

DOI: [10.32702/2307-2156-2019.2.25](https://doi.org/10.32702/2307-2156-2019.2.25)

UDC: 351

*N. N. Yakimenko*  
*doctoral student, Interregional Academy of Personnel Management, Kyiv*

## **IMPROVEMENT OF STATE CONTROL IN THE FIELD OF MEDIATION IN EMPLOYMENT ABROAD**

*Н. М. Якименко,*  
*докторант, Міжрегіональна Академія управління персоналом, м. Київ*

### **ВДОСКОНАЛЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ У СФЕРІ ПОСЕРЕДНИЦТВА У ПРАЦЕВЛАШТУВАННІ ЗА КОРДОНОМ**

*The article determines that the issue of administrative responsibility of legal persons is widely discussed in the scientific literature. Analysis of the relevant articles of the Code of Ukraine on Administrative Offenses allows us to conclude that an individual is the subject of an administrative offense. But recently, legislation has introduced rules that impose penalties on legal entities for the offense in the field of mediation in employment abroad.*

*Legislation on administrative liability of legal entities in Ukraine is currently underdeveloped. The general provisions and principles concerning the administrative liability of legal entities in legal acts are almost completely absent. The mechanism of bringing legal persons to administrative liability is almost not regulated. There is no systemic nature in the types of sanctions applicable to legal entities. In some cases, legal entities have the same responsibility as individuals.*

*It is grounded that the situation is complicated by the presence of a large number of normative material, the lack of its systematization, which causes considerable difficulties in its study.*

*It is analyzed that in the theory of law, legal liability is defined as the legal relationship arising from an offense, between the state in the person of its special organs and the offender, which has the obligation to be subject to appropriate restrictions and adverse consequences for the commission of the offense. In the regulations applicable in the field of mediation in employment abroad, there are all elements that are characteristic of legal liability: violation; unfavorable echoes in the form of a fine; an offender, who may be a legal entity, including a state body; authorities (officials) authorized to impose penalties, as well as indications specific to administrative liability. This is the inequality of the parties (the legal entity is controlled by a public body in a certain area of its activity).*

*У статті визначено, що у науковій літературі широко дискутується питання про адміністративну відповідальність юридичних осіб. Аналіз відповідних статей Кодексу України про адміністративні правопорушення дозволяє дійти висновку, що суб'єктом адміністративного правопорушення визнається фізична особа. Але останнім часом у законодавстві з'явилися норми, які передбачають накладення стягнень на юридичних осіб саме за правопорушення у сфері посередництва у працевлаштуванні за кордоном.*

*Законодавство про адміністративну відповідальність юридичних осіб в Україні на теперішній час є недостатньо розробленим. Загальні положення та принципи стосовно адміністративної відповідальності юридичних осіб у нормативно-правових актах майже повністю відсутні. Механізм притягнення юридичних осіб до адміністративної відповідальності майже не врегульований. Немає системності й у видах санкцій, що застосовуються до юридичних осіб. У деяких випадках юридичні особи несуть відповідальність нарівні з фізичними особами.*

*Обґрунтовано, що ситуація ускладнюється ще й наявністю великої кількості нормативного матеріалу, відсутністю його систематизації, що зумовлює значні труднощі у його вивченні.*

*Проаналізовано, що у теорії права юридична відповідальність визначається як правовідносини, що виникають із правопорушення, між державою в особі її спеціальних органів та правопорушником, на якого покладається обов'язок зазнати відповідних обмежень і несприятливих наслідків за вчинення правопорушення. У приписах, що застосовуються у сфері посередництва у працевлаштуванні за кордоном, є всі елементи, характерні для юридичної відповідальності: порушення; несприятливі наслідки у вигляді штрафу; порушник, яким може бути юридична особа, у тому числі державний орган; органи (посадові особи), уповноважені накладати стягнення, а також ознаки, характерні саме для адміністративної відповідальності. Це і є нерівність сторін (юридична особа підконтрольна у певній сфері своєї діяльності державному органу).*

**Key words:** *state regulation of mediation in employment abroad, administrative responsibility, obtaining licensing skills, violating licensing legislation.*

**Ключові слова:** *державне регулювання посередництвом у працевлаштуванні за кордоном, адміністративна відповідальність, дотриманням ліцензійних умов, порушник ліцензійного законодавства.*

**Problem solving in general and its connection with important scientific or practical tasks.** One of the important directions for updating Ukrainian administrative law is, of course, the modernization of the institute of administrative responsibility, in particular responsibility for offenses in the field of mediation in employment abroad. Administrative offenses have always been and remain the most common type of violation of the law. They cover almost all spheres of public life, activities of enterprises, institutions, organizations and bodies of state power. But despite this, the regulatory framework that regulates the process of bringing a person to administrative liability, unfortunately, is still far from perfect, which generates numerous problems in practice.

**An analysis of recent research and publications, which initiated the solution to this problem, the allocation of previously unsettled parts of the general problem.** The works of I.P. Bidzury, E.E. Bekirova, L.V. Valuev S.L. Dembitskaya, Yu.M. Ilnitskaya, I.D. Shepherd, G.M. Pisarenko, Yu.V. Sergeeva et al. became the basis for studying the problems of state regulation of mediation in employment abroad. However, without having to speak of a spectacular focus for a long time, some of the most significant problems with state regulation of mediation in employment abroad are unnecessary in the domestic naukovykh clubs.

**Formulating the goals of the article (statement of the task).** Identify the nature and features of the improvement of state control in the field of mediation in employment abroad.

**Виклад основного матеріалу дослідження з обґрунтуванням отриманих наукових результатів.** Establishing a licensing regime in the field of mediation in employment abroad requires not only the establishment of rules for the provision of services and the mechanism for controlling the activities of licensees, but also a mechanism for the protection of violated rights and for bringing offenders to liability, which contains certain deprivation and restrictions of property and other nature, in particular, the annulment licenses for violation of the legislation in the field of licensing.

First of all, it is necessary to define the concept of the phenomenon analyzed by us, namely administrative responsibility - this is a kind of legal responsibility, that is, the specific response of the state to an administrative offense, which consists in the application of specific administrative sanctions (administrative penalties) by the authorities and officials, to persons committed offenses (misdemeanors) [1, p. 40].

Administrative liability is characterized by the fact that the normative basis for its onset is: the Code of Ukraine on Administrative Offenses, as the main legislative act on administrative liability, according to which

administrative liability for the offenses provided for by this code occurs, if these violations by their nature do not entail in accordance with the law of criminal liability, other codes, as well as separate laws, etc.

In addition, paragraph 22 of Part 1 of Art. 92 of the Constitution of Ukraine provides for only four types of legal liability: civil law, criminal, administrative and disciplinary, and according to its features the liability of legal entities for violating the legislation in the field of mediation in employment abroad is mostly administrative.

The current legislation provides for the prosecution of not only physical persons, but also legal entities, which is well grounded in the conditions of the emergence of a market economy.

There is an opinion among scholars that administrative offenses should be distinguished as a process of applying administrative and legal norms, as a process of executive and executive bodies. It is necessary to agree that the proceedings in cases of administrative misconduct are most appropriate to be regarded as procedural activity on the basis of rules established by the legislator, aimed at establishing an objective truth in the case of administrative misconduct and making a decision in accordance with the current legislation. In other words, it is the activity of authorized entities for the application of administrative penalties, embodied in the administrative-legal form.

The tasks of the proceedings in cases of administrative violations in accordance with Art. 245 of the Code of Ukraine on Administrative Offenses are: timely, comprehensive, complete and objective clarification of the circumstances of each case; resolving it in strict conformity with the law; ensuring implementation of the issued resolution; Identification of causes and conditions conducive to the commission of administrative offenses; prevention of an offense; education of citizens in the spirit of observance of laws; strengthening the rule of law. Proceedings in cases on administrative offenses are carried out on the principles of strict adherence to the principles of law, protection of the interests of the state and person, publicity, objective truth, equality of citizens before the law, efficiency, as well as the presumption of innocence, according to which a person who is brought to administrative responsibility, is considered innocent until the contrary is proved and documented in the manner prescribed by law [2].

An important characteristic of proceedings in cases of administrative violations is the sequence of committing actions specified in the legislation. In this case, each stage is aimed at solving a specific range of problems and is characterized only by their inherent features.

The ruling made in the case of an administrative offense may be appealed by the person concerned to the supreme body regarding the authority (official) who applied these measures or to the court. It should be noted that the right to appeal such a decision is one of the guarantees of the protection of individual rights, ensuring the legality of bringing to administrative liability.

According to Art. 20 of the Law of Ukraine "On Licensing Types of Economic Activity" № 222 of March 2, 2015, for conducting a kind of economic activity subject to licensing, without a license or implementation of such types of economic activity, in violation of licensing conditions, officials of economic entities are liable to administrative liability, stipulated by the Code of Ukraine on Administrative Offenses.

Of greatest interest is the notion of a continuing offense and the delineation of a continuing offense from a "normal" offense.

There is no concept of a continuing offense in the Code of Ukraine on Administrative Offenses. The definition of a continuing offense of "misdemeanor" can be found in the Letter from the Ministry of Justice № 22-34-1465 dated December 01, 2003. In particular, it is noted that continuing administrative misdemeanors are misdemeanors related to prolonged, continuous non-fulfillment of duties provided for by the legal norm, terminated either by the performance of regulated duties or by bringing the guilty person into default. Very often these offenses are the consequences of unlawful inaction [3; 4; 5].

**Conclusions from this study and prospects for further exploration in this direction.** Consequently, continuing offenses are characterized by the fact that a person who has committed certain actions or inaction is in the future in a state of continuous continuation of these actions (inaction). These actions continuously violate the law for some time. Sometimes such a state lasts for a considerable time and all the time the perpetrator continuously makes a misdemeanor in the form of failure to perform his duties.

#### References.

1. The Verkhovna Rada of Ukraine (1996), "The Constitution of Ukraine", available at: <http://zakon5.rada.gov.ua/laws/show/254к/96-вп> (Accessed 29 January 2019).
2. The Verkhovna Rada of Ukraine (1984), The Law of Ukraine "Code of Ukraine on Administrative Offenses", available at: <http://zakon5.rada.gov.ua/laws/show/80731-10> (Accessed 22 January 2019).
3. Ministry of Labor and Social Policy of Ukraine (2010), "The procedure for monitoring compliance with the licensing conditions for conducting business from mediation in employment to work abroad", available at: <http://zakon1.rada.gov.ua/laws/show/z0888-10> (Accessed 22 January 2019).
4. State Enterprise of Ukraine (2001), "Regulations on the implementation of state supervision of compliance by licensing authorities with the requirements of legislation in the field of licensing", available at: <http://zakon5.rada.gov.ua/laws/z0685-01> (Accessed 22 January 2019).
5. The Verkhovna Rada of Ukraine (2004), The Law of Ukraine " Code of Ukraine on Administrative Misdemeanors ", available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?id=&pf3516=5558&skl=5](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=5558&skl=5) (Accessed 29 January 2013).

#### **Список використаних джерел.**

1. Конституція України Верховна Рада України; Конституція, Закон від 28.06.1996 р. № 254к/96-ВР [Офіційний веб-портал Верховної Ради України] // – Режим доступу до ресурсу: <http://zakon5.rada.gov.ua/laws/show/254k/96-вр>

2. Кодекс України про адміністративні правопорушення Верховна Рада УРСР; Кодекс України, Закон, Кодекс від 07.12.1984 року №8073-Х [Офіційний веб-портал ВРУ] // – Режим доступу до ресурсу: (статті 1 – 212-20): <http://zakon5.rada.gov.ua/laws/show/80731-10>

3. Порядок контролю за додержанням Ліцензійних умов провадження господарської діяльності з посередництва у працевлаштуванні на роботу за кордоном затвержений Наказом Міністерства праці та соціальної політики України 06.09.2010 року № 272 [Офіційний веб-портал ВРУ] // – Режим доступу до ресурсу: <http://zakon1.rada.gov.ua/laws/show/z0888-10>

4. Положення про здійснення державного нагляду за додержанням органами ліцензування вимог законодавства у сфері ліцензування затверджене Наказом Держпідприємництва України від 25.07.2001 р. № 101 [Офіційний веб-портал ВРУ] // – Режим доступу до ресурсу: <http://zakon5.rada.gov.ua/laws/z0685-01>

5. Кодекс України про адміністративні проступки: Закон України Проект від 26.05.2004 р. № 5558 [Офіційний веб-портал ВРУ] // – Режим доступу до ресурсу: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?id=&pf3516=5558&skl=5](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=5558&skl=5)

*Стаття надійшла до редакції 10.02.2019 р.*