
АЗАМАТТЫҚ ҚҰҚЫҚ ЖӘНЕ АЗАМАТТЫҚ ПРОЦЕСС ГРАЖДАНСКОЕ ПРАВО И ГРАЖДАНСКИЙ ПРОЦЕСС CIVIL LAW AND CIVIL PROCEDURE

DOI 10.31489/2020 P1/76-84

UDC 34.07; 347.96

A.K. Rakhmetollov¹, A.S. Kizdarbekova², S.D. Bekisheva¹, L.T. Tyll³

¹*Academy of Law Enforcement Agencies under the General Prosecutor's Office
of the Republic of Kazakhstan, Kossy, Kazakhstan;*

²*Ye.A. Buketov Karaganda State University, Karaganda, Kazakhstan;*

³*Advocacy, Prague, Czech Republic*

(E-mail: askar-step87@mail.ru)

On the issue of responsibility of officials for violation of the rights of entrepreneurs

The article is devoted to analysis of the effectiveness of the response of officials of state bodies and organizations to violations of the rights of entrepreneurs, ensuring their protection. One of the key indicators for assessing the performance of officials is the appeal of business entities. The work focuses on the characteristic violations of the rights of entrepreneurs encountered in law enforcement practice, as well as on the problems of legislative regulation of the responsibility of perpetrators. Along with officials of various bodies and organizations, violations of the rights of entrepreneurs are allowed by the law enforcement officials. The provision of Article 32 of the Code of the Republic of Kazakhstan On Administrative Infractions, according to which the law enforcement officials for administrative offenses, committed in the performance of official duties, are liable in accordance with regulatory legal acts regulating the procedure for serving in the relevant authorities, requires appropriate attention. The work also concludes that at present there is a need to distinguish between the limits of administrative and criminal liability, to specify at the legislative level the categories as «Illegal interference in entrepreneurial activity», «Interfering with legal entrepreneurial activity», and «Corporate raiding».

Keywords: entrepreneur, entrepreneurship, business, violation of rights, harm, appeals, officials, law enforcement agencies, responsibility, legality.

Introduction

The effectiveness of relations between public authorities with citizens and a person depends not only on the observance of the rule of law, but, appearing as a general social phenomenon, also depends on the discipline of subjects of managerial relations. Discipline is an effective tool in the formation of high organization and coordination of actions of subjects of government, state regulation. In this context, legality serves as the basis of discipline, as one of the requirements for protecting discipline is to comply with laws and other regulatory legal acts.

The practice of recent years shows that cases of direct violation of laws and cases of official inaction of officials that are contrary to the principles of official discipline have become more frequent, as a result, the victims are innocent citizens [1; 333, 334], business, turning to them to protect their rights and legal interests.

Of course, this negative trend is reflected in the investment attractiveness of our state, increasing the level of well-being of citizens, and the quality of their life. In this regard, the analysis of the effectiveness of the response of officials of state bodies and organizations to violations of the rights of entrepreneurs, ensuring their protection is relevant.

Methods and materials

When writing this work, general scientific and private scientific methods of cognition of social and legal phenomena, logical, systemic, analysis, comparative and legal, regulatory and logical methods of interpretation of legal norms were used.

Results

The analysis of the law enforcement practice of the Ombudsman for the Protection of the rights of Entrepreneurs, the National Chamber of Entrepreneurs, Courts and Law Enforcement Agencies has allowed the formation of a number of provisions and recommendations on them.

1) Appeals by entrepreneurs regarding the protection of their rights are currently one of the main ways to respond to violations.

2) The Code of the Republic of Kazakhstan on administrative infractions requires a review of the issue of administrative responsibility of law enforcement officials for violation of the rights of entrepreneurs (part 2 of article 32).

3) It is necessary at the legislative level to normatively define the category of «illegal interference in entrepreneurial activity». Since in addition to paragraph 4 of the Normative Decree of the Supreme Court of the Republic of Kazakhstan «On Certain Issues of the Application by Courts of the Norms of the Special Part of the Code of the Republic of Kazakhstan on Administrative infractions» № 7 of October 6, 2017, any other normative legal acts do not properly define this category, but the existing definition does not correspond to actual reality. According to the specified regulatory decision, Illegal interference by government officials may result in abuse of power or abuse of authority. Illegal interference is accompanied by the issuance of an act, giving instructions or another action, which were subsequently declared illegal in the prescribed manner.

4) Along with the definition of the category «illegal interference in entrepreneurial activity», the issues of responsibility for such criminal offenses as «Interfering with legal entrepreneurial activity» and «Corporate raiding», which, due to conflicts in legal norms and their lack of a clear definition in the legislation, have acquired latent character, do not find the appropriate response from the criminal prosecution authorities.

5) Currently, the institution of property liability for illegal actions (inaction) and decisions of officials of state bodies, in general, and law enforcement agencies, in particular, which have caused harm to citizens and business entities, are not properly applied in practice. As a response to the current situation, a separate regulation is proposed in the civil procedure legislation of the judicial procedure for the consideration of these proceedings, bringing them to the category of cases of mandatory categories.

Discussion

Appeals of entrepreneurs. The Head of State K. Tokayev in his speech at the extended meeting of the Government of the Republic of Kazakhstan held on July 15, 2019, noted: «... Domestic business, the so-called national bourgeoisie should be supported in every possible way, and those who interfering with its development by unreasonable checks, requisitions, raiding must be strictly punished. Finally, it is time to criminalize the actions of state bodies and their representatives aimed at undermining business, to envisage strict measures in the legislation, including criminal prosecution, as is the case in a number of states. Officials who interfering with business development are sent to prison...» [2].

We share the opinion of N.A. Rudakova, who believes that the right to a complaint, first of all, ensures a citizen's personal interest in protecting his (her) violated right. At the same time, each satisfied complaint is not just protection of the violated right or legitimate interest of the individual; at the same time, it should serve the cause of correcting deficiencies in the operation of the apparatus, of those negative phenomena that contributed to the infringement of the rights of a citizen, and stop violations of the law. The analysis of appeals to various bodies allows us to formulate on their basis public opinion on certain issues, to draw appropriate conclusions about the state of affairs in a particular area of public and state life [3; 43].

The complaints, appeals of entrepreneurs are one of the indicators of the effectiveness of the state activity and its individual institutions.

Thus, according to the Ombudsman for the Protection of Entrepreneurs' Rights, in 2018, the business ombudsman and his office received 4,633 requests from entrepreneurs, of which 1978 were positively resolved. The largest number of requests from entrepreneurs received by the business ombudsman concerned: administrative barriers (6 %); investments, subsidies, loans (6 %); land (17 %); taxes (9 %); procurement (7 %); complaints to law enforcement agencies (8 %); proposals for legislation (5 %); architecture and

construction (4 %); trading activities (3 %); civil-legal disputes of entrepreneurs with other business entities, non-profit organizations and individuals (6 %); agro-industrial complex (4 %); other issues (25 %) [4].

Compared with 2017, in 2018 there is an increase in the number of complaints from entrepreneurs on illegal actions by law enforcement agencies by 78 % (*in 2017, the Ombudsman received 4 % (207) of 5195 complaints; in 2018, 8 % (370) of 4633 complaints*).

The available facts of restoring the rights of business entities and holding guilty officials of both state bodies in general and law enforcement agencies, in particular, indicate the presence of a number of unresolved issues in the analyzed area.

Based on the law enforcement practice of the Ombudsman for the Protection of the Rights of Entrepreneurs, the National Chamber of Entrepreneurs [13; 94], Courts and Law Enforcement Agencies, it follows that violations of the rights of entrepreneurs are allowed in all regions of our state.

Currently, the criminal process continues to be one of the vulnerable areas, as evidenced by the reporting data of investigating judges to consider complaints of actions (inaction) and decisions of the prosecutor and criminal prosecution authorities.

For example, in 2018, investigating judges examined 3066 complaints about actions (inaction) and decisions of the prosecutor and criminal prosecution authorities, of which 32 % (983) were satisfied, 1834 complaints were examined in the first half of 2019, of which 41 % (754) satisfied.

The analysis established such shortcomings in the law enforcement practice of law enforcement officials in the criminal process as: unreasonable refusal to register applications (relationships) in the Unified Register of Pre-trial Investigations; failure to ensure lawfulness, comprehensiveness, completeness of pre-trial investigation; the issuance of illegal, unreasonable and unmotivated procedural acts; non-compliance with the procedure for considering petitions of participants in criminal proceedings; failure to comply with the procedure for the seizure of material evidence, as well as the removal of the relevant encumbrances; unreasonable involvement in the orbit of criminal prosecution.

We are not saying that the work in the field of ensuring the protection of the rights of entrepreneurs in the criminal process is not carried out. Over the period from 2016 to 2019, the General Prosecutor's Office, together with authorized organizations, carried out significant work in this direction, the results of which were repeatedly announced at the forums on the development and protection of the rights of entrepreneurs held by the General Prosecutor's Office in conjunction with the National Chamber of Entrepreneurs.

Unfortunately, to date, corruption, lack of professionalism, low qualifications of employees, formalism, and bureaucracy are not the only facts that manifest themselves in government bodies.

According to I.N. Pustovalova, the process of democratization of the society, its de-ideologization, reduction of the material level of public servants, the lack of an adequate legislative framework governing public service at the present stage, are one of the reasons that contribute to the high prevalence of criminal manifestations in government bodies, further development of legal nihilism, both in government bodies and in society as a whole.

Qualitative changes in the essence of regulation of public service relations require the improvement of legal regulation methods, one of which is state coercion in the form of legal responsibility of civil servants. Not a single law, no matter how well developed it is, will not operate without well-established mechanism for its implementation and the application of responsibility for non-compliance with the rules established therein [5; 4, 126].

We share the above point of view of I.N. Pustovalova about the need to strengthen the responsibility of officials for damage caused by improper official actions.

Responsibility of officials. The current legislation of the Republic of Kazakhstan provides for liability of officials for violation of the rights of entrepreneurs.

Meanwhile, in our opinion, a number of institutions and legal norms governing the relevant issues of responsibility are declarative in nature and in fact do not find proper application.

According to the reporting information of the Agency of the Republic of Kazakhstan for Civil Service and Anti-Corruption Affairs in the direction of protecting business, the National Anti-Corruption Bureau (Anti-Corruption Service) only in 2018 prevented 260 facts from illegal interference by government agencies, 199 officials were involved, 104 were convicted, more 400 entrepreneurs were protected [6].

Such impressive data on illegal interference in business give rise to the need for an appropriate response from the state and its authorized bodies.

The current legislation of the Republic of Kazakhstan provides 4 directions for responding to illegal actions (inaction) of officials in relation to business entities:

- disciplinary responsibility;
- administrative responsibility;
- criminal responsibility;
- civil-legal (material, property) responsibility.

Disciplinary and administrative responsibility. In accordance with parts 1, 3, 4, article 32 of the Code of the Republic of Kazakhstan On Administrative Infractions (hereinafter — the Code of Administrative Infractions), law enforcement officers for administrative offenses committed in the performance of official duties are liable in accordance with regulatory legal acts governing the procedure for serving in the relevant authorities.

Bodies (officials) that are granted the right to impose administrative penalties, instead of imposing administrative penalties on the persons specified in parts one and three of the Code of Administrative Infractions, must transfer materials on offenses to the relevant authorities to resolve the issue of bringing the perpetrators to disciplinary liability [7].

Thus, for violation of the legislation of the Republic of Kazakhstan, entailing the imposition of administrative penalties, law enforcement officers are subject to disciplinary responsibility.

The exception is the cases provided by Part 2 of Article 32 of the Code of Administrative Infractions, when the above officials committed violations of the regime of the State Border of the Republic of Kazakhstan, the regime at checkpoints across the State border of the Republic of Kazakhstan and the customs border of Eurasian Economic Union, the legislation of the Republic of Kazakhstan on state secrets, the sanitary and epidemiological welfare of the population, the fire safety requirements, the traffic rules, the customs regulations outside the duty station, the legislation of the Republic of Kazakhstan on accounting and financial reporting, the budget and tax law of the Republic of Kazakhstan, the legislation of the Republic of Kazakhstan on public procurement, the rules of hunting, fishing, other rules and norms for rational use and protection of natural resources, the persons specified in part one of this Article shall bear an administrative liability on common basis. These persons cannot be subject to administrative sanctions in the form of deprivation of the right to carry and store firearms and cold arms and administrative arrest [7].

The Code of Administrative Infractions provides for a number of articles entailing administrative liability for illegal interference in entrepreneurial activity, violation of the procedure for conducting inspections.

Thus, Article 173 of the Code of Administrative Infractions is dedicated to the illegal interference of officials of state bodies exercising supervisory and control functions, as well as local executive bodies, in the activities of individual entrepreneurs, legal entities by issuing illegal acts and giving illegal orders that impede their entrepreneurial activity, and entails a fine for perpetrators in the amount of one hundred monthly calculation indices [7].

Based on the data of legal statistics on the facts of illegal interference of officials in entrepreneurial activity in 2016, under Article 173 of the Code of Administrative Infractions, 4 penalties were issued. In 2017 there was zero statistics. In 2018, 2 decisions were issued, 1 of which was terminated due to the lack of an administrative offense. In the first half of 2019 there was 1 resolution, which was terminated due to the lack of an administrative offense.

Compared with the previous period, these statistics on the facts of illegal interference by officials in entrepreneurial activity have significant differences.

So, earlier the Code of the Kazakh Soviet Socialist Republic on Administrative Infractions, adopted at the eighth session of the Supreme Council of the Kazakh Soviet Socialist Republic of the tenth convocation on March 22, 1984, contained article 169–4, which read as follows: «Illegal interference of officials of state bodies exercising supervisory and control functions, as well as akims of all levels and their deputies in the activities of citizens (individual entrepreneurs) and legal entities, including in the form of issuing illegal acts and giving illegal orders that impede their business, entails a fine in the amount of twenty to fifty sizes of the monthly calculation indicator established by law» [8].

In 2000, under the aforementioned article, 98 materials were submitted to the court, decisions (decisions) were issued in relation to 112 persons, of which: 97 were brought to administrative responsibility, administrative penalties were imposed; 4 — terminated in connection with the transfer of cases to the prosecuting authority; 11 — terminated due to other circumstances.

In our opinion the main reason for the current situation is the absence in the law on administrative offences, a clear understanding of the category of «illegal interference in entrepreneurial activity» and the limits demarcate areas of administrative and criminal liability, and the dispositions of the article the clause

«...performing Supervisory and control functions...», narrowing the circle of subjects, to whom, on aforementioned formal basis, the question of liability do not apply.

According to paragraph 4 of the Normative Decree of the Supreme Court of the Republic of Kazakhstan «On Certain Issues of the Application by the Courts of the Rules of the Special Part of the Code of the Republic of Kazakhstan on Administrative Infractions» No. 7 of October 6, 2017, the courts, when considering cases of administrative offenses under Article 173 of the Code of Administrative Infractions, should take into account that the cancellation of decisions on cases of administrative infractions in relation to business entities indicates illegal bringing them to administrative responsibility and may entail consequences provided by law. However, such a cancellation alone is not enough for the actions of the bodies (officials) that issued the canceled decisions to be indicative of an offense under Article 173 of the Code of Administrative Infractions. An official may not be blamed for the performance of his (her) official duties in the absence of evidence of illegal interference in entrepreneurial activity.

Illegal interference by government officials may result in abuse of power or abuse of authority. Illegal interference is accompanied by the issuance of an act, giving instructions or other actions that are subsequently declared illegal in the prescribed manner [9].

As previously noted, according to the results of 2018, 260 facts were suppressed in the direction of protecting the business by the Anti-Corruption Service from illegal interference by state bodies, 199 officials were brought to justice, 104 were convicted, and the rights of more than 400 entrepreneurs were protected.

Meanwhile, based on the information of legal statistics, the issue of bringing to responsibility the indicated at least 95 not convicted officials under Article 173 of the Code of Administrative Infractions was not initiated, which also indicates the presence of relevant problems in law enforcement.

We share the opinion of Davydova N.Yu. that the task of protecting the rights, freedoms and legitimate interests of citizens is also solved by the institution of responsibility of bodies and officials to the state [14; 48].

Taking into account that the transfer of consideration of the issue of bringing to administrative responsibility to the category of disciplinary proceedings applies to the persons specified in Article 32 of the Code of Administrative Infractions, among whom are law enforcement officials, these statistics indicate that there are problems with the enforcement of Article 173 of the Code of Administrative Infractions. To reveal the full potential of the application of this article, careful legislative revision is necessary, with consideration of the prospects for a corresponding extension of Part 2 of Article 32 of the Code of Administrative Infractions.

Criminal liability. In the scientific world, a number of scholars' works are devoted to the issue of criminal liability for infringement of the rights of entrepreneurs, which focus on such criminal offenses as «Corporate raiding» and «Interfering with legal entrepreneurial activity».

It should be noted that the practice of initiating criminal cases and bringing to the justice the perpetrators of these criminal offenses is actually identical with the enforcement of Article 173 of the Code of Administrative Infractions. Currently, these standards have practically zero statistics.

For the period from 1998 to the 1st half of 2019, 17 cases were submitted to the courts under the article «Interfering with legal entrepreneurial activity», and under the article «Corporate raiding» from 2011 to the 1st half of 2019 — 2 cases.

We do not exclude the fact that illegal actions of perpetrators who infringe on the rights of business entities find a corresponding response. The current criminal law provides for such criminal offenses as «Abuse of official authorities» (Article 361 of the Criminal Code of the Republic of Kazakhstan, hereinafter — the Criminal Code), «Excess of powers or official authorities» (Article 362 of the Criminal Code), «Inaction on service» (Article 370 of the Criminal Code), «Negligence» (Article 371 of the Criminal Code) [10], for each of which there are certain statistical indicators.

Meanwhile, a number of criminal offenses that affect the rights of business entities are also associated with other areas (for example, criminal offenses against property, individuals, in the economic sphere and others), do not belong to the sphere of corruption and other criminal infractions against the interests of the state service and the state management.

Taking into account the specifics of the objects of criminal offenses to which the wrongful acts of the guilty persons are directed, we believe that the current practice does not fully correspond to the level of proper response to ensure the protection of the rights of entrepreneurs. This circumstance is associated with such elements of the criminal offenses as the objective and subjective parties, which today in the legislation have a narrow form in relation to the victim side that is actually affected, to business entities.

Civil responsibility. In the scientific world and the business environment, the problem of property liability of officials is being actively discussed, which affects business entities and makes them defenseless.

The following scientists, such as Suleymenov M.K., Basin Yu.G., NorV.S., Ripinsky S.Yu., Mirzoyev P.Z., Skaryukin V.P., Suprun S.V., Tarlo A.E., Stupnitskaya Yu.A., Zuyeva M.V., Ostrikova L.K., Minakov I.A., Koliyeva A.E., Voitenko O.N., Roshchin M.E., Muravsky V.F., Kovalenko A.A., Kirilova N.A., Nadezhdin N.N., Proshchalygin R.A., Panteleyeva A.A., Korolev I.I., Popov V.V., Bogdanov V. P. and others, devoted their scientific work to this issue.

According to professor M.K. Suleymenov, for property liability the main thing is the compensation function, the restoration of violated rights, and not punishment, as in other branches of law. When restoring rights, the main thing is to get compensation. In this case, no one is interested in the psychic attitude of the offender to the offense, the fact itself and its wrongfulness are important.

The statement made by G.F. Shershenevich has not lost its significance, he wrote: «The consequences of an offense are expressed mainly in two forms: 1) punishment and 2) compensation for harm. The punishment consists in causing to the violator the right to suffer by depriving him (her) of any good, secured to him (her), like all citizens, with the right: life, liberty, bodily integrity, property inviolability (fine, confiscation). The compensation of the victim of an offense for harm caused to him (her) by the violator consists in restoring the disturbed balance of interests; in the equation of the reduction in the value of one property at the expense of the value of the property of the offender» [11].

According to Ripinsky S.Yu., the right of the entrepreneur to claim to the state for compensation for harm, being private, being one of the civil-legal methods of protecting the violated right, should be governed by the same rules that govern the entrepreneur's corresponding right to persons who are in equal to him (her) position. The scope of the relevant powers should be the same for the exemptions established by law [12; 42].

Each state, which claims to be legal, must ensure the inevitability of the responsibility of all perpetrators, without exception: citizens, organizations, officials of state bodies. In the consciousness there constantly must be the idea of the possibility of «unpleasant» legal consequences for the violator, unprofitable for him (her) as in material, so and in moral terms.

According to the judicial report for 2018, 22,500 complaints were received by the judicial authorities on the issue of appealing against actions, decisions of state bodies and public servants. Taking into account that in this report there is no corresponding column on the total number of claims on disputes on compensation for the harm caused by illegal actions, decisions of state bodies and civil servants, as part of this work, data are presented on disputes on compensation for harm caused by illegal actions of inquiry bodies, preliminary investigation, Prosecutor's office and court.

As we noted above, in 2018 only investigating judges satisfied 983 (754 in the first half of 2019) complaints about actions (inaction) and decisions of the criminal prosecution authorities, the prosecutor. In disputes on compensation for harm caused by illegal actions of the inquiry bodies, preliminary investigation, Prosecutor's office, court, in 2018, the judicial authorities, taking into account the balance of unfinished cases for the previous period, received 107 complaints (233 in 2016; 137 in 2017; 88 in the first half of 2019), of which 68 (140; 95; 40) were considered with a decision, 50 (110; 74; 35) were satisfied.

Considering as an error the statutory period of limitations for filing claims on disputes on compensation for the harm, considering the account in the statistical data of the claims made against the illegal actions of the court, as well as the presence of other mechanisms for appealing illegal actions (inaction) and decisions of officials of public authorities, in general, and law enforcement agencies, in particular, these statistical data indicate that this institution is not widely used in practice.

In our opinion, the main problems of the weak work of this institution are:

1) Difficulties in proving guilt, lengthy and high workload of judicial procedures related to filing lawsuits against specific state bodies and officials, which create obstacles for citizens and business entities to protect their rights. In our opinion, it is necessary to consider the issue of separate regulation in the civil procedure legislation of the judicial procedure of these proceedings.

2) Fear of business entities about possible subsequent problems with state authorities, in general, and law enforcement agencies, in particular, in case of the appeal to court with the issue of compensation of the caused harm, damage or restoration of the lost benefit. In this regard, as part of the ongoing digitalization, it is necessary to consider at the legislative level the issue of initiating these proceedings without fail, regardless of the amount of damage caused, thereby excluding direct contact between the business entity whose rights are violated and the persons who committed these violations.

Conclusions

Thus, a uniform practice of responding to violations of the rights of entrepreneurs by government officials and organizations is currently ensured. However, there are a number of difficulties in bringing the perpetrators to an established liability and redress for persons whose rights are violated. There has been a practice in the use by authorized bodies of alternative measures of responsibility against perpetrators, which is caused by such factors as a lack of a clear understanding in the categories of «Illegal interference in entrepreneurial activity», «Interfering with legal entrepreneurial activity», and «Corporate raiding». Generalizing the judicial practice, which we conducted in the framework of the study, showed that in order to ensure uniformity in the interpretation and application of legislation in the practice of authorized state bodies, it is necessary to eliminate conflicts, introduce clarifications, additions to certain norms of legislative acts and normative orders of the Supreme Court.

References

- 1 Жетписбаев Б.А. Теоретические проблемы административно-правового принуждения в Республике Казахстан: моногр. / Б.А. Жетписбаев. — Алматы: Данекер, 2001. — 410 с.
- 2 Выступление Главы государства К. Токаева на расширенном заседании Правительства [Электронный ресурс]. — Режим доступа: https://akorda.kz/ru/speeches/internal_political_affairs/in_speeches_and_addresses/vystuplenie-glavy-gosudarstva-k-tokaeva-na-rasshirennom-zasedanii-pravitelstva/ (дата обращения 18.12.2019 г.)
- 3 Рудакова Н.А. Конституционное право граждан на обращения в государственные органы и органы местного самоуправления: дис. ... канд. юрид. наук / Н.А. Рудакова. — М., 2002. — 176 с.
- 4 Ежегодный доклад Президенту Республики Казахстан [Электронный ресурс]. — Режим доступа: https://ombudsmanbiz.kz/rus/ezhegodnyi_doklad/?cid=38/ (дата обращения 18.12.2019 г.)
- 5 Пустовалова И.Н. Ответственность государственных служащих по законодательству Кыргызской Республики: дис. ... канд. юрид. наук / И.Н. Пустовалова. — Алматы, 1999. — 166 с.
- 6 Национальный доклад о противодействии коррупции [Электронный ресурс]. — Режим доступа: <http://qyzmet.gov.kz/ru/kategorii/nacionalnyu-doklad-o-protivodeystvii-korrupcii/> (дата обращения 18.12.2019 г.)
- 7 Кодекс Республики Казахстан от 5 июля 2014 г. № 235-V «Об административных правонарушениях» (с изм. и доп. по сост. на 03.07.2019 г.) [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus/docs/K140000235/> (дата обращения 18.12.2019 г.)
- 8 Кодекс Казахской ССР (принят на VIII сессии Верховного Совета Казахской ССР X созыва 22 марта 1984 г.) (утратил силу) «Об административных правонарушениях» [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus/docs/K840001000/> (дата обращения 18.12.2019 г.)
- 9 Нормативное Постановление Верховного Суда Республики Казахстан от 6 октября 2017 г. № 7 «О некоторых вопросах применения судами норм Особенной части Кодекса Республики Казахстан об административных правонарушениях» (с изм. и доп. по сост. на 31.05.2019 г.) [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus/docs/P170000007S/> (дата обращения 12.12.2019 г.)
- 10 Кодекс Республики Казахстан от 3 июля 2014 г. № 226-V «Уголовный кодекс Республики Казахстан» (с изм. и доп. по сост. на 28.10.2019 г.) [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus/docs/K140000226/> (дата обращения 18.12.2019 г.)
- 11 Сулейменов М.К. Ответственность в гражданском праве [Электронный ресурс] / М.К. Сулейменов. — Режим доступа: <https://journal.zakon.kz/203608-otvetstvennost-v-grazhdanskom-prave.html> (дата обращения 18.12.2019 г.)
- 12 Рипинский С.Ю. Имущественная ответственность государства за вред, причиняемый предпринимателям незаконными действиями (бездействием) органов исполнительной власти: дис. ... канд. юрид. наук / С.Ю. Рипинский. — СПб., 2002. — 203 с.
- 13 Киздарбекова А.С. Деятельность Национальной палаты предпринимателей как институциональный механизм снижения предпринимательских рисков в Республике Казахстан [Электронный ресурс] / А.С. Киздарбекова, А.Е. Карибаева, Г.Б. Асетова. Режим доступа: https://law-vestnik.ksu.kz/srch/2016_Law_3_83_2016.pdf (дата обращения 18.12.2019 г.)
- 14 Давыдова Н.Ю. Юридическая природа ответственности органов и должностных лиц местного самоуправления перед гражданами [Электронный ресурс] / Н.Ю. Давыдова. — Режим доступа: https://law-vestnik.ksu.kz/srch/2014_Law_3_75_2014.pdf (дата обращения 18.12.2019 г.)

А.Қ. Рахметоллов, А.С. Қыздарбекова, С.Д. Бекішева, Л. Тылл

Кәсіпкерлердің құқықтарын бұзғаны үшін лауазымды тұлғаларды жауапкершілікке тарту туралы

Мақалада мемлекеттік органдар мен ұйымдардағы лауазымды тұлғалар кәсіпкерлердің құқықтары бұзылған жағдайда олардың қорғалуын қамтамасыз етуге жауап қайтарудың тиімділігін талдауға арналған. Шенеуніктердің қызметін бағалаудың маңызды көрсеткіштерінің бірі — кәсіпкерлік

субъектілерінің өтініштері. Авторлар құқық қолдану тәжірибесінде кездесетін кәсіпкерлердің құқықтарының бұзылуына, сондай-ақ кінәлілердің жауапкершілігін заңнамалық реттеудің қиыншылықтарына назар аударған. Әр түрлі органдар мен ұйымдардың лауазымды тұлғаларымен қатар, құқық қорғау органдарының қызметкерлері кәсіпкерлердің құқықтарының бұзылуына жол береді. Қазақстан Республикасының «Әкімшілік құқық бұзушылық туралы» кодексінің 32-бабының ережесі, оған сәйкес құқық қорғау органдарының лауазымды тұлғалары қызметтік міндеттерін орындау кезінде жасалған әкімшілік құқық бұзушылықтар үшін тиісті органдарда қызмет ету тәртібін реттейтін нормативтік құқықтық актілерге сәйкес жауаптылықта болады, тиісті назар аударуды қажет етеді. Сонымен бірге, қазіргі уақытта әкімшілік және қылмыстық жауапкершіліктің шектерін ажыратып, заңнамалық деңгейде «кәсіпкерлік қызметке заңсыз араласу», «заңды кәсіпкерлік қызметке кедергі жасау» және «рейдерлік» категорияларын белгілеу қажеттілігі туындайды.

Кілт сөздер: кәсіпкер, кәсіпкерлік, бизнес, құқықтардың бұзылуы, зиян, шағымдар, лауазымды тұлғалар, құқық қорғау органдары, жауапкершілік, заңдылық.

А.К. Рахметоллов, А.С. Киздарбекова, С.Д. Бекишева, Л. Тылл

К вопросу ответственности должностных лиц за нарушение прав предпринимателей

Статья посвящена анализу эффективности реагирования должностных лиц государственных органов и организаций на нарушения прав предпринимателей, обеспечения их защиты. Одним из ключевых показателей оценки деятельности должностных лиц являются обращения субъектов предпринимательства. Авторами уделено внимание на характерные нарушения прав предпринимателей, встречающиеся в правоприменительной практике, а также на проблемы законодательного регулирования ответственности виновных лиц. Наряду с должностными лицами различных органов и организаций, нарушения прав предпринимателей допускаются сотрудниками правоохранительных органов. Положение ст. 32 Кодекса Республики Казахстан «Об административных правонарушениях», согласно которому сотрудники правоохранительных органов за административные правонарушения, совершенные при исполнении служебных обязанностей, несут ответственность в соответствии с нормативными правовыми актами, регламентирующими порядок прохождения службы в соответствующих органах, требует соответствующего внимания. В работе также сделан вывод о том, что в настоящее время назрела необходимость разграничения пределов административной и уголовной ответственности, конкретизация на законодательном уровне категорий «незаконное вмешательство в предпринимательскую деятельность», «воспрепятствование законной предпринимательской деятельности», «рейдерство».

Ключевые слова: предприниматель, предпринимательство, бизнес, нарушение прав, вред, обращения, должностные лица, правоохранительные органы, ответственность, законность.

References

- 1 Jetpisbayev, B.A. (2001). *Teoreticheskie problemy administrativno-pravovogo prinuzhdeniya v Respublike Kazakhstan. [Theoretical problems of administrative law enforcement in the Republic of Kazakhstan]*. Almaty: Daneker [in Russian].
- 2 Vystuplenie Hlavu gosudarstva K. Tokaeva na rasshirennom zasedanii Pravitelstva [Speech by the Head of State K. Tokayev at an expanded meeting of the Government]. *akorda.kz*. Retrieved from https://akorda.kz/ru/speeches/internal_political_affairs/in_speeches_and_addresses/vystuplenie-glavy-gosudarstva-k-tokaeva-na-rasshirennom-zasedanii-pravitelstva/ (data obrashcheniya 18.12.2019 g.) [in Russian].
- 3 Rudakova, N.A. (2002). Konstitutsionnoe pravo hrashdan na obrashcheniia v gosudarstvennye orhany i orhany mestnoho samoupravleniia [The constitutional right of citizens to appeal to state bodies and bodies of local self-government]. *Candidate's thesis*. Moscow [in Russian].
- 4 *Ezhegodnyi doklad Prezidentu Respubliki Kazahstan* [Annual report to the President of the Republic of Kazakhstan]. *ombudsmanbiz.kz*. Retrieved from https://ombudsmanbiz.kz/rus/ezhegodnyi_doklad/?cid=38/ (data obrashcheniya 18.12.2019 g.) [in Russian].
- 5 Pustovalova, I.N. (1999). *Otvetstvennost gosudarstvennykh sluzhashchikh po zakonodatelstvu Kyrghyzskoi Respubliki* [Responsibility of civil servants according to the legislation of the Kyrgyz Republic]. *Candidate's thesis*. Almaty [in Russian].
- 6 Natsionalnyi doklad o protivodeistvii korruptsii [National Anti-Corruption Report]. *qyzmet.gov.kz*. Retrieved from <http://qyzmet.gov.kz/ru/kategorii/nacionalnyy-doklad-o-protivodeystvii-korruptcii/> [in Russian].
- 7 Kodeks Respubliki Kazahstan ot 5 iuliia 2014 hoda No. 235-V «Ob administrativnykh pravonarusheniakh» [On Administrative Infractions]. *adilet.zan.kz*. Retrieved from <http://adilet.zan.kz/rus/docs/K1400000235/> [in Russian].
- 8 Kodeks Kazahskoi SSR (priniat na VIII sessii Verkhovnoho Soveta Kazahskoi SSR X sozyva 22 marta 1984 hoda) «Ob administrativnykh pravonarusheniakh» [On administrative Infractions] (utratil silu). *adilet.zan.kz*. Retrieved from http://adilet.zan.kz/rus/docs/K840001000_/ (data obrashcheniia 18.12.2019 h.) [in Russian].
- 9 Normativnoe postanovlenie Verhovnoho Suda Respubliki Kazahstan ot 6 oktiabria 2017 hoda № 7 «O nekotorykh voprosakh primeneniia sudami norm Osobennoi chasti Kodeksa Respubliki Kazahstan ob administrativnykh pravonarusheniakh»

[On some issues of application by the courts of the norms of the Special Part of the Code of the Republic of Kazakhstan on Administrative Infractions]. *adilet.zan.kz*. Retrieved from <http://adilet.zan.kz/rus/docs/P170000007S/> [in Russian].

10 Kodeks Respubliki Kazahstan ot 3 iiulia 2014 hoda No. 226-V «Uholovnyi kodeks Respubliki Kazahstan» [The Criminal Code of the Republic of Kazakhstan]. *adilet.zan.kz*. Retrieved from <http://adilet.zan.kz/rus/docs/K1400000226> [in Russian].

11 Suleymenov, M.K. Otvetstvennost v grazhdanskom prave [Responsibility in civil law]. *journal.zakon.kz*. Retrieved from <https://journal.zakon.kz/203608-otvetstvennost-v-grazhdanskom-prave.html> [in Russian].

12 Ripinsky, S.Yu. (2002). Imushchestvennaia otvetstvennost gosudarstva za vred, prichiniaemyi predprinimateliam nezakonnymi deistviiami (bezdeistviem) orhanov ispolnitelnoi vlasti [Property liability of the state for harm caused to entrepreneurs by illegal actions (inaction) of executive authorities]. *Candidate's thesis*. Saint Petersburg [in Russian].

13 Kizdarbekova, A.S., Karibaeva, A.E., & Asetova G.B. Deiatelnost Natsionalnoi palaty predprinimatelei kak institutsionalnyi mekhanizm snizheniia predprinimatelskikh riskov v Respublike Kazahstan [The activities of the National Chamber of Entrepreneurs as an institutional mechanism for reducing business risks in the Republic of Kazakhstan]. *law-vestnik.ksu.kz*. Retrieved from https://law-vestnik.ksu.kz/srch/2016_Law_3_83_2016.pdf [in Russian].

14 Davydova, N.Yu. Yuridicheskaiia priroda otvetstvennosti orkhanov i dolzhnostnykh lits mestnoho samoupravleniia pered grazhdanami [The legal nature of the responsibility of local authorities and officials to citizens]. *law-vestnik.ksu.kz*. Retrieved from https://law-vestnik.ksu.kz/srch/2014_Law_3_75_2014.pdf [in Russian].