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ABOUT THE FEATURES OF THE WARNING IN ADMINISTRATIVE LAW

This article discusses theoretical and practical issues in the field of imposing an administrative penalty in the form of a warning. The relevance of this article is explained by the widespread use of this type of administrative penalty, as well as by the fact that currently there are still unresolved issues regarding this type of penalty. First of all, this refers to the effectiveness of this method of punishment, taking into account the frequency of its use, as well as the mandatory use in certain cases. The moral or educational impact that forms the basis of the effectiveness of prevention can be defined as controversial, since the person guilty of an administrative offense. In a certain sense, it avoids real responsibility, since property rights or freedom of movement, for example, are not affected. The abstract moral aspect of this punishment, of course, is supported by additional legal consequences, but still, it makes you wonder if there is a need to «forgive for the first time», and not use other punishments. Therefore, the question arises about the need for this type of administrative penalty in the improving legislation of the Republic of Kazakhstan. It seems necessary to analyze the differences between administrative warning and the institution of insignificance.

Keywords: administrative responsibility, recovery, offense, prevention, consequences.

Introduction

According to the report «On the results of consideration by the authorized bodies of cases of administrative offenses» published on the website of legal statistics (qamqor.gov.kz), at the time of writing this article (12/21/2022), 7,973,179 resolutions on the imposition of administrative penalties were issued in the Republic of Kazakhstan. Two types of administrative penalties: a warning (1,363,517. 17.1 %) and an administrative fine (6,535,110. 81.9 %), together

account for 99 % of all imposed penalties, while the remaining 7 types together account for only 1 % of this amount [1].

These statistics show that the warning is the second largest administrative penalty, which, in turn, indicates the relevance of his research.

In the process of researching this topic, a number of issues were identified in the scope of application of the provisions on prevention.

An important conceptual provision of administrative-tort legislation in relation to its penalties is the principle of proportionality (conformity) of the penalty to the committed offense when bringing the violator to administrative responsibility.

In order to implement this principle, as well as to differentiate liability measures and facilitate the choice by law enforcement officers of the most appropriate specific violations of specific types of sanctions, their size or timing, various administrative penalties are used.

Materials and methods

The following methods were used in the work: theoretical and practical analysis of scientific and specialized literature on the research problem; analysis of normative documents on the subject under study; analysis and generalization of existing experience in sentencing; observation; logical, systematic methods

Results and discussion

Article 41 of the Administrative Code of the Republic of Kazakhstan [2] lists the types of administrative penalties, starting from the lightest (warning) to the heaviest (administrative arrest and administrative expulsion from the Republic of Kazakhstan).

Administrative penalties affect certain rights and freedoms of the subject being held accountable. For example, an administrative fine affects the subject's property, administrative arrest and administrative expulsion affect freedom of movement, etc. Therefore, the question arises which rights of the subject are affected by such an administrative penalty as a warning [3].

According to art. 43 of the Administrative Code of the Republic of Kazakhstan, a warning is a negative assessment of the committed offense and a warning about the inadmissibility of illegal behavior. The warning is issued in writing.

A warning as a type of administrative punishment is a measure of administrative punishment expressed in an official censure of an individual or legal entity. The name «warning» is traditionally, although it does not quite fit the name of punishment, as a final decision, an official censure by the state of an illegal act. The word «warning» means a notice, a warning. Carries the semantic load of a warning about something, has a notification character about the upcoming trouble, possible danger. Terminologically, the legislator has inaccurately chosen

the definition of administrative punishment for a person who has committed an offense. The consequences are reduced to a moral understanding of the illegal act and the placement of information about the offense in the database of the executive authority for the subsequent establishment of the fact of repeated commission of an administrative offense [4].

Thus, it can be seen that in essence, this type of penalty practically does not affect the rights and interests of the subject that can be considered important to him. It should be borne in mind that the effect of punishment, which is expressed only in words, will not be significant. The only really important consequence of imposing an administrative penalty in the form of a warning is that more serious consequences may occur for the repeated commission of an offense. A warning does not exempt from administrative responsibility and its consequences, as, for example, in the case of the application of exemption from administrative responsibility due to the insignificance of the act [5].

It is worth pointing out that the warning is a kind of middle ground between exemption from liability due to the insignificance of the act and the imposition of an administrative fine (or other administrative penalty). As already mentioned, the warning, although it carries an exclusively educational function, still entails certain consequences.

In this context, it is necessary to consider the provisions of art. 57 of the Administrative Code of the Republic of Kazakhstan. According to paragraph 2 of part 1 of this article, the circumstance aggravating responsibility for an administrative offense is the repeated commission of a homogeneous administrative offense for which a person has already been brought to administrative responsibility for a certain period.

This circumstance is important due to the fact that p. 2 of art. 43 of the Administrative Code of the Republic of Kazakhstan «Warning» states that in the absence of circumstances provided for in art. 57 and a note to art. 366 of the Administrative Code, the subject imposing the administrative body is obliged to apply punishment in the form of a warning, if it is provided for by the relevant article of the Code.

Consequently, if a person has previously committed an administrative offense and a court decision has been made against him, then if the court violates it again, the official will not be obliged to impose a penalty in the form of a warning [6].

Such reasoning, however, is consistent with the provisions of the Administrative Code of the Republic of Kazakhstan. For example, in a number of articles, an administrative penalty in the form of a warning is imposed if a person has committed an act provided for in the first part of the article (for example, articles 89, 272, 288). In addition, a warning in these cases is an uncontested form

of punishment. However, part 2 of these articles directly indicates that if a person commits the actions provided for in part 1 of the article repeatedly within a year, this will entail another punishment – an administrative fine. Consequently, the provisions of art. 43, where it is stated that in the absence of certain circumstances, the court is obliged to apply an administrative penalty in the form of a warning is directly consistent with the text of the articles, since the court does not even have to choose, since the articles directly provide for an alternative punishment [7].

However, not all articles of the Administrative Code are presented in this form. For example, articles 75, 81, 309, 315 offer an alternative: a warning or a fine, and articles 73, 73–1 – a warning or administrative arrest. In this case, the court, the official, is already obliged to take into account the requirements of part 2 of article 43.

Another important issue is the obligation to impose an administrative penalty in the form of a warning, if there are no aggravating circumstances. In connection with what is such a duty formed? As already mentioned, there are certain doubts about the effectiveness of such a penalty as a warning, and the effectiveness of achieving the goals of punishment. Warning – there is more of a moral impact that warns against committing offenses in the future, but this warning is not expressed clearly enough, and can be ignored or forgotten [8].

In addition, the obligation to apply a warning in the absence of aggravating circumstances may encourage a person to commit a violation. For example, part 1-1 of article 73–1 (intentional infliction of minor harm to health) or part 1–1 of Article 73–2 (beatings) indicate that the actions provided for in part one of this article committed against a person who is in family and household relations with the offender are punishable by a warning or administrative arrest.

Scientific disputes and the position of law enforcement indicate that the essence of the warning is not accepted as punishment for the offense committed. «Moral impact», «moral and psychological impact», «educational measures» and other social attitudes, in our opinion, should be excluded from the system of legal norms, especially from such a type of state coercion as punishment. The guilty person does not perceive the measure of responsibility aimed at his consciousness, mood. Punishment is a measure of responsibility, and when the consequences of the committed offense are extremely favorable to the guilty person, the essence of responsibility is lost [9].

The way out of the situation is seen in fixing the warning as a legal liability only for committing an administrative offense by negligence. If there is an intentional form of guilt, this punishment should be canceled. In our opinion, it is better to stop administrative prosecution against a person who has committed an offense carelessly, taking into account all the circumstances of the case, to recognize the offense as

insignificant, than to impose an ephemeral punishment, increasing annually the number of persons brought to administrative responsibility [10].

In conclusion, it should be noted that the warning is not perceived by the person who committed the offense as a measure of legal responsibility, a speedy pardon from the state authority and a notification that the next time the punishment will surely come. Such a situation requires serious scientific understanding, which may lead to the complete exclusion of the warning from the Administrative Code of the Republic of Kazakhstan as a measure of legal responsibility, or to renaming and clarifying its content, which should more clearly identify the punitive preventive measure inherent in administrative penalties.

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ӘКІМШІЛІК ҚҰҚЫҚТАҒЫ ЕСКЕРТУ ЕРЕКШЕЛІКТЕРІ ТУРАЛЫ

Бұл мақалада ескерту түрінде әкімшілік жаза қолдану саласындағы теориялық және практикалық мәселелер қарастырылады. Бұл баптың өзектілігі әкімшілік жазаның осы түрін кеңінен қолданумен, сондай-ақ қазіргі уақытта жазаның бұл түріне әлі де шешілмеген мәселелердің бар екендігімен түсіндіріледі. Бұл, ең алдымен, оны қолдану жиілігін, сондай-ақ белгілі бір жағдайларда қолдану міндеттілігін ескере отырып, осы жазалау әдісінің тиімділігіне қатысты. Ескертудің тиімділігіне негіз болатын моральдық немесе тәрбиелік әсерді даулы деп анықтауға болады, өйткені әкімшілік құқық бұзушылыққа кінәлі адам. Белгілі бір мағынада ол нақты Жауапкершіліктен аулақ болады, өйткені мүліктік құқықтар немесе қозғалыс еркіндігі, мысалы, әсер етпейді. Бұл жазаның абстрактілі моральдық аспектісі, әрине, қосымша заңды салдармен күшейтіледі, бірақ бәрібір басқа жазаларды қолданудың орнына «бірінші рет кешіру» қажеттілігі бар ма деген сұрақ туындайды. Сондықтан ҚР заңнамасында әкімшілік жазаның бұл түрінің қажеттілігі туралы мәселе туындайды. Әкімшілік ескерту мен маңызды емес институт арасындағы айырмашылықтарды талдау қажет.

Кілтті сөздер сөздер: әкімшілік жауапкершілік, жаза, құқық бұзушылық, ескерту, салдары.

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ОБ ОСОБЕННОСТЯХ ПРЕДУПРЕЖДЕНИЯ В АДМИНИСТРАТИВНОМ ПРАВЕ

В данной статье рассматриваются вопросы теоретического и практического характера в сфере наложения административного взыскания в виде предупреждения. Актуальность данной статьи объясняется широким применением данного вида административного взыскания, а также тем, что в настоящее время к данному виду взыскания все еще остаются неразрешённые вопросы. В первую очередь это относится к эффективности данного метода наказания, учитывая частоту его применения, а также обязательность применения в определённых случаях. Моральное или воспитательное воздействие, которое ложится в основу эффективности предупреждения можно определить, как спорное, так как лицо, виновное в административном правонарушении. В определенном смысле избегает реальной ответственности, так как имущественные права или свобода передвижения, к примеру, не затрагиваются. Абстрактный моральный аспект данного наказания, конечно, подкрепляется дополнительными юридическими последствиями, но все же, заставляет задумываться, есть ли необходимость «прощать на первый раз», а не использовать другие наказания. А потому, возникает вопрос о необходимости такого вида административного взыскания в совершенствующемся законодательстве РК. Необходимым представляется проанализировать различия между административным предупреждением и институтом малозначительности.

Ключевые слова: административная ответственность, взыскание, правонарушение, предупреждение, последствия.

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