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DOI <https://doi.org/10.32849/2663-5313/2023.5.14>**Oleksandr Shaparenko,***Postgraduate Student at the Department of Police Law, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, oleksandrshaparenko@ukr.net***ORCID:** orcid.org/0000-0002-0156-5385Shaparenko, Oleksandr (2023). Type of and grounds for legal liability of a judicial assistant. *Entrepreneurship, Economy and Law*, 5, 96–100, doi <https://doi.org/10.32849/2663-5313/2023.5.14>

TYPE OF AND GROUNDS FOR LEGAL LIABILITY OF A JUDICIAL ASSISTANT

Abstract. Purpose. The purpose of the article is a theoretical and legal description of the types of and grounds for legal liability of a judicial assistant. **Results.** The article studies the types of and grounds for legal liability of a judicial assistant as a subject of the court's patronage service and a civil servant with whom the relevant state institution has close employment relations. The author proves that, in general, the administrative and legal status of a judicial assistant is characterised as the legal status of a special-purpose civil servant who is authorised to perform the functions of the State in a specific area and is associated with ensuring the functioning of a separate public authority. The judiciary is one of the most important institutions of the State, which, given its strategic and comprehensive nature, cannot function without internal organisational mechanisms. The most effective patronage unit from a nationwide perspective is the institute of judicial assistants; moreover, given the rigidity of public policy, it should be noted that the issue of certain types and forms of bringing judicial assistants to justice for failure to perform (improper performance of) their duties is still pending. The author underlines that legal liability as a basic theoretical and legal category is considered by researchers as a basic institution in administrative law and a lever of public administration pressure which enables to regulate certain relations related to the performance (non-performance) of functions assigned to a particular person, including the introduction of a sanction regime (i.e., imposition of penalties of a certain form and type). **Conclusions.** The author proves that legal liability of a judicial assistant as a basic category of administrative law is characterised by the fact that the latter is a specific administrative unit and may be subject to certain types of disciplinary sanctions (related to his/her legal status of a civil servant), as well as sanctioning provisions of labour law, and provisions of administrative, criminal and constitutional law. Furthermore, it is proved that the disciplinary liability of a judicial assistant implies bringing the latter to justice and imposing appropriate sanctions for failure to fulfil the duties assigned by Ukrainian legislation and improper exercise of powers to ensure the effective work of a judge and the performance of his/her legal duties.

Key words: judicial assistant, liability, interaction, labour law, right to protection, court support.

1. Introduction

At the present stage of formation of the institution of human and civil rights and freedoms, a separate area of activities of law enforcement bodies and human rights organisations of Ukraine is the effectiveness of the main management processes related to the functioning of national institutions designed to prevent violations of human and civil rights and freedoms.

In this context, the judiciary is one of the most important institutions of the State, which, given its strategic and comprehensive nature, cannot function without internal organisational mechanisms. The most effective patronage unit from a nationwide perspective is the institute of judicial assistants; moreover, given the rigidity of public policy, it should be noted that the issue of certain types and forms of bringing judicial assistants to justice for fail-

ure to perform (improper performance of) their duties is still pending.

Scholars identify the institution of legal liability of judicial assistants as a separate area of research, as this issue is a cornerstone in the functioning of the judiciary and is considered to be a top priority, including in the context of active hostilities in Ukraine and repulsing russia's armed aggression.

Moreover, it should be noted that this issue has been studied, among others, by researchers such as: I.B. Azemsha, O.D. Hryn, A.A. Ivanyshchuk, Ye.Yu. Podorozhnyi, O.M. Radchenko, N.P. Svyrydiuk, T.O. Chepulchenko and others. However, given the large-scale russian invasion, the threatening situation for the institution of human and civil rights and freedoms, as well as the significant need to improve state mechanisms so that the highest results are achieved

with the least effort, this topic requires new research and scientific analysis.

The purpose of the article is a theoretical and legal description of the types of and grounds for legal liability of a judicial assistant. This, in turn, necessitates solving the following research tasks: 1. Define the essence and content of the concept of “legal responsibility” in the context of the functioning of the court and its patronage service; 2. Substantiate the essence and content of the types of and grounds for legal liability of a judicial assistant as basic disciplinary and procedural categories; 3. Outline the main areas for improving the functioning of the mechanism outlined as the subject of the study.

The object of the article is public relations in the field of ensuring the judiciary’s activities and protection of human and civil rights and freedoms.

The subject matter of the study is the types of and grounds for legal liability of a judicial assistant.

2. Formation of the institution of legal liability

It should be noted that the current situation with the functioning of the mechanism for the protection of human and civil rights and freedoms requires significant improvement, in particular in terms of developing standards of legal liability of special-purpose civil servants, who are also employees of patronage services, and in the context of the subject matter of this article, such persons are judicial assistants.

The institution of legal liability has been widely used in civilised society for a long time, as it is a sign of a democratic state system and characterises society as safe from infringement of human and civil rights and freedoms, as well as promising in terms of social and technological progress. It should be noted that the institution of a judicial assistant, like other civil servants, is inherently designed to help the state mechanism function more efficiently in various sectors of social life and ensure the sustainability and balance of democratic processes.

Currently, there is no single correct approach to defining the concept of legal liability; each of the scientific positions has both advantages and disadvantages. In addition, a number of views on the issue of legal liability allow for a more meaningful and in-depth approach to its study and development on this basis of a more or less unified, universal approach to the definition of the concept of “legal liability” (Podorozhnyi, 2014). In our opinion, it is quite logical to apply this approach to the definition of basic concepts, terms and categories, since it is in this format that complex scientific, theoretical and applied conclusions can be substantiated.

A. Ivanyshchuk defines the administrative and legal status of a judicial assistant as a set of his/her legal personality, professional tasks, obligations and rights to assist a judge and prepare court cases for consideration, fulfil other legal instructions of a judge and the head of the court staff, combined with professional restrictions and special disciplinary liability (Ivanyshchuk, 2015). Accordingly, since the judicial assistant is a person who has a number of powers and performs tasks important for the functioning of the court, the issue of his/her legal liability is doctrinally relevant, since not every person appointed to the respective position performs his/her functions to the fullest extent.

I.B. Azemsha rightly notes that if we accept the term “responsibility” in the broad sense in which it is used in everyday life, in philosophical literature and even in the everyday life of lawyers, the specificity of the legal understanding of responsibility is lost and there is a need to clarify the definition that denotes what is included in the concept of responsibility in legal terms. The need for a special legal concept of liability, even if it is the most general, will allow to distinguish responsibility in legal terms from other phenomena defined by the same term, since it denotes one of the most important institutions of law (Azemsha, 2010). Therefore, it is important to note that from the modern perspective, the content and essence of the concept of liability can be adapted depending on the scope of its application, and in addition, in a particular field, such as legal, it can be used in the context of various branches and areas of law application. For example, such restrictions are contained in the legislation of Ukraine, in terms of determining the types and forms of liability applicable to individuals (whether civil servants or other persons).

The need to introduce such an institution in Ukrainian courts arose as a result of the so-called “small-scale judicial reform” of 2001, which led to a significant increase in the workload of courts in general and judges in particular. The main purpose of introducing the position of judicial assistant in Ukrainian courts was to relieve judges from performing routine technical work during the preparation and consideration of court cases (Radchenko, 2014). In line with the need to introduce the institution of judicial assistants into the judicial system, the issue of ensuring proper principles of their legal liability has become increasingly relevant, which in turn will fundamentally affect the observance of human and civil rights and freedoms in the activities of such officials.

Liability arises as a result of the social need to coordinate human behaviour with the sys-

tem of social relations as a sphere of boundaries, the framework of necessary human behaviour, the requirements of society (or class) to the individual, as the inevitability of giving an account of one's behaviour to a person or organisation that has the right to call for an account. Liability is a social relation of restricting the freedom of each individual from the perspective of the interests of society, the reliance of the will of society on the individual's free will, directing his/her activities within certain limits (Chepulchenko, 2010). Accordingly, it should be emphasised that the liability of a judicial assistant may arise in several circumstances, the most important of which is the fact of holding office by such person (i.e., the stability of legal relations), the presence (vesting) of his/her powers, as well as an indication of the fact of failure to fulfil a certain duty or improper exercise of powers.

3. Distinguishing the types of legal liability

There is still an ongoing discussion about the dual nature of the understanding of legal liability and the expediency of distinguishing its positive form and the possibility of its application in practice. Very useful and informative works are being carried out in the field of highlighting the correlation between legal liability and legality, characterisation of the ideological foundations, particularities of its application in civil, criminal, constitutional law, etc. Moreover, when covering certain problems of legal liability, authors use different methodological approaches, defining legal liability as a means, as a system, as an institution or as a form of state legal influence (Svyrydiuk, 2011; Hryn, 2016). In the context of the above, we propose to interpret legal liability as a system that ensures law and order in the activities of a judicial assistant. It is a mechanism the main task thereof is to ensure compliance with the ratio of functions/tasks performed and compliance with the legislation of Ukraine, as well as their completeness and extent. In the event of non-compliance of the undertaken/performed activities with the legislation of Ukraine, or activities performed not in the manner expressly provided for by the legislation of Ukraine, it is important to ensure that legal consequences automatically occur – which is what the institution of legal liability is all about.

It should be emphasised that many definitions of social responsibility have in common that responsibility is seen as a form of interconnection and interaction between society and the individual. Social responsibility is defined as accountability, as an individual's attitude to social requirements, which is expressed in specific actions, as a person's conscious and volitional attitude to the requirements imposed by society and the obligation to

strictly comply with them, as a corresponding positive or negative assessment of a person's activities by society. Therefore, social responsibility is one of the manifestations of the relationship and interdependence of the individual and society (Malinovska, 2017). Although this perspective enables to distinguish and clearly delineate the boundaries and content of social responsibility and legal liability, in the context of bringing to it and applying specific sanctions to the relevant judicial assistant, it is possible only in the context of clear legal certainty.

For example, interpretation of theoretical and legal developments requires considering the provisions of the Regulations on Judicial Assistants (No.21 approved by the Council of Judges of Ukraine on 18 May 2018), which stipulates that depending on the type and nature of the violation, the judicial assistant shall be disciplinary, civil, administrative or criminal liable in accordance with applicable law: for non-performance, untimely or improper performance of his/her duties; for exceeding his/her powers as defined by law; for inactivity or unfair use of the rights granted to him/her; for non-compliance with the legislation on information, state secrets and personal data protection; for non-compliance with the anti-corruption legislation of Ukraine; for non-compliance with the requirements of regulatory legal acts on labour protection and fire safety; for failure to comply with the restrictions established by this Regulation related to admission to patronage service and completion of patronage service; for violation of the rules of internal labour regulations of the court and labour discipline; for violation of the Rules of Conduct for court employees (Regulations on the judicial assistant: decision of the Council of Judges of Ukraine, 2018). Accordingly, these provisions clearly define the limits of the judicial assistant's liability and its specific types, although in our opinion, the relevant document is a brief and specialised summary of the provisions and norms of the relevant sectoral legislation of Ukraine, which directly provides for such liability, and its clauses and parts may only be of a referential nature.

4. Conclusions

The article studies the types of and grounds for legal liability of a judicial assistant as a subject of the court's patronage service and a civil servant with whom the relevant state institution has close employment relations. The author proves that, in general, the administrative and legal status of a judicial assistant is characterised as the legal status of a special-purpose civil servant who is authorised to perform the functions of the State in a specific area and is associated with ensuring the functioning of a separate public authority.

The author underlines that legal liability

as a basic theoretical and legal category is considered by researchers as a basic institution in administrative law and a lever of public administration pressure which enables to regulate certain relations related to the performance (non-performance) of functions assigned to a particular person, including the introduction of a sanction regime (i.e., imposition of penalties of a certain form and type).

The author proves that legal liability of a judicial assistant as a basic category of administrative law is characterised by the fact that the latter is a specific administrative unit and may be subject to certain types of disciplinary sanctions (related to his/her legal status of a civil servant), as well as sanctioning provisions of labour law, and provisions of administrative, criminal and constitutional law.

Furthermore, it is proved that the disciplinary liability of a judicial assistant implies bringing the latter to justice and imposing appropriate sanctions for failure to fulfil the duties assigned by Ukrainian legislation and improper exercise of powers to ensure the effective work of a judge and the performance of his/her legal duties.

The prospect for further research is the need for a comprehensive theoretical, legal and administrative analysis of the powers of a judicial assistant as the main element of his/her administrative and legal status.

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ВИДИ ТА ПІДСТАВИ ЮРИДИЧНОЇ ВІДПОВІДАЛЬНОСТІ ПОМІЧНИКА СУДДІ

Анотація. Мета. Метою статті є теоретико-правова характеристика видів та підстав юридичної відповідальності помічника судді. **Результати.** У статті досліджено види та підстави юридичної відповідальності помічника судді як суб'єкта патронатної служби суду та державного службовця, з яким відповідна державна установа перебуває в тісних трудових відносинах. Обґрунтовано позицію про те, що загалом адміністративно-правовий статус помічника судді характеризується як правове становище державного службовця спеціального призначення, котрий уповноважений на здійснення функцій держави в специфічній галузі, пов'язаний із забезпеченням функціонування окремого органу державної влади. Одним із найбільш пріоритетних інститутів держави є судово-гілька влади, котра з огляду на її стратегічність та всеохопність не може функціонувати без внутрішньо організаційних механізмів. Найбільш ефективним патронатним підрозділом у загальнодержавному розумінні є інститут помічників судді, водночас, урахувавши жорсткість державної політики, належить зауважити на питанні окремих видів і форм притягнення помічників судді до відповідальності за невиконання (неналежне виконання) своїх функційних обов'язків. Звертається увага на те,

Chepulchenko, T.O. (2010). Sotsialna vidpovidalnist: poniattia ta sutnist [Social responsibility: concept and essence]. *Visnyk Natsionalnoho tekhnichnoho universytetu Ukrainy "Kyivskiy politekhnichnyi instytut"*, no. 1(5), pp. 42–46 [in Ukrainian].

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Polozhennia pro pomichnyka suddi: rishennia Rady suddiv Ukrainy vid 18.05.2018 № 21 [Regulations on the judicial assistant: decision of the Council of Judges of Ukraine dated May 18, 2018 No. 21]. (2018). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/rada/show/vr021414-18#Text>

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що юридична відповідальність як базова теоретико-правова категорія розглядається дослідниками як базовий інститут в адміністративному праві й такий важіль державно-управлінського тиску, що вможливає унормування окремих взаємин, пов'язаних із виконанням (невиконанням) покладених на конкретну особу функцій, у тому числі запровадження щодо неї санкційного режиму (тобто накладання стягнень певного виду та типу). **Висновки.** Доведено, що юридична відповідальність помічника судді як базова категорія адміністративного права характеризується тим, що останній є специфічною адміністративною одиницею та до нього може бути застосовано як окремі види дисциплінарних стягнень (пов'язаних із його правовим статусом державного службовця), так і норми санкційного типу трудового законодавства, а також положення адміністративного, кримінального та конституційного законодавства. Додатково обґрунтовано позицію про те, що дисциплінарна відповідальність помічника судді полягає в притягненні останнього до відповідальності та накладання відповідних санкцій за невиконання покладених законодавством України обов'язків і неналежну реалізацію повноважень щодо забезпечення ефективної роботи судді та виконання ним своїх законних обов'язків.

Ключові слова: помічник судді, відповідальність, взаємодія, трудове законодавство, право на захист, забезпечення роботи суду.

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