

Administrative responsibility for offenses on air transport

Currently, the number of administrative offenses committed by both individuals and legal entities on air transport is increasing. This is evidenced by the sufficient amount of information that is covered in the mass media, as well as judicial practice.

Today, the number of administrative offenses in air transport, committed by both individuals and legal entities, is increasing. This is evidenced by a sufficient amount of information that is covered in the mass media, as well as judicial practice regarding individual citizens who commits offenses during flights, such as: consumption of alcoholic drinks, use of radio communication devices on board an aircraft, violation of the norms of the current legislation on the transportation of dangerous substances or objects. At the same time, legal entities commit offenses related to violation of the procedure for using the airspace of Ukraine, operating an aircraft without documents giving the right to fly, etc. In this connection, it becomes necessary to consider the issue of administrative responsibility for offenses on air transport. If we talk about administrative responsibility for offenses on air transport, then we have episodic works in which attention is drawn to some aspects of the introduction and implementation of sanctions for violations of established universally binding rules in the field of aviation; their authors are: Y. Y. Bagan, A. S. Bychkov, N. V. Daraganova, E. K. Yerashov, I. Ya. Kozachok, A O. Sobakar, A. V. Filippov and others. Scientists draw attention to certain features of administrative liability for offenses in air transport. Thus, N. V. Daraganova believes that administrative responsibility for offenses in air transport should be considered as a type of legal responsibility, which is a set of administrative legal relations arising in connection with administrative offenses in air transport, and which involves the application by authorized bodies, by officials of air transport bodies, administrative fines provided by law to persons who have committed these offenses [1, p. 84]. At the same time, in relation to some offenses committed on air transport, the norms of other legislative acts are applied, although it would be desirable to provide for liability in accordance with the Code of Ukraine on Administrative Offenses. I. Ya. Kozachok emphasizes that the peculiarity of administrative responsibility in the field of air transport is that many norms that establish certain rules of conduct in this field and regulate other legal relationships, the violation of which administrative responsibility arises, are blanket, have a repressive nature [2, p. 109]. It is worth agreeing with this, since the Code of Administrative Offenses provides for administrative responsibility for violating the rules of flight safety and the rules of behavior on an aircraft; other types of offenses committed by legal entities and natural persons are reflected in the Aviation Code of Ukraine, the Law of Ukraine "On the Liability of Carriers during International Passenger Transportation", which in terms of content can be classified as administrative offenses. In fact, administrative responsibility, both in any field of public relations and in the field of civil aviation, is used to encourage individuals and

legal entities to comply with the various rules of conduct established in this field, to ensure public order and safety at civil aviation facilities [2, p. 109]. A. V. Filippov emphasizes the need to strengthen responsibility for committing administrative offenses in the field of civil aviation by increasing the amount of fines and introducing additional sanctions for this category of offenses in the form of cancellation of the license of economic entities in the field of aviation activity, the certificate (certificate) of the air operator ships, etc. [3, p. 66-67]. The scientist's position is correct in terms of both increasing the amount of fines and applying additional types of penalties. In today's conditions, the regulatory and legal provision of administrative responsibility for offenses on air transport is carried out by the Code of Ukraine on Administrative Offenses, the Aviation Code of Ukraine and a number of laws containing norms that provide for administrative responsibility on air transport. Administrative responsibility in the Code of Ukraine on administrative offenses is established in three ways: 1) blanket way; 2) by specifying specific rules in the corresponding article of the codified act, the violation of which entails the onset of administrative liability; 3) establishing a prohibition, the violation of which constitutes an objective aspect of an administrative offense directly in the norm of the Special part of the legislative act on administrative offenses [4, p. 91-92]. In the context of the above, it is worth talking about the classification of offenses on air transport depending on the subject of the offense - these are natural and legal entities. Confirmation of the above is the responsibility for the offense provided for by the Criminal Procedure Code and the Air Code of Ukraine.

Analysis of the provisions of the Code of Ukraine on administrative offenses makes it possible to single out the following types of administrative offenses in air transport: violation of flight safety rules (Article 111 of the Code of Administrative Offenses); violation of the rules of conduct on an aircraft (Article 112 of the Code of Administrative Offenses); violation of the rules of international flights (Article 113 of the Code of Administrative Offenses); violation of fire safety rules on the railway, a variety of rules in this field, ensuring public order and public safety [5, p. 5-9]. In connection with this, the object of administrative offenses in air transport is public relations in the field of safety in air transport. The Air Code of Ukraine uses the terms "aviation safety", "aviation safety" and "flight safety". But a direct appeal to Art. 10 of the Air Code of Ukraine provides an opportunity to note that aviation safety is the broadest concept in terms of content and consists of flight safety, aviation safety, environmental safety, economic and informational safety [6]. In the administrative and legal literature, the objective side is defined as such an element of the composition of the offense, which includes the signs that determine the act of external behavior of the offender. The study of the signs of the objective side, along with the analysis of other elements of a certain composition of an administrative offense, makes it possible to provide a reliable legal assessment of socially harmful actions, in particular, actions that violate the norms of current legislation in the field of civil aviation. In general, a clear definition of the signs of the objective side of the composition of an administrative offense on air transport is necessary for the correct legal assessment of this socially harmful act. Administrative scientists emphasize that the content of the objective side of an administrative offense consists of such signs as the action (action or inaction), its harmful consequences, the causal relationship between the action and

its consequences, place, time, environment, method, tools and means of commission misdemeanor. Based on the content of Art. 9 of the Code of Administrative Offenses, a mandatory component of the objective side of an administrative offense is an action or inaction that encroaches on public order, property, rights and freedoms of citizens, on the established management procedure and for which the law provides for administrative liability [7]. Considering the above-mentioned categories of administrative offenses in air transport, it can be noted that the objective side of offenses is expressed in the following forms: - placing in the area of the airfield any signs and devices similar to marking signs and devices adopted for the recognition of airfields, or burning pyrotechnic articles without the permission of the airport or airfield administration, or setting up objects that contribute to the mass gathering of birds that are dangerous for flights aircraft (formal composition); – failure to comply with the rules on placing night and day marking signs or devices on buildings and structures (formal composition); – damage to airfield equipment, airfield signs, aircraft and their equipment (material composition); – passage or passage without proper permission on the territory of airports (except for air terminals), airfields, radio and lighting facilities for flights (formal warehouse); – execution of flights in violation of regulations governing aviation activities (formal composition); - non-compliance by persons on board the aircraft with the orders of the ship's commander (formal composition); – violation of the rules for photographing, filming and using radio communication devices on board the aircraft (formal composition); – violation of the rules of international flights (formal composition); – violation of fire safety rules established for air transport (formal composition); – violation of the rules of transportation of dangerous substances or objects by air transport (formal warehouse); - production for the purpose of sale, sale or use of knowingly forged air transport tickets and other travel documents and documents for the transportation of goods; – damage to seals and locking devices of containers, tearing off seals from them, damage to individual cargo spaces and their packaging, packages, as well as fences of warehouses used to perform operations related to the transportation of goods by air transport; – damage to containers and vehicles intended for air cargo transportation.

Based on the norms of the Code of Administrative Offenses, the subject of committing administrative offenses on air transport is a convicted natural person who has reached the age of sixteen at the time of committing the administrative offense [7]. In the context of the mentioned achievement by the subject of an administrative offense of the age from which administrative responsibility can arise, and his soundness of mind is one of the mandatory conditions for recognizing a person guilty and responsible for what he has done. Thus, the subject of committing an administrative offense on air transport is natural persons, in particular: natural persons (Article 111 of the Code of Criminal Procedure), (Article 112 of the Code of Criminal Procedure), etc.; members of the flight crew (Article 113 of the Code of Administrative Procedure), (Article 111 of the Code of Administrative Procedure), etc.; officials (Part 2 of Article 111 of the Code of Administrative Offenses), (Part 2 of Article 120 of the Code of Administrative Offenses), etc. The analysis of the composition of administrative offenses on air transport makes it possible to note that these articles have special features that indicate the peculiarities of the legal position of the subjects and allow differentiating the responsibility of different categories of

persons, thereby ensuring a fair legal assessment of the committed act. Special features perform one of two functions: first, they can be constructive features of simple compounds, which means that only special subjects are brought to administrative responsibility for the relevant offenses; secondly, they can be qualifying features of qualified syllables. Regarding the subjective side of the violation on air transport, it is worth talking about the reflection of the corresponding mental processes that were taking place in the mind of the violator at the time of committing the administrative offense, the awareness of its commission and the evaluation of the result. Therefore, the subjective side of the offense characterizes the will of the offender and determines his behavior both at the time of committing the offense and after it has been committed. In this regard, the subjective side can be considered as the inner side of the objective side, characterized by the presence of fault in the form of both intent and negligence. At the same time, Art. 126 of the Aviation Code of Ukraine establishes that legal entities and natural persons whose activities are related to the use of the airspace of Ukraine, the development, manufacture, repair and operation of aviation equipment, the implementation of economic activities in the field of civil aviation, air traffic maintenance, security aviation, are responsible according to the law [6]. Based on the content of this article, individuals and legal entities are liable for violations of legislation in the field of civil aviation. But further analysis of the Aviation Code of Ukraine makes it possible to state that for offenses in the field of civil aviation, liability will be applied only to legal entities as subjects of aviation activity in the form of imposing a fine. The majority of scientists who studied the implementation of state policy in the field of civil aviation emphasized the need to introduce more effective types of sanctions than fines. At the same time, part 2 of Art. 10 of the Air Code of Ukraine states that in order to ensure the safety of civil aviation, the authorized body on civil aviation implements a set of measures aimed at preventing the occurrence of aviation events, including: a) banning, canceling, temporarily suspending or changing the performance of any types of flights and aviation activities in case of detection of a threat to aviation safety or their non-compliance with the established standards and aviation rules of Ukraine; b) annulment, temporary suspension of validity of certificates, certificates, licenses, permits, restriction of rights granted by these documents, cancellation of approval of candidacies in accordance with part ten of this article; c) imposing fines and taking other measures to ensure aviation safety.

As A. V. Strelnikov points out, legal entities are able to accumulate significantly greater financial, material, and intellectual resources to achieve their goals than an individual individual, which has both a positive and a negative side, since a violation of the established order of management and state discipline, committed by a legal entity, can cause much greater damage to the state and society than the misdemeanor of an individual individual [8]. In this regard, T. O. Zima emphasizes that the administrative responsibility of legal entities is regulated by a significant number of legal norms that are part of the legal institute of administrative responsibility and form a separate sub-institute "Administrative responsibility of legal entities" [9, p. 10]. In this aspect, it is appropriate to analyze the regulatory legal acts of the post-Soviet countries - the Republic of Azerbaijan, the Kyrgyz Republic and the Republic of Kazakhstan - regarding the establishment of administrative

responsibility on the subject under investigation. Legislative acts regulating administrative liability for violation of air transport rules provide for administrative liability of both individuals and legal entities, which is reflected in the relevant codes. As noted by T. O. Zima, in order to increase the effectiveness of the administrative responsibility of legal entities, it is necessary to carry out at least a partial codification of the normative acts that establish it. Such codification can be carried out both on the basis of the Code of Administrative Offenses and by adopting a new law that would exclusively regulate the administrative responsibility of legal entities. [9, p. 10]. Therefore, administrative responsibility for offenses on air transport is an appropriate legal form of the state's response to the protection of national interests and the protection of the population in the field of ensuring aviation security, which provides for the application by authorized bodies (officials) for violations of the generally binding aviation rules of Ukraine to the violator (individuals and legal entities) of administrative fines in the manner and under the conditions stipulated by the norms of administrative legislation.

References

1. Дараганова Н.В. Юридична відповідальність за адміністративні правопорушення на повітряному транспорті: дискусійні питання. *Юридична наука*. 2011. № 4/5. С. 83-90.
2. Козачок І. Я. Адміністративно-правові засади забезпечення безпеки польотів на авіаційному транспорті : дис. ... канд. юрид. наук :12.00.07. Київ, 2015. 217 с.
3. Філіппов А. В. Адміністративна відповідальність за правопорушення, що посягають на безпеку цивільної авіації: дискусійні питання. *Юридична Україна*. 2006. № 6. С. 26–30.
4. Крижановська В.А. Адміністративна відповідальність в адміністративному праві України : сучасне розуміння, нові підходи : дис. ... канд. юрид. наук : 12.00.07. Львів, 2016. 258 с.
5. Гончарук С. Т. Гончаренко А. П. Посилення адміністративної відповідальності за порушення правил безпеки польотів. *Юридичний вісник. Повітряне і космічне право*. 2013. № 1. С. 5-9.
6. Повітряний кодекс України від 19.05.2011 № 3393-VI URL : <https://zakon.rada.gov.ua/go/3393-17> (дата звернення: 12.09.2022).
7. Кодекс України про адміністративні правопорушення від 07.12.1984 № 8073-X URL : <https://zakon.rada.gov.ua/go/80731-10> (дата звернення: 12.09.2022).
8. Науково-практичний коментар Кодексу України про адміністративні правопорушення / за заг. ред. С.В. Петкова. Київ : Юрінком Інтер, 2020. 792 с.
9. Зима О.Т. Адміністративна відповідальність юридичних осіб : дис. канд. юрид. наук : 12.00.07. Харків, 2001. 164 с.