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ADMINISTRATIVE PENALTIES AND MEASURES OF ADMINISTRATIVE AND EDUCATIONAL INFLUENCE APPLIED TO MINOR OFFENDERS IN THE REPUBLIC OF KAZAKHSTAN

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The procedure for imposing administrative penalties on minor violators of administrative bans is carried out on general grounds in cases directly provided for by law. In addition, this order has its own specifics.

Thus, in accordance with the code of administrative offences of the Republic of Kazakhstan, when determining the conditions for the application of types of administrative penalties, the current legislation provides for a number of significant exceptions in relation to persons who have committed administrative offenses in adolescence. The educational role of administrative penalties applied primarily to minors will be significantly strengthened and the possibility of replacing administrative sanctions with measures of administrative and educational influence will be expanded.

Thus, in accordance with Part 2 of Article 65 of the code of administrative offenses, "an administrative penalty may be imposed by applying educational measures to a minor who has committed an administrative offense." [1] in addition, the legislator takes into account the fact that minor offenders depend on their age, the nature of the administrative offense committed, the method of its commission, the reasons, the goals, etc. Therefore, the degree of public danger of crimes committed by adolescents in most cases is lower than that of similar crimes committed by adults.

Solving the issue of the nature and application of punishment helps to identify and ensure the most favorable regime of educational influence by eliminating harmful influences on the teenager and consolidating the results of educational work.

Thus, an administrative penalty is a measure of state coercion applied to it by a judge, authorities (officials) authorized by law for the commission of an administrative offense and is expressed in the form of deprivation or restriction of the rights and freedoms of a minor who has committed an offense provided for in the Code of administrative offenses.

In addition, administrative penalties are applied in order to restore social justice and educate the person who committed the offense, in the spirit of compliance with the requirements of legislation and respect for the rule of law, as well as in order to prevent the commission of new offenses by both the offender himself and other persons.

An administrative penalty does not aim to inflict pain on a person who has committed an administrative offense or to discriminate against his / her human dignity, as well as to damage his / her business reputation. Article 55 of the code of administrative offences establishes that an administrative penalty for an administrative offense is applied in exact accordance with the provisions of this code within the limits provided for in the article of the special part of the penalty for an administrative offense.

The administrative penalty must be fair, correspond to the nature of the offense, the circumstances of its commission, the personality of the offender, including the behavior before and after the commission of the offense, property status, conditions that facilitate or aggravate administrative liability.

These conceptual provisions indicate that when imposing an administrative penalty on a minor, courts and authorized bodies (relevant persons) must be guided by the requirements of the law. They are based on the fact that administrative penalties against minors should be aimed at correcting and re-educating the perpetrator and preventing the commission of new offenses. They equally protect against unjustified severe punishment, as well as unjustified soft punishment, and also prevent unjustified release of minor offenders from administrative punishment.

The harsh punishment imposed, which does not correspond to the severity of the Committed Act and the personality of the minor, causes great harm to the cause of his correction and upbringing. The committed injustice is painfully felt by teenagers, contributes to its malice, pessimism and creates favorable conditions for further illegal activities. It cannot be said that an unjustified release from punishment or an appointment with an unjustifiably lenient measure of punishment causes less harm, since it affects the appearance of a feeling of impunity in a teenager, in addition, it sometimes gives him a "physical" opportunity to continue illegal activities[2; 7-13].

The imposition of an administrative penalty does not exempt it from the obligation for which the penalty was imposed: it is obliged to eliminate the violations committed and compensate for the damage caused.

The age of a minor is taken into account as a mitigating circumstance in combination with other mitigating and aggravating circumstances. At the same time, administrative penalties for minors are applied not all, but only those that are most common in administrative practice. These include: a warning, an administrative fine, and certain types of other administrative penalties, for example, administrative arrest does not apply to minor offenders.

The legal specifics of applying administrative penalties to minor offenders are reflected in Article 66 of the Code of administrative offences of the Republic of Kazakhstan. In accordance with this article, a fine is imposed if the minor has an independent income or property that can be foreclosed on. The amount of an administrative fine imposed on a minor may not exceed ten monthly calculation indices, regardless of the amount of the fine provided for in the article of the special section. If a minor does not have sufficient property to pay a fine, the fine is imposed on the parents or their surrogates on general grounds.

Deprivation of a special right minors can be isolated for a period of no more than one year.

Other types of administrative penalties (with the exception of administrative arrest), as well as measures of administrative and legal influence specified in Articles 41 and 52 of the Code of administrative offenses, apply on general grounds to minors guilty of committing an administrative offense. When imposing an administrative penalty on a minor in accordance with Article 67 of the Code of administrative offences of the Republic of Kazakhstan, in addition to the circumstances provided for in articles 56 and 57 of this code, the conditions of his life and

upbringing, the level of mental development, other characteristics of the individual, as well as the influence of older persons on him are taken into account.

For one administrative offense, one main or Main and additional administrative penalty may be imposed. In accordance with Article 71 of the Code of administrative offences and Article 62 of this document, the statute of limitations is reduced by half when releasing minors from administrative liability or execution of an administrative penalty. A minor who has been subjected to an administrative penalty for an administrative offense is considered to have been subjected to this penalty within six months from the date of completion of the execution of the decision on the imposition of an administrative penalty.

Features of liability of minors who have committed an offense, they can be subject not only to punitive measures, but also to measures of administrative and educational influence. Educational measures of influence are one of the forms of state response and coercion aimed at combating delinquency by minor delinquents, as well as an alternative to administrative responsibility.

Such views are confirmed by the norms of current administrative legislation. Thus, in accordance with Article 75 of the code of the Republic of Kazakhstan on administrative offenses "a minor who has committed an administrative offense for the first time may be released from administrative liability or execution of the imposed administrative penalty by a court, a body (official) authorized to consider cases of administrative offenses with the application of educational measures provided for by law".

Measures of educational influence can be classified according to their direction into the following types :

- moral measures (warnings, punishments, reprimands);
- measures of a property nature (fine, confiscation, compensation for material damage);
- punishment, appeal to the identity of the offender and related to the restriction of his rights and freedoms (transfer to supervision, referral to a special medical and educational institution) [3; 47].

Of course, all the above-mentioned measures of influence applied to a minor delinquent have educational significance and are included in the system of general and special preventive measures aimed at eliminating juvenile delinquency. When assigning measures of educational influence, the circumstances in which the life of a minor takes place, the level of his general upbringing, the level of mental development, other characteristics of the individual, as well as the influence of adults on him, are taken into account. All this should be taken into account in order to correctly choose effective measures of influence that have the greatest impact on the upbringing of a teenager.

"In order to clarify the concept of ""administrative and educational influence"", the legislator points out that the new code of administrative offenses includes special administrative and educational measures to influence the consciousness of a minor, which were not previously reflected in the code of administrative offences of 2001." Thus, in accordance with Article 66 of the Code of administrative offences, the following measures of educational influence may be assigned to a minor who has committed an administrative offense:

- a) explanation of the law;
- b) assignment of the obligation to compensate for the damage caused;
- c) restriction of leisure and establishment of special requirements for a minor;

At the same time, this code indicates that the legislation may provide for other measures of educational influence. In addition, a minor may be assigned several measures of educational influence at the same time. This confirms that they are not punitive measures and perform only educational functions, not punitive ones.

The possibility of applying several measures of educational influence at the same time increases their effectiveness. For example, measures of educational influence, such as the interpretation of the law and the restriction of free time; the obligation to compensate for the damage caused and the restriction of free time, are quite compatible.

The disposition of Article 70 of the Code of administrative offences of the Republic of Kazakhstan reveals the essence and content of measures of educational influence on minor offenders provided for in Article 69 of this code:

- the interpretation of the law consists in explaining to a minor the damage caused by his actions and the legal consequences of repeated Commission of an offense provided for by this code;

- the obligation to compensate for the damage caused is imposed taking into account the property status of the minor and the presence of appropriate labor skills;

- restriction of free time and establishment of special requirements for the behavior of a minor may provide for a ban on visiting certain places, using certain forms of free time, including driving a vehicle, staying outside the house after a certain time of day, leaving other places without the permission of the court or the body (official) authorized to consider cases of administrative offenses. In respect of a minor, special requirements for the behavior of the offender provided for in Article 54 of this code may be established, as well as a requirement to complete training or get a job with the help of the commission for the protection of the rights of minors.

The provisions of this article once again confirm that the Republic of Kazakhstan confidently enters the international legal space and complies with international, standard rules for the administration of justice for minors. As proof of this:

1. In accordance with the United Nations Standard Minimum Rules for the administration of juvenile justice or the "Beijing rules", the competent authority shall be guided by several principles when choosing measures of influence of a minor offender:

- a) Measures of influence should be measured not only by the circumstances and severity of the offense, but also by the condition and needs of the minor, as well as in accordance with the requirements of society;

- b) the decision to restrict the personal freedom of a minor should be made only after careful consideration of the issue, and the restriction should be brought to the minimum possible level;

- c) a minor offender may not be deprived of his / her personal liberty if he / she repeatedly commits violence against another person or other serious offenses, as well as in the absence of other appropriate measures of influence;

- d) when considering cases of minors, their survival in poor conditions should play a crucial role.

The main difficulty in developing these principles ends with contradictions between Re-education and blame, between help and punishment, between a measure of influence in the interests of protecting society as a whole, between general prevention and individual punishment.

The contradictions between these approaches are more pronounced when considering cases of minors than adults. Due to the variety of causes and effects that are a feature of juvenile cases, the relationship between these substitute measures is complex.

In order to provide greater flexibility and, if possible, avoid drawing conclusions, the competent authorities should place a wide range of measures of influence in the resolution of the case. Thus, the measures that can be implemented in combination with each other are::

- resolution on care, management and supervision;
- probation;
- resolution on working for the benefit of society;
- financial punishment, compensation and restitution;
- resolution on the adoption of interim and other measures;
- resolution on participation in group psychotherapy and other similar activities;
- resolutions on the transfer of education, change of residence or other educational measures;
- other relevant resolutions;
- no minor may be removed from parental supervision, partially or completely, unless this measure is justified by the circumstances surrounding his case [4,412].

These measures of influence and sanctions are promising and deserve to be applied in Kazakhstan. Their common feature is, first of all, their reliance on society as an effective solution tool. Re-education through the involvement of society is a traditional measure that covers many aspects. In this regard, the relevant authorities should support public organizations in providing their services. In a number of these measures, an important role is assigned to the family, which is the "natural and basic nest of society". In addition to the rights of parents within the family, they are obliged to ensure the care and supervision of their children. Therefore, the separation of children and parents is very important and the last resort. He may be motivated by the facts of the case to take this important step, such as child abuse.

2. As another example, we present an excerpt from the juvenile court under the Illinois State (U.S.) act of 1889:

- in case of committing a minor offense, the court may terminate the case in accordance with the circumstances of the case. He can send the child under the care and supervision of a probation agent;

"he can order the child to be placed under the supervision of a probation officer, allowing him to remain in his own home. In this case, the juvenile offender must visit the probation agent as many times as necessary, and in all cases that are considered necessary, they can be sent to the court for additional information. The court may transfer the teenager to the care and supervision of the probation agent, placing him in a decent family under the friendly supervision of the said probation agent;

- placing a teenager in a family in a boarding house guarantees that the cost of the boarding house can be paid through voluntary donations or without appropriate expenses, etc. [5,197].

3. The third example is related to the experimental procedure. The laws of some foreign countries make it possible to conduct experiments in the selection of procedures and measures to influence the consciousness of a minor offender. Thus, in Germany, the so-called "Lubeck model", which deals with juvenile delinquents, is widespread, that is, it is determined by the structure of actions:

- the police will send a notification to the teenager about the need to come to the prosecutor for a preventive interview;

- such an interview is mandatory and is an alternative to administrative and criminal prosecution;

- in addition to the interview, the prosecutor may assign the teenager the task of performing public works, send him to the Youth Affairs Service, etc.

Thereby, the code of administrative offences has made significant changes to the procedure for bringing minors to administrative responsibility, taking into account the age and other characteristics of adolescents, thereby providing a wide range of opportunities for its correction by the authorized body.

It should be noted that administrative and educational work among juvenile delinquents has a state scale, as one of the successes in building a democratic legal state and civil society is the education of young people as a guarantor of the future of the Republic of Kazakhstan.

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