



ANALYSIS OF NORMS ON EXEMPTION FROM ADMINISTRATIVE LIABILITY IN CONNECTION WITH THE EXPIRATION OF THE STATUTE OF LIMITATIONS FOR BRINGING TO ADMINISTRATIVE RESPONSIBILITY: NATIONAL AND FOREIGN EXPERIENCE

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Abstract. The article analyzes the role of the institution of terms of administrative responsibility in ensuring the principles of legal certainty, proportionality, and justice. Evaluating the provisions of Article 36 of the Code of Administrative Offenses from the point of view of practice, the problems arising as a result of insufficient regulation of the mechanisms of suspension and reinstatement of deadlines are especially noted. On the example of the legislation and judicial practice of Russia and Kazakhstan, a comparative analysis of the effectiveness of the rules of suspension and restoration of time limits, differentiated time limits is carried out.

Keywords. Administrative law, administrative responsibility, administrative penalty, exemption from administrative responsibility, term of administrative responsibility, term, comparative analysis.

The timing of administrative liability plays a central role in ensuring the principles of institutional and legal certainty, proportionality, and justice. In practice, exemption of a person from liability upon expiration of the term is considered an independent type of exemption from legal liability. It is scientifically explained that the probability of achieving the goals of punishment decreases over time. Therefore, the correct calculation of deadlines and the clear definition of legal consequences during their passage are crucial for the stability of judicial practice.

Although Article 36 of the Code of the Republic of Uzbekistan on Administrative Responsibility establishes general calculation rules, the biggest problem in practice is that the mechanisms for suspending and restoring deadlines are not sufficiently regulated at the norm level. Although the principle of starting the calculation from the day of discovery in ongoing offenses shows the right direction, the question of how to calculate the "time loss" in cases where proceedings cannot be carried out temporarily for procedural reasons remains open.

In case of expiration of the statute of limitations, the person is subject to release from administrative liability. Scholars consider this circumstance a form of exemption from administrative liability[1][2]. Speaking about this type of exemption from liability, some scholars have attempted to reveal its significance. Thus, the main content of exemption of a person from legal liability is the disappearance or significant reduction of the social danger of the person who committed the offense. At the same time, as D.V. Orlov noted, "the existence of the institution of exemption from liability due to the expiration of the term is directly related to the purposes of the punishment." After all, the goals pursued by the execution of punishment cannot be achieved after a certain period of time. At the same time, the disappearance or significant reduction of the social danger of a person indicates the elimination of their ability to pose a social threat or cause harm in the committed offense, the change in the person's act, or the absence of danger to society.

Part 1 of Article 36 of the Code of Administrative Offenses stipulates that an administrative penalty may be applied no later than one year from the date of the offense, and for ongoing offenses - no later than one year from the date of its detection. Consequently, the term for applying an administrative penalty for ongoing offenses is calculated from the date of detection of the offense, and not from the date of its commission. The main reason for this is that the day of detection in ongoing offenses becomes the main factor for its termination and prosecution.

Although the rules related to the statute of limitations are partially regulated in the Code of Administrative Offenses, no procedure for suspending and restoring the expiration of the statute of limitations is established. Existing gaps in the law are causing a number of problems in modern practice, which is developing at a serious pace. After all, new trends require improvement of judicial practice regarding administrative offenses[7].

These problems have been studied by a number of scholars, some of whom noted that the stages of administrative liability proceedings are not defined in the code, such issues as when this process begins, what stages it consists of and when it ends, when it is suspended are not defined.[8] Other scholars noted the need to suspend the passage of time in these cases, restore the case to proceedings with the elimination of the grounds for subsequent suspension, preventing the conduct of the case, its consideration in court and the imposition of punishment due to concealment, serious illness, departure abroad, and other valid factors.[9]

N. Usmanaliyev, who conducted research on administrative offense proceedings, drew attention to the gaps in the norms regarding the statute of limitations, and proposed to introduce a mechanism for suspending and reinstating the statute of limitations, as well as to consolidate in legislation a general statute of limitations that serve as the basis for exemption from liability by differentiating the statute of limitations.

A similar problem exists in Russian legislation, where the Code of the Russian Federation on Administrative Offenses provides for a single case of suspension of the terms of administrative liability. This is "the satisfaction of the petition of the person in respect of whom the administrative offense case is being conducted, for the consideration of the case at his place of residence." In this case, the time of submission of the case is not included in the statute of limitations.[11]

The Code of Administrative Offenses of the Republic of Kazakhstan contains more specific provisions on the suspension and restoration of deadlines. Thus, the term for applying administrative penalties for an administrative offense is suspended in the following cases:

- upon appointment of an expert examination;
- during the consideration and response to acts of prosecutorial supervision;
- when issuing a ruling on bringing the person against whom the proceedings are being conducted to court;
- when sending a case to a court or to an official of a state body authorized to conduct proceedings on administrative offenses.

The calculation of these periods is resumed from the moment of receipt of the results of the examination, from the date of adoption of the decision on the act of prosecutorial supervision and response, as well as from the date of delivery of the decision on the bringing of the person being brought to administrative responsibility to the executing body (official).

Delivery period should not exceed one month.[12]

In addition, the current legislation does not contain a single rule or explanation regarding the time of commission of an administrative offense committed as a result of inaction. However, in some foreign countries, special attention is paid to this. In particular, paragraph 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated March 24, 2005 No. 5 "On Certain Issues Arising in the Application by Courts of the Code of the Russian Federation on Administrative Offenses" states that in the case of an administrative offense committed in the form of inaction, the term of administrative liability is calculated from the day following the last day of the term for the performance of the relevant obligation.[13] This clarification clarifies the procedure for calculating the term of administrative liability, in particular, establishes the rule for calculating the term for offenses in the form of inaction.

According to part 2 of Article 36 of the Code of Administrative Offenses, in the event of refusal to initiate a criminal case or termination of the criminal case, but the actions of the offender contain signs of an administrative offense, an administrative penalty may be applied no later than one month from the date of the decision to refuse to initiate a criminal case or terminate the criminal case, if the periods provided for in part one of this article have not expired[14]. An important condition in this case is that the period (one year) established by part 1 of the article has not expired. This procedure is established taking into account the relationship between a criminal case and an administrative offense. However, this rule creates a discrepancy between parts 1 and 2 of the article.

Article 62 of the Code of the Republic of Kazakhstan on Administrative Offenses, entitled "Exemption from administrative liability in connection with the expiration of the statute of limitations for bringing to justice"[15], according to which, as a general rule, a person is not brought to administrative responsibility after two months from the date of the commission of the administrative offense. However, this norm also notes that, depending on the type of administrative offense committed, in some cases this period may be 1, 3, 5 years. A noteworthy aspect of Kazakhstan's legislation is the provision that if a person commits a new administrative offense before the expiration of the terms, the term is recalculated. Such a rule does not exist in our legislation. The "differentiated" determination of prosecution periods can also be found in the legislation of the Republic of Belarus (from 2 months to 3 years, depending on the type of offense committed).[16]

By establishing the statute of limitations depending on the type of offense committed, the fairness and proportionality of the liability system are achieved, as well as by establishing deadlines corresponding to the severity of the offense, the possibility of prosecution is increased, and the effectiveness of the execution of punishment is ensured.

Article 64 of the Criminal Code of the Republic of Uzbekistan contains provisions on the terms of prosecution, which also establish the terms of prosecution depending on the degree of social danger of the crimes, as well as the suspension and reinstatement of the term of prosecution[17]. In addition, the general term of exemption from liability (regardless of its termination) is also fixed.

Having analyzed the opinions of scholars and the legislation of a number of foreign countries on exemption from administrative liability in connection with the expiration of the statute of limitations, the following conclusions can be presented:

- "Exemption of a person from administrative responsibility in connection with the expiration of the statute of limitations" should be indicated as a separate norm in the Code of



Administrative Offenses. The basis for this is the disappearance or decrease in the social danger of the offender, non-compliance with the requirements of the purposes of punishment.

- it is advisable to differentiate the terms of administrative liability depending on the type, nature, and degree of social danger of the offense. This ensures the fairness and proportionality of the accountability system.

- the procedure for suspending and restoring the terms of administrative liability is not fully and clearly regulated by law. In this regard, it is advisable to use the experience of foreign countries.

The above analysis shows that the terms of administrative liability play an important role in ensuring the principles of legal certainty, proportionality, and justice, and its content is directly related to the purposes of punishment, strengthening the conclusions about the decrease or disappearance of the social danger of the act over time.

Comparative analysis helps to better understand the development trajectory of current legislation and practice. These considerations once again confirm that the task of the institution of terms of administrative responsibility is to maintain a balance between the effectiveness of law enforcement and the guarantee of the rights and freedoms of the individual.

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