European experience of legal regulation of prescription of imposing administrative liability in certain post-socialist countries

Європейський досвід правового регулювання давності притягнення до адміністративної відповідальності в деяких постсоціалістичних країнах

Ksenia Tokareva

Key words:

term, prescription, time restrictions, administrative liability, administrative penalty, termination of the case, exclusion of the proceedings, expiry of term for imposition of an administrative penalty.

Ключові слова:

термін, набувальна давність, обмеження за часом, адміністративна відповідальність, адміністративний штраф, завершення розгляду справи, виключення з розгляду, закінчення терміну накладення адміністративного стягнення.

From 1988–1990s and up to this time in the period of historical development of their own statehood of post-socialist countries and the adoption of new democratic legal values, the states, united by the same legal ideas, started reforming legislation on administrative offenses. Each of them chosed their own direction of development, and this led to the differentiation of legal provisions, resulting in the defining the problem generally.

This paper's connection to the important scientific and practical tasks consists in the fact that Ukraine has chosen the European model of the legal system development, but continues to conform to the legislation, which is obsolete and unable to ensure effective protection of human rights. The Code of Ukraine of Administrative Offences belongs to it. Due to the need for conducting a reform of administrative and tort law in which the scholars have noted the need to enhance the role of general provisions and the maximum coverage of social relations which are to be administratively and legally regulated[1], the afore-mentioned comparison is very important.

Analysis of recent research. Such scientists as A.A. Banchuk, A.A. Baida, A.V. Bereza, Y.V. Grodetsky, I.M. Demchenko, A.V. Kaplina, A.S. Zubov, A.I. Orehov, V.B. Rusanova, P.V. Pantalienko, S.V. Petkov, A.V. Fazikosh, V.Y. Tatsiy, V.I. Tyutyugin and others dedicated their scientific works to problems of administrative and tort liability of post-socialist foreign countries. Analysis of recent research and publications, in which there was commenced a solution of the question in hand, has shown that comparing the experience of statute of limitations on imposing administrative offenses, has not been given necessary attention by the scientists. An earlier unsolved part of the general problem remains to be the ascertaining of whether there are common and distinctive features of legal regulation of countries selected for the study.

The purpose of this paper lies in carrying out a said comparison in order to explain the establishment of limitations for imposing administrative liability, its duration, and the legal consequences of the expiry on the example of some post-socialist countries (Lithuania, Latvia, Estonia, Poland, Czech Republic, Croatia).

Basic material research. Currently, in all post-soviet countries of Eastern Europe (Poland), the Baltic States (Lithuania, Latvia, Estonia), Central Europe (Czech Republic), South-Eastern Europe (Croatia) there continues to exist some separate laws (codes) of misdemeanors, which in Ukraine are called administrative offences. These countries are in a state of transition from the old Code of Administrative Offences to creation of theirs own legal framework. As a result, administrative offenses either become part of the criminal law, or lose their status as "administrative", but are continuing to be demarcated from crimes. In legislation of each state there are minor offenses allocated, which have no signs of public danger.

[1] Логачов І.В. Деякі аспекти кодифікації адміністративно-деліктного законодавства України / І.В. Логачов // Право і безпека. – 2013. – № 1(48). – С. 77.

Post-socialist Baltic countries (except Estonia) are continuing using codes adopted in 1984–1985.

In Latvia since August 29, 1991 from the name of the Latvian SSR Code of Administrative Offences the abbreviation "SSR" was excluded and in this regard, it became to be known as the "Code of Administrative Offences of Latvia" (hereinafter – CAO RL)[2]. This law applies both to the Law "About Administrative Procedure" from 25.10.2001 (entered into force from 01.02.2004), which regulates procedural issues of case consideration[3].

"Prescription of imposing administrative liability" in art. 37 of the CAO RL provides that administrative penalties may be applied not later than six months from the date of the violation, and if the violation is a long – then within six months from the date of its detection[4].

In case of refusal to initiate criminal proceedings, or if the criminal case is closed, but the act does show signs of an administrative offense, administrative hearing may be commenced not later than one month from the date of the decision not to institute criminal proceedings or to close the case. Separately, there are special deadlines for certain specific administrative offenses for a period of one month from the date of discovery of violations, but not later than two years after its commission. The proceedings shall be terminated if, within nine months of the commencement of administrative proceedings, a decision on the application of punishment is pending[5].

Known to Ukraine circumstances that preclude the proceedings, called in art. 239 of the CAO RL as "circumstances that do not allow the proceedings on an administrative violation". Thus, the legal consequences of the expiry date of application of punishment in Latvia are the same as in Ukraine. The same is the fact that, in accordance with art. 275 of CAO RL, the expiration of an administrative penalty is expressed in the form of a decision to cease production.

Lithuania is also characterized by the absence of the new code. The current Code of Administrative Offences of the Republic of Lithuania (Lietuvos Respublikos Administracinių Teisės Pažeidimų Kodeksas)[6] has been adopted by the Lithuanian SSR on 13.12.1984, entered into force – on 01.04.1985 (hereinafter – CAO LR) and is a typical Soviet Code of post-socialist countries, into which during the independence of Lithuania there was introduced a number of amendments and changes. In this country, criminal offenses and administrative offenses is demarcated, and the analogy of application of the general principles of criminal law is forbidden[7].

Prescription of administrative liability provided for in art. 35 of the CAO LR under the name of "terms for imposing of an administrative punishment". According to its rules, an administrative penalty may be imposed not later than six months after the commission of the offense, and in the case of long offenses – within six months from the date of its discovery. Administrative penalties for committing offenses provided for individual articles of the Administrative Code of LR can be applied not later than six months from the date of detection, but not more than one year from the date of commiting them.

Special term for sentencing is provided in Lithuania for the cases of refusal to initiate criminal proceedings or the appointment of economic sanctions and it consists of two months (ch. 2, art. 35 of the CAO LR). The Code of Lithuania provides for the possibility of extending the term of appointment of punishment if the person brought to administrative responsibility has either no permanent place of residence; or has left for a long time and lives abroad; or is ill or wanted; or there are other reasons why it is impossible to solve the problem of imposing administrative liability. In these cases, the terms of art. 35 of the CAO LR may be extended, but not more than one year. However, by such bases for prolonging the term of imposing the penalty, as well as calculation of timing, which begins after the discovery of an administrative offense, the law of Lithuania does not allow the creation of situation of prolonged human presence in a state of legal limbo. For such cases, the Code establishes a clearly defined time limit, assuming that the penalty may not be imposed unless in cases of h. 1, 2 tbsp. 35 of the CAO LR there have passed two years since the commission of the offense.

---

[2] Administratīvā procesa likums 25.10.2001 (Stājas spēkā: 01.02.2004) : Latvijas Republikas tiesību akti [Electronic resource]. – Mode of access : http://likumi.lv/doc.php?id=55567.

[3] Tamtiež.

[4] Latvijas Administratīvo pārkāpumu kodekss [Electronic resource]. – Mode of access : http://likumi.lv/doc.php?id=89648.

[5] Tamtiež.

[6] Lietuvos Respublikos Administracinių Teisės Pažeidimų Kodeksas [Electronic resource]. – Mode of access : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493978.

[7] Принцип верховенства права: проблеми теорії та практики : у 2 кн. / за заг. ред. Ю.С. Шемшученка. – К. : Конус-Ю, 2008– . – Кн. 2 : Принцип верховенства права у діяльності держави та в адміністративному праві / відп. ред. В.Б. Авер'янов. – 2008. – С. 281.

The legal consequence of the expiration of statute of limitations in Lithuania is the inability of the proceedings of an administrative offense. Article 250 of the CAO LR provides that in such a case, administrative proceedings may not be initiated, and those initiated should be discontinued[8].

The form of the legal consequences of the expiration of statute of limitations in Lithuania and Ukraine is also the same. According to art. 287 of the CAO LR, after consideration of an administrative case, the body (official) decides to close the case in case of the expiration of term for imposition of penalty[9]. That is, the conceptual changes in the timing of the issue of administrative penalties (sentencing) after the formation of their own statehood in Lithuania have occurred. Ukraine is different from the duration of the period – 6 months; as is the existence of special grounds for applying a longer period of one year.

Lithuania, as well as Ukraine, has not extended on the administrative tort scope the usage of the law on administrative proceedings[10], which is due to the existence of the order of proceedings on administrative offenses, provided by the current Code.

Estonia. The current Code of Misdemeanors Procedure Republic of Estonia was adopted on May 22, 2002 and entered into force on September 01, 2002 (hereinafter – the CMP ER). Article 29 of the CMP ER establishes the "circumstances precluding the proceedings of the offense". The trial of the offense cannot be initiated, and initiated proceedings shall be terminated, if the prescription period for it has ended[11]. Thus, the legal consequence of the expiration of statute of limitations for the offense committed in Estonia and Ukraine – is the same – i.e. it is a circumstance precluding the proceedings.

Unlike Ukraine, the external form of exclusion of production in the countries researched is not the "closure of the case", but its "discontinuation". This proves part 2 art. 73 of the CMP ER, which states that the authorized body, which carries out extra-judicial proceedings in the event of lapse of time shall issue an order to cease production[12].

A special legal consequence of the termination of the lapse of time in Estonia is also the right to compensation the person in respect of whom there were proceedings made and the attorney's fees were paid, i.e. the attorney who participated in the pre-trial examination of the case by the state or local budgets[13].

Thus, the CMP ER does not include periods of prescription, limiting the indication of their existence. However, Estonian law allows the use of the analogy of the criminal law. In the current Penal (Criminal) Code of Estonia Republic from 06.06.2001 (which entered into force on 01.09.2002) (hereinafter – PC ER), the prescription is set for two years for the offenses from the date of their taking place till the court sentence comes into force (except in cases where the law provides for the prescription period of three years (p. 3 art. 81 of the PC ER)[14]). Rules for long and ongoing violations in Estonia are typical.

A characteristic feature of prescription for the offense in Estonia is the possibility to interrupt it. The statute of limitations for the offense cannot be restored if it occurred after more than three years. If the statute of limitations in the commission of the offense is three years, it should not be restored if it's been ten years since it took place (art. 8, art. 81 of the PC ER)[15].

Based on comparison shown, the legal consequences of the expiry of the limitation period in the form of exclusion proceedings are common for Estonia and Ukraine. Distinctive are the length of the period, the presence of basis for interruption and the use of the analogy of the criminal law.

---

[8] Lietuvos Respublikos Administracinių Teisės Pažeidimų Kodeksas [Electronic resource]. – Mode of access : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493978.

[9] Tamtiež.

[10] Банчук О.А. Право об административных нарушениях: опыт стран Западной и Восточной Европы, требования Европейского Суда по правам человека и стандарты Совета Европы / О.А. Банчук [Electronic resource]. – Mode of access : http://www.pravo.org.ua/files/administr/covv/banchuk_pravo_adm_porush_rus.pdf.

[11] Адміністративне деліктне законодавство: зарубіжний досвід та пропозиції реформування в Україні / авт.-упоряд. О.А. Банчук. – К. : Книги для бізнесу, 2007. – С. 703.

[12] Там само. – С. 727.

[13] Code of Misdemeanour Procedure of Republic of Estonia passed 22.05.2002h. [Electronic resource]. – Mode of access : https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/521082014006/consolide.

[14] Penal Code of Republic of Estonia passed 06.06.2001h [Electronic resource]. – Mode of access : https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522012015002/consolide#para81.

[15] Ibid.

Poland. As in Estonia, the legislator of Poland, deliberately started creating legislation on administrative offenses separately from the criminal ones. Still, some provisions of the latter shall apply by analogy to administrative law. Unlike many other European countries, where administrative offenses may be determined not only by law but also by subordinate legal acts, in Poland the express requirement for the establishment of administrative liability only by law has remained[16]. This is proved by a Contravention Code (Kodeks wykroczeń) of the Poland Republic from 20.05.1971 (hereinafter – CC PR)[17], adopted to replace the previous act of 11.07.1932.

Prescription for offenses in Poland provided for in art. 45 of the CC PR, which states that the penalty for committing a violation does not apply to it, if from the moment it was committed a year has passed, and if the proceedings have begun – two years after the commission of the offense. In case of cancellation of the validity of decisions, the prescription shall commence from the date for cancellation of the decision[18]. Thus, the expiry of limitation to prosecute for offenses in Poland leads to the fact that the punishment is considered to be non-existent.

Czech Republic. In cases of prosecutions for offenses Czech Republic is guided by the Misdemeanor Act № 200/1990 from 17.04.1990 (hereinafter – Act № 200/1990)[19]. Statute of limitations defined in art. 20 of the Act № 200/1990 titled "termination of responsibility for the misdemeanor", which provides that the offense cannot be subject to review, if it occurred after one year has passed. Until that time, one does not include the period during which this same fact of a criminal investigation was conducted according to the special regulatory legal acts[20]. That is, the legal consequence of the expiry of the prosecution for the commission of the offense is its termination. Under the definition "termination of liability for misconduct", the abandonment of the administrative body of the case without consideration (art. 67 of the Act № 200/1990) or the termination of the proceedings (art. 76 of the Act № 200/1990) are meant.

Expiration and termination of limitation of liability occurs according to the rules of this code simultaneously. This fact is absolute and its recognition should not be dependent on the will of the authorized body, which only perpetuates its legal form. This is confirmed by reference to the law of the fact that after the opening of the case the authorized body shall terminate the proceedings if it turns out that the responsibility has been discontinued (n. f. h. 1 art. 76 of the Act № 200/1990)[21]. That is, the cessation of responsibility for a misdemeanor is a ground for termination of production. The comparison showed that other conditions such decision in the Czech Republic are similar to the grounds for exceptions to the current production of the Code of Ukraine about administrative offences.

Croatia was among the first in 1990 to adopt a new law on misdemeanors, which was replaced in 2002 by the law with the same name. The last the Misdemeanor Act (Zakon o Prekršajima) of Republic of Croatia was adopted on 03.11.2007 (hereinafter – the Act) to replace the previous one – from 11.07.2002 and it is considered to be part of the criminal law of this country. Legislation of the Republic of Croatia is constantly being reformed. If earlier the prescription for misconduct has been established for a period of one year, the new rules in Article 13 of the Act provide that the production (prosecution) for a misdemeanor shall not be brought after the expiration of two years from the time it was committed. Separate law can be installed over a longer period, but not more than three years. In addition, the country is characterized by the fact that prescription is interrupted by every action of the competent authority, which takes place within the prosecution of a person for an act that has signs of misconduct. After each break, the limitation period begins anew[22].

Limitation of prosecution for a misdemeanor ends in any case when it exceeds twice the prescribed period of limitation, that is – 4 or 6 years. So, based on the experience of Croatia there becomes apparent an increase in the severity of the rules of accountability for misconduct, which appears to change the statute of limitations to 2–3 years. Differences are seen in the installation as the basis of its interruption of each action of the competent authority and terminology used.

---

[16] Принцип верховенства права: проблеми теорії та практики : у 2 кн. / за заг. ред. Ю.С. Шемшученка. – К. : Конус-Ю, 2008– . – Кн. 2 : Принцип верховенства права у діяльності держави та в адміністративному праві / відп. ред. В.Б. Авер'янов. – 2008. – С. 281.

[17] Kodeks wykroczeń z dnia 20 maja 1971r [Electronic resource]. – Mode of access : http://isap.sejm.gov.pl/DetailsServlet?id=WDU19710120114.

[18] Tamtież..

[19] Zákon České národní rady o přestupcích : Předpis č. 200/1990 Sb. [Electronic resource]. – Mode of access : http://www.zakonyprolidi.cz/cs/1990-200.

[20] Адміністративне деліктне законодавство: зарубіжний досвід та пропозиції реформування в Україні / авт.-упоряд. О.А. Банчук. – К. : Книги для бізнесу, 2007. – С. 862.

[21] Zákon České národní rady o přestupcích : Předpis č. 200/1990 Sb. [Electronic resource]. – Mode of access : http://www.zakonyprolidi.cz/cs/1990-200.

[22] Zakon o Prekršajima : kojega je Hrvatski sabor donio na sjednici 3 listopada 2007 [Electronic resource]. – Mode of access : http://narodne-novine.nn.hr/clanci/sluzbeni/2007_10_107_3125.html.

This development of legislation in Croatia confirms the view of A.V. Bereza, who pointed out that it is wrong to speak of "the decisive influence of the socialist or Soviet legacy on the pace and direction of administrative reforms. Historical heritage was only one of a number of factors", "next to the europeanization, in formation of the party system, economic situation, etc."[23], which is unquestionable.

Conclusions

Anticipating prescription to serve as time limits for imposing a penalty (using punishment), the law of each country protects the person from the public prosecution for the offense unlimited in time. Peculiarities of this system give the prospects for further development, as not all states equally establish the forms of these time limits. Despite terminological differences, the legal implications of the statute of limitations on administrative penalties for all studied post-socialist countries are the same – this is the cessation of production, the closure of the case, the impossibility of imposing a penalty for the offense.

Summary

The article is dedicated to the research of the institute of terms of imposing administrative penalties in cases of administrative violations of certain post-socialist European countries, namely Lithuania, Latvia, Estonia, Poland, Czech Republic and Croatia. Terminological differences are being identified, as well as the essence of term of prescription of imposition of administrative liability, prescription of imposing penalties, time restrictions, prescription of prosecution for the misdemeanor. The author analyzes the legislation and describes the time of prescription, the legal consequences of their termination, and there appears to be a number of common and distinctive features with the legislation of Ukraine. Based on the obtained scientific and practical results, conclusions are justified and the prospects for further development are indicated.

Анотація

Статтю присвячено дослідженню інституту умов накладення адміністративного штрафу в справах про адміністративні порушення в деяких постсоціалістичних європейських країнах, а саме Литві, Латвії, Естонії, Польщі, Чехії та Хорватії. Визначено термінологічні відмінності, а також сутність терміну давності накладення адміністративної відповідальності, призначення накладення штрафів, обмеження за часом, призначення судового переслідування за правопорушення. Автор аналізує законодавство й описує термін набувальної давності, правові наслідки завершення розгляду, визначає ряд спільних і відмінних рис у порівнянні із законодавством України. На підставі отриманих наукових і практичних результатів обґрунтовано висновки та вказано на перспективи подальшого розвитку.

Literature:

1. Логачов І.В. Деякі аспекти кодифікації адміністративно-деліктного законодавства України / І.В. Логачов // Право і безпека. – 2013. – № 1(48). – С. 74–78.
2. Administratīvā procesa likums 25.10.2001 (Stājas spēkā: 01.02.2004) : Latvijas Republikas tiesību akti [Electronic resource]. – Mode of access : http://likumi.lv/doc.php?id=55567.
3. Latvijas Administratīvo pārkāpumu kodekss [Electronic resource]. – Mode of access : http://likumi.lv/doc.php?id=89648.
4. Lietuvos Respublikos Administracinių Teisės Pažeidimų Kodeksas [Electronic resource]. – Mode of access : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493978.
5. Принцип верховенства права: проблеми теорії та практики : у 2 кн. / за заг. ред. Ю.С. Шемшученка. – К. : Конус-Ю, 2008– . – Кн. 2 : Принцип верховенства права у діяльності держави та в адміністративному праві / відп. ред. В.Б. Авер'янов. – 2008. – 314 с.

[23] Береза А.В. Вплив соціалістичної спадщини на адміністративні реформи у Східній Європі / А.В. Береза // Часопис Київського університету права. – 2013. – № 4. – С. 133.

6. Банчук О.А. Право об административных нарушениях: опыт стран Западной и Восточной Европы, требования Европейского Суда по правам человека и стандарты Совета Европы / О.А. Банчук [Electronic resource]. – Mode of access : http://www.pravo.org.ua/files/administr/covv/banchuk_pravo_adm_porush_rus.pdf.
7. Адміністративне деліктне законодавство: зарубіжний досвід та пропозиції реформування в Україні / авт.-упоряд. О.А. Банчук. – К. : Книги для бізнесу, 2007. – 912 с.
8. Code of Misdemeanour Procedure of Republic of Estonia passed 22.05.2002h. [Electronic resource]. – Mode of access : https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/521082014006/consolide.
9. Penal Code of Republic of Estonia passed 06.06.2001h [Electronic resource]. – Mode of access : https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522012015002/consolide#para81.
10. Kodeks wykroczeń z dnia 20 maja 1971r [Electronic resource]. – Mode of access : http://isap.sejm.gov.pl/DetailsServlet?id=WDU19710120114.
11. Zákon České národní rady o přestupcích : Předpis č. 200/1990 Sb. [Electronic resource]. – Mode of access : http://www.zakonyprolidi.cz/cs/1990-200.
12. Zakon o Prekršajima : kojega je Hrvatski sabor donio na sjednici 3 listopada 2007 [Electronic resource]. – Mode of access : http://narodne-novine.nn.hr/clanci/sluzbeni/2007_10_107_3125.html.
13. Береза А.В. Вплив соціалістичної спадщини на адміністративні реформи у Східній Європі / А.В. Береза // Часопис Київського університету права. – 2013. – № 4. – С. 131–134.

Ksenia Tokareva,
graduate student of the Law Institute
of the National Aviation University