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DOI <https://doi.org/10.32849/2663-5313/2022.4.04>**Maksym Donets,***Applicant, Scientific Institute of Public Law, 2a, H. Kirpy str., Kyiv, Ukraine, postal code 03035, Maksym_Donets@gmail.com***ORCID ID:** 0000-0025-3589-1628

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SPECIFICITIES OF ADMINISTRATIVE LIABILITY OF SERVICEMEN (BODYGUARDS) OF THE STATE PROTECTION DEPARTMENT OF UKRAINE

Abstract. Purpose. The purpose of the article is to determine the specificities of administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine. **Results.** The liability of public legal entities is one of the elements of the legal regulatory mechanism governing social relations in the field of public administration. Furthermore, legal liability is an integral part of the administrative and legal status of actors of public law and is expressed through the application to them of certain measures of the State and legal coercion for improper exercise of powers, depending on the field of activities they are engaged in. In general, the administrative liability of bodyguards has been studied from the perspective of four main blocks: administrative liability of bodyguards as officials; administrative liability of the bodyguards as individuals; administrative liability of the actor of the protection services where the bodyguard is employed (in services); special administrative (special disciplinary) liability of bodyguard officials. It is determined that the administrative liability of the actor of protection services (administrative liability of the legal entity) by depriving of the license to carry out protection services indirectly leads to adverse effects for the bodyguard, because he loses the right to protect an individual under the contract of such a legal entity. **Conclusions.** It is proved that the administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine involves a system of provisions of administrative law, according to which: first, bodyguards are subject to administrative sanctions for violation of the rights and freedoms of other persons or/and the public interest of the State and society as a whole, improper performance of their professional duties in the protection of the person entrusted to them; second, bodyguards are protected against third parties who seriously interfere with their professional administrative duties prescribed by law. It is underlined that servicemen (bodyguards) of the State Protection Department of Ukraine can be brought to administrative liability for the whole range of administrative offenses related to corruption and military administrative offenses.

Key words: State Protection Department of Ukraine, serviceman (bodyguard), administrative-legal status, legal liability, administrative liability.

1. Introduction

In the system of ensuring various humanitarian values, servicemen (bodyguards) of the State Protection Department of Ukraine play an important role because of risking their lives and health to protect life, health and the inviolability of the elite of society, which in turn makes a leading contribution to ensuring the proper rule of law for all citizens without exception, organizes the creation of the national product, forms the state and local budgets for providing socially unprotected population, creates masterpieces of art, develops science or raises the prestige of the Ukrainian people in the international sports arena.

Nevertheless, the activities of the servicemen (bodyguards) of the State Protection Department of Ukraine, should not be such that they unnecessarily restrict the rights and freedoms of other persons, do not allow exceeding the limits of the necessary defence, or in disproportionate use of physical force or special means. In such cases, they should be subject to administrative sanctions of various legal nature.

The scientific basis of the study is the works of outstanding experts in administrative law, which have been useful in formulating the author's positions and conclusions, such as: V. Averianov, O. Bandurka, O. Halunko, Ye. Hetman, Yu. Harust, O. Dzhafarova,

O. Drozd, O. Kobzar, T. Kolomoiets, A. Manzhula, Ye. Sobol, S. Shatrava, R. Shapoval, and others. In current conditions, the concept of administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine at both theoretical and practical levels have been studied at substandard levels. This leads to the fact that the rights of servicemen (bodyguards) of the State Security Department of Ukraine and others with whom they clinch, protecting their clients from unwanted contact are mutually violated.

Therefore, the problem of administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine requires further development and improvement.

2. Concept and specificities of liability

According to the *Explanatory Dictionary*, the term "liability" is interpreted as being imposed on someone or taken responsibility for a certain area of work, a case, for someone's actions, activities, words (Bilodid, Buriachok, 1974).

The general theory of the State and Law defines legal liability as the adverse effects of a personal, property or organizational nature, provided for by sanctions of law, that a person experiences for an offence committed. It is retrospective, evaluates the past, that is, it is liability for the act that has already taken place. It is thus distinct from political, moral and other social responsibilities that can assess future actions. Therefore, depending on the branch, norms are classified into the following sub-categories of liability: constitutional, criminal, civil, disciplinary, material, administrative (Tsvik, 2002).

According to V. Kyrychenko and A. Kurakin, legal liability is the obligation of the offender under the current legislation to experience forced deprivation of certain goods (personal, property or organizational) for an offence committed (Kyrychenko, Kurakin, 2010, p. 102).

In general, we say that legal liability plays an important role in the legal regulatory mechanism for the activity of the relevant actor of administrative law and consists in the implementation of an appropriate set of certain legal measures and remedies, used in any violation of their activities.

The study of legal liability reveals that the legislation in force does not contain provisions that explain the very notion of administrative liability, but the theory of administrative law presents a significant number of opinions of experts in administrative law who have in one way or another examined this issue.

According to Ye. Dodin, administrative liability is the determination by the competent State bodies, through the application of administrative-coercive measures, of restrictions on property and personal benefits and interests

for the commission of administrative offences (Dodin, 1998, p. 266). F. Shulzhenko and Ye. Nevmerzhytskyi, relying on the analysis of legal perspectives, concluded that administrative liability is a specific influence of the State on an administrative offense, that is, the imposition of penalty on the offender by the authorized body or official under the applicable law (Shulzhenko, 2003, p. 107).

M. Shemshuchenko believes that administrative liability is a kind of legal liability, which consists in applying to a person who has committed an administrative offence certain administrative punishment. Administrative liability is incurred for violation of general mandatory rules in various branches of public administration even when the violation has not caused specific harmful effects (Shemshuchenko, 1998).

In T. Kolomoiets's opinion, administrative liability is a kind of legal liability, a specific form of negative response by the State, through its competent authorities, to the corresponding category of unlawful manifestations (especially administrative offences), according to which the perpetrators of these offences shall answer to the authority of the public authority for their wrongful acts and be subject to administrative sanctions in the manner prescribed by law (Kolomoiets, 2009, p. 101).

Academician V. Kopeichykov considered that administrative liability should be understood as the application of administrative punishment by an authorized body or official to the perpetrator of an offence, which is not, by its nature, subject to criminal liability under current legislation (Kopeichykov, 2003).

In general, administrative liability is the application of special means of State action, administrative sanctions imposed both in judicial and quasi-judicial manner, to violators (Halunko, Kurylo, Koroied, 2015; Kozulina, 2014).

According to T. Kolomoiets, administrative liability as a kind of legal liability is: external; applicable only to the commission of an offence; related to State coercion in the form of punitive and legal measures; determined by law; characterised by prosecution of the offender in a certain procedural manner; characterised by prosecution by authorized State bodies and officials; characterised by certain material and domestic losses, provided for by law, incurred by the perpetrator of an offence (Kolomoiets, 2009, p. 102).

Therefore, the liability of public legal entities is one of the elements of the legal regulatory mechanism governing social relations in the field of public administration. Furthermore, legal liability is an integral part of the administrative and legal status of actors of public law and is expressed through the application to them of certain measures of the State and legal coer-

cion for improper exercise of powers, depending on the field of activities they are engaged in.

Following Professor Yu. Bytiak, administrative liability means imposing on offenders general mandatory rules in force in public administration, administrative sanctions entailing aggravating material effects for these persons (Bytiak, Bohutskyi, Harashchuk, 2001, p. 158).

3. Legal and regulatory framework for administrative liability

For example, under article 7, para. 5. Of the Law of Ukraine "On Protection services", the grounds for revocation of the license for protection services of the actor of protection services are: when it is established that a licence or a copy thereof has been transferred to another legal or natural person for the conduct of business; the licensee refusal of an inspection by a licensing body or a specially authorized licensing body; failure of the actor of protection services to comply with a decision on eliminating defects (Zakon Ukrainy Pro okhoronnu diialnist, 2012). A form of administrative liability is the special disciplinary liability of officials (Bytiak, Bohutskyi, Harashchuk, 2001, p. 176). Therefore, we believe that special administrative liability is the special disciplinary liability of bodyguards.

Thus, the administrative liability of bodyguards has been studied from the perspective of four main blocks: 1) administrative liability of bodyguards as officials; 2) administrative liability of the bodyguards as individuals; 3) administrative liability of the actor of the protection services where the bodyguard is employed (in service); 4) special administrative (special disciplinary) liability of bodyguard officials.

Bodyguards with the status of officials include servicemen (bodyguards) of the State Protection Department of Ukraine and police of the National Police. For example, these include the full range of administrative offences related to corruption (Chapter 13-A of the CoAO) and military administrative offences (Chapter 13-B of the CoAO), in particular for abuse of power or official position by a military official (arts. 172-13 of the CoAO), excess of power or official powers by a military official (arts. 172-14 of the CoAO) (Kozulina, 2014).

Therefore, servicemen (bodyguards) of the State Protection Department of Ukraine can be brought to administrative liability for the whole range of administrative offenses related to corruption and military administrative offenses.

In our view, the extension of the provisions of Chapter 13-B of the CoAO to servicemen (bodyguards) of the State Protection Department of Ukraine, under which they may be held administratively liable, do not reflect

the legal nature and social relations in this field. As the specifics of their activities reflect not the protection of the Homeland from external open aggression, but intellectual activity related to the fight against terrorism and ensuring the normal functioning of the highest bodies of State power. Furthermore, we believe that the CoAO should be supplemented with articles that: first, provide normal conditions for the performance of military duties by the servicemen (bodyguards) of the State Protection Department of Ukraine; second, protect citizens from abuses by servicemen (bodyguards) of the State Protection Department of Ukraine simultaneously.

Bodyguards, as individuals without official status, may be held administratively liable for disobeying a lawful order or request of a police officer, a member of a public order and State border protection unit, a serviceman (art. 185 of the CoAO) and arbitrariness, in other words, the unauthorized exercise of one's actual or presumed right, contrary to the procedure established by law, which did not cause significant harm to citizens, State or public organizations (art. 186 of the CoAO). In the latter case, it should be noted that so-called civilian bodyguards do not have the right to impersonate law enforcement officials, otherwise they may be subject to administrative liability under art. 186 of the CoAO "Arbitrariness".

Thus, bodyguards are not protected by administrative coercive measures during actions to protect individuals. Accordingly, we propose to supplement the CoAO with an article that will protect civilian bodyguards from violations by other persons during the performance of their professional duties.

The administrative liability of bodyguards as individuals without official status is provided for in numerous articles of the CoAO, in particular, for arbitrariness if they impersonate representatives of law enforcement agencies, however, they are not protected by administrative coercive measures against violations by other persons in the performance of their professional duties.

With regard to the administrative liability of the actor of the protection services in which the bodyguard works, it should be noted that: first, only the actor of non-State protection services may be held liable; the State Protection and Guard Police Department of Ukraine is not the actor of this offence; second, such liability is sooner indirectly than directly relates to the bodyguard, because the loss of a security license results in the loss of the right to protect an individual under the contract by such a legal person.

Therefore, the administrative liability of the actor of protection services (administrative liability of the legal entity) by depriving

of the license to carry out protection services indirectly leads to adverse effects for the bodyguard, because he loses the right to protect an individual under the contract of such a legal entity.

The special disciplinary liability of militia bodyguards, regulated by special laws, along with the Labour Code, is of interest.

Furthermore, according to the Law of Ukraine "On the State Protection of State Authorities of Ukraine and Officials," servicemen (bodyguards) of the State Protection Department of Ukraine are disciplinary, administratively, materially or criminally liable, as prescribed by law, for the committed offenses. The Disciplinary Regulations of the Armed Forces of Ukraine provide for disciplinary liability in the event of failure to perform (improper execution of) his or her official duties, the violation of military discipline or public order by a serviceman, the commander shall remind him/her of the duties of service and, if necessary, impose disciplinary sanctions. In particular, the following disciplinary sanctions may be imposed on junior and senior officers: remarks; reprimands; severe reprimands; warning of incomplete service; demotion; reduction of one rank; dismissal from military service on grounds of misconduct; deprivation of military rank (Zakon Ukrainy Pro derzhavnu okhoronu orhaniv derzhavnoi vlady Ukrainy ta posadovykh osib, 1998).

Consequently, the special disciplinary liability of militarized bodyguards is regulated by special laws, the laws of Ukraine, which approve the Disciplinary Regulations of the Armed

Forces of Ukraine, according to which, in the event of the commission of unlawful acts, they bear disciplinary liability with an extended range of penalties.

4. Conclusions

Summing up, we can state as follows: the administrative liability of bodyguards has been studied from the perspective of four main blocks: administrative liability of bodyguards as officials; administrative liability of the bodyguards as individuals; administrative liability of the actor of the protection services where the bodyguard is employed (in service); special administrative (special disciplinary) liability of bodyguard officials.

Servicemen (bodyguards) of the State Protection Department of Ukraine may be held administratively liable for the full range of administrative offences related to corruption and military administrative offences.

Therefore, the administrative liability of the servicemen (bodyguards) of the State Protection Department of Ukraine involves a system of provisions of administrative law, according to which: first, bodyguards are subject to administrative sanctions for violation of the rights and freedoms of other persons or/and the public interest of the State and society as a whole, improper performance of their professional duties in the protection of the person entrusted to them; second, bodyguards are protected against third parties who seriously interfere with their professional administrative duties prescribed by law.

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Максим Донець,

здобувач, Науково-дослідний інститут публічного права, вулиця Г. Кірпи, 2А, Київ, Україна, індекс 03035, Maksym_Donets@gmail.com

ORCID ID: 0000-0025-3589-1628

ОСОБЛИВОСТІ АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ ВІЙСЬКОВОСЛУЖБОВЦІВ (ТІЛООХОРОНЦІВ) УПРАВЛІННЯ ДЕРЖАВНОЇ ОХОРОНИ УКРАЇНИ

Анотація. Мета. Метою статті є визначення особливостей адміністративної відповідальності військовослужбовців (тілоохоронців) Управління державної охорони України. **Результати.** Відповідальність публічних суб'єктів права є одним з елементів правового регулювання суспільних відносин у сфері державного управління. Також юридична відповідальність є складником адміністративно-правового статусу суб'єктів публічного права і виражається через застосування до них певних заходів державно-правового примусу за неналежне виконання своїх повноважень залежно від сфери діяльності, якою вони займаються. Адміністративну відповідальність загалом тілоохоронців досліджено з позиції чотирьох основних блоків, таких як: адміністративна відповідальність тілоохоронців як посадових осіб; адміністративна відповідальність тілоохоронців як фізичних осіб; адміністративна відповідальність суб'єкта охоронної діяльності, в якій працює (проходить службу) тілоохоронець; спеціальна адміністративна (спеціальна дисциплінарна) відповідальність посадових осіб тілоохоронців. Визначено, що адміністративна відповідальність суб'єкта охоронної діяльності (адміністративна відповідальність юридичної особи) шляхом позбавлення її ліценції на здійснення охоронної діяльності опосередковано приводить до настання несприятливих наслідків для тілоохоронця, адже він втрачає право здійснювати охорону фізичної особи за договором такої юридичної особи. **Висновки.** Доведено, що адміністративна відповідальність військовослужбовців (тілоохоронців) Управління державної охорони України полягає у системі норм адміністративного права, згідно з якими: по-перше, на тілоохоронців накладаються адміністративні стягнення за порушення прав і свобод інших осіб або/та публічного інтересу держави і суспільства загалом, неналежне виконання своїх професійних обов'язків у разі охорони ввіреної фізичної особи: по-друге, захищають тілоохоронців від третіх осіб, які грубо заважають виконувати їм професійні адміністративні обов'язки, що визначені законом. Наголошено, що військовослужбовці (тілоохоронці) Управління державної охорони України можуть бути притягнуті до адміністративної відповідальності за весь спектр адміністративних правопорушень, що пов'язані з корупцією, та військові адміністративні правопорушення.

Ключові слова: Управління державної охорони України, військовослужбовець (тілоохоронець), адміністративно-правовий статус, юридична відповідальність, адміністративна відповідальність.

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