

Kakimzhanov M. T., Filin V. V.

**QUALIFICATION OF SEPARATE COMPOSITIONS OF ADMINISTRATIVE
OFFENCES ENCROACHING ON THE INSTITUTES OF STATE POWER IN
THE REPUBLIC OF KAZAKHSTAN**

*Kakimzhanov Murat
Tursynbaevich,
c.j.s. (PhD of jurisprudence),
Professor of the Department
of general legal and special
disciplines at Karaganda Eco-
nomic University of Kazakh-
stan Consumers Association,
Associate professor, Colonel
retired police;*

*Filin Vladimir
Vladimirovich,
c.j.s. (PhD of jurisprudence),
Associate professor at the De-
partment of administrative
law and administrative activ-
ity of Internal Affairs Bodies
at Karaganda Academy of Ka-
zakhstan MIA named after B.
Beisenov, the Republic of Ka-
zakhstan, Associate professor,
Lieutenant-colonel of police.*

The authors investigate issues related to the interpretation and enforcement of individual administrative-tort norms that contain established order of activities (operation) of the bodies of state power as an object of infringement. They note the regularity of detailed description of the character of objective aspect in the dispositions of articles of the special part of the Administrative Violations Code of the Republic of Kazakhstan. Here is argued that such a legislative technique eliminates a lot of problems in enforcement activity of a huge number of administrative and jurisdictional authorities, officials of which, for the most part, do not have an appropriate legal education and basic skills to determine unlawfulness in a person's conduct.

Keywords: administrative offence, composition of an administrative offence, generic objects of encroachment, objective aspect of an administrative offence, qualification of offences.

Improving the efficiency of rule-making activity is one of the main goals of the Concept of Legal Policy of the Republic of Kazakhstan. The need for further work on the systematization of the current legislation, consolidation by branches of

the legislation, its release from obsolete and duplicating norms, filling gaps in legal regulation, elimination of internal contradictions in the current law are identified in the concept. There is emphasized the relevance of minimization the reference rules in laws and expanding the practice of adoption of directly applicable laws within the range of issues, on which, in accordance with the Constitution, legislative acts can be taken.

These priorities determine the value of studies in the legislation of the Republic of Kazakhstan on Administrative Offences of issues related to the interpretation and enforcement of individual administrative-tort norms and the established procedure for exercising of administrative and jurisdictional activity.

For example, in chapter 29 of the Administrative Violations Code of the Republic of Kazakhstan, on the grounds of generic objects of infringements, combine administrative offences, which threaten to the institutes of state power under articles 513-531 [1].

Objects specified in this chapter are: administration of justice (activity of courts), legitimate activity of a lawyer, prosecutor, investigator, interrogator, bailiff, officer of justice and others.

In the considered chapter of the Code, there are interesting for us articles: 522 - "Obstruction of the lawful activity of a prosecutor, investigator, interrogator, officer of justice, bailiff"; 525 - "Failure to fulfill orders and other legal requirements of an officer of justice, bailiff"; 526 - "Non-informing of an officer of justice about the change of employment and residence of a person from whom child support is collected"; 528 - "Obstruction to an officer of justice, bailiff in execution of the decisions of courts and other bodies".

Analyzing the content of the above formulations, attention should be drawn to article 522 of the Administrative Violations Code of the Republic of Kazakhstan:

- part 1: "Obstruction of the lawful activity of a prosecutor, investigator, interrogator, officer of justice, bailiff, expressed in the refusal to the unimpeded with the presentation of a warrant card access to a building, room or territory of a state body, organization, regardless of ownership, as well as refusal of the submission of the required documents, materials, statistical and other information, inspections, audits, examinations and allocation of specialists - entails a warning or a fine on officials in the amount of up to twenty monthly calculation indices or administrative detention for up to five days".

- part 2: "Willful failure to comply with the requirements of a prosecutor, investigator, interrogator, officer of justice posed on the grounds and in the manner prescribed by law - entails a fine for individuals in the amount of one to three, for

officials – in the amount of ten to fifty monthly calculation indices or administrative detention for up to ten days”.

The object of infringement of that article combines a wide range of established order of activity (functioning) of public authorities (prosecutors, investigators, bailiffs and officers of justice).

Objective aspect is expressed through obstructing the legitimate activities of the above-mentioned bodies, which is accomplished by the refusal to the unimpeded with the presentation of a warrant card access to a building, room or territory of a state body, organization, regardless of ownership, as well as refusal of the submission of the required documents, materials, statistical and other information, inspections, audits, examinations and allocation of specialists.

Subjective aspect of part 1 of this article specifies the form of careless fault. Sanction determines an official as a subject.

Part two of the above article, unlike the first one, provides for responsibility for deliberate form of guilt (for the purpose of hiding documents and materials in order to avoid an audit, and so on). Both physical person and official are determined as a subject.

There are some questions. In particular, with regard to the subjects of responsibility determined in sanctions of part 1 and 2 of this article. At that, in article the form of guilt acts as a qualifying feature.

Why does in the first part the legislator indicate as a subject only an official? Or, according to the legislator, physical persons are liable only in the event of deliberate forms of guilt? What does the legislator have in mind under the form of subjective aspect in this article? Is it possible to “carelessly” deny the representative of authorities to exercise its lawful actions? With that, it should be noted that in some cases, the Administrative Violations Code of the Republic of Kazakhstan qualifies the refuse to exercise legitimate orders or requirements of the prosecutors, employees of internal affairs bodies and etc. as “malicious disobedience” (under part 2 article 355 of AVCRK). In addition, in the disposition of part 2 article 522 of the Administrative Violations Code of the Republic of Kazakhstan somehow suddenly “poor bailiffs” fall out of the “glorious State guard”!

Should be noted that in articles 525, 526 and 528 of the Administrative Violations Code of the Republic of Kazakhstan legislator determines object of infringement similar to one in article 522. The difference of the three subsequent formulations mostly deals with the objective aspect.

So, in article 525 of the Administrative Violations Code of the Republic of Kazakhstan it is expressed in non-performance by officials and individuals, without

reasonable excuse, of rulings and lawful requirements of an officer of justice related to the exercising of an executive document, including on the submission in a term designated to them the information about the debtor's place of employment and income, retention under order of the court and other bodies and sending collected sum to the recoverer, on levy of execution on funds and property of the debtor held by other individuals and legal entities, or failure to report information about the dismissal of the debtor, about its new place of work or residence, if it knows (in part one). In the submission to the officer of justice of knowingly false information, including on the income and property status of the debtor. It should be noted that from part 2 article 522 in part 3 article 525 of the Administrative Violations Code of the Republic of Kazakhstan after all gets the "lost" norm on responsibility for failure to comply with the legitimate requirements of a bailiff.

Objective aspect of article 526 of the Administrative Violations Code of the Republic of Kazakhstan is expressed in failing to report without valid excuse by an official of an organization that carries out withholding child support, disabled parents support, wife (husband) support under executive document issued on the ground of a court order within a month to an officer of justice and the person receiving alimony about dismissal from work of the person that shall pay the alimony, as well as about its new place of work and residence, if it knows.

Objective aspect of article 528 of the Administrative Violations Code of the Republic of Kazakhstan is expressed in preventing by individuals and officials of organizations a commission by an officer of justice, bailiff actions for levy of execution on property (inventory, assessment, seizure, and bidding) or refusal, in this regard, to perform its requirements. As we can see, in fact, the above actions are detailed only by the subject of execution proceedings. However, we do not consider it appropriate to merge the articles into one article - 522.

Such a detailed description of the nature of the objective aspect in the dispositions of articles of the special part of the Administrative Violations Code of the Republic of Kazakhstan is not accidental. In practice, this technique removes a lot of problems in enforcement activity of a huge number of administrative and jurisdictional bodies, officials of which, for the most part, do not have the appropriate legal education, basic skills to determine the unlawfulness of person's conduct. For example, similar offences in transport, public roads and communications set out in the AVCRRK, where almost every paragraph of violations of Driving Regulations of the Republic of Kazakhstan provides for a separate article - composition of an administrative offence.

References:

1. *Administrative Violations Code of the Republic of Kazakhstan* [Kodeks Respubliki Kazakhstan ob administrativnykh pravonarusheniyakh]. Available at: http://online.zakon.kz/Document/?doc_id=1021682 (accessed: 12.04.2013).
2. *Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020* [Kontseptsiya pravovoi politiki Respubliki Kazakhstan na period s 2010 do 2020 goda]. Available at: <http://www.pushkinlibrary.kz/olic/text/koncepciya.html> (accessed: 12.04.2013).