Case No. 944/4597/22

Proceedings No. 3/944/2811/22

**D У С R E E**

**IN THE NAME OF UKRAINE**

**07.12.2022 Yavoriv**

The judge of the Yavoriv district court of the Lviv region, I.M. Matviyiv, with the participation of the secretary of the court session, T.V. Fostakovska, the prosecutors, Y.A. Tarnovsky, and V.M. Hryniv, the chief specialist of the Department for the Prevention of Conflict of Interest, I.I. Pashka, individuals, who is brought to administrative responsibility Atroshenko V.A., the defender of the person who is brought to administrative responsibility lawyer Malay A.V., in the city of Yavoriv in remote court proceedings in the mode of video conferencing using the video conferencing subsystem: https://vkz.court.gov.ua, having considered the materials received from the Department for the Prevention of Conflict of Interests of the National Agency for the Prevention of Corruption, about bringing to administrative responsibility:

Atroshenko Vladyslav Anatoliyovych, born on December 5, 1968, RNOKPP 2517602993, Ukrainian, citizen of Ukraine, place of work, position: Chernihiv city council, city mayor, registered at: 31 Fedorovsky Street, Chernihiv, living at: Honcha Street , 17 sq. 26/27, Chernihiv,

according to part 1, 2 of article 172-7 of the Code of Ukraine on administrative offenses,

**e s t a b l i s h e d**

V.A. Atroshenko, holding the position of Chernihiv city mayor, contrary to the requirements of paragraph 2, 3 h. 1 st. 28 of the Law of Ukraine "On the Prevention of Corruption" in the period from 01.07.2022 to 02.07.2022, he did not report a real conflict of interest and made a decision under the conditions of a real conflict of interest, namely: exercising the powers of the mayor, he gave instructions to the driver Korobko O.M. (provides, as a driver, the transport service of the mayor V.A. Atroshenko) about the need to take out the Tesla Model X car, license plate number АА0420ZA, which belongs to his wife - I.T. Atroshenko, outside the territory of Ukraine, which was his private interest, that is, by his actions, he committed administrative offenses provided for in part 1 and part 2 of article 172-7 of the Code of Administrative Offenses of Ukraine.

At the court session, Atroshenko V.A. pleaded not guilty and explained that indeed on 05.03.2022 in connection with active hostilities in the territory of the city of Chernihiv, his wife Atroshenko I.T. left the borders of Ukraine to Poland in a Toyota Camry car license plate number SV8993EV. 01.07.2022 he and the driver Korobko O.M. on the basis of the order of the Chernihiv City Council dated 27.06.2022 No. 15-rv/vs "On аn assignment trip", headed to Lugano (Switzerland) to participate in the International Conference on the Restoration of Ukraine. On 07/02/2022, officials of the State Border Service of Ukraine of the "Krakivets" MPP made a decision to refuse to cross the state border to leave Ukraine, at the same time, the driver nevertheless decided to cross the border in a Tesla Model X vehicle, license plate number AA0420ZA, for the purpose of returning the Toyota Camry car to the territory of Ukraine. No instructions regarding the return of the Toyota Camry car license plate number SV8993EV to the driver Korobko O.M. did not provide, and therefore believes that there are no signs of corruption in his actions.

Defender Malay A.V. before the start of consideration of the case on the merits, requested the court to return the protocol on administrative offense No. 56 of September 15, 2022 against V. A. Atroshenko, and the materials attached to it for further processing, or to transfer the above-mentioned case to the jurisdiction at the place of work of V. A. Atroshenko, namely, to the Desnyan District Court of Chernihiv, since this report on an administrative offense dated September 15, 2022, against Atroshenko V.A. drawn up with a clear violation of the Code of Administrative Offenses of Ukraine, namely: the specific time and date of the commission of the offense was not indicated, as well as the place of the commission of the administrative offense was incorrectly established. Later, he asked the court to close the proceedings in the case due to the absence of V.A. Atroshenko. part of an administrative offense, since the case file does not contain any evidence that Atroshenko V.A. instructions regarding the return of a Toyota Camry car license plate number SV8993EV to the driver Korobko O.M.

Representative of the National Agency for the Prevention of Corruption Pashko I. I. stated at the court hearing that in the actions of Atroshenko V. A. considered the composition of administrative offenses provided for in part 1 and part 2 of article 172-7 of the Code of Administrative Offenses of Ukraine and asked the court to bring him to justice.

Prosecutors Tarnovskyi Yu.A. and Hryniv V.M. also believe that in the actions of Atroshenko V.A. the composition of the administrative offenses provided for in part 1, part 2 of article 172-7 of the Code of Administrative Offenses of Ukraine is seen, and therefore they asked to impose an administrative penalty on him in the form of a fine with the application of part 6 of article 30 of the Code of Administrative Offenses of Ukraine with deprivation of the right to hold positions related to performing the functions of the state or local self-government for a period of 1 year.

After listening to the explanations of the trial participants and examining the written materials of the case, the court reached the following conclusion.

According to paragraph 2, 3, Part 1, Article 28 of the Law of Ukraine "On Prevention of Corruption" (hereinafter referred to as the Law), persons specified in para. 1, 2, part 1 of Article 3 of the Law (including city mayors), are obliged to:

to report no later than the next working day from the moment when the person learned or should have learned about the existence of a real or potential conflict of interests of the direct supervisor, and in the case of a person holding a position that does not involve the presence of a direct supervisor, or in a collegial body - National agency or other body defined by law or a collegial body in which a conflict of interest arose during the performance of its powers, respectively; not to take actions or make decisions in conditions of a real conflict of interests.

A finding of violation of the specified requirements and, accordingly, the commission of administrative offenses provided for by the disposition of part 1, 2 of article 172-7 of the Code of Administrative Offenses of Ukraine, is possible under the following conditions: the person has a real conflict of interests; in the presence of a real conflict of interest, the person does not report the conflict of interest in accordance with the procedure established by law; in the presence of a real conflict of interests, a person acts or makes a decision while performing his/her official/representative powers.

Given the definition of a real conflict of interest given in para. 13 h. 1 st. 1 of the Law, for its ascertainment it is necessary to establish simultaneously the following components: private interest; official/representative powers; conflict between private interest and official/representative powers, which affects the objectivity or impartiality of decision-making, or taking or not taking actions during the exercise of said powers.

In addition, in accordance with Part 4 of Article 23 of the Law, a decision made by a person in favor of the person from whom he or his relatives received a gift is considered to be made in the context of a conflict of interests.

According to para. 12, part 1, article 1 of the Law, a private interest is any property or non-property interest of a person, including those caused by personal, family, friendship or other non-professional relationships with natural or legal entities, including those arising in connection in connection with membership or activity in public, political, religious or other organizations.

The court found that, according to the information on the persons who register the marriage (marriage record dated August 7, 1994 No. 1307), I.T. Atroshenko, born on February 18, 1971, is the wife of V.A. Atroshenko. According to the vehicle registration card, Atroshenko I.T. is the owner of a Tesla Model X car, license plate number AA0420ZA from 10/24/2020.

According to the letter of the Main Center for Special Information Processing of the State Border Service of Ukraine dated 08/08/2022 No. 11-17-1422/22/12 troshenko I.T., 03/05/2022 alone, left through the Sheghini checkpoint on the transport vehicle Toyota Camry, license plate number СВ8983ЕВ, which is under the right of use Chernihiv City Council, outside the territory of Ukraine. Thus, the facts of refusal to cross the state border V.A. Atroshenko, who was supposed to take part in the International Conference on restoration of Ukraine, which took place in the city of Lugano (Switzerland), and one person crossing the state border by a car driver Korobko O.M. on a Tesla Model X vehicle, license plate number AA0420ZA, belonging to the wife of Atroshenko V.A. - I.T. Atroshenko, deny the purpose of using the specified vehicle to participate in the conference and confirm the fact that it was taken out of the territory of Ukraine for the purpose of satisfying a private interest, which can be: - preservation of movable property (Tesla Model X vehicle, license plate number AA0420ZA); - saving funds for the purchase of the appropriate service (driver service, "driver"); - transfer of a Tesla Model X vehicle, license plate number AA0420ZA to his wife I.T. Atroshenko, in order to meet her needs, namely providing a vehicle.

Part 1 of Article 12 of the Law of Ukraine "On Local Self-Government in Ukraine" states that the mayor is the main official of the territorial community of the city.

According to Article 8 of the Law of Ukraine "On Service in Local Self-Government Bodies", the main duties of local self-government officials are, in particular: compliance with the Constitution and laws of Ukraine, other normative legal acts, acts of local self-government bodies; preventing actions or inactions that may harm the interests of local self-government and the state.

Acting in the interests of the territorial community, Atroshenko V.A. how the mayor of Chernihiv could use the driver Korobko O.M. exclusively to ensure the fulfillment of powers specified in Part 4 of Article 42 of the Law of Ukraine "On Local Self-Government in Ukraine".

During the implementation of Atroshenko V.A. of the specified official authority in the part related to the joint property with his wife, the above-mentioned private interest prevailed over the public interest, in connection with which between the private interest of Atroshenko V.A. and his official powers, a contradiction arose.

During the implementation of Atroshenko V.A. of the specified official authority in the part related to the joint property with his wife, the above-mentioned private interest prevailed over the public interest, in connection with which between the private interest of Atroshenko V.A. and his official powers, a contradiction arose.

Therefore, the private interest of V.A. Atroshenko, which consisted in the desire to transfer the car Tesla Model X, license plate number AA0420ZA, to his wife Atroshenko I.T., outside the territory of Ukraine, influenced the unbiased decision-making in the form of instructions to the driver Korobko O.M., as he understood that giving instructions to the driver of a passenger car Korobko O.M. will lead to the satisfaction of a private interest, and the driver's working time will not be used for the benefit of the territorial community, Atroshenko V.A. should have refrained from giving such an instruction to the driver, which would have been a demonstration of his impartiality.

Therefore, based on the circumstances established above, the court came to the conclusion that Atroshenko V.A. when he made the above-mentioned decisions, there were contradictions between his private interest and his official powers, which affected his objectivity and impartiality when he made the above-mentioned decisions, in connection with which he violated the requirements of Clause 1 and Clause 2 of Part 1 of Art. 28 of the Law, for which responsibility is provided under Part 1 of Art. 172-7 of Code of Administrative Offenses of Ukraine and Part 2 of Art. 172-7 of the Code of Administrative Offenses of Ukraine.

The court critically evaluates the petition of the defense attorney of the person brought to administrative responsibility, lawyer Malay A.V. about violation of the rules of jurisdiction, since the administrative offense was committed by V. A. Atroshenko. on the territory of the international automobile checkpoint "Krakivets", the place of commission of the offense is the international automobile checkpoint "Krakivets", located at the address: str. Mykhailo Verbytskoho, 54, village Krakowets, Yavorivsky district, Lviv region.

The evidence collected in the case and the materials examined by the court as a whole point to the commission of administrative offenses related to corruption, precisely at the address indicated in the protocol, because at the time of receiving the decision, Atroshenko V.A. about the refusal to cross the state border and continued driving by the driver of the city mayor's wife's vehicle (Tesla Model X, license plate number AA0420ZA), the Chernihiv city mayor did not take measures to stop the assignment trip of Korobko O.M. with the purpose specified in the order "for transportation to the destination of the Chernihiv mayor" and the return of the driver to the place of work.

Regarding the petition of the defense attorney of the person who is brought to administrative responsibility in the part of returning the protocol on administrative offense No. 56 of 15.09.2022 for further processing to the National Agency for the Prevention of Corruption, the court notes that Article 284 of the Code of Administrative Offenses of Ukraine provides for an exhaustive list of resolutions that can be issued by the body ( official) in the case of an administrative offense, in particular, the imposition of an administrative penalty, the application of influence measures provided for in Article 24-1 of the Code of Administrative Offenses of Ukraine, closing the case.

At the same time, despite the fact that the issuing of a resolution on the return of the protocol for revision is not provided for by the provisions of Article 284 of the Code of Administrative Offenses of Ukraine, however, in accordance with the letter of the Higher Specialized Court of Ukraine for consideration of civil and criminal cases dated May 22, 2015 No. 223-943/0/4-17, it was introduced judicial practice regarding the issuing of resolutions to return the protocol for revision or proper registration to the relevant body and contains an exhaustive list of cases in which this is possible, namely, the protocol was drawn up by an unauthorized person, the protocol was drawn up without complying with the requirements of Article 256 of the Code of Administrative Offenses of Ukraine. However, the defender's motion dated November 15, 2022 does not contain any reasonable grounds indicating the existence of such deficiencies.

The court does not take into account the arguments of V.A. Atroshenko. and his lawyer, regarding the absence of a conflict between the private interest of V. A. Atroshenko. and his official or representative powers, which affects the objectivity or impartiality of decision-making, or the performance or non-performance of actions during the performance of the specified powers of the mayor, since Atroshenko V.A. does not deny the fact that his wife left on 05.03.2022 in a company car "Toyota Camry" license plate number SV8993ЕВ outside Ukraine, and on July 2, 2022, the driver O.M. Korobko. crossed the border of Ukraine at the "Sheghini" checkpoint on a "Tesla Model X" vehicle, license plate number АА0420ZA owned by Atroshenko I.T. and after some time returned to Ukraine in a company car "Toyota Camry" license plate number SV8993EV.

When deciding on the type and size of an administrative fine, the court proceeds from the following.

The Law of Ukraine "On the Basics of State Anti-Corruption Policy for 2021-2025" dated June 20, 2022 No. 2322-IX, which entered into force on July 10, 2022, approved the Anti-Corruption Strategy for 2021-2025 and formulated the main principles of anti-corruption policy, in particular: ensuring the inevitability of legal liability for corruption and corruption-related offenses, which creates an additional deterrent effect for all subjects of legal relations; formation of public intolerance to corruption, establishment of a culture of integrity and respect for the rule of law.

Corruption represents a huge threat to legal norms, democracy, human rights, objectivity and social justice, hinders economic development and endangers the stability of democratic institutions and ethical norms of society (paragraph 2 of the Agreement on the establishment of a group of states against corruption (GRECO) from 05.05.1998). Corruption threatens law and order, democracy and human rights, destroys good governance, honesty and social justice, hinders competition and economic development and threatens the stability of democratic institutions and the moral foundations of society (paragraph 5 of the preamble of the Criminal Convention on Combating Corruption (ETS 173) dated 27.01.1999 , ratified by the Law of Ukraine No. 252-V dated 10.18.2006).

Cases of corruption endanger trust in the institution as a whole. Thus, modern realities in Ukraine cause public (societal) interest in both corruption crimes and administrative offenses related to corruption, and the need to effectively counter them in order to protect individuals, society and the state.

The results of the analysis of the state of corruption in Ukraine, the effectiveness of the anti-corruption policy of previous periods, international standards and the best global practices in the field of prevention and counteraction of corruption made it possible to formulate the following basic principles of the anti-corruption policy for 2021-2025, in particular:

ensuring the inevitability of legal responsibility for corruption and corruption-related offenses, which creates an additional deterrent effect for all subjects of legal relations;

formation of public intolerance to corruption, establishment of a culture of integrity and respect for the rule of law.

Administrative responsibility for corruption offenses as one of the main mechanisms for ensuring compliance with the rules of ethical behavior by public officials is characterized by a high anti-corruption potential, as it makes it possible not only to respond quickly and effectively to the facts of violations of the requirements of anti-corruption legislation, stimulating virtuous persons to properly perform their duties and comply rules of ethical behavior, but also to remove from performing the functions of the state or local self-government persons who grossly or systematically violate their obligations, make biased decisions or use the powers granted to them in their own interests.

According to Article 23 of the Code of Administrative Offenses of Ukraine, an administrative penalty is a measure of responsibility and is used for the purpose of educating a person who has committed an administrative offense in the spirit of observing the laws of Ukraine, respecting the rules of coexistence, as well as preventing the commission of new offenses both by the offender himself and by other persons.

According to para. 2, Article 33 of the Code of Administrative Offenses of Ukraine, when imposing a fine, the nature of the offense committed, the identity of the offender, the degree of his guilt, property status, mitigating and aggravating circumstances are taken into account.

According to Part 1 of Article 36 of the Code of Administrative Offenses of Ukraine, when one person commits two or more administrative offenses, an administrative penalty is imposed for each offense separately.

In accordance with part 1 of article 172-7 of the Code of Administrative Offenses of Ukraine, failure to notify a person in the cases and procedures established by law of the presence of a real conflict of interest entails the imposition of a fine from one hundred to two hundred non-taxable minimum incomes of citizens.

According to Part 2 of Article 172-7 of the Code of Administrative Offenses of Ukraine, actions or decision-making in conditions of a real conflict of interest entail the imposition of a fine of two hundred to four hundred non-taxable minimum incomes of citizens.

Thus, taking into account the position chosen by Atroshenko V.A. during the hearing of the case, namely, that he does not plead guilty to the offenses committed, taking into account that the actions of V.A. Atroshenko, related to corruption, were already the subject of court proceedings in case No. 750/1587/18 according to the protocols regarding the latter's commission of administrative offenses under Article 172-7 of the Code of Administrative Offenses of Ukraine, based on the results of the trial, a decision was made regarding V.A. Atroshenko. on closing the proceedings in the case at the request of the defender of the person on the basis of the expiration of the terms of imposition of penalty, which does not rehabilitate the person for committing the offense and testifies to the repeated use of his official powers by the mayor in his private interests, the absence of circumstances mitigating or aggravating his responsibility, the court came to a conclusion about imposition on V.A. Atroshenko. administrative penalty for each offense separately in the form of a fine within the scope of the sanction of Part 1 and Part 2 of Article 172-7 of the Code of Administrative Offenses of Ukraine.

In accordance with Part 6 of Article 30 of the Code of Administrative Offenses of Ukraine, deprivation of the right to hold certain positions or engage in certain activities is appointed by the court for a period of six months to one year, regardless of whether it is provided for in the sanction of the article (sanctions of part of the article) of the Special Part of this Code, when taking into account the nature of the administrative offense committed in the position, the person who committed the administrative offense, and other circumstances of the case, the court recognizes that it is impossible for her to retain the right to hold certain positions or engage in certain activities.

Taking into account the nature of the offense committed by V.A. Atroshenko, namely, that he instructed the driver Korobkо O.M. about the need to take out the Tesla Model X car, license plate number АА0420ZA, which belongs to his wife, outside the territory of Ukraine, as well as Atroshenko VA's attitude to the offenses committed by him, the court considers that his actions in the position of the mayor are not aimed at protecting public interests and he cannot refuse the predominance of private interest under the time of exercising the powers granted to him, in connection with which the court recognizes that it is impossible for him to retain the right to hold positions, related to the performance of the functions of the state or local self-government and assigns him an additional administrative penalty, which is not provided for in part 2 of article 172-7 of the Code of Administrative Offenses of Ukraine, in the form of deprivation of the right to hold positions related to the performance of the functions of the state or local self-government.

Such an administrative penalty, the court is convinced, corresponds to the principle of the anti-corruption policy for 2021-2025, approved by the Law of Ukraine "On the principles of the state anti-corruption policy for 2021-2025" dated June 20, 2022 No. 2322-IX, as ensuring the inevitability of legal liability for corruption-related offenses to create an additional deterrent effect for all subjects entrusted with the performance of state functions.

According to Clause 5 Part 2 of Art. 4 of the Law of Ukraine "On Court Fees", in the case of a court ruling on the imposition of an administrative penalty, the court fee is set at 0.2 of the subsistence minimum for able-bodied persons, i.e. 496.20 hryvnias.

Guided by the Law of Ukraine "On the principles of state anti-corruption policy for 2021-2025" dated June 20, 2022 No. 2322-IX, Articles 30, 36, Part 1, Article 2. 172-7, 283, 285 of the Code of Administrative Offenses of Ukraine, clause 5, part 2, art. 4 of the Law of Ukraine "On Court Fees",

**d e c i d e d**

Vladyslav Anatoliyovych Atroshenko should be found guilty of committing an administrative offense provided for in Part 1 of Article 172-7 of the Code of Administrative Offenses of Ukraine and imposed an administrative penalty in the form of a fine in the amount of two hundred tax-free minimum incomes of citizens, which is 3400 (three thousand four hundred) hryvnias.

Vladyslav Anatoliyovych Atroshenko should be found guilty of committing an administrative offense provided for in Part 2 of Article 172-7 of the Code of Administrative Offenses of Ukraine and to impose on him an administrative penalty with the application of Part 6 of Article 30 of Code of Administrative Offenses of Ukraine in the form of a fine in the amount of four hundred tax-free minimum incomes of citizens, which is 6,800 ( six thousand eight hundred) hryvnias with deprivation of the right to hold positions related to the performance of functions of the state or local self-government for a period of 1 (one) year.

Collect a court fee in the amount of 496 (four hundred and ninety-six) UAH 20 kopecks from Atroshenko Vladyslav Anatoliyovych in favor of the state.

An appeal against the decision may be filed with the Lviv Court of Appeal through the Yavoriv District Court of the Lviv Region within ten days from the date of its issuance.

The decision of a judge in cases of an administrative offense becomes legally binding after the expiry of the period for filing an appeal, with the exception of decisions on the application of penalties provided for in Article 32 or 32-1 of this Code.

The fine must be paid by the violator no later than fifteen days from the date of delivery of the decision on the imposition of a fine, and in the event of an appeal against such a decision no later than fifteen days from the day of notification of the abandonment of the complaint or submission without satisfaction.

If the offender fails to pay the fine within this period, the decision on the imposition of the fine is sent to the state executive service body for execution in accordance with the procedure established by law.

The term of implementation of the resolution is three months from the day following the entry into force of the resolution.

In order to enforce the resolution on the collection of a fine for the commission of an administrative offense, the offender shall be charged double the amount of the fine, determined by the resolution of the Cabinet of Ministers of Ukraine.

Judge I.M. Matvііv