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# Studia i artykuły

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## An analysis of the Administrative Code of the Republic of Kazakhstan

**Summary**

Existing world experience gives reason to believe that recent history does not know a single example, firstly, a highly flexible, well-functioning economy without a market, and, secondly, a highly socially oriented market economy without the regulatory role of the state, both economically and on the legal level. Of particular importance is the state legal regulation of agrarian sector in the conditions of formation and development of market relations.

Legislation aimed at formation of market relations in agrarian and industrial complex decided a number of important issues. It created the conditions of agricultural enterprises operate independently, based on their interests, provided them with the opportunity to freely dispose of products, build their contractual relations on a voluntary basis, form the basis of market relations in the form of the procurement system in the state reserves, procurement system through exchanges, wholesale markets, fairs and so forth.

**Key words**: of formation, food products, exchanges, law

The development of science and industry of administrative law for the past two decades, Kazakhstan has undergone dramatic changes.

Market-based instruments seriously pushed the old system of governance by introducing more flexible regulatory tools, putting the state on a par with other owners and business entities.

There are new institutions of administrative law, such as the Institute of public services. The development of administrative law increasingly affected by the financial interests of the state. Administrative methods and bases of the use of more and more adjusted to the economic circumstances, what is an example of a modern policy of attracting foreign investment, or the development policy of their own internal resources to make money (local tourism, services, etc.)

It could not but reflect on the institution of administrative law such as a public service, where the focus is already on her involvement in crisis management. Most emphasizes the involvement of the elite civil service people most effectively distinguished themselves in business, that substantiates the necessity of introduction of the new system of government regulation.

The same reason caused quite frequent public administration reform and civil service and its new directions identified in the statements of the President of the Republic of Kazakhstan, the Chairman of "Nur Otan" Nursultan Nazarbayev at the XVI Congress of the Party March 11, 2015.

Defining constants in the fundamental reform of administrative law remains Institute of administrative responsibility.

In a developed market, state enforcement remains an effective instrument for ensuring the rule of law. After the Head of State has rejected the proposal for the introduction of the Criminal Code of RK corporate criminal liability, administrative responsibility continues to be the only way of enforcement to ensure compliance with the laws of legal entities.

Institute of administrative responsibility inherent in post-Soviet countries as a legacy of the Soviet period. If you look at an even earlier period, at the beginning of the XIX century in Tsarist Russia there was a distinction, "the objective of separation of state law, criminal law and other new industries, the interim stage of development of the institute unimportant crimes completed their formal allocation in an independent kind of criminal law torts ( offenses). "

Differentiation of offenses of significant and insignificant was the basis of differentiation of criminal and administrative dilektnogo law. This principle is maintained to this day.

Domestic administrative tort law has a fairly good practice codification. The Code of Administrative Offences of 2014 continues the tradition of earlier legislation. At the same time, it passed the Criminal Code of RK has made major adjustments to the understanding and delineation of criminal and administrative offenses. This was made possible thanks to the introduction of such concepts as criminal offenses. The Criminal Code of the Republic of Kazakhstan treats it as a "guilty act (action or inaction), does not pose great danger to society, causing minor damage or creates a threat of

harm to the individual, organization, society or the state, for the commission of which is punishable by a fine, correctional labor, attracting community service, the arrest. " While minor offenses has always been a feature of the administrative offense, which is always called an administrative offense.

At the same time, the Administrative Code of the Republic of Kazakhstan does not provide the concept of an administrative offense. The Code recognizes that "the basis of administrative responsibility is an act that contains all the features of the offense provided for in the Special Part of this Code." This approach caused some confusion scientists. He denied all the theoretical approaches of the general theory of law theory of criminal law and administrative law theory.

In fact, the legislature has assumed the right to determine the qualification of the wrongful act, or recording it in the Criminal Code or in the Code of Administrative Offence. Mild and low level of public danger is no longer a guarantee of qualification of the offense as the administration, as the same features has the criminal offense that entails a criminal record. That is, missing the necessary theoretical basis offenses graduation. A lack of scientific and theoretical basis has never brought a positive result.

This raises the question of how well the developers of the Administrative Code and the Criminal Code to understand the requirements of the Concept of legal policy of Kazakhstan for the period from 2010 to 2020, approved by Presidential Decree of 24 August 2009 № 858, that: "For the administrative and tort law are the topical issues of defining more clearly the range of legal, protected administrative tort law and accordingly a clear distinction between administrative law and criminal sanctions. "

It should be stated that scientists administrativisty were poorly represented in the working group on the development of the Administrative Code of the Republic of Kazakhstan, although work in this direction lasted almost ten years.

Perhaps such an approach can be called the residual when a Criminal Code was moved to a series of articles in the CAO. However, this approach may not be durable. Legislation lacking theoretical framework can not be right, in this case, it would, in our opinion, to turn to the experience of other countries that do not share the offenses on criminal and administrative.

CAO adopted on 5 June 2014 and entered into force on 1 January 2015 is already causing a valuable range of complaints, from both the theoretical and practical side. But the most interesting thing is that he has angered MPs, who themselves have accepted it. Thus, they exhibited claims to compositions and sanctions traffic violations when the Administrative Code has entered into force. Although the vote of the Administrative Code in making such a claim on the part of voting was not.

Even after the adoption of the Administrative Code of the Republic of Kazakhstan scientists administrativisty forced to begin to shape the concept of the modern domestic administrative tort law, and this despite the complete lack of logic of the law, which was formed in favor of the implementation of the criminal law policy of the state and its decriminalization.

It begins critical thinking and conceptual clarification of the rules of the Administrative Code of the RK species characteristics, limits and areas of application of administrative sanctions. It should be noted that the developers of the rules of the special part of CAO adhere to the old scheme of systematization, sharing their offense object. One of the objects is the legislation on environmental protection, utilization of natural resources, an administrative offense which is stipulated by chapter 21 of CAO. They cover the full spectrum of public relations in the field of environmental legislation and the Environmental legislation of Kazakhstan.

If you start the analysis of the codified law on administrative responsibility, Chapter 8 of Administrative Offences was already in the Administrative Code of the Kazakh SSR in 1984, but it was not independent since united offenses in the field of environmental protection, use of natural resources, protection of historical and cultural monuments and consisted of 70 standards.

On the basis of these rules, have an independent chapter was introduced in the Republic of Kazakhstan in 2001, the Code of Administrative Offences - Chapter 19, which is called - "Administrative violations in the field of environmental protection, use of natural resources." It should be noted that even a cursory comparative analysis of hypotheses and disposition rules of the

Administrative Code of 2001 with the standards of 1984, shows that the legislator serious progress in detailing and specifying the offense. Seriously expanded composition of such offenses, as well as severe penalties increased.

In the Administrative Code of the Kazakh SSR in 1984 for violation of the excess of specifications of maximum permissible emissions entail the imposition of a warning or a fine on officials in the amount of up to a thousand rubles. CAO 1991 was originally based on the introduction of a new system for calculating the fines provided for sanctions for the same rate of penalty on officials in the amount of up to twenty, for legal entities - in the amount of one hundred monthly calculation indices, the wording of the Law of Kazakhstan "On amendments and additions to the RK Code of Administrative Offences, "dated January 20, 2006 № 123-III LRK new sanctions, and it provides for a fine for individuals in the amount from five to ten, on the officials, individual entrepreneurs have been introduced, legal entities of small or medium-sized enterprises - in the amount of twenty to fifty monthly calculation indices, for legal entities of a large enterprise - in the amount of one thousand percent of the rate of payment for environmental pollution. That is already evident here a new approach of the legislator, which is moving away from a fixed fine of pure theory and introduces the need to measure damage to the environment. What, in principle, it is an indicator of the implementation of the principle of "the polluter pays".

However, already in 2007 it introduced more sophisticated approach, namely, the legal entities of a large enterprise - in the amount of one thousand percent of the rate of payment for emissions into the environment for the exceeded amount of emissions. It should be noted that the Law "On introducing amendments and addenda to some legislative acts of Kazakhstan on environmental issues" of January 9, 2007 № 213-III LRK almost all dedicated to the refinement of legislation related to issues of payment for emissions into the environment Wednesday

It is this interpretation of administrative sanctions for exceeding the standards for emissions into the environment, laid down in the environmental permit raises serious dissatisfaction on the part of nature, and also by scientists until now. With what it is connected, namely the fact that this approach was saved by developers of the Administrative Code and the new CAO, 2014.

That is, current Article 328 of the RK Administrative Code of sounds in the following interpretation: "The excess emissions standards for the environment, set out in the project documentation and (or) environmental permit, or the absence of an environmental permit, if these actions do not contain signs of a criminal offense, shall entail a fine on individuals in the amount of ten, on small businesses - in the amount of thirty, to medium-sized businesses - in the amount of fifty monthly calculation indices, for big businesses - in the amount of one thousand percent of the rate of payment for emissions into the environment for the exceeded amount of emissions. "

If the first part of the norm is all right and the law provides for liability for exceeding the limits of legitimate harm (objectively forced), namely for the excess emissions to the environment. That second part, namely sanctions cause some confusion associated, primarily, with its legitimacy.

This issue was repeatedly raised and academics and practitioners. All of them agree that the approach of the legislator is not correct and in addition, it is illegal.

The sanctions Art. 328 of the Administrative Code of Kazakhstan provides the imposition of only one kind of administrative punishment - fine. In accordance with Art. 44 under the administrative penalty is defined as "monetary penalty imposed for an administrative offense in the cases and within the limits provided for in the articles of the Special Part of this section, in an amount corresponding to a certain number of monthly calculation index, determined in accordance with the law in force at the time of initiation of the case on administrative offense ". The same article stipulates that "In the cases provided for in the articles of the Special Part of this section, a penalty payment expressed as a percentage of:

1) the amount of harm to the environment;

2) the amount of default or improperly executed tax liability;

3) the amount of unpaid (non-listed), untimely and (or) incomplete paid (enumerated) social contributions;

4) the amount of non-listed, untimely and (or) incomplete calculated, withheld (accrued) and (or) paid (listed) of mandatory pension contributions and compulsory professional pension contributions;

5) the amount of the value of excisable goods resulting from the illegal business;

6) the amount of unaccounted for in accordance with the accounting and financial reporting requirements of the Republic of Kazakhstan legislation or improperly accounted;

7) the amount of the transaction (operation), perfect (held) in violation of the financial laws of the Republic of Kazakhstan;

8) the amount of income (revenue) obtained as a result of monopolistic activity or violations of the law of the Republic of Kazakhstan on electricity, natural monopolies and regulated markets, the legislation of the Republic of Kazakhstan, regulating the activities of financial market and financial organizations;

9) the cost of energy used in excess of the approved standards in the period in which the offense occurred, but no more than one year;

10) the amount of unapplied domestic and foreign currency. "

Logically, it follows that with regard to Art. 328 Administrative Code of the Republic of Kazakhstan can be applied one of those exceptions, namely the fine as a percentage of the amount of environmental damage caused. However, the question of the relation between concepts and terms "percentage of the payment rates for emissions into the environment for the exceeded amount of emissions" and "percentage of the amount of environmental damage caused," should examine whether these concepts are the same.

Emissions into the environment - represent "emissions, discharges of pollutants, accommodation in environmental waste production and consumption environment, harmful physical WHO activities, accommodation and storage of sulfur in the environment in the clear", that is emission, it recognized the need, which is not avoid due to natural resources. The state, using market mechanisms to control emissions into the environment of emissions trading in accordance with the rules and obligations of trading on emission reductions approved by the Government Resolution dated February 6, 2008 № 107.

Of course, the excess emission is an offense directed against the environment. It must be punished and natural resource users agree with this statement, which is not questioned. Another question is how and how much will be applied punishment.

Exceeded emissions in understanding the state is harmful to the environment to be measured and punishment.

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