 - 20% of such housing is located in Zakarpattia and Ivano-Frankivsk region. In the capital, it accounts for 13.5% [29]. This data suggests that more than 20% of housing in Ukraine needs reconstruction and modernization. The consequence of such activities will necessarily be committed offenses.

Table 2. Housing Fund *(million m ^{2} of total area)*.

	2010	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
The total housing fund	1079,5	1094,2	1096,6	966,1	973,8	977,9	984,8
City housing fund	693,0	700,7	700,1	588,1	592,5	594,0	599,4
Rural housing fund	386,5	393,5	396,5	378,0	381,3	383,9	385,4

Source: made by [3].

The data presented in Table 2 indicate a tendency for a decrease in the housing stock in Ukraine. And this causes an increase in the risk of offenses.

The main issue lies in determining the causes of offenses.

The first group of causes is due to intentional violations of established norms and standards. In this case, in order to reduce the number of such offenses, the legislation should provide for an effective mechanism for detection, recording of the offense and a clear mechanism for bringing the perpetrators to justice. For this purpose, it should be foreseen.

The second group of causes for violating urban planning standards and norms lies in the area of ignorance of the existence of certain urban planning norms and provisions. In order to reduce the number of such a group of offenses, the legislation should provide for effective mechanisms for public awareness of building codes and standards in the field of urban planning, as well as to prioritize directions of the activity of the respective control (supervision) bodies for the provision of recommendations for their elimination, i.e. for detected offenses – recommendations on their elimination must precede the application of administrative sanctions.

Although the buildings and structures of the CC1 class [28], as a rule, should include:

- all objects of industry, energy, transport and communication, agriculture and processing of agricultural products, not included in the CC3 and CC2 classes;
- public buildings, physical education and sports facilities not included in the CC3 and CC2 classes, as well as all temporary objects and mobile homes;
- objects of infield roads, communications and product pipelines;
- greenhouses, coldframes;
- towers of low voltage distribution network, lamp posts;
- private buildings.

It is impossible to ignore the situation, such as the deterioration of the technical condition of housing. One of the factors of such a deterioration is the imperfect organizational mechanism for carrying out work on maintenance of housing in a proper condition.

For a long time, housing maintenance companies failed to cope with their direct responsibilities due to lack of funds and the lack of skilled workers, due to which the already neglected housing deteriorated even more. The solution to this problematic issue was made possible by the introduction of alternative forms of management and maintenance of housing, for example, management companies or housing cooperatives [30, p. 137].

It is also possible to improve the situation by establishing administrative liability for those responsible for maintaining the housing in a proper condition by securing the corresponding composition of the administrative offense in the Code of Ukraine on Administrative Offenses.

Conclusions. In general, the institution of administrative liability in the field of urban planning requires substantial modernization, but not at the expense of making changes and additions to the current legislation, but on the basis of the creation of a new doctrine of understanding of administrative liability combined with the application of a systematic approach.

All of the above will provide an opportunity for the creation of effective mechanisms for applying the institute of administrative liability in practice.

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