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The concept of administrative offenses of minors

This article considers the current issues of administrative offenses committed by minors in the Republic of Kazakhstan. In particular, lawyers, sociologists, psychologists and other scientists studying the genesis of offenses and the legitimacy of the mechanism of legal liability for administrative offenses believe that the only basis for bringing juveniles to justice is the offense committed by them. In this regard, one of the most pressing issues is the problem of prevention, warning and combating juvenile delinquency, which can ultimately lead to a significant reduction. Therefore it should be noted that government agencies and officials should pay attention to the prevention and warning of delinquency when dealing with minors. The authors draw attention to the fact that, as practice shows, timely preventive measures taken to prevent administrative offenses of minors are of particular importance in legal and educational relations as an alternative to measures of administrative responsibility. Therefore the authors has conducted a profound and extensive study of the issue of neglect of children today, analyzing the reforms, views and opinions that have been recognized as worthy of complex and in-depth study, taking into account all stakeholders, including government agencies, social workers, scientists and others.

Keywords: administrative law, administrative proceedings, juvenile delinquency and liability, administrative liability, administrative penalties.

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Introduction

The current dynamics of administrative offenses committed by minors in the Republic of Kazakhstan testifies to the inadequacy of measures for the prevention and warning of offenses taken by government agencies and the public. This opinion is confirmed by data from social surveys conducted by various researchers. Thus, when asked how effective it is for government agencies to struggle with juvenile delinquency and whether the public is aware of the consequences, 85 % of respondents said they feel unsafe, anxious, or often intimidated by an attack [1: 13].

Therefore in this regard one of the priorities of public policy should be the reliable protection of the rights and freedoms of minors of the Republic of Kazakhstan from various encroachments, which can be achieved through the application of appropriate legal regulation of public relations and administrative sanctions. According to the Article 19 of “Convention on the Rights of the Child”, which protects the honor and dignity of the individual from all forms of physical and mental violence, the state must be the object of special attention to the rights and legitimate interests of juveniles in criminal proceedings [2: 180]. This can be applied both in the consideration of cases of juvenile offenders and in administrative-procedural forms in terms of bringing children to administrative responsibility.

In this regard it is important to note that in the Republic of Kazakhstan there is a dangerous trend of increasing the number of minors (as victims, witnesses and individuals that are the subject of administrative liability) involved in the administrative process for the involvement of minors in administrative sanctions.

The procedure for imposing administrative prohibitions and administrative penalties on juvenile violators is carried out on a general basis in cases directly provided by law. In addition, this discipline has its own peculiarities.

For example, in accordance with the Code of the Republic of Kazakhstan on Administrative Offenses, the current legislation provides for a number of significant exceptions for individuals who have committed administrative offenses during adolescence. First of all, the educational role of administrative penalties imposed on minors will be significantly strengthened and the possibility of replacing administrative sanctions with administrative-educational measures will be expanded.

Thus, in accordance with Part 2 of Article 65 of the Code of Administrative Offenses, “an administrative penalty may be imposed on a juvenile who has committed an administrative offense with the

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application of measures of educational influence". In addition, the legislator considers the age of juvenile offenders, takes into account the nature of the administrative offense committed, the method of its commission, reasons, purposes, etc. The level of social danger of juvenile delinquency is often lower than the level of similar offenses committed by adults.

Addressing the nature of punishment and its application will help to identify and ensure the most appropriate regime of educational impact on the adolescents by eliminating the harmful effects and confirming the results of educational work.

Thus, an administrative penalty is a measure of state coercion applied by a judge, bodies (officials) authorized by law to commit an administrative offense and is expressed in the form of deprivation or restriction of the rights and freedoms of a minor who committed an offense under the Code of Administrative Offenses.

In addition, administrative penalties are applied in order to restore social justice and educate the offender in the spirit of compliance with the law and respect for law and order, as well as to prevent the offender and others from committing new offenses.

Methods and materials

The dialectical method of recognition of social and legal phenomena and modern methods of cognition formed by experience form the methodological basis of the research. General logical methods of theoretical analysis, such as analysis, synthesis, generalization and comparison were widely used in the study. The methods of legal analysis, clarification, and interpretation were used to address the main objectives in the disclosure of the content. In addition, the study took into account the views of Kazakhstani legislation, domestic and foreign scholars on the issues of educational measures for minors who have committed administrative offenses.

Results and discussions

The social danger of juvenile delinquency, the antisocial nature and negative nature of administrative offenses is an important matter of public concern. It is essential to study them in detail and create actions aimed at developing a comprehensive response to these offenses. Specialists in various fields are trying to be creative in solving this problem. However, according to the official data of the Ministry of Internal Affairs, there is an active trend of administrative offenses committed by minors throughout Kazakhstan. For example, according to the official data of the Department of Internal Affairs of Pavlodar, juveniles were brought to administrative responsibility for various categories of offenses 1325 times in 2000, 2236 times in 2001, and 2583 times in 2002.

It should be noted that official statistics do not take into consideration the total number of administrative offenses committed by minors, but the number of people identified and punished in an administrative manner. Therefore, when analyzing the indicators of official statistics, it should be borne in mind that there are significant differences between official and real indicators, as some violations occur in the absence of official data of the Ministry of Internal Affairs. Nevertheless, official statistics on the issue that we are considering show that juvenile delinquency is widespread in the region .

Analytical research allows us to conclude that most juvenile delinquency is characterized as a public threat that goes from an administrative offense to a criminal offense. This, in turn, forces law enforcement agencies, government and non-government agencies to make tough decisions regarding the elimination of the socially dangerous phenomenon.

Although juvenile delinquency is not the subject of our special research, we have to pay attention to it, because all types of juvenile delinquency and crime can give the researcher a clear picture of the common delicacy of the issue of juveniles. Therefore, studying the phenomenon of administrative offenses of minors, we take into consideration the legitimacy of the spread of these issues among adolescents, taking into account a number of criminal offenses committed by minors.

At the same time it should be noted that the crime rate among adolescents is increasing. The truth of the dynamics of its development can be confirmed by the following examples:

– In 1999 in Pavlodar region (minors make up 31 % of the total population) 12,812 crimes were registered, of which 707 crimes (5.5 %) were committed with the participation of 837 minors.

– During the same period in 2000 a total of 11,668 crimes were registered, of which 778 crimes (6.6 %) were committed with the participation of 756 minors.

Buketov University

– In the first half of 2001 5,146 crimes were registered, of which 375 involved 411 minors, which is 7.2 % of the total number of crimes.

The general reasons and conditions for the growth of juvenile delinquency are based on the current social situation. The most common among them are theft (329 in 1999, 321 in 2000), robbery (121 in 1999, 90 in 2000), piracy (31 in 1999, 59 in 2000), hooliganism (30 in 1999, 61 in 2000), drug addiction (56 in 1999, 73 in 2000) and so on.

At the end of 2000 only in Pavlodar region 7309 minors were brought to administrative responsibility as well as 4000 parents and their legal representatives for the offenses of their children and wards. As a part of preventive measures 11,092 minors were registered in the police departments of the region including 4,285 students of secondary schools and 1,636 students of vocational education [3].

Of course, according to the law, administrative offenses are less dangerous than criminal offenses, and if the offenses do not violate the rules of criminal liability by nature, there is an administrative liability. An administrative offense is an act or omission for which administrative liability is provided by law. In addition, although there are general similarities in the nature of administrative and criminal offenses, the main differences between them differ in the degree of public danger and the severity of the consequences of the offense.

According to the Code of Administrative Offenses, minor is a person who has reached the age of sixteen who have committed administrative offenses is subject to administrative liability both on a common basis and provided by the administrative legislation of the Republic of Kazakhstan. The process of imposing an administrative penalty on a juvenile offender is carried out not only in accordance with the laws of the Republic of Kazakhstan, but also in accordance with international standards for the administration of justice in respect of a juvenile delinquent. More about this is shown below.

It should be noted that the main features, causes, circumstances and dynamics of administrative offenses have been studied in practice, but not sufficiently analyzed in the scientific and legal literature. At the same time, the current work of individual administrative scientists of the Republic of Kazakhstan engaged in the study of certain categories of administrative offenses and administrative liability of minors does not always fully address the issues arising in this area [4].

As a result, there is a need for in-depth study of the legal literature, which is necessary for a detailed theoretical substantiation in order to create favorable conditions for its practical application by enlightening and revitalizing it. In addition, such research was the basis for the development of a state concept aimed at warning, prevention and suppression of juvenile delinquency in the Republic of Kazakhstan.

Nowadays, the measures taken by the state to prevent juvenile delinquency have a special place in the rational solution of a number of issues through the institution of studying the causes of administrative offenses of minors.

In the domestic and foreign literature there are constructions with different interpretations that reveal the essence of the offense. For example, a violation of the law is an act that is explicitly prohibited by administrative law. From an ethical point of view an offense is an evil that comes from a person and is directed against a person. From an anthropological point of view, delinquency is a distorted form of self-expression, a destructive way of self-determination of certain features and aspects of human nature. Every offense is a moral crisis of a person, his moral decline, which can be expressed in many different forms and manifestations of the word.

Freedom and the rule of law, law and crime are interdependent and, in fact, are an integral attribute of civilization. It is inherent in the law to impose restrictions on human freedom in a written law (ruling), but it is not alien to it in cases where an individual has the will or involuntary intention to violate it. At the beginning of the rise of Christianity, the apostle Paul said, "Where there is no law, there is no transgression". Consequently, where there is law, there are offenses. Despite their contradictions, they cannot exist without each other.

Despite the existence of many definitions of administrative offenses, none of them can fully reveal the legal nature of the offense. Thus, there is a lack of existing analytical tools in the competence of individual disciplines, and it is determined that the study of administrative offenses committed by minors requires a comprehensive approach.

In the various works of Kazakhstan and foreign administrations (administrative scientists) studying the phenomenon of administrative offenses, many definitions and explanations of the concepts and categorical apparatus of administrative offenses are given:

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– illegal, guilty act or omission, action or omission that violates the generally binding administrative law and leads to liability in the form of administrative penalties [5];

– dangerous, illegal, culpable act or omission of society, which arises as a result of violation of universally binding norms and leads to administrative liability [6];

– actions provided for by administrative law, which are contained in the law and subordinate regulations [7: 159];

– action or inaction guilty of intentional (or negligent) violation of public order, private, state, municipal and other forms of property, rights and freedoms of citizens, the established order of governance; the law provides for administrative liability [8: 29];

– act of guilt of a sane and delinquent adult, dangerous to society, subject to legal liability in accordance with the law [9: 45];

– illegal or culpable (intentional or negligent) act or omission of an administrative offense (misdemeanor) that violates the state or public law and order, property, rights and freedoms of citizens, and the law provides for administrative liability [10: 743];

– in UN international legal acts: any misdemeanor (act or omission) punishable by law within the legal system [11: 414];

– in accordance with Part 1 of Article 25 of the Code of Administrative Offenses, the inaction of an individual for illegal, culpable (intentional or negligent) actions or an illegal act or omission of a legal entity is an administrative offense [12: 10].

Thus, all administrative offenses committed by minors affect the public order, safety and health of citizens, their rights and freedoms, property, governance, etc.; can be predicted to be directed against them. According to the law, administrative offenses always have the following characteristics in the legal literature, which include common features such as public danger, wrongdoing, guilt and punishment. Together, these features form the main semantic load, without which it is impossible to objectively determine the purpose of the institution of administrative offenses and to understand the progress. Therefore these features can be considered as mandatory and inseparable components of the classical, i.e., adequate understanding of the essence of the institution of administrative offenses.

Thus, in our opinion, “administrative offenses of minors” means violations of public law, security, health, life, rights and freedoms, property and management; socially dangerous, illegal, intended actions committed by minors and subject to administrative liability under applicable law.

The predominance of this proposed form of definition reflects the main features identified in our study of the concept of administrative offenses of minors.

At the same time some scientists do not recognize the classification of the classical features of the concepts we present. For example, some disagree that “public danger” is a mandatory sign of an administrative offense. Some authors (A.A. Taranov, B.M. Lazerev, O.M. Yakuba) tend to think that the sign of public danger is inherent only in crimes, because they are harmful and antisocial, socially dangerous administrative offenses, criminal behavior, that is, it is an apostate and a qualitative feature. According to B.A. Zhetpisbayev, the uncertainty of the concept of “public danger” on the one hand, forces law enforcement agencies to turn a blind eye to the many misdeeds of minors, and on the other hand, to pay attention to educational measures and the nature of phenomena (actions or inactions), which at least legitimize them, that can be seen from the lack of effort [5: 26].

In addition, the legislative document lists only the main features of administrative offenses provided for in Article 25 of the Code of Administrative Offenses: illegal, guilty and punishable [5: 10]. In our opinion, it is a mistake for the legislation to ignore the sign of “public danger”, because even the simplest, insignificant offense violates the law and order of society and to some extent harms it. As a result, it poses a “public threat” to its stability and well-being.

Such conclusions are confirmed by the results of research by various administrative scientists. For example, A.B. Agapov writes: “Public danger is the most important feature of an administrative offense, it determines the limits of criminal misconduct” [13: 30]. This opinion was expressed by the well-known criminologist A.I. Dolgova “Danger to society is the main feature of every offense” [14]. On this basis, in particular on the “degree of public danger”, the law analyzes the various forms of illegal behavior, that is, the issue of classifying illegal actions into crimes or misdemeanors.

According to B.A. Zhetpisbayev, “by its social nature, public danger is an anti-social action that harms the interests of citizens, society and the state as a whole. The law determines that the act is dangerous to society. This may be irrelevant to the content of administrative offenses”. It should be taken into account that

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many homogeneous administrative offenses are recognized as crimes when repeated several times. In addition, the degree of public danger is one of the main criteria for distinguishing offenses from crime. Although the degree of public danger is a feature of all offenses, its quantitative parameters vary. It should be borne in mind that they cannot be registered (for example, not coming to the military commissariat on call; traveling without a ticket on public transport; street trading in unspecified places, etc.) [5: 107–108].

In our opinion, the concept of "public danger" is a phenomenon that occurs as a result of unlawful actions against individuals or society as a whole, including objective and subjective negative consequences.

In view of the above, it is clear that the description of the main features of administrative offenses in the legal literature remains controversial, because researchers always disagree on this issue and to some extent are diametrically opposed.

Other aspects of administrative offenses have not been still finished. The issue of determining the object of an administrative offense remains controversial. For example, after analyzing the relevant materials it can be concluded that the object of the offense is the state and public order. However, due to the fact that it is associated with many mandatory rules, it creates certain difficulties in determining the composition of the offense.

At first glance, it seems that views on the object of the offense can only be difficult to understand in the context of public relations, which are regulated by law and protected by administrative sanctions. In fact, it is much more difficult. For example:

– What actions can be classified as petty hooliganism, what is their list? How to distinguish between petty hooliganism and big hooliganism, where is the real limit?

– Can we confirm that the violation of the existing rules of conduct and governance is the result of illegal actions of adolescents?

Although the definition of the object of the offense in the literature is not controversial, it is insufficiently elaborated. At one time, there was an attempt to provide a complete definition of the object of the offense. The object is understood as the ability of individual social mechanisms to function normally in society, and as a set of objects to function normally, to exist in society on different planes. It should be taken into account that the legislature or other body does not always specify exactly what is prohibited if it believes that there may be rulings, prohibitions and requirements as an object. Such procedures are familiar to officials, as they are an integral part of administrative-procedural competence [15: 25–26].

The resolution of this issue is often influenced by the identity of the juvenile who committed the act classified as an administrative offense by law. At the same time, it is important to look at the teenager's actions: whether he understands it as an offense, an attack on public order, or whether it should be so in his worldview. It is well known that the misunderstanding of the nature of delinquency and crime, lack of basic legal knowledge and certain life experiences leads to the negative impact of group morality on adolescents. It is unlikely that minors will be able to cope with such influences on their own.

Prevention of such situation is determined by the relationship between three main components:

– the concept of legality (what is violated?);

– behavior of a teenager in a real situation (breaks the law, protects against breaking the law);

– with a real teenager [16: 6].

All this suggests that the issues of legal socialization of minors, especially in matters of administrative offenses, are complex, multidimensional and require a comprehensive study. Juvenile offenders often believe that ignorance of the law exempts them from liability for their actions or failure to perform legal duties. This conclusion is incorrect, because according to subparagraph 4 of Article 4 of the Constitution of the Republic of Kazakhstan "official publication of regulations relating to the rights, freedoms and obligations of citizens is a mandatory condition for their application" [17: 5].

Jurists living in different epochs and periods, during different social and political upheavals, sought to identify the underlying patterns of the causes of offenses.

Thus, T. Hobbes (1588–1682) in his treatise "Leviathan" portrayed the social reality — a world in which no one feels safe, where everyone is in danger of dying by force and fear for their life. He assured that the majority of human affairs in the world are focused on the perception of antagonism between individuals and communities, as well as the impact of many different crimes and offenses.

As a result of the research, T. Hobbes identified three main sources that are the basis of offenses against the person. They include:

– lack of understanding or excuse for ignorance of the law, order, punitive measures;

– misconceptions and conclusions;

Buketov University

– sudden onset of passion.

T. Hobbes classifies all offenses according to the nature of the offense as follows:

– ability to imitate other people;

– on the danger of their consequences;

– it varies depending on the place and time of the offender [18].

Conclusions

The results of the study are aimed at solving problems in a comprehensive, systematic manner, focusing on close cooperation with psychologists, sociologists, economists, teachers, specialists in related fields dealing with the problems of administrative offenses of minors. At the same time, a special task is to further study the social factors that affect the behavior of juvenile delinquents.

In our work we have tried to show that changes in the socio-economic and spiritual state of society have a significant impact on motivation and illegal decision-making. The study of this pattern should continue in both historical and comparative legal aspects. Such research will help to understand the following issues:

– to what extent the state and society determine the negative processes that they called themselves for struggle;

– how to reduce the level of aggression in society in a crisis;

– to understand why the efforts of law enforcement agencies to control crime in the country are not successful in building a democratic state.

Thus, the Code of Administrative Offenses has made significant changes to the procedure for bringing minors to administrative responsibility, taking into account the age and other characteristics of juveniles, so that the authority has an opportunity to correct it.

It should be noted that the administrative and educational work among juvenile offenders is of great priority for the state, as one of the successes in building a democratic state and civil society is the education of young people as a guarantee of the future of the Republic of Kazakhstan.

Thus, the analysis of the content and features of the mechanism of illegal behavior is important both theoretically and practically. Its scientific significance reveals the personality traits of the offender and the factors of the external social environment that make up the causes and circumstances that contribute to the commission of the offense. In the practical sense, the analysis helps to identify measures that can prevent the offense, to change the course of action of the offender. From this point of view, antisocial behavior is formed on the basis of the emergence and gradual development of contradictions and conflicts in different parts of the psychological process, resulting in administrative offenses.

In conclusion, the issues of administrative offenses committed by both adult and juvenile offenders remain relevant and persistent and are reflected in the social life of any state.

Buketov university

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Кәмелетке толмағандардың әкімшілік құқық бұзушылығының түсінігі

Мақалада елімізде Қазақстан Республикасында кәмелетке толмағандар жасайтын әкімшілік құқық бұзушылықтардың бүгінгі күндегі өзекті мәселелері қарастырылды. Нақтылай түсетін болсақ, құқық бұзушылық генезисі проблемаларын және әкімшілік құқық бұзушылық жасағаны үшін заңды жауапкершілік тетігінің заңдылықтарын зерделеумен айналысатын ғалымдар, заңгерлер, әлеуметтанушылар, психологтар және басқа да мамандар кәмелетке толмағандарды заңды жауапкершілік шараларына тартудың бірден-бір негізі олар жасаған құқық бұзушылық болып табылады деп санайды. Осыған байланысты өзекті мәселелердің бірі кәмелетке толмағандар жасаған құқық бұзушылықты ескерту, алдын алу және оған қарсы күрес проблемасы болып табылады. Бұл сайып келгенде олардың айтарлықтай төмендеуіне әкеп соғуы мүмкін. Демек, мемлекеттік органдар мен лауазымды адамдардың кәмелетке толмағандармен құқықтық жұмыс жүргізу кезінде назарын құқық бұзушылықты ескерту мен алдын алуға аудару керек екенін ескертеді. Авторлар тәжірибе көрсеткендей, кәмелетке толмағандардың әкімшілік құқық бұзушылықтарының алдын алу бойынша уақтылы қабылданған алдын алу шаралары әкімшілік жауапкершілік шараларына балама бола отырып, заңдық және тәрбиелік қатынастарда ерекше маңызға ие болатынына назар аударған. Сол себептен бүгінгі күндегі балалардың қадағалаусыздығы мәселесі барлық мүдделі тараптарды, оның ішінде мемлекеттік органдарды, әлеуметтік қызметкерлерді, ғалымдарды толғандырады. Күрделі және терең зерттеуге лайық деп жасалған реформаларды, көзқарастарды, пікірлерді саралай келе, мақалада авторлар тың және кеңінен зерттеу жүргізген.

Кілт сөздер: әкімшілік құқық, әкімшілік іс жүргізу, кәмелетке толмағандардың құқық бұзушылығы және жауапкершілігі, әкімшілік жауапкершілік, әкімшілік жаза.

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Понятие административного правонарушения несовершеннолетних

В статье рассмотрены актуальные вопросы административных правонарушений, совершенных несовершеннолетними в Республике Казахстан. В частности, ученые, юристы, социологи, психологи и другие исследователи, изучающие генезис правонарушения и правомерность механизма привлечения к юридической ответственности за административные правонарушения, считают, что единственным основанием для привлечения несовершеннолетнего к ответственности является совершенное им правонарушение. В связи с этим одной из самых актуальных проблем является проблема профилактики, предотвращения и борьбы с преступностью несовершеннолетних, которая, в конечном итоге, может привести к значительному снижению правонарушения среди несовершеннолетних. Поэтому следует помнить, что государственные органы и должностные лица должны уделять внимание предупреждению и предотвращению правонарушений при осуществлении правовой работы с несовершеннолетними. Авторы обратили внимание на то, что, в правоприменительной практике своевременные превентивные меры по предупреждению административных правонарушений несовершеннолетних имеют особое значение в правовых и воспитательных отношениях, как альтернатива мерам административной ответственности. Таким образом, проблема безнадзорности детей сегодня признана темой, заслуживающей комплексного и глубокого изучения всеми заинтересованными сторонами, включая правительственные учреждения, социальных работников, ученых и других. Авторы данной статьи провели новое и обширное исследование, анализируя реформы, взгляды и мнения.

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Ключевые слова: административное право, административное производство, правонарушение и ответственность несовершеннолетних, административная ответственность, административное наказание.

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