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**CONTINUITY IN UKRAINE'S ADMINISTRATIVE-TORT LAW:  
LEGISLATION, NECESSITY OR VECTOR FOR DEVELOPMENT**

**Key words:** *administrative social relations, Code of Ukraine on Administrative Offenses.*

The contemporary development of Ukrainian society, including its legal system, necessitates a conscious scientific approach to the reception of foreign experience in the legal regulation of administrative and delinquent social relations and the continuity of the legal system of the Soviet period of the country's existence. Despite the political vectors of the direction of the development of the legal system in the national legal systems of the countries of the European Union, as constantly emphasized by Ukrainian politicians and statesmen, V. Averianov wrote that domestic law of law in its considerable part continues to exist in captivity of theoretical contradictions and even erroneous postulates [1, p.16] formed in Soviet times. Unfortunately, we note that most of the research in the field of administrative and tort law is introverted, when the scientific research and the basis for their implementation are exclusively addressed to the analysis of the doctrinal views of domestic scholars, as well as the succession in the approaches to the formation of amendments and additions to the current legislation on administrative offenses are exclusively in the practice of the Soviet period.

As a result, the current norms of Code of Ukraine on Administrative Offenses (CUAO) not only track the continuity of the Soviet period of Ukraine's existence, when issues of state-and-state regulation of all social relations without exception, including those involving the bringing of a person to administrative liability, were put on the foreground, and changes to CUAO occur in not the best traditions of succession as separate norms of law, as well as institutes and branches of administrative-tort law. In this context, a clear line is followed not only by neglect of the rights and freedoms of a person and a citizen, which must be based on universally recognized principles of the rule of law, respect for the rights, freedoms and interests of

man and citizen, equality of human rights, participants in proceedings, etc., and vice versa – asserting a leading role links of state bodies, their undoubted rightness. At the same time, such a reference to the principles of the rule of law and law (which is stated in the CUAO) is more likely to be given to universal ideals than the real basis for the exercise of powers to document administrative offenses and bring perpetrators to administrative liability [2, p. 254].

Continuity (latin *continuitas* – continuity) – continuity in the development of law. The problem of continuity arises when a political regime in the state changes during the social revolution, in the emergence of new states or the cessation of their existence, with territorial changes in the state, writes V. Honcharenko [3, p. 318]. Of course, at the first stages of the development of an independent legal system, it is impossible to do without the use of the rules of law inherited from the USSR and the Ukrainian SSR, since, completely abandoning the continuity of the legal norms of the Ukrainian SSR, Ukraine at the dawn of its statehood would not have a universal regulator of social relations, which is right.

Administrative-tort law deals with complex systems related to violations of established rules of conduct that are in the spheres of regulation of various branches of law, whose norms develop nonlinearly and difficultly predictable. A profound understanding of the subject-objective branch of administrative-tort law with the use of outdated approaches and doctrines of administrative liability is impossible. First of all, this is due to the fact that the regulatory norms protected by the administrative and tort law and legislation in the overwhelming majority are significantly more dynamic and more actively subject to changes due to the convergence of the Ukrainian legal system with the national legal systems of the Western European countries and the European Union in as a whole, while administrative and tort rules, without exaggeration, remain in captivity of inherited totalitarian approaches to legal liability, laid down in the USSR.

The modern theory of administrative-tort law has no unity. Scientists are searching and trying to build doctrines for the development of individual norms, institutions, while the holistic doctrine of administrative-tort law in the country is absent. The above, in our opinion, is due to the lack of due attention from the state to this problem. Without exaggeration, the hundreds of changes experienced by CUAO were so fragmented that, instead of removing certain gaps and collisions, in part, on the contrary, they lead to an even greater gap in the quality of legal regulation related to the legal certainty of the rules of the administrative and tort law, their clarity, justice. For example, I would like to emphasize the unrestrained desire to establish administrative liability for the owners of vehicles, despite the fact that the Constitutional Court of Ukraine, such an approach to security rules is considered unconstitutional.

Today, the evolution of social relations really indicates the path to the globalization of law, the adoption of common approaches in the legal regulation of social relations by the national legal systems. However, the perception and introduction of foreign experience in national legislation

should not reject national traditions of legal regulation, and in this aspect the continuity of norms, the doctrines of administrative and tort law is key. Unfortunately, the administrative-tort law is for some reason seen in conservatism in the exclusive perception of the Soviet principles of administrative liability, when the codified acts in the area of administrative-tort law did not have a clearly defined object of legal regulation. The norms of CUAO clearly demonstrate that the basis of administrative liability is not a way of applying legal liability (extrajudicial), not a special subject of administrative delinquency – an official of the authorities and administration, the subject of public-legal relations, etc. The modern CUAO is a vivid mix of diverse approaches that demonstrates the search for a holistic doctrine of administrative and tort law in Ukraine. Most post-socialist countries have adopted their own codified acts of administrative-tort law, even the Russian Federation, which recognized itself as the successor to the USSR. Particular attention deserves the issue of procedural rules of administrative and tort law. For example, Belarus adopted not only codes containing substantive rules of administrative and tort law, but also separate codes of procedural administrative and tort law. To say that the procedural administrative and tort rules in the legislation of Ukraine is, in fact, nothing to say. The specified norms represent separate milestones, which are practically unrelated to each other, which necessitates the use of considerable discretion for the entities authorized to deal with administrative offenses. Obviously, this approach has remained since the Soviet period of Ukrainian statehood. In our opinion, the presence of such discretion is due to the fact that under a totalitarian regime, no citizen could oppose the person to the state, including in terms of defending rights, freedoms and interests. As a result, the administrative-command system and its influence on administrative-tort relations were absolute, which indicated the impossibility of doubting the legitimacy, fairness and correctness of any decision by an official. The continuity introduced by Ukraine in terms of creating and building its own independent, democratic, rule-of-law state is due to the fact that with the achievement of independence, Ukraine actually continued to use the normative legal acts of the USSR and the USSR, thereby using the continuity of legal acts and norms of law [4, with. 121]. The Law of Ukraine "On the Law of Succession" of September 12, 1991, determined that the laws of the Ukrainian SSR and other acts adopted by the Verkhovna Rada of the Ukrainian SSR are in force on the territory of Ukraine, since they do not contradict the laws of Ukraine adopted after the proclamation of Ukraine's independence. As a result, CUAO continued its operation. However, such continuity should not hinder the adoption of the conceptual new administrative and tort law of Ukraine, which will be a logical extension of those regulatory norms, which will be guarded by CUAO.

Convinced that CUAO as it is, it is archaic. Its norms for today are, in the vast majority, adapted to meet the tasks of the Code, instead of having an independent influence associated with the protection of public relations.

Trying to understand the reforms in the state, we must remind that, along with the reform of regulatory norms, there should be reform of security

norms, which should not become "addicts" or rely on subjective conviction in their application of individual officials, regardless whether they are representatives of the executive or judicial branches of power. The law, which applies legal liability, in this case, CUAO and administrative liability, must contain rules that are characterized if not absolute, then the maximum legal certainty, clarity not only for lawyers, but ordinary citizens.

As a result, for CUAO there is no such fundamental principle of law and a democratic society as the rule of law, observance of rights, freedoms and interests of a person and a citizen. According to the ancient Soviet-totalitarian tradition, these issues not only do not find their logical embodiment in the norms of positive administrative-tort law, but also in practice, law enforcement is not too much of a manifestation.

Ukraine, choosing a European vector of development, leaves behind an anchor that connects itself with the past. In no way, wishing to undermine the achievements of historical and legal science, we must note that those conceptual foundations of administrative and tort law, which are formed under another social system, state regime, are not suitable for modern Ukrainian statehood and society. In this regard, I am convinced that there is an urgent need not only for introducing amendments to CUAO, but for the adoption of a new or newly revised CUAO with fundamentally new fundamental principles, principles, first of all addressed to a person, protection of his rights, freedoms, interests, including from the arbitrariness of the state in the person of its organs and individual officials, which, in our opinion, can only be achieved through the adoption of high-quality administrative and procedural rules. Of course, the views on the European national legal systems should not deny their own legal heredity and national traditions of legal regulation of social relations. In this context, scientific substantiation, discussion and the empirical component of the application of new norms, based on national traditions of legal regulation, and the national legal awareness of Ukrainians, are important.

We hope that the problems raised will be the basis for large-scale scientific discussions and searches, that the legislator will listen to them and that in the nearest future this problem will be solved at the legislative level.

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