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PROCEDURES SUBJECTS OF THE CASES REGARDING VIOLATION OF FREIGHT TRAFFIC SAFETY LAWS

The article defines the current procedure problems of the cases regarding violation of freight traffic safety laws. Based on the legislation in force and enforcement, the investigation gives the range of motions aimed at improvement of procedural status of subjects of the cases regarding violation of laws on dangerous, overweighed and oversized freights transportation.

Keywords: transport, freight, traffic, violation of a law, responsibility, procedures.

Гуржий А. Субъекты производства по делам о нарушениях правил грузоперевозки. *Освещены актуальные проблемы производства по делам об административных правонарушениях в сфере безопасности грузовых перевозок. На основе анализа действующего законодательства, нормотворческой и правоприменительной практики разработан комплекс предложений, направленных на совершенствование процессуального статуса участников рассмотрения дел о нарушениях правил перевозки опасных, тяжеловесных и крупногабаритных грузов.*

Ключевые слова: транспорт, груз, дорожное движение, правонарушение, ответственность, производство.

Background. Any developed society cannot exist without reasonable satisfaction of social interests in freight transportation; the vehicle plays the key role to meet this need. 1.7 billion of freights, that is 79 % of all freight transportations, is shipped by vehicles in Ukraine [1].

Simultaneously, freights carriage is accompanied by risks, connected with the vehicle as a source of heightened danger. According to State Traffic Inspectorate Ministry of Internal Affairs of Ukraine, over 150 thousands of laws violations on dangerous, overweighed and oversized freights transportation were registered in Ukraine during 2006–2012. Such violations resulted in 420 road traffic accidents with injured people [2].

For the purpose of this, the issues of administrative responsibilities as a main procedure ensuring the security of freights transportation are becoming topical (critical). The current state of the institute of administrative responsibility functioning in the sphere of dangerous, overweighed and oversized freights transportation cannot be considered as a satisfactory one. The violations in this area are characterized by the ascendant dynamics, increased latency and immensity of negative social and economic consequences.

Every fifth road traffic accident, caused by the violations of laws on dangerous, overweighed and oversized freights transportation, results in death or injury of people. According to this index they are regarded as the most dangerous administrative law violations in vehicles.

However, the analysis of jurisdictional processes practical aspects in the sphere of freight transportation shows a great amount of problems connected with case reviewing, service document settlement, proceedings, procedural decisions taking and implementation. In most cases, the origins of these problems belong to the procedural status of the subjects of administrative and tort proceedings. All the factors including the limited range of procedural rights, the lack of guarantees of procedural obligations, weak control over their implementation negatively affect the cases of administrative offenses under Art. 132-1 of the Code of Ukraine on Administrative Offences (CAO of Ukraine). As a result, the court decisions in such cases are often appealed, annulled or not served.

The above mentioned factors emphasize the necessity of scientific research of ways to improve the procedural status of subjects of the cases regarding violation of laws on dangerous, overweighed and oversized freights transportation.

Analysis of recent researches and publications. Scholarly works of the main scientists such as G. Golubeva, T. Gurzhiy, V. Donenko, V. Novikova, A. Salmanova, M. Stotska, B. Razvadovskyi, E. Tsyba et al played an important role in the research [3–11]. Meanwhile, the questions of the procedural status of subjects of the cases regarding violation of laws on dangerous, overweighed and oversized freights transportation have not been studied comprehensively in national science. The vast majority of researchers highlight them only fragmentary and usually in the context of a related issue.

The aim of the paper is to clear up the defects of the procedural status of subjects of the cases regarding violation of laws on dangerous, overweighed and oversized freights transportation, and the development of particular legislative proposals for its improvement.

Results. Analysis of existing legislation reveals the following groups of subjects of cases regarding violation of laws on dangerous, overweighed and oversized freights transportation: the subjects of authority proceedings, having the right to organize the proceedings, draw up procedural acts, perform procedural actions; the subjects, interested in the case outcome; the subjects, promoting objective truth in the case by providing evidence about the circumstances of the offense; the subjects involved in the proceedings if special knowledge (technical, linguistic, etc.) is necessary.

Thus, a major number in the system of state-government entities involved in the organization of the delict cases under Art. 132-1 of CAO of Ukraine includes the heads of the internal affairs divisions of a law enforcement agency (heads or deputy heads of departments (divisions, administrations, and ministry), the commanders or deputy commanders of State Automobile Inspection MIA of Ukraine, heads or deputy heads of the Departments of Foreign Affairs).

This category of subjects makes a decisive influence on the course of the proceedings and results of its solution. They are personally responsible for the cause proceedings, its comprehensive and objective consideration, collection and evaluation of evidence. They organize the implementation of mandatory proceedings and preparation of official legal documents. Eventually, they pass the decisions on, determine the type and size of the penalty for the offense or find a person not guilty.

According to its nature the administrative and procedural powers of officials of the law enforcement agencies (officials dealing with cases regarding violation of laws on dangerous, overweighed and oversized freights transportation) can be divided into the following "groups":

- Implementation of maintenance inspection of vehicles (including mass-size);
- Institution of court proceedings regarding administrative violations;
- Carrying proceedings decisions (detention, personal inspection, examination and seizure of luggage and documents, including driver's license, license document for the vehicle, the temporary detention of the vehicle, suspension from driving, intoxication review, etc.);
- Organization of the case hearing involving interested people (implementation of preparatory actions, summons of interested people, involvement of experts, interpreters or other entities, conducting the case by hearing participants and presentation of their arguments);
- Solution of the case.

The analysis of the practical aspects of the specified terms underlines an extremely serious problem. In autumn 2008, the legislator added to the

current CAO of Ukraine a number of new articles on the responsibility for offenses against road safety (including Article 132-1), however, he has "forgotten" to introduce appropriate amendments to Art. 255 of CAO of Ukraine, that defines a list of persons authorized to draw up reports on administrative matters [12]. As a result, the traffic police officers are not entitled to draw up reports on violation of laws on dangerous, overweighed and oversized freights transportation.

However, the drawing up reports has become widely popular in recent years. Such a situation when the main procedural document, which is the starting point of administrative tort proceedings, is not in compliance with a current legislation is unacceptable and must be corrected as soon as possible.

Moreover, legal power uncertainty regarding the protocol drawing up in cases on violation of laws on dangerous, overweighed and oversized freights transportation prevents to apply important procedural decisions. More specifically in this case it is impossible to make temporary detention of the vehicle, since according to the law (Article 275-2 CAO of Ukraine) this measure is the subject to a mandatory recording in the administrative report [13].

The best solutions to the problems outlined above are to capture in the current legislation (in particular Art. 255 CAO of Ukraine) powers of the police officers to draw up the report on violation of laws on dangerous, overweighed and oversized freights transportation.

Another issue, that is extremely relevant in the context of the issues of liability for violation of laws on dangerous, overweighed and oversized freights transportation, is the limited range of procedural provisions within the competence of law enforcement officers.

At present, in order to solve proceedings concerning offenses in road transport authorized police officers have the right to: administrative detention, personal inspection, examination and seizure of luggage and documents, including driver's license, license document for the vehicle, the temporary detention of the vehicle, suspension from driving, review of intoxication or being under the influence of drugs, reducing drivers attention and reaction speed (Art. 260 CAO of Ukraine) [13]. Thus, if the further operation of the vehicle poses a danger to road traffic participants, traffic police have the right to temporarily detain a vehicle by locking or (if placing a detained vehicle significantly interferes with traffic) to tow it in a special area or park, and in addition, to seize the documents for the vehicle.

However, none of these measures is able to eliminate the risk of operating the vehicle with technical troubles or deviations (in size, weight, and configuration) for a long time. Indeed, under the current law (Article 265-2 CAO of Ukraine) the period of temporary detention of the vehicle cannot exceed 3 days, after this period it must be returned to the owner, regardless of the stage of solving the case. And the vehicle owners are not always ready to eliminate the technical problems. A detained vehicle is often put into operation immediately after the return without any repair and

removing technical problems. Actually, this is not surprising, because the cost of some vehicle repair is much higher than the probable amount of the administrative penalty for violation under Art. 132-1 of CAO of Ukraine.

As for the seizure of the driving license and license document for the vehicle, the first measure is effective in case the driver is the owner of the vehicle (but even in this case there is a possibility to transfer vehicle operation to other individuals); in its turn, the seizure of the license document for the vehicle is the basis for the prohibition of the transport services provision, but it cannot prevent the participation of a vehicle in traffic without any commercial purpose.

Thus, the current measures of procedural provision cannot guarantee long-term exclusion of vehicles having technical problems from participation in traffic. The danger of this situation is obvious – according to the statistics operation of vehicles with technical problems is a major cause of road accidents and deaths (about 25 deaths fall to 100 accidents committed to this cause) [3, p. 4].

It seems that one of the best ways to solve this problem is to introduce the practice of temporary prohibition of the vehicle operation (unless the existing technical problems are eliminated/removed). On the one hand, it will completely exclude dangerous vehicles from participating in traffic, on the other – it will encourage their owners to eliminate all the technical problems as soon as possible.

Taking into consideration all the above mentioned issues we propose the following changes to the current CAO of Ukraine:

1) To add part 1 and 2 of Article 260 CAO of Ukraine with the words "temporary ban on vehicle operation" after "temporary detention of a vehicle" (hereinafter it remains the same);

2) To add the current CAO of Ukraine with Article 265-4 "Temporary ban on vehicle operation":

"If there is reason / evidence the driver must be considered to have committed a violation under Part 1–4 Art. 121, Art. 121-1, 122-5 and 132-1 of the Code, an employee of the corresponding department of the Ministry of Internal Affairs of Ukraine prohibits the vehicle operation until the relevant violations are eliminated. Yet the vehicle registration plates must be removed until the causes of the operation prohibition are eliminated. Temporary ban on the vehicle operation shall be recorded in the report of the administrative offence, that shall include: the grounds of the decision to ban the vehicle operation, information of the vehicle (state registration number), as well as information about the owner of the vehicle".

The category of subjects of cases regarding violation of laws on dangerous, overweighed and oversized freights transportation includes prosecutors and judges.

According to Art. 250 CAO of Ukraine, prosecutor, deputy prosecutor, exercising supervision over compliance and correct application of laws in

the proceedings has the right: to study the case; check the legitimacy of bodies (officials) in the proceedings; to participate in the proceedings; make motions; to give conclusions on the issues arising during the proceedings; check the correct application of measures for administrative offences by the corresponding bodies (officials); make representation, appeal injunction and the decision on the complaint in the case regarding an administrative offense, as well as perform other actions envisaged by law.

The prosecutor instituting administrative proceedings is of considerable interest in this context. The introduction of the institution at the end of 2012 was an important step that expands the range of administrative and judicial powers of prosecutors and diversifies their roles in the organization of administrative and tort proceedings. However, unlike the prosecutor's protest (this form of response was assigned to the prosecution in the administrative proceedings during the previous decades), directed solely to review the resolution of the case, suspend the illegal actions and restore / reinstate the violated rights, the institution may include requirements to: eliminate the causes and conditions that contributed to the violation of the law; call people to account envisaged by law; damages; stop the inactivity of officers and officials [14]. The expansion in powers regarding administrative cases is a logical step that will contribute to a more complete and detailed implementation of the prosecution objectives regarding establishment of the rule of law, consolidation of law and order, protection against abusive attacks.

Judges of courts of general jurisdiction are one of the important subjects of proceedings concerning violations of laws on dangerous, overweighed and oversized freights transportation. Without the authority to review and resolve these cases substantially / essentially, the judges are involved in the proceedings: firstly, as the subjects of complaints about certain proceedings (including the measures taken to ensure procedural order), and secondly, as subjects of consideration of the corresponding administrative matters in order to appeal.

Under Art. 267 CAO of Ukraine the administrative detention, personal inspection, examination and seizure of luggage and documents, including driver's license, license document for the vehicle, the temporary detention of the vehicle, suspension from driving and other measures may be appealed by interested parties in court. The appeal of such action does not stop their execution and does not preclude further proceedings. However, if the case is closed due to lack of events and of administrative tort or other grounds under Art. 247 CAO of Ukraine, such measures shall be disaffirmed and the person, to whom they have been applied, shall be entitled to reimbursement of damage caused.

It should be noted that the current CAO of Ukraine does not fully regulate the procedure of complaints consideration (including – trials) within the framework of administrative tort proceedings. According to the CAO of

Ukraine, there is the right to appeal. Such questions as the timing of complaints consideration, issues to be clarified in the trial, as well as possible solutions that can be taken – are now resolved by the rules of civil procedure.

The current legal "gap" must be eliminated. Securing a claim in civil proceedings is characterized by several features, stipulated by specific civil disputes. The above mentioned measures are taken at the initiative of the eligible parties; they are mostly of property nature, etc. This affects the mechanism of their application "adapted" solely to the rules of civil procedure. Such a mechanism in the administrative and tort proceedings is not always effective because the administrative cases are considered according to different principles and procedures.

Regarding this, Art. 267 of the current CAO of Ukraine must be expanded with parts 3, 4 and 5: "The complaint to the measures of the administrative offense proceedings shall be tried within two days of its submission."

According to the administration of the complaint on enforcement measures proceeding in the administrative offence case, the judge makes one of the following rulings:

- upholds the enforcement measures;
- changes one enforcement measure into another one;
- changes the terms of enforcement measure;
- cancels the enforcement measure.

If the case was dismissed due to reasons, envisaged by the Article 247 of the Code of Ukraine of Administrative Offence, the used enforcement measures remain in force until the corresponding ruling comes into effect. Nevertheless the bodies or officials who take the court ruling on administrative offence can make a decision on canceling such enforcement measures simultaneously with taking such a ruling.

According to Article 293 of the Code of Ukraine of Administrative Offence, the subject of the administration of the complaint (as a rule a judge is such a subject) can take one of the following decisions: a) affirm a decision; b) cancel the ruling and remit the matter for fresh examination; c) cancel the ruling and dismiss a case; d) change the sanction within the law. At the same time the legislator doesn't indicate which grounds can be the reason to change or cancel the court ruling on administrative delict. As a practical matter this fact often leads to making controversial, weakly motivated decisions, which neither facilitate the objectivity of justice nor strengthen the judicial authority.

Thus, there exists the necessity to define legal grounds for cancellation or change of administrative offence ruling. To achieve this aim it is necessary to amend article 293 of the Code of Ukraine of Administrative Offence with part 3 of such contents:

"The grounds for cancellation or change of administrative offence ruling are:

- one-sided or incomplete investigation of facts in the case;

- inconsistency of conclusions, given in the ruling, with the facts of the case;
- significant violation of procedural rules of case processing;
- incorrect imposition of administrative penalty.

A person, who is held administratively liable, an affected party, representatives and a defense counsel form the category of subjects, interested in the results of the case on the violation of laws on dangerous, overweighed and oversized freights transportation. Taking into account the fact, that in the course of administrative-delictual case proceeding the issues on rights and freedoms of particular persons are solved, the legislator provides them with wide opportunities concerning participation in the hearing of the case, providing grounds for their legal position, the defense of their legal interests.

According to Article 268 of the Code of Ukraine of Administrative Offence, a person, who is held administratively liable, has right to: receive investigation materials, give explanations, provide proofs, enter a motion, take immediate part in case hearing, use legal help of a lawyer or other specialist in the sphere of law, appeal case ruling, speak their native language and use the services of translators if they do not know the official language of the proceeding.

In his/her turn the affected party (that is a person, who suffered moral, physical or property damage) exercises the right to receive investigation materials, enter a motion and appeal the ruling in the court in case of administrative offence.

In administrative-delictual case proceeding the affected party has less volume of procedural rights than the person, who is held liable. In particular, current Code of Ukraine of Administrative Offence doesn't envisage the right to use legal help of a counselor, and also the services of a translator if he/she doesn't know the state language.

The presence of such "imbalance" in the procedural status of the person, who was held to book and the affected person can not be found grounded. In this case the issue is in the restriction of constitutional right of a person on legal advice (article 59 of the Constitution of Ukraine) and the violation of the principle of equality of citizens, envisaged both by the Constitution (article 24) and current Code of Ukraine of Administrative Offence (article 248). These restrictions contradict not only the principles of law, but also the principles of social justice, such as in these cases the matter is not about a possible offender, but vise a versa – about a law-abiding, innocent subject of legal relations, who was seriously damaged by illegal actions.

The facts, stated above, make it necessary to bring administrative-procedural status of the affected person in line with the requirements of the Constitution and general social standards of people's rights. One of the most important steps in this direction should be confirmation in the article 269 of the Code of Ukraine of Administrative Offence of the right of the affected

person to get legal advice, to provide proofs, to speak native language and to use the services of translators when they do not know the official language of the proceeding. To achieve this aim part 2 of the article 269 of the Code of Ukraine of Administrative Offence should read as follows: "The affected person has right to receive investigation materials, provide proofs, enter a motion, use legal help of a lawyer or other specialist in the sphere of law, who according to legislation has right to provide legal assistance personally or on behalf of legal entity, to speak native language and use the services of a translator, if he/she doesn't know the language of the proceeding, to appeal the ruling in the court.

According to current Code of Ukraine of Administrative Offence (articles 270 and 271) a lawyer or other specialist in the sphere of law, who according to legislation has right to provide legal assistance can represent the persons, interested in the results of case solution.

The procedural status of specialist-lawyer in the administrative-delictual proceeding is defined by the party of the case he represents (a person, who is held liable or an affected party). In the first case he/she protects the defense of the person from "conviction", and hence has a status of a defense lawyer. In the other case he/she represents the person, who supports the position of the "conviction" and that is why he/she has the status of a representative. Meanwhile, the sphere of their procedural authorities is approximately the same. Both representative and defense lawyer have right to receive investigation materials, enter a motion and appeal the court decisions (official's decisions), that consider the case.

On the basis of analysis of appropriate provisions of the Code of Ukraine of Administrative Offence there can be distinguished only two differences in the procedural status of a representative and defense lawyer. The first one is in the fact that while appealing the procedural decisions in the court, the representative can act on his own behalf and the defense lawyer can appeal only on the behalf of the person, he/she represents.

The other distinctive feature is that according to article 271 of the Code of Ukraine of Administrative Offence the defense lawyer, along with the rights, stated in the Code, has also got other rights, stipulated by the laws of Ukraine. Therefore, article 270 of the Code of Ukraine of Administrative Offence, which states the procedural rights of the representative, doesn't indicate such a notice. This allows assuming that according to the legislator's point of view, the list of procedural rights of the representative is final and is not a subject for further interpretation.

In return let us notice that in this case there is an unjustified narrowing of the array of procedural authorities of the representative in an administrative-delictual process. First, such an approach contradicts the provisions of the Law of Ukraine "On advocacy and legal practice", under which a lawyer while performing the representative functions, exercises right to take

any actions, that are not forbidden by law, the rules of advocate ethics and legal assistance agreement, that are necessary to fulfill the conditions of the legal assistance agreement. Second, the capabilities of the person to defend his/her rights and freedoms, guaranteed by the Constitution, are limited.

Considering that Part 3 of the Article 270 of the Code of Ukraine of Administrative Offence should read as follows:

"Legal representatives and the representatives of the person have right to receive investigation materials, to enter a motion on the behalf of the person, whom he/she represents, to appeal the decisions of the body (official), that consider the case, as well as they exercise other rights, envisaged by the legislation of Ukraine".

A witness, namely a person who knows the facts, which should be substantiated in the case, plays an important role in administrative-delictual proceeding (in particular concerning the hearing of cases on violation of laws on dangerous, overweighed and oversized freights transportation). The value of witness's testimony is the fact that it may contain information about facts of the subject of evidence, meaningful empirical data, facts of procedural character, grounds for administrative-legal controversies, facts about violation of the legal order performance by any subject of administrative process. Besides, such testimony frequently serves a single method of identifying certain circumstances of the case, when they aren't set documentarily and are actively used together with other proving methods, securing cogency of testimony and facilitating the formation conditions of the latter ones [15, p. 194].

It is generally admitted that one of the biggest problems in the course of hearing cases on transport administrative offences is the refusal of offence witnesses to become witnesses in the case. It is a very typical situation when a person, who saw the delict, refuses to provide information on the conditions of the delict, pretending having no time, professional business or other personal circumstances. By doing this they sometimes hide a desire to avoid participation in legal procedures, they can even support the actions of the offender or despise the representatives of the authority.

At the same time the legislation (in particular the Code of Ukraine of Administrative Offence) doesn't envisage punishment for the witness if he/she refuses to testify in the case on administrative offence: currently such a refusal doesn't have any legal consequences. Taking into account this fact, the citizens with low level of legal culture and civil responsibility refuse to testify, using the slightest excuses or even without them. The result of such actions leads to "weakening" of evidential basis, impossibility to clarify case facts, termination of case and evasion of deserved responsibility.

Given the fact that in some cases the presence of testimony is a qualifying characteristic feature of administrative delicts on transport (e.g. Part 4 of the Article 122 of the Code of Ukraine of Administrative Offence), the defined problem is becoming more and more socially important. In order to

solve it, it is necessary to state in the current Code of Ukraine of Administrative Offence a provision on administrative responsibility of the witness for default of legal requirements of the person, who carries out proceedings in the administrative offence case and for intentional providing of untruthful information.

At the same time it is impossible to omit the fact, that while setting the responsibilities of the witness (to come on call, to provide truthful testimony), the current Code of Ukraine of Administrative Offence doesn't define the range of his/her procedural rights, negatively affecting the procedural position of the witness and contradicts the democratic standards of justice.

Therefore it is necessary to enumerate the rights of the witness in the article 272 of the Code of Ukraine of Administrative Offence: not to incriminate him/herself, family or close relatives, the list of which is stipulated by law; to witness in his/her native language and to use free help of a translator; observe on accuracy of his testimony records in documents.

In case of necessity an expert and a translator can be attracted in the administrative-delictual proceeding. Although in practice the majority of cases on violation of transportation rules of hazardous, oversize and heavy-weight load are considered without their participation, such participation can be extremely necessary in certain situations. As a matter of fact, the carriage of cargo through the territory of Ukraine is frequently done within the framework of transnational transport (we mean with the help of foreign drivers), and delicts in this sphere are connected with the violation of special technical rules and infliction of material damage. In such cases only a person, who has necessary knowledge (technical, economic, linguistic, etc.) can secure the right of a foreigner to testify in his native language, can state the fact of violation of some technical rule or estimate the cash value of damages suffered. Taking all of this into account, a legal status of an expert and a translator is of immense practical interest.

According to Article 273 of the Code of Ukraine of Administrative Offence an expert is appointed by the body (the official) that carries out administrative-delictual proceeding, in case of necessity of specific knowledge, including defining the size of the property damage, made by the administrative offence. An expert is obliged to arrive on call of such a body (official) and provide objective report on the tasks set for him. Meanwhile he/she has right to be present during case hearing, receive case materials on the subject of the expertise, submit claims on receiving additional materials, necessary for expert report; question a person who is held liable, a victim and witnesses on the matter of expertise if the body (official), that considers this case, allows.

A translator is involved in the administrative-delictual proceeding in the same way. If he is appointed by the body or official, who are considering the case, a translator has to arrive on call and to perform accurate and complete translation (Article 274 of the Code of Ukraine of Administrative Offence) [13].

The analysis of administrative-delictual status of persons, having special knowledge, shows that there is a wide area for its development and improvement. This refers primarily to the status of an expert. It is worth agreeing with T. Kolomoyets, who underlines that modern state of its legal regulation is distinguished by its generalized content and fragmentariness that do not allow an expert to implement his/her potential completely [16, p. 71].

In particular according to current legislation the evidence of the expert is greatly defined by the number of questions, raised by the subject of case hearing on administrative delict. At present an expert has no right to refuse to provide evidence that is beyond his/her special knowledge, to indicate in the expert report any circumstances, he was not questioned about, even if these circumstances can influence the court ruling. Such situation does not only limit the rights of an expert as a subject of administrative-delictual proceeding, but also facilitates the establishment of objective truth in the case, that is only possible on the basis of full, competent and extensive analysis of factual circumstances of a delict.

According to the above mentioned information it is worthy to expand the sphere of procedural rights of an expert as a participant of administrative-delictual proceeding by amending Article 273 of the Code of Ukraine of Administrative Offence. In particular we offer to amend this article with parts 4 and 5 that should read as follows: An expert has right to refuse from providing expert report if his special knowledge or provided materials are not enough.

An expert has right to state in his expert report the circumstances, he was not questioned about, if such circumstances can influence the case decision.

Conclusion. Summing it up we can state that current organizational and legal mechanism of considering and resolving cases on administrative offence, stipulated by Article 132-1 of the Code of Ukraine of Administrative Offence is far from being ideal. The proceeding of such cases is accompanied by many problems, which hinder the realization of procedural rights and freedoms of citizens, complicate objective issue establishment, determine mistakes of qualification, leading to excessive protraction of jurisdictional procedure, create holes in law for the offenders to avoid responsibility.

Mostly these problems have general character. They are driven by general weaknesses of procedural status of administrative-delictual proceeding subjects, and also systematic drawbacks of administrative offence case consideration: irregularity of separate procedural measures, inconsistence of procedural terms, insufficient information content of procedural documents etc.

Effective solution of procedural problems of responsibility for violation of laws on dangerous, overweighed and oversized freights transportation is only possible in case of a complex approach, directed at the improvement of administrative-delictual proceeding, despite its character and type of legal

cases. Within the framework of such approach we recommend to implement a complex of measures.

First, it is necessary to fix in the Article 255 of the Code of Ukraine of Administrative Offence the authorities of police officers to write a report on violation of laws on dangerous, overweighed and oversized freights transportation.

Second, we need to expand the list of measures on securing administrative offense case proceeding by way of including such a measure as temporary (before rectification of technical defects) ban on vehicle exploitation.

Third, we need to perform legal regulation (on the level of the Code of Ukraine of Administrative Offence) of the consideration procedure (including in court) of the claims on securing measures, implemented according to administrative-delictual proceeding.

Fourth, we need to define in the current Code of Ukraine of Administrative Offence the grounds for cancellation or change of rulings in cases on administrative offences.

Fifth, it is necessary to envisage administrative responsibility of a witness for failure to perform legal requirements of a person, who carries out proceeding in administrative offence case, also for intentional providing false testimony.

Sixth, it is worth fixing in the current Code of Ukraine of Administrative Offence:

- *the rights of the victim* to get legal help; provide proofs in the case, speak native language; use the help of a translator, to claim on renewal of the terms for appealing the ruling in the administrative case, which were missed due to important reasons;
- *the rights of the witness* not to incriminate himself, his family and close relatives; speak native language; use fee help of a translator, make notices on the documentary fixation accuracy of his evidence;
- *the rights of the witness* to refuse to give evidence beyond his special knowledge; to indicate in his expert report the circumstances, he was not questioned about, even if these circumstances can influence the court decision.

Besides, it is necessary to define the list of issues on a legislative level, which are subject for identification while considering claims and prosecutor requests in the cases on administrative offences.

REFERENCES

1. *Transport :* Vidpravlennja (perevezennja) pasazhyriv ta vantazhiv za vydamy transportu // Oficijnyj sajt Derzhavnoi' sluzhby statystyky Ukrai'ny

[Elektronnyj resurs]. — Rezhym dostupu : http://www.ukrstat.gov.ua/operativ/operativ2005/tz/tz_rik/tz_u/ts_u.htm.
2. *Avarijnist'* na avtoshljahah Ukrai'ny // Oficijnyj sajt Departamentu DAI MVS Ukrai'ny [Elektronnyj resurs]. — Rezhym dostupu : http://www.sai.gov.ua/ua/people/5.htm.
3. *Golubjeva G. K.* Administratyvno-pravova kvalifikacija porushen' vodijamy pravyl ekspluatacii' avtotransportnyh zasobiv : dys. ... kand. juryd. nauk : 12.00.07 / G. K. Golubjeva. — K., 2008. — 233 s.
4. *Gurzhij T. A.* Osnovnye nachala gosudarstvennoj politiki bezopasnosti dorozhnogo dvizhenija v Ukraine / T. A. Gurzhij // Administrativnoe pravo i process. — 2009. — № 5. — S. 29–33.
5. *Gurzhij T. A.* Gosudarstvennaja politika Ukrainy v sfere bezopasnosti dorozhnogo dvizhenija: perspektivy razvitija / T. A. Gurzhij // Administrativnoe pravo i process. — 2010. — № 2. — S. 32–37.
6. *Donenko V. V.* Administratyvna vidpovidal'nist' za pravoporushennja, pov'jazani z keruvannjam transportnymy zasobamy osobamy, jaki perebuvajut' u stani sp'janinnja : dys. ... kand. juryd. nauk : 12.00.07 / V. V. Donenko. — K., 2001. — 223 s.
7. *Novikov V. V.* Administratyvno-pravovi osnovy profilaktyky porushen' pravyl dorozhn'ogo ruhu v Ukrai'ni : avtoref. dys. na zdobuttja nauk. stupenja kand. juryd. nauk : spec. 12.00.07 "Teorija upravlinnja; administratyvne pravo i proces; finansove pravo; informacijne pravo" / V. V. Novikov. — K., 1997. — 24 s.
8. *Salmanova O. Ju.* Administratyvno-pravovi zasoby zabezpechennja milicijeju bezpeky dorozhn'ogo ruhu : dys. ... kand. juryd. nauk : 12.00.07 / O. Ju. Salmanova. — H., 2002. — 232 s.
9. *Razvadovskij V. I.* Administrativnaja otvetstvennost' za narushenie norm, pravil i standartov, kasajushhihsja obespechenija bezopasnosti dorozhnogo dvizhenija : dis. ... kand. jurid. nauk : 12.00.07 / V. I. Razvadovskij. — Odessa, 1998. — 176 s.
10. *Cyba Je. V.* Administratyvna vidpovidal'nist' za porushennja pravyl perevezennja pasazhyriv ta vantazhiv avtomobil'nym transportom / Je. V. Cyba // Krym. juryd. visnyk. — 2010. — № 2(9). — Ch. 1. — S. 254–261.
11. *Cyba Je. V.* Administratyvna vidpovidal'nist' za porushennja pravyl perevezennja pasazhyriv ta vantazhiv avtomobil'nym transportom v Ukrai'ni : dys. ... kand. juryd. nauk : 12.00.07 / Je. V. Cyba. — Donec'k, 2011. — 228 s.
12. Zakon Ukrai'ny "Pro vnesennja zmin do dejakyh zakonodavchyh aktiv Ukrai'ny shhodo vdoskonalennja reguljuvannja vidnosyn u sferi zabezpechennja bezpeky dorozhn'ogo ruhu" vid 24 veres. 2008 r. № 586-VI // Oficijnyj visnyk Ukrai'ny. — 2008. — № 79. — St. 2652.
13. Kodeks Ukrai'ny pro administratyvni pravoporushennja // Vidomosti Verhovnoi' Rady URSR. — 1984. — № 51. — St. 1122.
14. Zakon Ukrai'ny "Pro vnesennja zmin do dejakyh zakonodavchyh aktiv Ukrai'ny z pytan' udoskonalennja dijal'nosti prokuratury" // Oficijnyj visnyk Ukrai'ny. — 2012. — № 73. — St. 2934.
15. *Olefirenko N. A.* Osoblyvosti pravogo statusu svidka jak uchasnyka administratyvno-deliktnogo provadzhennja / N. A. Olefirenko // Visnyk Zaporiz. nac. un-tu. — 2011. — № 1. — S. 193–198.

16. *Kolomojec' T. O.* Zarubizhnyj dosvid normatyvnogo vyznachennja zasad uchasti eksperta v administratyvno-deliktnomu provadzhenni ta mozhlyvi shljahy jogo zapozychennja v Ukrai'ni / T. O. Kolomijec' // Visnyk Akademii' mytnoi' sluzhby Ukrai'ny. — 2009. — № 1. — S. 71–81.— (Serija "Pravo").

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Гуржій А. Суб'єкти провадження у справах про порушення правил безпеки вантажоперевезень.

Постановка проблеми. *Аналіз практичних аспектів юрисдикційної діяльності в сфері перевезення небезпечних, великовагових і великогабаритних вантажів засвідчив широке коло проблем, пов'язаних з розглядом відповідних адміністративних справ, складанням процесуальних документів, здійсненням процесуальних дій, прийняттям та виконанням процесуальних рішень. Витоки цих проблем криються в площині процесуального статусу суб'єктів адміністративно-деліктного провадження, що зумовлює доцільність наукового пошуку шляхів його вдосконалення.*

Метою *статті є висвітлення недоліків процесуального статусу суб'єктів провадження у справах про порушення правил перевезень небезпечних, великовагових і великогабаритних вантажів, а також розроблення конкретних законодавчих пропозицій з його вдосконалення.*

Результати дослідження. *З метою оптимізації провадження у справах про адміністративні проступки на транспорті в чинному законодавстві запропоновано закріпити повноваження працівників міліції щодо складання протоколу про порушення правил перевезення небезпечних вантажів, проїзду великовагових і великогабаритних транспортних засобів. Обґрунтовано необхідність розширення спектру заходів процесуального забезпечення, віднесених до компетенції працівників органів внутрішніх справ. Запропоновано впровадити в практику такий захід процесуального забезпечення, як тимчасова заборона експлуатації транспортного засобу. Внесено комплекс пропозицій, спрямованих на приведення адміністративно-процесуального статусу суб'єктів адміністративно-деліктного провадження у відповідність до вимог Конституції України та загальносоціальних стандартів прав людини.*

Висновки. *Низька ефективність заходів адміністративної відповідальності за делікти на транспорті значною мірою обумовлена процесуальними вадами їх реалізації. У зв'язку з цим постає необхідність вжиття комплексу правових та організаційних заходів, спрямованих на вдосконалення процесуального статусу учасників розгляду справ про порушення правил перевезення небезпечних, великовагових і великогабаритних вантажів.*

Ключові слова: транспорт, вантаж, дорожній рух, правопорушення, відповідальність, провадження.