

# КОНСТИТУЦИОННОЕ И АДМИНИСТРАТИВНОЕ ПРАВО

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## ADMINISTRATIVE ENFORCEMENT AND LIABILITY

### Annotation

The presented article is devoted to the peculiarities of the application of the institutions of administrative responsibility and administrative coercion, associated with procedural aspects. The concept and types of effectiveness of the norms of administrative-tort law are given, problems arising in connection with the establishment and application of administrative responsibility are analyzed. The unequal position of the parties in the framework of administrative proceedings, when one of the parties is a public authority or an official endowed with powers of authority determines the introduction of the principle of an active role of the court in administrative proceedings. Maintaining a balance between the parties and ensuring equal opportunities for them should now be given more attention in the course of humanization and unification of administrative legislation.

**Keywords:** administrative coercion, administrative tort law, individual rights and freedoms, administrative penalty, Enforcement, forfeitable withdrawal, offender, deprivation, warning.

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## ӘКІМШІЛІК МӘЖБҮРЛЕУ ЖӘНЕ ЖАУПКЕРШІЛІК

### Аңдатпа

Ұсынылған мақала процессуалдық аспектілермен байланысты әкімшілік жауапкершілік пен әкімшілік мәжбүрлеу институттарының қолданылу ерекшеліктеріне арналған. Әкімшілік-деликтілік құқық нормаларының түсінігі мен тиімділігі анықталып, әкімшілік жауапкершілік ор-

натылуына және қолданылуына байланысты туындайтын мәселелер талданады. Әкімшілік сот өңдірісі шеңберінде тараптардың бірі - өкілеттіктер берілген жария билік органы немесе лауазымды тұлға болып келуі, яғни тараптардың тең емес жағдайы, әкімшілік сот өңдірісіне соттың белсенді рөлі қағидасының енгізуін талап етеді. Қазіргі уақытта әкімшілік заңнаманы ізгілендіру және унификациялау барысында тараптар арасындағы тепе-теңдікті сақталуына және оларға тең мүмкіндіктерді қамтамасыз етілуіне көбірек назар аударылуын қажет етеді.

**Түйінді сөздер:** әкімшілік мәжбүрлеу, әкімшілік деликтілік құқық, жеке құқықтар мен бостандықтар, әкімшілік жаза, мәжбүрлеп орындау, алып тастау, құқық бұзушы, айыру, ескерту.

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## АДМИНИСТРАТИВНОЕ ПРИНУЖДЕНИЕ И ОТВЕТСТВЕННОСТЬ

### Аннотация

Представленная статья посвящена особенностям применения институтов административной ответственности и административного принуждения, сопряженных с процессуальными аспектами. Даются понятие и виды эффективности норм административно-деликтного права, анализируются проблемы, возникающие в связи с установлением и применением административной ответственности. Неравное положение сторон в рамках административного судопроизводства, когда одной из сторон выступает орган публичной власти или должностное лицо, наделенное властными полномочиями обуславливает введение принципа активной роли суда в административном судопроизводстве. Поддержанию баланса между сторонами и обеспечения им равных возможностей необходимо уделить в настоящее время более пристальное внимание в ходе гуманизации и унификации административного законодательства.

**Ключевые слова:** административное принуждение, административно-деликтное право, личные права и свободы, административное наказание, принудительное исполнение, изъятие, правонарушитель, лишение, предупреждение.

The Constitution of the Republic of Kazakhstan establishes the fundamental provision and principles for the recognition and protection of individual rights and freedoms in the republic. Human rights are a complex multidimensional phenomenon, a political and legal category that is a system of principles and normal relationships. Recognition of human rights and freedoms in the Constitution of Kazakhstan means that it comes from adopting them as one of the fundamental values of human existence and the main reference point in the development of society [1]. Recognition of the rights and freedoms of the absolute and inalienable expresses their universal character and distribution to every person on the territory of the republic, regardless of the citizenship to which country he belongs, the inadmissibility of their arbitrary withdrawal of the state or by any other entities. Only in cases, direct par-

icipation of the Constitution and laws, a person may be deprived or restricted in certain rights and freedoms. If human rights are innate, the rights of the citizen are acquired. In the legal status of a citizen of an organic group of people, as well as a set of political rights and obligations, establishing special possession of property and a citizen. At the same time, this status presupposes the citizen's certain duties, for the right to participate in the subsistence of the power that the individual is endowed with, with mandatory conditioning and the existence of rights to the state. The duties of a citizen express the measure of his full behavior, determining the degree of his positive responsibility to other people, the state and society as a whole. However, if they cannot be limitless. In theory and practice, the relationship between state power and the individual in the sphere of freedom should be regulated only by laws. Law is

the normative formula of human rights [2]. Only the law can introduce the necessary restrictions in real citizens. The main body for the protection of the rights and interests of the individual is the court, depending on whether there is a rule of effective restoration of rights and freedoms in cases of dispute and their violation. The judiciary is the exclusive authority exercising justice, it is the duty of the court to protect the rights of every person. Courts are entitled to use state coercion. Only the court is given the right to make decisions, judgments, sentences permitting restrictions on certain constitutional rights of citizens. Decisions, verdicts, court decisions are binding on all state bodies, organizations, officials, as well as citizens throughout the republic. The case of an administrative offense of the trial in the case of its commission, within fifteen days from date of receipt of the judge, (right), the competent consideration of the case, the protocol on administrative violation and other case materials [3]. A judge, an official, in the course of a case, an administrative offense, whether the person is guilty of committing it, is subject to its administrative responsibility, is there any circumstance that mitigates that aggravates responsibility, caused property damage, and also clarifies other circumstances that are relevant to the correct of the case. The consideration of the case of an administrative offense, the judge, the body (official) shall take one of the following decisions:

- 1) On imposing an administrative penalty;
- 2) On the termination of proceedings in the case.

Execution of decisions on imposition of administrative penalties is the last stage of the proceedings on administrative offenses, the essence of which is the practical implementation of the administrative penalty imposed on the offender.

The activity for the execution of decisions consist of two logically interrelated stages: the appeal of decisions to execution and their direct execution. At the first stage, the key role belongs to the body that adopted the decision on imposing an administrative penalty, which sends the ruling to the executing body. At the second stage, specially authorized bodies carry out activities to directly implement the sanction specified in the resolution. Sometimes these bodies (officials) deal with this issue, which made a decision to bring the infringer to administrative responsibility (for example, when executing a penalty in the form of a warning, collecting a fine). As a rule, the decision on imposition of an administrative penalty is

enforceable from the moment it enters into legal force and is sent to the body, (official) authorized to enforce it within 24 hours. Decisions on imposing an administrative penalty in the form of deprivation of special rights and administrative arrest shall be enforceable from the moment of its issuance. In the presence of circumstances, due to which the immediate execution of the resolution is impossible, the body that issued the resolution may postpone the resolution for up to one month. Questions on the deferral, installment, suspension or termination of the enforcement of the decision to impose an administrative penalty, as well as on the recovery of a fine imposed on a minor, from his parents or the persons who replace them, are considered by the judge, the body (official) who issued the decision, in a three-day term from the day of the origin of the grounds for the resolution of the relevant issue. The decision on such issues is taken in the form of a resolution [3].

The resolution on imposition of an administrative penalty is not enforceable if it was not appealed to execution within a year from the date of its entry into legal force, but for offenses in the field of taxation and antimonopoly legislation within five years from the date of its entry into legal force. At this time, the time for which performance is suspended due to a delay related to the application of the protest or the filing of a complaint is not included. It should be noted that the legislator links the long-term term only the beginning of the execution of the resolution. The execution process itself can last for a long time (for example, deprivation of special rights for three years). However, according to the law on enforcement proceedings, the penalty for administrative fine is 2 months. The decision on the imposition of an administrative penalty for which performance was not performed or the performance was not performed in full is returned to the body (official) who issued the resolution that complied the protocol on the administrative violation in cases and in the procedure provided for by the Law of the Republic of Kazakhstan "On Enforcement Proceeding and Status of Bailiffs" [4]. Thus, the judge who issued the decision must calculate the collection period, monitor the statute of limitations, and then take a decision in the form of an order to release the person from execution of the administrative penalty. In practice, of course, it is very difficult to control, since the number of them is very large, these cases are already in the archive. Execution of decisions on issuing a warning is made by the judge, the body that issued the

resolution, by handing or forwarding a copy of the order. Execution of decisions on the imposition of a fine is as follows. Initially, the violator is given the opportunity to execute the decision voluntarily by making a fine no later than thirty days to the state budget in the prescribed manner, with the exception of a fine levied at the crime scene (in this case, the infringer is issued a receipt). If the amount of the fine is not paid voluntarily, it is collected forcibly from wages, pensions, scholarships of the offender. If he does not have a salary, a pension, a stipend then the recovery applies to the offender.

The execution of decisions on forfeitable withdrawal of an item is made as follows. These items are transferred for sale to commission stores at the location of the property. The proceeds from the sale are transferred to the former owner, net of sales costs. Execution of the decision on the confiscation of the object is carried out by seizing the confiscated item and forcibly transferring it to the state's ownership. A decision on this is carried out by judicial executors, internal affairs bodies, supervisory, customs and other bodies. Execution of the court decision on deprivation of special rights is carried out by the authorized bodies by withdrawal of the driver's license, hunting ticket. After the expiration of the period of deprivation of a special right to a person subjected to this type of administrative penalty, seized documents shall be returned in accordance with the established procedure. In pursuance of the decisions on administrative arrest, persons under administrative arrest are detained. The term of administrative detention is counted at the time of arrest. Execution of decisions on administrative expulsion from the Republic of Kazakhstan is carried out by the bodies of the migration service of the Republic of Kazakhstan through a controlled independent exit of the expelled person from the Republic of Kazakhstan. A person who has not fulfilled the court decision on expulsion and who has not left the territory of the Republic of Kazakhstan within the time specified in the decision shall be subject to compulsory expulsion by decision of the court.

**Administrative liability.** Administrative responsibility is a type of legal responsibility, which is expressed in the application by an authorized body or official of an administrative penalty to the person who committed the offense [5]. Administrative responsibility is characterized by certain characteristics common to all types of legal liability. First, it is established both by laws and by-laws, or by their norms on administrative of-

fenses, therefore, it has a legal basis. The norms of administrative responsibility from an independent institution of administrative law. Secondly, the basis for administrative liability is an administrative offense. It should be noted that the object of encroachment are relations in the sphere of public administration, as well as some others. So, administrative responsibility is established for encroachments on customs, tax relations, relations related to the protection of property, with the protection of citizens' rights, nature, public health, trade, etc. At the same time, administrative responsibility is applied for violation of not every rule of administrative law, but those that contain an indication of administrative responsibility. Thirdly, there are administrative penalties for administrative offenses. Fourth, the administrative penalties are applied by a wide range of authorized state bodies and officials. All of them, exercising their powers, appoint administrative offenders to offenders. These include judges (magistrates), commissions for the affairs of minors and the protection of their rights, and numerous executive bodies. The Code of Administrative Offenses now extends the range of cases considered by the judges. Their exclusive competence was also expanded due to the attribution to their jurisdiction of the appointment, in addition to administrative arrest, of a number of other administrative punishments: deprivation of special rights, confiscation, forfeiture of a number of items, disqualification, administrative expulsion of foreign citizens and stateless persons outside the Republic of Kazakhstan. Fifth, administrative penalties are imposed by government bodies and officials on non-criminal offenders. This circumstance makes it possible to distinguish administrative responsibility from a disciplinary one, to which managers, workers, employees and support personnel are involved, usually in the order of subordination by a higher body or an official. Seventh, the use of administrative penalties does not lead to a criminal record and is not grounds for dismissal from work. Eighth, the measures of administrative responsibility are applied in accordance with the legislation regulating the proceeding in cases of administrative violations. Ninthly, administrative responsibility differs in its subject composition. The subject of this type of responsibility are both physical and legal entities – enterprises, organizations. Tenth, administrative responsibility is characterized by a special procedural order of its implementation. By its relative simplicity, effectively and economy, it differs from criminal and civil legal proceedings.

Consequently, administrative responsibility has a number of features that distinguish it from other types of responsibility. But the main feature of administrative responsibility is that its basis is an administrative offense, and measures are administrative penalties.

The function of administrative responsibility is determined by the goal and derive from it. Among them are the following:

- Penalty characterizing the punitive reaction of the state to the offense and expressed in the punishment of the guilty person, causing him property encumbrance, in adverse consequences;
- Right-recovery, allowing to recover from the offender caused harm, to compensate losses, providing unsatisfied interest of the empowered person;
- Educational, designed to from motives for subjects to legitimate behavior, to prevent the commission of new offenses.

Principles most vividly characterize responsibility, make it possible to see more clearly the nature of this legal remedy. The following basic principles of administrative responsibility are distinguished [6, p.105]:

Equity, designed to punish the perpetrator in a proportionate manner, not to allow the establishment of criminal sanctions for administrative misconduct and to deny the retroactive effect of a law that reinforces or reinforces responsibility; to impose on the perpetrator only one punishment for one violation; to provide compensation for damage caused by an offense, etc.

Humanism, expressed in particular in the prohibition to establish and apply such penalties that humiliate human dignity.

Legality requiring that administrative responsibility be imposed on the guilty person strictly under the law and for acts prescribed by law. Justification, which consists in an objective, comprehensive and reasoned investigation of the circumstances of the case, in establishing the fact of a person committing a specific offense and the corresponding rule of law, in a general form fixing administrative responsibility, and adopting an enforcement act that fixes the procedure, type and measure of possible punishment. Irreversibility, which means inevitability of responsibility, effective, qualitative and complete disclosure of offenses, mandatory and effective punitive response from the state to the perpetrators. Expediency, which implies the compliance of punishment chosen in relation to the offender, the

purposes of administrative responsibility, allowing individualize sanctions, take into account the various circumstances of the commission of the act – both mitigating and aggravating.

1. Penalties of a moral character:
  - Warning.
2. Monetary and property penalties:
  - Fine;
  - Confiscation;
  - Forfeit withdrawal.
3. Penalties addressed to the perpetrator:
  - Correctional labor;
  - Administrative arrest;
  - Temporary deprivation of special rights.

Despite the differences, all administrative penalties have common features:

- 1) they are punitive, in contrast to preventive measures;
- 2) they are established by a wide range of organs;
- 3) the application of an administrative penalty entails legal consequences, i.e. a person has a state of punishment. This circumstances acquires special significance when deciding whether to bring a person to criminal liability [7].

The system of administrative penalties includes different in nature and severity of sanctions. This allows for the appointment of punishment to take into account the identity of the offender, his property status, the degree of public danger of the committed misconduct, circumstances that mitigate and aggravate the responsibility. Administrative penalties are imposed by issuing special individual acts. Administrative penalties are divided into:

1. non-recurrent – fine, confiscation, forfeiture;
2. continuing – administrative arrest, deprivation of special rights, correctional labor;

In addition, administrative penalties are divided into:

1. basic;
2. additional.

A warning, a fine, the deprivation of special rights, correctional labor and administrative arrest are main. Confiscation and forfeiture can be basic and additional. For a specific administrative offense, only one principal or one principal and one additional penalty can be assigned.

Types of administrative penalties. The following administrative penalties may be imposed for committing administrative offenses:

- 1) warning;

- 2) fine;
- 3) the forfeited withdrawal of the object, which was the instrument of commission of the direct object of an administrative offense;
- 4) confiscation of the object, which was the instrument of commission of the direct object of an administrative offense;
- 5) deprivation of the special right granted to the given citizen (driving license, hunting rights);
- 6) collection of the value of goods and means of transport that were the direct objects of an administrative offense;
- 7) correctional labor;
- 8) administrative arrest.

Prevention is a moral punishment, a measure of educational impact. Its essence lies in the official negative assessment of the behavior of the offender. The warning applies when a minor offense occurs, if the offender is not sufficiently aware of the norms that are violated by him. The warning is issued in writing or issued in a different way. An oral warning is not an administrative penalty. Penalty – a monetary penalties imposed for an administrative offense in cases and limits provided for by the law. The fine imposed on a citizen for administrative offenses cannot exceed three hundred times the minimum wage, and on officials – five hundred times the minimum wage. The fine imposed on citizens and officials for administrative offenses cannot be less than 0.1 minimum wages. The fine must be paid by the violator not later than fifteen days from the day it was handed to him a resolution on imposition of a fine, and in case of appeal or protest against such decision – no later than fifteen days from the date of notification of the abandonment of the complaint or protest without satisfaction. Compensatory withdrawal of an object that was the instrument of commission or the direct object of an administrative offense consists in its forcible withdrawal and subsequent sale with the transfer of the proceeds to the former owner, less the costs of selling the seized item. Compensation of firearms and ammunition cannot be applied to person for whom hunting is the main source of livelihood. Seized on the basis of the resolution on compensated seizure, the objects are surrendered by the bodies (officials) that issued the resolution, for sale to a commission shop or specially designated for this purpose stores of state or cooperative trade at the location of the property to be seized. Confiscation of firearms and ammunition, other hunting tools cannot be applied to persons for whom hunting is the main source of

livelihood. Items that are direct objects of administrative customs offenses are confiscated regardless of whether they are in the personal property of the person who committed the administrative customs offense. If a person who has committed an administrative customs offense is not established, the things that are the direct objects of such an offense are to be turned into state property by a court decision. The decision to recover the cost of confiscated items from the offender with the return of the confiscated item must be carried out by the violator whitening ten days from the date of delivery of the decision to him, and in case of appeal or protest of the decision – no later than ten days after the notice of leaving the complaint or protest without satisfaction. In the event of failure to comply with the decision voluntarily, the penalty is enforced in accordance with the rules established by the Civil Procedural Code of the Republic of Kazakhstan [8]. When deciding on recovery from the offender of the cost of the confiscated, perishable items are returned immediately after the decision is made, other items – after collection from the offender of their value. The refusal of the offender to receive confiscated items is not grounds for non-fulfillment of the decision or return of the recovered sums to him. The deprivation of the special right granted to a given citizen consists in the fact that the offender is deprived of the right previously granted to him, engage in certain activities or perform certain types of work. Such sanction is applied for gross or systematic violation of the procedure for using the right given to it. It should be noted that citizens cannot be deprived of any, namely special law, i.e. one cannot deprive a person of his constitutional right [8]. The period of deprivation of this right cannot be less than fifteen days, and more than five years. In practice, the most often encountered is the deprivation of the right to drive a vehicle and the deprivation of the right to hunt. But in the legislation there are a number of exceptions regarding the application of this measure. The essence of correctional labor consists in the fact that within the period specified in the judge's decision, deductions in the amount of up to 20% of the income of the state are made from the wages of the offender. The amount of earning includes wages received at the main place of work and part-time, and fees received under contracts. During the appointed term, a person cannot resign from work on his own or take a vacation. In the term of serving correctional labor, only the time during which the deductions were

made from the offender's earnings are counted.

The features of the application of the institutions of administrative responsibility and administrative coercion considered in this article, coupled with procedural aspects, necessitate the adoption of a new Administrative Procedural Code of the Republic of Kazakhstan, which will come into force on July 1, 2021. Administrative procedural and procedural Code of the Republic of Kazakhstan is the first experience of codification and systematization of norms regulating the activities of administrative bodies of the state. Adoption of a new Code is a new and major stage in the way of democratization and humanization of Kazakhstan's legislation. The new Code had a huge impact on the notion of administrative re-

sponsibility, its principles, etc. It is not accidental. The special part of the Code of Administrative Offences of the Republic of Kazakhstan is opened by the chapter on administrative violations infringing upon the rights of citizens. It is very important that today one of the main tasks of administrative and tort legislation is the prevention of administrative offenses. The establishment of administrative responsibility and its application is intended not only to combat administrative violations, but also to prevent the latter, affecting not only the offenders, but also all citizens. Thus, the institution of administrative responsibility is an important factor in shaping the legal culture of the population, building a rule of law in Kazakhstan.

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