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PROSPECTS FOR THE INSTITUTE OF ADMINISTRATIVE RESPONSIBILITY IN THE REPUBLIC OF KAZAKHSTAN

Administrative liability is one of the types of legal liability arising from the commission of violations that do not pose a danger.

In Soviet and post-Soviet times, the institute of administrative responsibility received its scientific justification and stable normative consolidation. The works of well-known administrative scientists, such as Bakhrakh D.N., Alekseev S.S., Kozlov Yu.M., Lazarev Yu.M., are devoted to this institute, among Kazakh scientists it is necessary to single out Abrakhmanov B., Zhatkanbayeva A.E., Zhetpisbayeva B.A., Podoprigora R.A., and a number of others. At the same time, it is the institute of administrative responsibility that has undergone significant adjustments in the scientific field that has lost interest. What is the reason for this? What are the prospects for this type of responsibility in the normative and practical directions? What to expect from the legislator in the near future?

Historically, administrative responsibility is one of the most common types of responsibility. Administrative enforcement measures are an important instrument of state regulation of the activities of individuals and legal entities, and in relation to legal entities, in fact, the only and, accordingly, the most important.

Accordingly, due to the amendments made to the Code of Administrative Offences, we consider it necessary to analyze the current state and prospects for the development of the institute of administrative responsibility in the Republic of Kazakhstan.

Key words: Administrative responsibility, administrative coercion, administrative offense, Code of Administrative Offenses.

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Қазақстан Республикасындағы әкімшілік жауапкершілік институтының болашағы

Әкімшілік жауапкершілік – қауіп төндірмейтін құқық бұзушылықтар жасаған кезде туындайтын заңды жауапкершілік түрлерінің бірі.

Кеңестік және посткеңестік дәуірде әкімшілік жауапкершілік институты өзінің ғылыми негіздемесін және тұрақты нормативтік база қалыптастырды.

Бұл институтқа Д.Н. Бахрах, С.С. Алексеев, Ю.М. Козлов, Ю.М. Лазарев сияқты белгілі әкімші-ғалымдардың еңбектері арналған, қазақстандық ғалымдардың ішінде Б. Абрахманов, А.Е. Жатқанбаева, Б.А. Жетпісбаева, Р.А. Подопригора және басқаларды ерекше атауға болады.

Сонымен бірге ғылыми салада айтарлықтай түзетулер енгізілген әкімшілік жауапкершілік институты қызығушылықты жоғалтты.

Сонымен қатар айтарлықтай өзгерістер енгізілген әкімшілік жауапкершілік институты ғылыми салаға деген қызығушылық жоғалтты. Ол немен байланысты? Нормативтік және тәжірибелік бағыттардағы жауапкершіліктің бұл түрінің болашағы қандай? Жақын арада заң шығарушыдан не күтуге болады?

Тарихи тұрғыдан алғанда, әкімшілік жауапкершілік – жауапкершіліктің кең таралған түрлерінің бірі. Әкімшілік мәжбүрлеу шаралары – жеке және заңды тұлғалардың қызметін мемлекеттік реттеудің маңызды құралы, ал заңды тұлғаларға қатысты іс жүзінде жалғыз және сәйкесінше ең маңызды.

Осыған сәйкес, Әкімшілік құқық бұзушылық туралы кодекске енгізілген өзгерістерге байланысты Қазақстан Республикасындағы әкімшілік жауапкершілік институтының қазіргі жағдайы мен даму болашағына талдау жасау қажет деп санаймыз.

Түйін сөздер: әкімшілік жауапкершілік, әкімшілік мәжбүрлеу, әкімшілік құқық бұзушылық, Әкімшілік құқық бұзушылық туралы кодекс.

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Перспективы института административной ответственности в Республике Казахстан

Административная ответственность – это один из видов юридической ответственности, возникающий при совершении нарушений, не представляющих собой опасности.

В советское и постсоветское время институт административной ответственности получил свое научное обоснование и устойчивое нормативное закрепление. Данному институту посвящены работы известных ученых-административистов, таких, как Бахрах Д.Н., Алексеев С.С., Козлов Ю.М., Лазарев Ю.М., в числе казахстанских ученых следует выделить Абрахманова Б., Жаткан-баева А.Е., Жетписбаева Б.А., Подопригора Р.А. и других. Вместе с тем, именно институт административной ответственности, претерпевший существенные корректировки, в научной сфере потерял интерес. С чем это связано? Какие перспективы у данного вида ответственности в нормативном и в практическом направлениях? Что ожидать от законодателя в ближайшем будущем?

Исторически сложилось, что административная ответственность представляет собой один из наиболее распространенных видов ответственности. Меры административного принуждения являются важным инструментом государственного регулирования деятельности физических и юридических лиц, а в отношении юридических – фактически единственным и соответственно самым важным.

Соответственно, в силу внесенных изменений в Кодекс об административных правонарушениях считаем необходимым провести анализ современного состояния и перспектив развития института административной ответственности в Республике Казахстан.

Ключевые слова: административная ответственность, административное принуждение, административное правонарушение, Кодекс об административных правонарушениях.

Introduction

Various scientists in the field of administrative law, in fact, have long agreed that administrative responsibility is a type of legal responsibility arising from the commission of illegal, socially harmful or insignificant acts arising from numerous branches of law.

According to I.R. Bets and D.S. Buzov, administrative responsibility was formed «with the adoption in 1864 of the Charter on the punishments imposed by justices of the peace. The act became the prototype of the subsequent Codes of Administrative Offenses» (Бец 2014: 274). Since then, both in the Soviet and post-Soviet periods, several editions of the Code of Administrative Offenses have been adopted in Kazakhstan.

Such transformations were primarily associated with the great dynamism of this institution, which in turn is associated with economic, social, political processes taking place in society at a particular stage of development. So, according to the developers of the Scientific and Practical Article-by-Article Commentary to the Code of the Republic of Kazakhstan on Administrative Offenses: «The Code of the Republic of Kazakhstan on Administrative Offenses has a difficult fate, which is predetermined by its purpose – to be a «small criminal code». From the first years of his life, he quickly took into his «arms» dozens of industries and spheres of life, for which the legislator did not have enough confidence in the need to criminalize certain actions» (https://adilet.zan.kz/rus/docs/T2000000005).

The latest Code of Administrative Offenses of the Republic of Kazakhstan was adopted on July 5, 2014 No. 235 due to a serious transformation of all tort law and, first of all, the adoption of the new Criminal Code of the Republic of Kazakhstan.

In turn, one of the good reasons for the adoption of the Criminal Code was the policy of decriminalization, which served as the basis for the «overflow» of a number of previously qualified acts as crimes in the Code of Administrative Offenses of the Republic of Kazakhstan, namely, the recognition of these acts as socially harmful, and not socially dangerous. This, in turn, affected the quality of administrative punishment measures, and again raised the question of the prospects for criminal liability of legal entities.

It should be noted that the above reasons, as well as others, have led to the fact that administrative and tort legislation has become a certain tool for solving not only issues of prevention, prevention and combating offenses, but also a certain pressure on the business and industrial sectors. Namely, the use of penal and punitive functions. Since fines occupy a certain place in the replenishment of the republican and local budgets.

Accordingly, a critical analysis of the current state of the Code of Administrative Offenses of the Republic of Kazakhstan is necessary as the only act providing for liability for «acts that contain all

the signs of an offense provided for in the Special Part ... of the Code» (https://online.zakon.kz/m/document?doc_id=31577399).

Main part

Analysis of the current state of the institution of administrative responsibility, in our opinion, should begin with an analysis of its concept and features.

As noted earlier, administrative responsibility is a type of legal responsibility arising for the commission of certain acts provided for by the Code of Administrative Offenses of the Republic of Kazakhstan. At the same time, the Code of Administrative Offenses recognizes «an illegal, guilty (intentional or reckless) action or inaction of an individual or an unlawful action or inaction of a legal entity, for which this Code provides for administrative responsibility» (clause 1, article 21) (https://online.zakon.kz/m/document?doc_id=31577399). In general, such a concept, in fact, does not contain clear criteria for classifying an act as an administrative offense.

In turn, the Criminal Code of the Republic of Kazakhstan of July 3, 2014 introduces the concept of a criminal offense (paragraph 1 of article 10) and delimits it, depending on the degree of public danger and punishability, is divided into crimes and criminal offenses. At the same time, it establishes that a crime is a culpably socially dangerous act (clause 2 of article 10), while a criminal offense is a culpable act that does not pose a great public danger, that caused minor harm or created a threat of harm to an individual, organization, society or the state (clause 2, article 10). At the same time, insignificant harm, as a rule, is based on clause 10 of Article 1 of the Republic of Kazakhstan, which interprets an insignificant amount as the value of property belonging to an organization, not exceeding ten monthly calculation indices, or property belonging to an individual, not exceeding two monthly calculation indices. At the same time, paragraph 4 of Art. 10 also indicates that an action or inaction is not a criminal offense, although it formally contains signs of any act provided for by the Special Part of this Code, but due to its insignificance does not pose a public danger.

That is, pursuing a policy of decriminalization and liberalization of criminal liability, the legislator has practically pursued a policy of distinguishing violations of the law according to the level of public danger. Thus, the developers of the Law «On Amendments and Additions to the Code of Administrative Offenses of the Republic of Kazakhstan» dated January 31, 2017 pursued «three main areas: humanization of administrative and tort legislation (61% of all amendments), improvement of individual institutions of proceedings in cases of administrative offenses (8 % of all amendments) and the systematization of the procedural and procedural norms of the Code of Administrative Offenses (31% of all amendments), which provides for the improvement of the procedure for reviewing cases and determines the procedural and legal status of «instruction on the need to pay a fine»» (https://www.primeminister.kz/ru/news/snizhenie-razmerov-shtrafov-smyagchenie-sanktsii-i-naznachenie-preduprezhdenii-optimizatsiya-koap-v-intervu-s-n-pan).

The task was set to further improve administrative and tort legislation in order to humanize it and reduce repressiveness, including in terms of: transferring a number of administrative offenses into the sphere of civil or disciplinary liability, reviewing the sanctions of administrative acts for their possible mitigation and reduction.

But at the same time, in the structure of offenses, the concept of an administrative offense is «lost», which has always been qualified as socially harmful, not possessing a public danger. In the interpretation of the Code of Administrative Offenses of the Republic of Kazakhstan of 2014, one of the cornerstone parts of the signs of an administrative offense is actually lost, namely the presence of a level of public danger (harmfulness).

The developers of the commentary to the Code of Administrative Offenses of the Republic of Kazakhstan in 2014 were forced to miss this moment. They considered only such components as punishability, guilt and wrongfulness, and wrongfulness was characterized as a legal recognition of antisocial behavior harmful to citizens, society, state [comment].

This approach can be explained. However, it is he who allows the legislator to quite freely qualify certain compositions. For example, the need to decriminalize Art. 130 of the Criminal Code «Slander» with its transfer to the Code of Administrative Offenses of the Republic of Kazakhstan in order to implement recommendation No. 13 of the Istanbul Anti-Corruption Action Plan for the countries of Eastern Europe and Central Asia of the OECD for 2017-2020 on the need to decriminalize libel (https://www.oecd.org/corruption/acn/Kyrgyzstan-ACN-Progress-Update-Oct-2016-RUS.pdf). As a result, liability for libel is provided for in Art. 73-3 of the Code of Administrative Offenses of the Republic of Kazakhstan. A number of other articles

have undergone the same transformation, for example, Art. 108 Intentional infliction of minor bodily harm and Art. 109 Beatings and this at a time when issues of domestic violence and bullying, including cyberbullying, are hyper-relevant and require state intervention.

To date, Article 484 of the Code of Administrative Offenses of the Republic of Kazakhstan Violation of the rules for the circulation of civilian and service weapons is under development, which was updated in the light of the January events. The issue of control over the circulation of weapons in the republic has become aggravated due to the fact that military and sporting weapons, stolen from special stores and military storage facilities, have appeared in free circulation. In addition, the events in January 2022 revealed the presence of significant violations in the circulation of civilian and sporting weapons, as well as the events in September 2022 in Kostanay, which led to the murder of employees of a hunting and sporting weapons store and subsequent fires.

It is clear that the legislator is between two fires, namely the need to decriminalize the situation in the country and meet the requirements of the international community, and with another need to tighten responsibility for acts that infringe on human (child) rights, the number of which is growing. In this sense, the Code of Administrative Offenses of the Republic of Kazakhstan has turned into a saving act for the legislator, which is enough to freely juggle issues of determining the level of public danger.

The codified act has become a means of implementing state programs and obligations. At the same time, a certain instability of this document should be emphasized. More than 1000 changes and additions have been made to it since the day of its adoption. These changes are largely dictated by the adoption of new regulations and the formation of new legal relations, the implementation of which requires a coercive mechanism. For example, the introduction of mandatory pension contributions for employers initiated by the adoption of the Law "On Amendments and Additions to some legislative acts of the Republic of Kazakhstan on pension provision" dated August 2, 2015 (https://adilet.zan.kz/rus/docs/Z1500000342) or most of the articles of Chapter 21 Administrative offenses in the field of environmental protection, use of natural resources were transformed in the light of the adoption and entry into force of the Environmental Code of the Republic of Kazakhstan dated January 2, 2021 (https://adilet.zan.kz/rus/docs/K2100000400). And there are many such examples.

In fact, the Code of Administrative Offenses of the Republic of Kazakhstan has become one of the most flexible normative acts that quickly responds to the high degree of dynamism of social relations that are characteristic of any developing society, including Kazakhstan.

For example, the adoption of a new Tax Code, proclaimed by the President of the Republic of Kazakhstan K.K. Tokaev will also entail serious changes in the Code of Administrative Offenses (https://www.akorda.kz/ru/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-181130). So, it is not possible to talk about some stability of the code.

In fact, the norms fixing the fundamental and procedural aspects of administrative responsibility remain stable. Among such stable regulators, it is necessary, first of all, to designate administrative penalties and measures of procedural support. All other measures are very mobile, which, on the one hand, allows you to respond flexibly to a real live situation, but on the other hand, creates a certain instability of the legislation.

It should be noted another potential threat in the modern systematization of the norms of the Code of Administrative Offenses of the Republic of Kazakhstan. Namely, the possibility of overloading the Code of Administrative Offenses with non-working norms.

In fact, the developers argue that the Law of January 31, 2017 (https://adilet.zan.kz/rus/docs/Z1700000127/info) removed all «dead» articles, however, in fact, the introduction of new whole blocks of regulation cannot but guarantee the appearance of such. But at the same time, there is no mechanism to prevent such an overload, since only experience and time can reveal. In addition, we believe that in reality the legislator could not completely remove all non-working articles from the Code of Administrative Offenses, since, in fact, a number of articles providing for a fairly wide disposition are retained by the legislator as a preventive measure. This also allows the use of these articles for any possible variations of the violation.

Analyzing the principles of lawmaking on legal responsibility, in our opinion, the issue of specifying the disposition is bypassed. So, for example, Article 298. Violation of the rules for the safe conduct of work or Article 310. Violation of the legislation of the Republic of Kazakhstan in the field of space activities and many others.

Of course, one can agree with the opinion of T.V. Kashanina, who, analyzing the significance

of legal structures, notes that they allow: «Firstly, they allow for law-making economy. Due to the complication of social life, the scope of legal regulation is constantly expanding. But thanks to legal constructions, it is possible to increase the degree of abstraction of law and economically streamline the legal field. Legal constructions facilitate the perception and study of the whole variety of legal phenomena, as they simplify all this variety of particular cases of legal practice. Secondly, legal constructions contribute to the concentrated expression of the content of law. The created model is a kind of blank, model, pattern, it allows you to immediately, as they say, in one fell swoop, resolve many life situations. Thirdly, legal constructions are a powerful tool for generalizing life situations, allowing you to immediately program a very large legal space. It follows that legal constructions make it possible to eliminate the gaps in law. And, finally, legal constructions, dissecting legal situations by structure (construction elements), give normative acts logical harmony» (Kashanyna 2011: 182-183). However, «generalization of life situations» allows representatives of authorized bodies to interpret the grounds for bringing to administrative responsibility quite broadly, referring to certain rules that are essentially subordinate regulatory legal acts. These rules of accountability have evolved over the years. And no changes are expected in the near future. Which, in fact, makes the institute of administrative responsibility and administrative coercion «convenient». In most cases, state bodies refer to the fact that it is objectively impossible to exhaustively determine the content of all possible violations of a person's rights in the activities of government bodies. At the same time, a too general wording can carry both corruption risks and risks of abuse of office, and much more.

This is also confirmed by statistics. Thus, 4.24 million offenses were registered in 2021, and 4.17 million in 2022. If we analyze material aspects, for example, fines, then in 2021 54,473 million tenge were imposed, 31,039 were recovered and in 2022 71 508 million were imposed and 53,664 million tenge were collected (https://lprc.kz/wp-content/uploads/2020/01/Perspektivy-razvitiya-administrativno-deliktnogo-prava-_prava-administrativnoj-otvetstvennosti_-v-Respublike-Kazahstan.pdf).

That is, of course, it is easier for state bodies to solve their tasks and program settings with the help of the Code of Administrative Offenses, however, we believe that they should look for other administrative measures that are not related to bringing to administrative responsibility. Among such measures, first of all, it is necessary to include notification of the essence and content of the rules that an individual or legal entity must adhere to. So, in most cases, the perpetrators call the cause of the violation ignorance of certain restrictions, etc. The principle «ignorance does not exempt from responsibility» in this case does not benefit the quality of public administration.

The need for efficiency, quality, compliance with technical and other requirements, in our opinion, is a priority and, accordingly, government agencies are interested in ensuring greater discipline of performers. In addition, in most cases, the violation is not committed intentionally and the initial penalty may not be so severe. Thus, the Code of Administrative Offenses of the Republic of Kazakhstan provides for such a measure of punishment as a warning, which, in accordance with Art. 43 is defined as a Warning «official giving by the court, body (official) authorized to impose an administrative penalty, a negative assessment of the offense committed and warning an individual or legal entity about the inadmissibility of unlawful behavior. The warning shall be issued in writing.» At the same time, paragraph 2 of this article indicates that «in the absence of the circumstances provided for by Art. 57 (aggravating circumstances) and the Note to Article 366 of this Code, the court (judge), body (official) imposing an administrative penalty is obliged to apply the warning provided for by the relevant article of the Special Part of this Code" (https://online.zakon.kz/m/document?doc_id=31577399). At the same time, the analysis shows that there are a number of articles, for the commission of acts regulated by them, the subject could painlessly bring to a warning, and not a fine, for example. That is, minor offences. In this case, an important condition should be voluntary compensation for the damage caused (https://lprc.kz/wp-content/uploads/2020/01/Perspektivy-razvitiya-administrativno-deliktnogo-prava-_prava-administrativnoj-otvetstvennosti_-v-Respublike-Kazahstan.pdf). This would also reduce the repressive nature of the Code of Administrative Offenses, especially since the current legislation significantly strengthens the consequences of bringing to administrative responsibility.

Administrative Offenses may adversely affect the efficiency of the functioning of the state apparatus and the attractiveness of the investment environment.

Accordingly, as a result of the study, we consider it possible to draw the following conclusions.

Conclusions

1. Pursuing a policy of decriminalization and liberalization of criminal liability, the legislator has practically pursued a policy of distinguishing violations of the law according to the level of public danger.

2. in the structure of offenses, the concept of an administrative offense is "lost", which has always been qualified as socially harmful, not endangering society. In the interpretation of the Code of Administrative Offenses of the Republic of Kazakhstan of 2014, one of the cornerstone parts of the signs of an administrative offense is actually lost, namely the presence of a level of public danger (harmfulness).

3. The Code of Administrative Offenses of the Republic of Kazakhstan has become one of the most flexible normative acts that quickly responds to the high degree of dynamism of social relations that are characteristic of any developing society, including Kazakhstan.

4. In order to improve the norms of the Code of Administrative Offenses of the Republic of Kazakhstan, it is necessary to conduct constant monitoring for the presence of invalid norms with their subsequent removal. Avoid overly broad dispositions to avoid corruption and other schemes.

5. Continue the policy of reducing the repressiveness of the Code of Administrative Offenses of the Republic of Kazakhstan with an emphasis on preventive work.

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