

Zh.B. Karipbaev, K.S. Mussin

*Ye.A. Buketov Karaganda State University, Kazakhstan
(E-mail: zhasulankaripbaev@mail.ru)*

Concept of bringing minors to administrative responsibility

The purpose of this article is to consider the legal issues of the concept of attracting lawyers, sociologists, psychologists and other specialists who study the problems of the Genesis of offenses and the laws of the mechanism of legal responsibility for administrative offenses. As practice shows in the article, 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. The author also emphasizes in this article that understanding and studying the Genesis of the offense will help to identify the causes, motives, purpose and take appropriate preventive measures. If this is not an offense, it will at least help to prevent the offense that can be expected in the future. As you know, any society needs stability, security and prosperity, and they can not be accessible without the knowledge and use of domestic and international experience gained in the implementation of measures aimed at preventing and preventing juvenile delinquency. This is due to the fact that the degree of well-being of any state can be formulated on the basis of indicators that characterize its development and the extent of juvenile delinquency in this state.

Keywords: Administrative law, administrative offense, administrative responsibility, offense, administrative penalty, features of administrative responsibility.

Introduction

The current rapid dynamics of administrative offenses committed by minors in the Republic of Kazakhstan indicates insufficient measures to prevent and remind offenses committed by state bodies and public. This opinion is supported by the data from sociological surveys conducted by various researchers. Thus, 85 % of respondents asked how public authorities are effective in dealing with juvenile delinquency and experience these outcomes for the community, saying that they do not feel safe from criminal trespass, feel anxiety, anxiety or often fear before the attack [1; 24].

Therefore, one of the important directions of state policy implemented in this aspect 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 appropriate legal regulation of public relations and social actions requiring administrative responsibility.

According to the article 19 «about the Convention on the Rights of the child», the state should be an object to which the rights and legitimate interests of minors who have entered the criminal justice system have special consideration to protect the honor and dignity of the individual in all forms of physical and mental violence. [2; 108]. This can be attributed to both administrative and procedural forms in the consideration of juvenile cases and the involvement of children in administrative proceedings.

In this regard, it is important to note that in the Republic of Kazakhstan there is a risk of increasing number of minors (as victims, witnesses and people subject to administrative liability) involved in the administrative process to involve minors in administrative proceedings.

Current practice indicates a significant aggravation of the crime situation in the youth environment, and the ineffectiveness of previous measures to prevent juvenile delinquency in changing social and economic conditions of the state's development. For example, by analyzing some official statistics, from 1997 to 2000, according to the «Inquiry on the Status of Juvenile Offenses in Pavlodar city», there is a rapid growth of administrative offenses committed by minors in the city.

During this time in Pavlodar city 9045 minors were brought to administrative responsibility, including: in 1997 — 1070, in 1998 — 1633, in 1999 — 3785, in 2000. — 2548 people.

In this regard the most widespread and socially dangerous types of administrative offenses committed by minors are:

- drinking alcoholic beverages and visiting public places in a state of intoxication;
- use and storage of narcotic drugs and psychotropic substances.

For example, the number of juvenile offenders who were brought to administrative responsibility for drinking and intoxication in public places between 1997 and 2000: in 1997 — 921; In 1998 — 1500; In 1999 — 1668; 2000 — 1697.

In 1997 — 32, in 1998 — 55, in 1999 — 67, in 2000 — 12 juvenile offenders were identified for drug and psychotropic use.

The number of parents who were brought to administrative responsibility for administrative offenses: in 1997 — 34; in 1998 — 75; in 1999 — 2774; in 2000 — 1223.

Methods and materials

Methods of research work are based on individual scientific and general scientific methods of knowledge as normative-logical, historical, comparative law, analysis, synthesis, system-legal, etc. In the course of the research, theorems on the theoretical concepts of transport commitments were analyzed.

Results

Abovementioned action could be described as voluntary acts of conscience expressing the juvenile's illegal behavior. These actions are not only external but also internal. Therefore, as a rule, legal science, in its turn, is interested in those who are not interested in ordinary, everyday activities, but only those who have a positive or negative assessment.

Thus, unconscious, irresponsible behavior is not recognized as a crime, because it is not controlled by one's intelligence and will. Voluntary and unwise behavior of a person are not governed by the law and do not lead to legal liability. The role of rights in such behavior can only be conditionally stated. Therefore, when considering cases of administrative offenses of minors, the CCTB bodies and commissions on affairs of minors and protection of their rights may ask the court to refer a minor to specialized educational institutions, which may take into account the following factors:

- age group;
- living conditions and upbringing;
- level of mental development and other characteristics of the individual;
- social status;
- behavior of a minor;
- the role and influence of adults;
- motive, nature and gravity of the offense [3; 122].

For example, in Pavlodar there is an increase in behavioral criminalization of young children (11–14 years old) with the growth of adolescent offenses. According to the DIA of Pavlodar, 2 teenagers, 11–14 years old, were sent to a special school in Taraz by a court decision for a crime. It shows that the offending behavior of young children has shifted from administrative to criminal, depending on the public danger and the severity of the consequences. Such tragic outcome of juvenile justice cases nowadays calls for the need to strengthen prevention efforts with minors in the region and in Kazakhstan as a whole.

It is necessary to analyze thoroughly and summarize the results of preventive measures aimed at combating juvenile delinquency, as well as to study all mechanisms of involving minors to administrative responsibility.

The content and features of the administrative responsibility mechanism are important both theoretical and practical.

Theoretically, he reveals the laws and procedures for applying administrative liability to a juvenile delinquent, explain the process of affecting the offender's personality, and further explains the effectiveness of the authorities taking administrative liability measures in order to 'block' the offenses.

In practice, the analysis helps identify administrative and legal coercive measures that can prevent the further spread and commission of administrative offenses by juveniles. In this case, an administrative offense committed by minors is a ground for bringing minors and their parents to various administrative liability measures. At the same time, administrative offenses are the only basis for imposing administrative liability, that means that if there is no clearly stated offense, it cannot be said about administrative liability either.

As mentioned above, when engaging minors in administrative responsibility, they need to understand clearly the role of parents in their lives and the ability to fulfill their responsibilities.

Discussion

According to «the Regulations on the commission on minors' affairs and protection of their rights», parents or other legal representatives of the minor who do not fulfill their obligations to educate and bring up their children or have a negative effect on their normal physical and moral development the commission may also apply the following remedial measures to its legal representatives:

- to apply to court for recovery of material damage to a minor;
- petition to the trusteeship and guardianship authorities in case of a direct threat to the life and health of the minor, on the immediate removal of the minor from parents or other legal guardians, as well as on the removal of the trustee or guardian from the performance of their duties or the termination of the adoption agreement;
- restriction or deprivation of parental rights and petition for application of other measures provided by the legislation of the Republic of Kazakhstan.

In order to explain fully the administrative responsibility of minors used on the basis of administrative offenses, it is important to identify the essence of the concept of administrative responsibility and the specifics of administrative responsibility of minors.

There are many approaches to the first notion in the legal literature, that are based on various methods of researching law.

We give a few definitions to the spirit of past traditions of Soviet law:

- I.A. Galagan explains that «administrative responsibility involves the application and implementation of administrative penalties» [4; 41];
- I.S. Samoshchenko and M.H. Farukhshin administrative responsibility is «... a state compulsory service, «a response» «to a guilty offense», using a sanction of legal rules that accompany state and public prosecution, and humiliation of a person, and actions to be taken in accordance with the guilt's specific procedural rules» [5; 228].

In the modern legal literature there are many definitions of the concept of administrative responsibility. Let's compare some of the concepts of the authors of textbooks on the courses «Administrative Law» and «Administrative Liability», both the Kazakh and Russian scientists — the authors of the administration»:

- administrative responsibility is the type of legal liability of the authorized body (official), which is expressed in the imposition of an administrative penalty on a person (individual or legal entity) who committed an administrative offense in the manner, prescribed by the administrative legislation. [6; 130];
- administrative responsibility is a form of legal responsibility of the person who committed the offense, which is manifested by the imposition of an administrative penalty by an authorized body or an official [7; 161];
- administrative responsibility is a measure of administrative-legal coercion in the form of imposition of an administrative penalty on the person who committed an administrative offense [8; 39];
- administrative liability is a type of legal liability that is manifested by the imposition of an administrative penalty on the person who committed the offense. Administrative responsibility has the hallmarks of general legal responsibility [9; 269];
- administrative responsibility is a type of legal liability, in which the subject is the state, executive and legislative authorities, courts with authority in the field of administrative justice, officials of definite bodies, as well as authorized legal entities [10; 22];
- Administrative responsibility for legal liability inherent in all aspects of the latest law, based on legal norms related to the violation of legal norms, is determined by the regulatory legal acts of the authorized bodies, associated with state enforcement. On the other hand, administrative responsibility is an integral part of administrative coercion and has all the qualities it has. (performance of functional duties of functional entities, etc.) [11; 24];

It is appropriate to point out that the new Code on administrative offenses is still vague on the part of the legislator, who does not define administrative liability, that makes it difficult for this legal institution to understand adequately the meaning.

It's clear that all authors from the references provided by us are a measure of administrative responsibility, a punishment imposed by an authorized body (official) on a person who has committed an administrative offense. However, some inconsistencies need to be pointed out. Thus, some authors say that administrative responsibility is a form of legal responsibility, which in turn does not cause doubts. Other researchers believe that the concept of administrative responsibility is broader and is one of the components of an integrated le-

gal and regulatory framework that is used by government agencies (officials) for violating administrative sanctions.

An analysis of the various definitions of administrative responsibility makes one think about how the above mentioned definitions can be used to understand the concept of a juvenile institution of administrative responsibility.

Here it is necessary to note once again that in accordance with article 65 of the Code of administrative offenses, «people who have reached the age of 16, but not less than 18 years are recognized as minor» when committing an administrative offense. However, those who have reached the age of sixteen when committing an administrative offense, are recognized as capable of a legislator, meaning that they may be held administratively liable for an administrative offense.

It is the attainment of the legal age of the minor that underlies the application of administrative penalties. From this age, the minor is able to perceive and understand the moral and psychological aspects of administrative responsibility, taking into account his / her personality.

In accordance with part 2 of Article 65 of the Code of administrative offenses, the legislator states that «an administrative penalty may be applied to a minor who has committed an administrative offense using the methods of upbringing and influence him/her». Compulsory educational measures, as well as administrative penalties, are liability measures, but in essence they are equivalent administrative penalties.

Taking into consideration the above mentioned concepts, we can conclude that the concept of administrative responsibility of a minor is understood as a legal liability, which is manifested by the imposition of an administrative penalty or a disciplinary measure on a minor who has committed an administrative offense.

Thus, administrative responsibility of minors is a special type of legal liability and is characterized by the features of prevention (warning), alternative role, limitation and protection.

Administrative responsibility of minors differs from administrative responsibility of adults. Let us describe the most obvious of them.

The first group of features of the mechanism of administrative responsibility of minors is the circumstance which precludes administrative responsibility of minors. According to the applicable administrative legislation, the following are:

- firstly, during the counter course, one's mind was ill, meaning that he could not understand the physical nature and danger of his (inaction) or chronic mental illness, temporary mental disorders, mental retardation or other serious mental illness. Minors who have not managed them due to their administrative responsibility.

- secondly, due to the fact that all citizens of the Republic of Kazakhstan have the right to adequate protection, regardless of age, nationality, gender, race, religion, occupational or other special training and service status, the minors are in a state of adequate protection, that is, the identity of the guardian or other people, if the need arises, to cause harm to the encroachment upon protection of property, land and other rights, the legally protected interests of a society or the State from unlawful encroachments. In case of failure to go beyond the defense is allowed. At the same time, a minor, who has exceeded the necessary limits of protection due to fear, fear or intimidation, may not be subject to administrative liability;

- third, administrative responsibility of the minor, if it is proven that an administrative offense has been committed, and that it has solved the danger that directly threatens the life, health, rights and legitimate interests of that person or other people, the interests of society or the state, if the offense can be eliminated by other means in the absence and at the same time not exceeding the limit of extreme necessity.

- fourth, the administrative responsibility of the minor will be excluded if the offense committed by him is caused by force or mental force in case that the person can't control his actions.

The second group describes the features of administrative responsibility of minors in the context of circumstances that facilitate or aggravate liability for administrative offenses.

Circumstances that facilitate the administrative liability of minors are:

- first, the age of the minor;
- secondly, the minor's repentance over the offenses committed;
- third, to prevent the harmful effects of juvenile offenders, to compensate voluntarily for damage or to remedy the caused damage;
- fourthly, the commission of an administrative offense under the influence of strong excitement or serious personal or family circumstances;
- fifth, administrative offenses resulting from physical or mental abuse.

The circumstances which aggravate the responsibility of the minor for administrative offenses, include:

- illegal acts of the minor;
- past behavior and the number of offenses committed.
- repeated by a person, previously brought to administrative responsibility for a similar administrative offense, by virtue of which the period of time provided for by article 61 of this Code has not expired;
- involvement of a minor into an administrative offense;
- involvement of the guilty person in committing an administrative offense, people known to be suffering from severe mental disorders, or people under the age of administrative responsibility.;
- committing an administrative offense on the grounds of national, racial or religious hatred or enmity, a vengeance on the legitimate actions of others, as well as concealing or facilitating the commission of another offense;
- administrative offense by the person or his relatives in connection with the performance by that person of his official, professional or public duty;
- committing an administrative offense against a woman who is known to be pregnant in the guilty person, as well as with a young child, another defenseless or helpless person, or a dependent person on the guilty party;
- administrative offenses by a group of people;
- committing an administrative offense in the event of a natural disaster or other emergency;
- committing an administrative offense in a state of alcohol, drug or substance abuse is a circumstance which aggravates the liability for an administrative offense.

The third group of features of administrative responsibility of minors is presented in the form of the basis for release from administrative responsibility and administrative punishment:

- a minor who commits an act of an administrative offense, may be released from administrative responsibility for the change of circumstances, as well as due to a disease that impedes the imposition of an administrative penalty;
- if a minor who committed an offense with an administrative offense precludes the imposition of an administrative penalty, then he may be released from administrative responsibility or imposition of an administrative penalty, or an amnesty from additional penalties;
- a minor may be released from administrative responsibility in the case of minor injury, due to an administrative offense;
- a minor, who has committed an administrative offense, may be released from administrative responsibility by the judge, authorities (official), who are authorized to consider cases on administrative offenses, if he voluntarily compensated for the damage caused by an administrative offense, or otherwise compensated for the damage caused by the offense;
- a minor may be released from administrative liability in connection with the expiration of the statute of limitations.

One of the features of administrative responsibility of minors is that administrative offenses of minors are only dealt with in specialized inter-district courts in accordance with part 2 of article 684.

Finally, in accordance with applicable administrative law, the parents or other guardians of the minor may be held responsible as a measure of administrative liability for the minor. In addition to the above, it should be added that the Code on administrative offenses provides for administrative offenses that encroach on the rights of minors in Chapter 12. Summarizing the above, we can conclude:

- administrative responsibility of the minors is an effective measure of influence on the consciousness of the minors capable of creating conditions for the prevention and further prevention of infringement of the requirements of the administrative and legal norms by the minors;
- administrative responsibility of the minor is exercised not only in the public interest, but also in the interests of the juvenile, because timely administrative measures against it are the basis for the suspension of juvenile offenses, this eliminates the possibility of criminalizing a crime and thereby helps eliminate the likelihood of a teenager becoming involved in criminal liability in the future. It should be taken into consideration that repeated administrative offenses can eventually be classified as crimes. For example, in accordance with article 434 of the administrative Code, offenses that are considered to be minor hooliganism can be classified as hooliganism in accordance with article 293 of the criminal Code of the Republic of Kazakhstan.;
- administrative responsibility of the minors creates prerequisites for limiting the consequences of harm caused by the offense committed;

– administrative responsibility of the minors, promotes the creation of a special legal mechanism capable of protecting the personal legal interests of minors from the overthrow of the state bodies by officials.

Conclusion

Thus, the main cause of administrative offenses is, as a consequence of the application of administrative penalties to minors, the resulting misdemeanor and actions due to the inability of the minors always to assess correctly the different situations in their lives due to their age and developmental differences.

In this regard, the text of the law to the majority of adolescents is not always clear and clear, as explained above, due to their low legal literacy and lack of knowledge of the legal norms set by the state. In some cases, it is not necessary to know everything because the rules themselves are optional. Even those who understand why the laws are needed cannot be deterred, especially by teenagers who do not know them. Another problem that complicates the features of administrative responsibility of minors is the imperfection of many legal rules governing the procedure for imposing administrative penalties on a minor. For this reason, there are several key aspects of an inquiry that underlie administrative offenses:

– First, the imperfection of the rule of law may be beyond the real historical reality, if they do not meet the specific requirements of public relations, in other words, the norms are outdated. For example, despite the collapse of the USSR in December 1991 and the change in public relations, it is sufficient to show the validity of the administrative offenses Code of the Republic of Kazakhstan, which was adopted in January 30, 2001, in 1984. However, the Code contained legal provisions which were useful for socialist relations rather than market. From the theory of law, it is known that if the rule of law is not of public utility, even if it is binding on the law and in effect with the existing legal provisions and prohibitions, and also enforced by the population, the outcome of its action is still negative or at least impartial;

– Second, the volatility and instability of the norms that govern the legal function of public relations are of great importance. «The uncertainty of the law causes insecurity in the hearts of every person, and treachery and hypocrisy urge you to be cautious everywhere» [12; 130].

– Third, due to the weakening of the actual application of the rules of law, punishment for offenders is often neglected, lead to their illegality, as a result of which the rule of law gradually loses its value in the sources of the population living in the territory of that state;

– Fourth, the legal rule has a direct effect on the behavior of the entity, only if the entity fully understands and agrees with the rule of law. In this case, it is implemented as a rational and useful standard, which is the principle of operation of the entity.

– • Generally, a good understanding and knowing well the rule of law is achieved by interpreting its content, which may vary and in some cases even be false or taken false. To confirm such assertions, the opinion of Cesare Bakkari, a medieval Italian lawyer, is correct, in his commentary on the significance of the rule of law when committing an offense: «It is better to warn and to prevent than to punish offenses. That is the intention of any good law, but the tool used to that end is still largely invalid or even contrary to its intended purpose... do you want to warn about a crime? For that to happen, the laws need to be clear and straightforward, so that all national forces are focused on protecting them, and even if they are partially used out of use. They should be more concerned about the people than about the people they represent. Make people feel respect for the law and their fear of it, so that people only fear it. A strong and courageous nation must, in the end, get rid of the uncertainty of the laws» [12; 130]

Thus, the measures of administrative liability for juveniles presented as administrative penalties must necessarily be reflected in the rules of the current administrative law. The content of the said legal norms and the procedure for imposing administrative penalties on those norms should, as far as possible, be readily understood or accessible to young offenders.

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Ж.Б. Кәріпбаев, К.С. Мусин

Кәмелетке толмағандардың әкімшілік жауапкершілікке тартылу концепциясы

Аталған мақаланың мақсаты бүгінгі таңдағы құқықбұзушылық генезисі мәселелерін және әкімшілік құқықбұзушылық жасағаны үшін заңды жауапкершілік механизмінің заңдылықтарын зерделеумен айналысатын қорғаушылар, әлеуметтанушылар, психологтар және басқа да мамандарды кәмелетке толмағандардың заңды жауапкершілік шараларына тарту концепциясының құқықтық сұрақтарын қарастыру. Тәжірибе көрсеткендей, кәмелетке толмағандардың әкімшілік құқықбұзушылықтарының алдын алу бойынша уақтылы қабылданған алдын алу шаралары әкімшілік жауапкершілік шараларына балама бола отырып, заңдық және тәрбиелік қатынастарда ерекше маңызға ие. Сондай ақ, авторлар мақалада құқықбұзушылықтың генезисін түсіну және зерделеу себептерін, уәждерін, мақсатын анықтауға және тиісті алдын алу шараларын, егер бұл құқықбұзушылық болмаса, онда, кем дегенде, болашақта күтуге болатын құқықбұзушылықтың алдын алуды қарастырған. Белгілі болғандай кез келген қоғамға тұрақтылық, қауіпсіздік және өркендеу қажет, ал оларға жасөспірімдердің құқықбұзушылығының алдын алуды және ескертуге бағытталған іс-шараларды жүзеге асыру процесінде қол жеткізілген отандық және әлемдік тәжірибені білмей және пайдаланбай қол жеткізуге болмайтынын авторлар баса назар аударып, зерттеген. Бұл кез-келген мемлекеттің әл-ауқатының дәрежесі, оның дамуы мен сол мемлекеттегі кәмелетке толмағандар арасындағы құқық бұзушылықтардың таралуының дәрежесін сипаттайтын көрсеткіштер негізінде тұжырымдауға болады деп түсіндіреді.

Кілт сөздер: әкімшілік құқық, әкімшілік құқықбұзушылық, әкімшілік жауапкершілік, құқықбұзушылық, әкімшілік жаза, әкімшілік жауапкершіліктің ерекшеліктері.

Ж.Б. Карипбаев, К.С. Мусин

Концепция привлечения несовершеннолетних к административной ответственности

Целью данной статьи является рассмотрение правовых вопросов концепции привлечения юристов, социологов, психологов и других специалистов, занимающихся изучением проблем генезиса правонарушений и закономерностей механизма юридической ответственности за совершение административных правонарушений. Как показывает практика, своевременно принятые меры по профилактике административных правонарушений несовершеннолетних имеют особое значение в юридических и воспитательных отношениях, являясь альтернативой мерам административной ответственности. Кроме того, авторы подчеркивают, что понимание и изучение генезиса правонарушения позволяют выявить причины, мотивы, цель и принять соответствующие профилактические меры, если это не является правонарушением, то, по крайней мере, поможет предотвратить правонарушение, которое можно ожидать в будущем. Как известно, любому обществу необходимы стабильность, безопасность и процветание, а это невозможно без знаний и использования отечественного и мирового опыта, достигнутого в процессе осуществления мероприятий, направленных на предупреждение правонарушений подростков. Это объясняется тем, что степень благосостояния любого государства может быть сформулирована на основе показателей, характеризующих его развитие и степень распространения правонарушений среди несовершеннолетних в этом государстве.

Ключевые слова: административное право, административное правонарушение, административная ответственность, правонарушение, административное взыскание, особенности административной ответственности.

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