

## ADMINISTRATIVE-TORT MEANS OF OVERCOMING CORRUPTION RISKS IN THE FIELD OF ROAD TRAFFIC

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The relevance of maintenance of road safety is beyond doubt. In this regard, authorities and citizens have an undivided opinion on the need for such actions as an essential component of the successful transformation of specific relations. Road accidents claim 1,300,000 lives around the globe every year, and about 50 million people suffer injuries that lead to disability. Ukraine ranks fifth in Europe in terms of road traffic deaths. Our country has faced almost 200 thousand road traffic accidents, of which 26 thousand results in bodily injuries. In 2010, 4,709 people died in road traffic accidents and 38,917 people were injured. Every third person deceased is a young person under the age of 29. According to the World Bank, the Ukrainian economy loses \$5 billion annually as a result of road accidents<sup>1</sup>.

Most people are involved in road safety because everyone is a road user regardless of our desire – the driver, passenger, pedestrian, etc. An infant transported from the maternity hospital by car is also a road user – a passenger. After gaining independence, considerable attention has been paid to the development of operational framework for road safety and legal support of relevant activities. Particular emphasis still belongs to an administrative-tort component of countering traffic violations mainly due to a significant intensification of existing sanctions, improvement of current articles, and the introduction of novel corpus delicti of administrative offences.

At the same time, it is necessary to draw attention to extensive corruption dependence within the area concerned, as confirmed by surveys of citizens and specific scientific publications on corruption in the road safety sector.

Thus, Razvadovskiy B.L. stresses that one of the problems of ensuring road safety is corruption, which actualizes the development of adequate countermeasures, and supports the opinion of many experts that one of its main drivers is the “unproven mechanism for engaging NGOs and the media in monitoring the activities of law enforcement agencies”<sup>2</sup>.

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<sup>1</sup> Доненко В.В. Публічне адміністрування безпеки дорожнього руху: становлення в умовах реформування : монографія. Дніпропетровськ : Ліра ЛТД, 2011. 380 с.

<sup>2</sup> Развадовський Б.Л. Корумпованість відносин у сфері дорожнього руху: заходи протидії. *Боротьба з організованою злочинністю і корупцією (теорія і практика): науково-практичний журнал*. 2011. № 25. С. 167–172.

The project “Corruption in Ukraine 2022: understanding, perception, prevalence” presented by the National Anti-Corruption Agency notes that under the survey of citizens, central social problems of Ukraine are 1) Armed aggression of Russia against Ukraine (90.4%), 2) High cost of living and low incomes (69.2%), 3) Corruption (64.2%), 4) Unemployment (64.2%), 5) Unjust judiciary (55.2%).

It is symptomatic that regarding activities of law enforcement agencies, respondents demonstrated the highest indicators of corruption experience and ensuing situations as a result of unofficial payments or services to avoid responsibility for violation of traffic rules – 25.4%; 14.3% of respondents had the same experience when checking documents at stationary posts by the patrol police (it is believed this type of domestic corruption should also be attributed to road safety, because it occurs while driving a vehicle).

Another object of potential corruption relations is service centers, which somewhat relate to road traffic because they provide various vehicle services. Therefore, during registration (re-registration of vehicles), 22.8% of citizens had corruption situations, driver license issuance – 17% of citizens, reception and preservation of a license plate – 11%<sup>3</sup>.

It can be concluded that every fourth vehicle driver (owner) had a corruption experience in communicating with road traffic authorities.

The reformed parking system did not get rid of additional corruption risks after the adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Reforming the Vehicle Parking Area” No. 2262-VIII dated December 21, 2017, which established a new unit with quite significant administrative and jurisdictional powers. The current Code is supplemented by Art. 152-1 Violation of parking rules and violation of rules for equipping paid-parking platforms. The key objectives of inspectors are to inspect the streets for identifying stopping and parking violations, incl. non-payment of parking, and recording such violations<sup>4</sup>.

Accordingly, corruption offenses are related to malpractice and illegal enrichment: inspectors can receive cash (undue remuneration) at the place of violation detection in order to escape punishment (administrative penalty) by the violator. This is driven by the establishment of a new unit – parking inspectors with ample administrative and jurisdictional powers that can be used for undue benefits. The above is associated with the following:

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<sup>3</sup> Корупція в Україні 2022: розуміння, сприйнятливість, поширення / НАЗК. Київ, 2023. 168 с. URL: <https://nazk.gov.ua/wp-content/uploads/2023/04/1f23b766-e031-4c3f-81a4-0167b4f93116.pdf>.

<sup>4</sup> Про внесення змін до деяких законодавчих актів України щодо паркування транспортних засобів : Закон України від 29 травня 2014 р. № 1283-VII / Верховна Рада України. *Відомості Верховної Ради України*. 2014. № 29. Ст. 943. URL: <https://zakon.rada.gov.ua/laws/show/1283-18#Text>.

1) innovation should be subject to implementation through adjusting the job description of parking inspectors; 2) the availability of not only appropriate tools for recording traffic violations but also appropriate means of monitoring the activities of parking inspectors; 3) low qualification indicators for parking inspectors and the lack of the necessary elements of basic education to carry out such activities and the initial training and retraining of parking inspectors as a result of the lack of proper professional education. There is a situation when parking inspectors have powers equal to those of the patrol police (violation recording, vehicle seizure, imposition of an administrative penalty), but their professional training is low enough; 4) the need for proper control by local self-government bodies; 5) proper control by the public and individual citizens.

Another area that brings corruption risks is the training of drivers (according to the NACP, 17% of respondents confirmed their involvement in corruption relations), which is crucial for the overall state of road safety. In order to ensure the high-quality process of passing exams, which is subject to numerous complaints about corruption, service centers of the Ministry of Internal Affairs of Kyiv, Lviv, Odesa and Vinnytsia regions introduced a pilot project: they equipped examination classes and vehicles with cameras and sound recording. The MIA of Ukraine reports that more than 700 theoretical and practical exams are taken daily in each pilot region, and, on average, only one in four passes the driver's test at the first try. On the one hand, a low rate of passing exams may indicate a corruption prosperity in the past and its decrease due to the experiment.

A major step toward active counteraction to corruption during driver training is the amendment of the Code of Ukraine on Administrative Offenses (CUoAO) in terms of the introduction of administrative liability in the field of training and permit to drive<sup>5</sup>. The changes aim to improve state control in driver training and permit to drive, reduce road accidents, mitigate corruption risks during training, retraining and advanced training of drivers, conduct state accreditation of institutions (driving schools), hold theoretical and practical exams, etc. For the first time in the history of administrative tort legislation, liability for violation of the procedure for training, retraining and advanced training of drivers has been enshrined. It refers to violation of the established procedure for training, retraining and advanced training of drivers by officials of institutions, their branches, or other separate subdivisions, as well as individual entrepreneurs, namely: training/retraining of drivers by a person

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<sup>5</sup> Про внесення змін до Кодексу України про адміністративні правопорушення щодо запровадження адміністративної відповідальності у сфері підготовки та допуску водіїв до керування транспортними засобами : Закон України від 13 липня 2023 р. № 3234-IX / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/3234-20#Text>.

who does not have a valid document confirming expertise in driver training; admission of persons who have not passed a theoretical exam to practical training of drivers; conducting practical training of drivers using vehicles equipped with violation of the Traffic Rules, or by a person revoked a driving license (Article 127-3 of the CUoAO). It is also about breach of the procedure for state accreditation of institutions conducting training, retraining and advanced training of drivers, certification of their specialists, and the procedure for taking a driving test and a driver's license registration and issuance, namely, breach of the established procedure for state accreditation of institutions conducting training, retraining and advanced training of drivers by officials, as well as breach of the established procedure for certifying their specialists; breach of the established procedure for taking driving exams or issuing a driver's license by officials of territorial service centers of the Ministry of Internal Affairs of Ukraine.

At the same time, significant changes were introduced to Article 15 of the Law of Ukraine "On Road Traffic". A person seeking to obtain a driver's license of a particular category or type shall undergo a medical examination, specific training at an accredited institution or independently master a theoretical module of the standard curriculum, taking into account vehicle categories, and practice driving at an accredited institution or retraining in accordance with the standard curriculum, and successfully pass theoretical and practical exams. The procedure for training, retraining and advanced training of vehicle is determined by the Cabinet of Ministers of Ukraine. Training, retraining and advanced training of drivers takes place at accredited institutions, regardless of the form of ownership and subordination, which has the relevant certificate upon accreditation. Training, retraining and advanced training of drivers is conducted by specialists who meet the specified qualification requirements of the central executive body that maintains the formation and implementation of state health policy. The list of requirements for institutions and qualification requirements for specialists are set by the Ministry of Internal Affairs of Ukraine in agreement with central executive authorities ensuring the formation of state policy on education and science and transport and labor protection. A person who has undergone appropriate training at an accredited institution or independently mastered the theoretical module of the standard curriculum, taking into account vehicle categories, takes a theoretical exam. A person who has successfully passed the theoretical exam and undergone appropriate training in practical driving at an accredited institution is allowed to pass the practical exam. Thus, it is proposed to allow a person striving to obtain a driving license of appropriate category or type to implement self-training in accordance with a typical curriculum. It means that a person will chose either to contact specific institutions (driving schools) or master the theoretical module of a typical curriculum independently.

It is worth noting that the Committee on Anti-Corruption Policy of the Verkhovna Rada of Ukraine highlighted some provisions of these changes that contain corruption-related factors. As a result, the Committee supports the conclusion of the National Agency on Corruption Prevention and draws attention to the fact that the proposed model of legal regulation is corruption-generating (Articles 127-3 and 127-4 of the CUoAO as amended by the draft Law) and does not comply with the principle of proportionality of the administrative penalty to the degree of social harmfulness of the committed act as one of the 2 elements of the rule of law determined by the provisions of Part 1 of Article 8 of the Constitution of Ukraine. Firstly, the implementation of these provisions of the draft Law will increase corruption risks in the area concerned as it will increase the amount of bribes and ultimately rise of the cost of services both on the part of business entities and authorized persons. Secondly, the current Article 53 of the Law of Ukraine “On Road Traffic” states that legal entities and individuals who are guilty of violating road safety legislation, relevant rules, and regulations shall be liable under the legislation of Ukraine. At the same time, Articles 127-3 and 127-4 of the draft Law do not specify unlawful acts that can be qualified as a “violation of the established procedure” by officials and as grounds for bringing to administrative responsibility. Comprehensive requirements, breach of which may be the basis for bringing particular entities to justice, are also not regulated by statutory acts of the Cabinet of Ministers of Ukraine. Such requirements are not established by the proposed amendments to the Code of Ukraine on Administrative Offenses. Given the foregoing, the objective side of offenses is legally vague. In order to prevent corruption risks, when bringing persons to administrative responsibility set forth in Articles 127-3 and 127-4 of the draft Law, coherent and unambiguous corpus delicti should be well-defined. In addition, the Committee notes that the draft law amends the Law of Ukraine “On Road Traffic” that contradicts Article 2 of the Code of Administrative Offenses of Ukraine, according to which amendments to the legislation of Ukraine on administrative offenses shall be made by laws on amendments to this Code and other laws of Ukraine<sup>6</sup>.

While respecting the work of the law-making body of the state, it stands to mention positive aspects in an attempt to influence corruption-generating factors through enshrining responsibility and improving procedures for obtaining a driving license. On the other hand, it is necessary to monitor the practice of introducing innovations and their effectiveness and efficiency

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<sup>6</sup> Рішення Комітету Верховної Ради України з питань правоохоронної діяльності щодо експертного висновку законопроекту № 7354 / Комітет питань з антикорупційної політики Верховної ради України. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1817819>.

in the context of corruption risks – therein lies the establishment of cooperation between scientists and practitioners of relevant units, involving a wide range of the public.

In general, it is noteworthy that there are favorable decisions on improving the current administrative and tort legislation in the field of road safety, which also affect the corruption component in the area concerned. The introduction of automatic traffic violation recording, which set up a new type of proceedings, significantly reduced a corruption-generating component of bringing to justice for violations of traffic rules, which, by their nature, have a chief effect on road safety, is crucial. The process from fixing a violation to paying a fine is contactless. There are almost no opportunities to shed responsibility via corruption proposals. At the same time, there is a need to pay attention to the decrease in the effectiveness of automatic fixation due to the abolition of penalty points and their role in reducing corruption risks<sup>7</sup>.

First of all, penalty points are an integral part of automatic recording and its main attribute – it is how administrative fines were once generally called. Points have been canceled and automatic recording remains.

Secondly, penalty points are a kind of the administrative penalty (Art. 27-1 of CUoAO is abolished); they cannot contribute to the observance by road users of the established rules but, on the contrary, cultivate a feeling of impunity and encourage further violations. Moreover, the above does not contradict the provisions of Art. 23 “Purpose of administrative penalty” of CUoAO, according to which an administrative penalty is applied, in particular, in order to prevent further offenses both by the offender and others”. After all, a person who has penalty points deducted is considered to be brought to administrative responsibility. After deducting penalty points, the prospect of drawing a more severe punishment in the form of a fine was intended (emphasized) to prevent the commission of traffic violations and encourage the violator to adhere to traffic rules. At the same time, it should be highlighted that the deduction of penalty points is carried out automatically, in case of recording a traffic violation, to bring a person to responsibility and provide with an appropriate administrative penalty. And most importantly, any corruption option was completely eliminated.

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<sup>7</sup> Про внесення змін до деяких законодавчих актів України щодо вдосконалення регулювання відносин у сфері забезпечення безпеки дорожнього руху : Закон України від 19 липня 2015 р. № 596-VIII / Верховна Рада України. *Відомості Верховної Ради України*. 2015. № 39. Ст. 372. URL: <https://zakon.rada.gov.ua/laws/show/596-19#Text>.

Про внесення змін до Кодексу України про адміністративні правопорушення щодо штрафних балів : Закон України від 24 квітня 2020 р. № 566-IX / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/566-20#Text>.

Thirdly, in accordance with Art. 27-1 of CUoAO (annulled), penalty points are a charge imposed on citizens for offenses: 1) in road safety; 2) recorded automatically; 3) limited offenses. In particular, this applies to administrative offenses under Art. 122 of CUoAO, including speeding, the breach of requirements of road signs and markings, rules for freight transportation, vehicle towing, stopping, parking, passage of pedestrian crossings, failure to give way to pedestrians at non-regulated pedestrian crossing, violation of the prohibition against driving vehicles on sidewalks or pedestrian paths, etc.

Fourthly, the abolition of provision on penalty points is a continuity of the merely punitive policy of the state against traffic violators, as confirmed by the former cancellation of the caution for a traffic violation. The potential of caution as a kind of administrative penalty is in force only in case of violation of the rules by pedestrians. In O.Yu. Salmanova's opinion, the experience of developed countries indicates other approaches to applying penalty points, which act as an additional incentive for the violator to realize the seriousness of consequences in case of systematic breach of traffic rules, including driver's license revocation. The resort to a stricter kind of liability occurs after the driver has scored a specific number of penalty points since the monetary penalty is effectless, especially toward drivers who earn tens or hundreds of thousands of hryvnias per month<sup>8</sup>. Fifthly, the protracted introduction of automatic traffic violation recording shows that an individual has not become the chief player in the road safety sector. Consequently, after the installation of the automatic recording system, the indicators of budget replenishment come first, and not human safety. The introduction of automatic recording as a type of proceedings in cases of traffic violations eliminates corruption risks as much as possible and thus establishes partnership relations between road users and representatives of regulatory authorities, namely, the Patrol Police.

Sixth, when deciding to cancel penalty points, it was not regarded widespread road safety offenses, the consistently high level of administrative tort, and impossibility of their absolute observation by all road users. Accrual of penalty points was intended to stimulate law-abiding drivers, and systematic violators could dispose of accrued points in a matter of days or even hours. The task of preventing road traffic offenses should be carried out in a comprehensive and consistent manner, and the use of purely punitive methods is an attempt to continue the traditions of the Soviet past.

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<sup>8</sup> Салманова О.Ю. «Мертвонароджені» штрафні бали як вид адміністративного стягнення. *Запорізькі правові читання* : матеріали щорічної міжнародної науково-практичної конференції, м. Запоріжжя, 19–20 травня 2020 р. / за заг. ред. Т.О. Коломоєць. Запоріжжя : Видавничий дім «Гельветика», 2020. С. 188–190.

Seventh, when approving provisions on penalty points, the specific international experience laid the groundwork for their implementation, and five years later, it turned out that “the experience of developed countries confirms other approaches to applying penalty points, which are regarded as an extra incentive for traffic awareness, including by disqualifying a person from driving”, states the explanatory note to the draft law. These fluctuations prove the lack of a sustainable strategy for maintaining road safety, as well as their continuity and consistency. During the existence of our state, none of road safety programs has been realized in full.

Specific caution measures enshrined in the current administrative tort legislation, particularly for road safety, are significant for maintaining accountability and eliminating corruption risks. Let’s focus on some of their provisions.

Thus, Article 22 of CUoAO allows for exemption from administrative liability under minor offenses. In case of a minor administrative offense, the body (official) authorized to solve the case may release the offender from administrative liability and be limited to a verbal warning. At the same time, the Article does not apply to the offenses set forth in part four of Article 121, part five of Article 122, Articles 122-2, 122-4, part three of Article 123, parts two to five of Article 126, Articles 130 and 161-1 of the Code. As a result, the legislator created obstacles to evade liability for traffic violations through declaring misconduct insignificant by an official or court. Such decisions mostly contained corruption risks and were a “legal” way to shed responsibility. The amendments to Article 38 of CUoAO “Terms of imposing an administrative penalty” wielded significant influence: an administrative penalty for committing offenses set forth in Article 130 of the Code may be imposed within one year from the date of its commission. Before, there was a general deadline for imposing an administrative penalty for this type of offense, i.e., no later than two months from the date of offense commission. Thus, it has been eliminated the corruption option to avoid liability due to the deliberate postponement of consideration of the case on an administrative offense for various reasons.

We believe that the Procedure for executing a resolution on the imposition of an administrative penalty in the form of a fine for an automatically recorded road traffic offense, or for violation of the rules of vehicle stopping or parking recorded in the mode of photography (video recording) stipulated in Article 300-1 of CUoAO provides for incentive elements that not only stimulate fine payment but also the execution of judgment. On the other hand, such a resolution is considered executed following the provision which states that in case of payment by the person specified in part one of Article 14-2 of this Code, or by a citizen (resident) of Ukraine who imported into the territory of Ukraine a vehicle registered



outside Ukraine, of 50 percent of the fine under the resolution imposing an administrative penalty for an automatically recorded road safety offense, or for violation of the rules of vehicle stopping or parking recorded in the mode of photography (video recording), before the service of such a resolution or receipt of a postal notice of service or refusal to receive it, or the return of a postal item with a non-delivery mark, or within ten days from the date of entry into force of the resolution. The decision to impose an administrative penalty for violation of vehicle stopping and parking of vehicles recorded in the mode of photography (video recording) is also considered executed in case of payment of a fine upon notification of administrative liability left by an authorized official on the windshield at the scene, including by paying 50 percent of the fine within ten days from the date of the offense. Corruption mitigation means that a person interested in official payment of half of the penalty within ten days considerably decreases the need to evade liability via corruption proposals and stimulates the payment of a fine.

Only individual issues of corruption risks in the field of road safety related to administrative and tort legislation have been covered.

The highest risks of committing corruption and corruption-related offenses arise when providing administrative services and performing control and supervisory functions by authorized officials of state control bodies. Thus, B. M. Holovkin rightly draws attention to corruption risks in the provision of administrative services in the field of road safety control, namely: – non-transparent distribution of permits for international road transport of goods/passengers on the territory of a foreign state, creation of an artificial shortage of permits in order to persuade carriers to buy them from intermediaries at an inflated cost (it is worth noting that after the approval of the “transport visa-free regime between the EU and Ukraine in June 2022, the specified corruption risk is minimized for one year); – excessive bureaucratization of licensing economic activity, encumbrance with formal procedures for obtaining licenses for domestic and international road transportation of passengers, cargoes, dangerous freight and hazardous waste, as well as monopoly on licensing the specified economic activity by the central executive body, which creates conditions for finding illegal ways to solve this problem; – partial digitalization of services for licensing economic activities<sup>9</sup>.

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<sup>9</sup> Головкін Б.М. Корупційні ризики у сфері державного контролю за безпекою дорожнього руху. *Реалізація державної антикорупційної політики в міжнародному вимірі* : матеріали VII Міжнародної науково-практичної конференції, м. Київ, 8–9 грудня 2022 р. / редкол. : В.В. Черней, С.Д. Гусарев, С.С. Чернявський та ін. Київ : НАВС, 2022. С. 30–33.

Supporting the above opinion, it is noted that it is only part of corruption risks occurring in the activities of the relevant administrative authorities providing public services. These problems will be gradually resolved with the entry into force of the Law of Ukraine “On Administrative Procedure” as of December 15, 2023, which will reduce corruption risks in the provision of administrative services and bring Ukraine closer to EU standards. At the same time, it is worth marking that the practical implementation of the mentioned law requires both the introduction of numerous amendments and additions to the current legislation and the development of an understanding of the conceptual foundations of administrative procedure and theoretical knowledge of the statutory regulation of the procedure for adopting and executing administrative acts, the cultivation of basic skills in the employment of administrative procedural legislation, taking into account European standards and principles of public administration.

The draft Code of Ukraine on Administrative Offenses by the Ministry of Justice of Ukraine, which will be submitted for discussion, should preserve the available capacity to counter corruption risks and keep its advancement given the modern development doctrine.

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