UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2022.2.12

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Pinchuk, Vladyslav (2022). Recording of administrative offences by district police officers: definition of essence and content. *Entrepreneurship, Economy and Law*, 2, 76–80, doi https://doi.org/10.32849/2663-5313/2022.2.12

RECORDING OF ADMINISTRATIVE OFFENCES BY DISTRICT POLICE OFFICERS: DEFINITION OF ESSENCE AND CONTENT

Abstract. ***Purpose.*** The purpose of the article is to generally describe the essence and content of the recording of administrative offences by district police officers. ***Results.*** In the article, scientific perspectives of scientists and researchers enable to describe the main scientific and theoretical, practical provisions on the interpretation of the essence and content of the report as a form of expression of decision-making in the document flaw system. The article reviews and compares the obtained results with domestic scientists' doctrinal perspectives regarding the administrative and legal interpretation of the report, as well as the recording of administrative offence. In the article and the conclusions, the author suggests a set of positive and negative aspects of the functioning of the institution in law, and, on the basis of the literature review, some steps are proposed for possible optimisation. It is proved that the recording of an administrative offence is a form of fixing the fact, event, circumstances of the act committed, which allows initiating the process of administrative prosecution of the offender. Furthermore, the author argues that its essence and significance in the context of considering an administrative offence case is key, as it can contain not only the inspection of the offence specificities in general, but also information on administrative detention of persons, information on temporary seizure and inspection of property of the offender and other facts. ***Conclusions.*** It is emphasised that the content of the recording of administrative offence is clearly regulated by the Code of Administrative Offences of Ukraine and should comply with it. In case of breach of the basic principles defined by the relevant Code, it can be sent for revision as evidenced by domestic legal practice. A special issue in the context of determining the features of the content of recording an administrative offence is the establishment of what is mandatory and what is optional, because such features have a direct impact on the timing of its formulation.

Key words: recording, administrative law, offence, police, district officers, community officers, concept.

1. Introduction

The issue of effective administrative and legal protection of human and civil rights and freedoms in Ukraine and throughout the world is urgent in the present circumstances, since an effective response to administrative offences by authorised persons and citizen concerned guarantees stability and sustainability in the development of the institution of human rights and freedoms.

Moreover, the National Police of Ukraine is the largest law enforcement body in Ukraine, with a staff of more than 120.000 people, where district police officers exercise a bulk of administrative in general and administrative and jurisdictional powers in particular.

At the same time, the main areas of optimising the work of law enforcement bodies in the context of improving the administrative and legal processes and procedures are actively studied by scientists and researchers. Therefore, we propose to focus on recording an administrative offence by a district police officer and find out the essence and content of the relevant process.

The purpose of the article is to generally describe the essence and content of the recording of administrative offences by district police officers. Goal setting, in turn, allows specifying the list of tasks, which include: the general legal description of the conceptual and categorical framework of the research; the analysis of the essence and content of the process of reporting administrative offences by district police officers; development of general theoretical proposals to optimise the functioning of the relevant institution of law.

The relevance of the topic, as stated at the beginning of the article, does not raise any objections, since the organisation of an effec-

tive response to administrative offences will positively affect the stable functioning of the institution of human and civil rights and freedoms. First of all, to provide further deeper and more comprehensive study, we propose to analyse the conceptual and categorical apparatus of the outlined topic.

2. The concept and particularities of recording an administrative offence

In the context of administrative law science, a record differs significantly from the interpretation of the concept in the classical sense. According to Shkrebets, the record is a document which fixes the course and results of meetings. The recordings show all statements on the issues under consideration, as well as the decisions taken as a result of the discussion (Shkrebets, 2018). However, it should be noted that while this interpretation of the concept 'recording' differs significantly from that of legal study in general and administrative legal science in particular, there are still common features. This directly refers to the fact that the recording, as the form of the document, is intended to fix a certain event, the performance of certain actions, their justification, as well as the final decision, which is accepted and binding to be carried out as a result of the facts under consideration.

At the same time, the issue of recording an administrative offence as a form of expression of decision-making in an administrative procedure is considered more substantively.

According to M. Bezdolnyi, who has studied the forms of expression of decisions of public authorities in relations with persons, the recording is a procedural document officially certifying the fact of unlawful actions for which administrative liability is provided, and the main source of evidence, so it should be properly documented (Bezdolnyi, 2009, p. 3). This perspective fully reflects the provisions of the law, inter alia, that an improper recording or a recording drawn up by an improper actor, is null and void and only indicates the misconduct of a police officer or other actor of public authority.

However, domestic legislation (articles 45 and 46 of the Code of Administrative Procedure and article 251 of the Code of Administrative Offences of Ukraine) do not define the concept of a recording, which, in our opinion, significantly complicates the application of this category both in scientific circles and in the practical activities of law enforcement bodies in general and district officers of the National Police of Ukraine in particular.

In I. Kuian's opinion, the recording of administrative offence is a written account of an unlawful act, having the characteristics of an administrative offence, under certain conditions, that is, when establishing the factual data provided for in article 251 of the Code of Administrative Offences, it is a document of evidentiary value in a case. For example, the scientist also cites the opinion that there is no definition of the concept of recording an administrative offence in the Legal Encyclopaedia published by the National Academy of Sciences of Ukraine (Kuian, 2003, pp. 176-177).

3. Contents of the protocol on administrative offense

We believe that the crime situation in the State, conducive to the systematic exercise by the National Police of Ukraine and other law enforcement bodies of their administrative and jurisdictional powers, such as recording an administrative offence (for example, by a district police officer) and the absence of a definition of the concept of a recording of administrative offence in the legislation of Ukraine are interrelated problems, requiring scientific development and definition.

In addition, article 256 of the Code of Administrative Offences provides for the requirements for the content of the recording of administrative offences, namely: "The recording of the administrative offence shall specify: the date and place of drawing up; the title and full name of the person who drew it up; identity data of the offender prosecuted for administrative liability (if found); time and nature of the administrative offence; the legal regulation establishing liability for the offence; names, addresses of witnesses and victims, name of the whistle-blower (by written consent), if any; explanation of the person liable; other information necessary for the resolution of the case. If the offence has caused material damage, it is also recorded" (Code of Ukraine on Administrative Offences, 1984).

Therefore, considering the general structural elements of the content of the relevant recording and the need to specify the features of its drafting by district police officers in general and all those who have the right to draw up the relevant documents in particular, in our view, it is logical to design not only a typical form of such a document, but also a definition of its concept.

According to O. Yarmak's studies on the recording of administrative offence as a source of evidence in the proceedings in cases on administrative offences, the recording of an administrative offence is the main procedural document in the case on an administrative offence, containing a summary of the facts as evidence in this case, the final legal classifi-

cation of the actions (omissions) of the person against whom proceedings have been initiated, on the grounds of which the case is considered on the merits (Iarmak, 2014).

Thus, the need to define the concept of recording of administrative offences is even more topical, since the facts listed by the scientists and the provisions of the current legislation of Ukraine clearly indicate the risk of problems with the legality of its drawing, as well as the need to respect human and civil rights and freedoms in this context.

Moreover, A. Yarmak argues that the recording is a general document in the consideration of the case on administrative offence, which only underlines the urgent need to define its concept in order to establish the appropriate procedural form.

The content of the recording of the administrative offence by a district police officer, among others, has its elements and clear requirements, as the information reflected in it directly demonstrates the circumstances, facts of the event, the surname, first name and middle name of all the participants, their address and contact details, as well as their statements regarding the situation.

In addition, the issue of the fact and circumstances of the event, which should directly indicate the relationship between the act committed by the perpetrator and the effects of the injury to human and civil rights and freedoms or the interest of the State, is also described. All the above to some extent directly affect the need to regulate the definition of the recording of an administrative offence in the current legal framework governing the recording of administrative offences, not only by district police officers, but also by other actors authorised to do so.

Furthermore, the legislator has taken steps to improve the process of the recording of administrative offences, but unfortunately, these proposals do not concern the activities of district police officers, but could be used, by analogy, for drafting other legal regulations. For example, the Law of Ukraine *On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Regulation of Relations in the Sphere of Ensuring Road Safety* (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Regulation of Relations in the Sphere of Ensuring Road Safety, 2015) provided for a list of factual data, which may be evidence in cases on administrative offences and, accordingly, which must be specified in the recording of the administrative offence by the authorised person.

However, we believe that the implementation of the penalty point system, which would have a direct impact on the amount of fine for an administrative offence, for which a district police officer, within the scope of his/her administrative jurisdictional powers, holds the person liable, would significantly improve the functioning of the institution concerned and would directly affect the definition of both the concept of the recording of an administrative offence and its content.

At the same time, such a position requires further elaboration, as the positions specified in the legislation have been implemented taking into account the functioning of the system of automatic recording of committed criminal offences, which is not possible for natural persons, in respect of whom the district police officer within his/her competence exercises administrative and jurisdictional powers.

In addition, the legislator removed the recording of an administrative offence from the list of evidence in the category of cases on administrative offences recorded automatically (in the field of road safety), which is clearly stipulated by the Law of Ukraine *On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine 'On the National Police'* (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine "On the National Police", 2015).

The above-mentioned positions also concern the National Police of Ukraine and can, provided substantial processing, be interpreted into the administrative and jurisdictional activities of district police officers of the National Police of Ukraine.

4. Conclusions

To sum up, the analysis of scientists' perspectives on the challenging issues of defining the essence and content of the concept of the recording of an administrative offence makes it possible to state that:

1. The recording of an administrative offence is a form of fixing the fact, event, circumstances of the act committed, allowing the initiation of administrative prosecution of the offender.

2. Its essence and significance in the context of considering an administrative offence case is key, as it can contain not only the inspection of the offence specificities in general, but also information on administrative detention of persons, information on temporary seizure and inspection of property of the offender and other facts.

3. The content of the recording of administrative offence is clearly regulated by the Code of Administrative Offences of Ukraine, and should comply with it, in case of non-compliance with the basic principles

defined by the relevant Code, it can be sent for revision, as evidenced by domestic legal practice. A special issue in the context of determining the features of the content of recording an administrative offence is the establishment of what is mandatory and what is optional, because such features have a direct impact on the timing of its formulation.

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СКЛАДАННЯ ПРОТОКОЛІВ ПРО АДМІНІСТРАТИВНЕ ПРАВОПОРУШЕННЯ ДІЛЬНИЧНИМИ ОФІЦЕРАМИ ПОЛІЦІЇ: ДО ВИЗНАЧЕННЯ СУТНОСТІ ТА ЗМІСТУ

Анотація. ***Мета***. Метою статті є загальна характеристика сутності та змісту складання протоколів про адміністративні правопорушення дільничними офіцерами поліції. ***Результати***. У статті на підставі наукових позицій учених і дослідників було охарактеризовано основні науково-теоретичні та практичні положення щодо тлумачення сутності та змісту поняття протоколу як форми вираз прийняття рішення в системі документообігу. Узагальнено та проведено порівняння отриманих результатів із доктринальними поглядами вітчизняних науковців стосовно адміністративно-правового тлумачення поняття протоколу, а також протоколу про адміністративне правопорушення. Автором у тексті статті та висновках пропонується ряд позитивних і негативних аспектів щодо функціонування відповідного інституту в праві, а також на підставі проаналізованих думок пропонуються деякі кроки щодо ймовірної оптимізації. Доведено, що протокол про вчинення адміністративного правопорушення є формою фіксації факту, події, обставин учиненого діяння, що дозволяє запустити процес притягнення до адміністративної відповідальності особу-правопорушника. Автором також підтримується позиція про те, що його сутність та значення в контексті розгляду справи про адміністративне правопорушення є ключовими, оскільки він може вміщати в себе не лише оглядові характеристики правопорушення в цілому, а й відомості щодо адміністративного затримання осіб, інформацію про тимчасове вилучення та огляд майна особи-правопорушника та інші факти. ***Висновки***. Підкреслюється, що зміст протоколу про адміністративне правопорушення чітко врегульований Кодексом України про адміністративні правопорушення та має йому відповідати, а в разі недотримання основних засад, визначених відповідним кодексом, його може бути відправлено на

доопрацювання, про що свідчить вітчизняна юридична практика. Окремим питанням у контексті визначення особливостей змісту протоколу про адміністративне правопорушення є встановлення того, що є обов'язковим реквізитом, а що факультативним, оскільки такі особливості безпосередньо впливають на термін його складення.

Ключові слова: протокол, адміністративне право, правопорушення, поліція, дільничні офіцери, офіцери громади, поняття.

The article was submitted 10.03.2022
The article was revised 30.03.2022
The article was accepted 21.04.2022