

## CONCEPT AND TYPES OF ADMINISTRATIVE PENALTY

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**Annotation:** This article examines essential elements of administrative offense. It analyzes concept and features of essential elements of an administrative offense. It divides them according to the degree of public danger, nature of damage, subject of offense, structure, design features.

**Keywords:** administrative offense, features, types, essential elements (corpus delicti).

An administrative penalty is a monetary penalty that can be imposed on individuals or companies who fail to comply with requirements of a statute or regulation, an order given by a Ministry official, or a requirement of an authorization (permit, license, approval etc.). As an administrative (rather than prosecutorial) enforcement tool, administrative penalties are issued by designated Ministry officials rather than the courts, under authority of the Environmental Management Act (section 115) or the Integrated Pest Management Act (section 23) and in accordance with the Administrative Penalty Regulation (B.C. Reg. 133/2014 and 134/2014). The doctrine about essential elements (corpus delicti) occupies central place and is of great practical importance in Administrative Law Theory. Firstly, it facilitates identification and classification of the most significant features of antisocial acts, helps in establishment of fair sanctions; secondly, it assists law enforcement authorities to properly qualify offenses, thus setting adequate influence measures; thirdly, makes possible to understand the law, support training of lawyers, and promotes legal erudition of citizens.

Generally, the combination of elements is the description of act in the law. Description of an action not yet committed, but only possible or supposed. In practice, only legally significant features characterizing act as an offense, goes down for such a description. They have been named the structural features. The main source of this description is the Code of Ukraine on Administrative Offences (hereinafter the CAO). Elements features may be permanent and variable.

Permanent features received general recognition in legislation, legal theory, and social practice. For example, "age of administrative responsibility", "witness", "vehicle", "pedestrian", "firearm", "afforestation", "intellectual property", "building", "official" and so on.

Variable features can change their meaning quite often. By rule, these features are contained in regulations.

For example, the law established the responsibility for violation of infringement of sanitary rules (Art. 42) [2] Infringement of rules of trade by alcoholic drinks (Art. 156), public welfare (article. 152), holding dogs and cats (Art. 154), health facilities and lines of communication (Art. 147) and so on. These rules can be set, changed, canceled by the relevant authority, what results in changes of the respective compositions.

Assessment features are widely used in description of essential elements. The content of such features in statute is not clearly defined, thus the question of their presence or absence is under law enforcement officials consideration.

Therefore, theoretical studies play an important role in revealing of their content. Such features, as "gross violation" (Articles 85, 108), "Arbitrariness" (Article 186), "emergency situation" (Articles 127, 140), "provision of necessary conditions and living, training and education" (Article 184), "prodigal expenditure" (Articles 60, 98), "mismanagement maintenance" (Article 150), "mismanagement" (Art. 164-2), "devices similar to markings", "objects that contribute crowded birds hazardous to aircraft flight "(Art. 111),"insulting molestation to citizens", "similar actions" (Article 173) states that "offends human dignity and public morality "(Article 178), "persistent disobedience" (Article 185), "willful evasion" (Articles 185-3, 185-4), "reasonable excuses" (Article 210) and so on.

Features could be distinguished by the degree of generalization. In this case, it is referred to the following features: a) general; b) generic or specific; d) specific or individual.

Common characteristics for all essential elements (illegality, sanity, fault etc.).

Generic (specific) are typical for the group of elements. For example, essential elements, that describes violations in the field of standardization, product quality, metrology and certification. Social relationships that develop in this area are the specific object of encroachments in this case.

Specific (individual) describes separate specific elements "expansion of inveroacious hearings" (Art. 173), "stowaway travel" (Art. 135), "prostitution" (Art. 181-1), "silence in public places" (Art. 182), "narcotic substances in small sizes" (Art. 44)," organization of street procession "(Art. 185-1)," contempt of court" (Art. 185-3).

1. The Code of Ukraine on Administrative Offences: Official Bulletin of the Verkhovna Rada of Ukrainian SSR, 1984, annex to No. 51, Article 1122 (Brought into force by Resolution of the Verkhovna Rada of Ukrainian RSR, 1984, annex to No. 51, Article 1122.

2. The source of these articles is the Code of Ukraine on Administrative Offences, unless otherwise is noted.

Essential elements of administrative offenses classifies depending on: 1) the degree of public danger - on basic and qualified; 2) the nature of damage - on material and formal; 3) the subject of an offense - on private and official (service); 4) the structure - on alternative and definite; 5) the design features - on descriptive and blanket (referential).

Let's examine characteristics of each type of essential elements of administrative offenses. Recognizing this, or that act as an administrative offense and imposing sanctions for violation, the legislator considers that the degree of public danger of similar offences may be different.

Thus, infringement by drivers of vehicles of railway crossings rules characterized by greater public danger while providing services for passengers or dangerous cargo transportation (Art. 123).

Due to this fact in some cases legislator, considers several essential elements of administrative offenses, belong the same type of actions. These elements vary the degree of public danger. Any additional features called qualifying are indicating a higher degree of danger.

Thus, features may be basic, such as occur in every case of commitment of offence and qualifying, such as supplements the basic features.

Basic features in their turn form the so-called general essential element of an offence. If necessary, legislator complements essential elements with qualifying features, thus an act can be qualified under another article that imposes stricter punishment. Essential elements, with such features are named qualifying.

In the Code it often appear such a qualifying feature as replication (Articles 44-2, 95, 104), an emergency situation (Articles 122, 127, 140), the presence or possibility of harmful material consequences (Articles 128-1, 140), state of drunkenness (Art. 127), leaving of a place of road traffic accident (Art. 122-4), a gross violation of rules (Art. 85), act committed by official (Articles 93, 95-1, 107-1). Material essential elements contain such features, as A) occurrence of harmful material consequences caused by committed act. For example, forest damage by sewage, caused its shrinkage (Art. 72), infringement of requirements of fire safety in woods (Art. 77), abduction of other's property (Art. 51); B) describes action that necessarily leads to harmful effects, despite they are not identified by the law: breach of law of a state ownership on bowels (Art. 47); excess of limits and specifications of use of natural resources (Art. 91-2); prodigal expenditure of fuel and energy resources (Art. 98); sale of products in violation of the requirements for health warnings on tobacco products (Article 168-2).

To the formal (conditional term) belongs such elements that have no features of harmful material consequences. For example, residing without registration of location (Art. 197), infringement of a frontier regime (Art. 202), illegal withdrawal of passports in mortgage (Art. 201).

Completing the description of material and formal essential elements of administrative offenses is important to note, that the criminal law concludes slightly different meaning in their concepts. Under the material elements herein understands those in which the end of crime is associated with the occurrence of socially dangerous consequences (a person can be attracted for murder only if in result of his actions someone's death occurred); formal elements are those, where the occurrence of socially dangerous consequences is not a feature, i.e. recognition of crime with such essential elements requires only the establishment that the committed act is prohibited by the law. These crimes include, for example, illegal possession of firearms. In such cases, essential elements are "collected" from several different independent offences. This is the violation of various acts, regulations and requirements. Using formal approach in this case it is not difficult to indicate several offenses. For example, the infringement of the established rules and mode of operation of installations and manufactures from processing and recycling of waste (Art. 82). Moreover, legislator considers all these acts, as one offense. The basis of this approach is the likeness of these acts, so they are identical and have one and the same legal features of an essential element.

It should be also noted, that in one blanket construction of an essential element of an offence, a number of different references types could be combined. As an example Article 125 "Other infringements of traffic rules", establishes violations of traffic rules, except foreseen by Articles 121-128, part first and part second of Art. 129, Articles 139, 140 of the CAO. Article 212-10, establishes restrictions on campaigning: campaigning person, whose participation in the election campaign is prohibited by law, campaigning beyond the terms established by law, or in places prohibited by law, campaigning in ways and means that are contrary to the Constitution and Laws of Ukraine, or other breach of statutory restrictions on campaigning, except foreseen by Articles 212-9, 212-13 and 212-14 of the Code.

In addition to these, the classification base of essential elements of administrative offences could be amended with other criteria. According to this feature of the subjective side, as a form of fault, offenses can be divided into intentional and reckless, and on the basis of motives into acquisitive and altruistic etc.

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