

Analysis of National Legislative Standards Determining Liability for Violation of Administrative Control Rules and Prospects for Their Improvement

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ABSTRACT: In the article, the norms of the legislation of the Republic of Uzbekistan determining responsibility for the violation of administrative control rules are studied on the basis of a comparative analysis with the legislation of the CIS countries, and proposals and recommendations aimed at their improvement are given.

KEYWORD: administrative control, controlled person, administrative restrictions, obligations, administrative responsibility, administrative punishment, administrative prejudice, decriminalization.

Improving the prevention of recidivism in the world, including moral correction of persons under preventive control, prevention of repeated offenses by them, elimination of the conditions and factors that enable this, modern mechanisms for protecting the rights, freedoms and legal interests of persons under administrative control for the purpose of development, special attention is paid to the fundamental reform of the post-penitentiary ("post-prison") system. However, in countries such as China, India, the USA and Indonesia, the recidivism rate is increasing dramatically. For example, in the last 5 years, the rate of recidivism in the United States is 70 percent, of which 62 percent are violent crimes. This situation puts before the world community the need to develop and implement an effective system of prevention of recidivism.

To improve the system of preventive control over the execution of criminal sentences and previously convicted persons in the world, including the strengthening of the implementation of international standards for the moral correction of persons under national law, protection of their rights and legal interests, the implementation of modern organizational and legal means of prevention of offenses in the system, under the control Research aimed at finding scientifically based solutions to problems related to the prevention of repeated crimes by differentiating administrative responsibility for violation of restrictions and non-fulfillment of established obligations, individualizing punishment for these acts, and determining responsibility for acts outside the scope of responsibility is gaining importance.

In our country, comprehensive reforms aimed at introducing a system of "social prevention" based on the creation of "territorial methods" with a special approach to the early prevention of offenses are being implemented. In this process, special attention is paid to effective use of the capabilities of the administrative control institute, implementation of new administrative-legal means of moral correction of the controlled persons, modernization of the administrative legislation in this regard based on the requirements of the time.

Nevertheless, in recent years, cases of repeated crime, non-observance of established restrictions and non-fulfillment of obligations have been increasing. In particular, in 2020, the number of people brought to administrative responsibility for violating the rules of administrative control increased by 22.4%, and the number of people brought to criminal responsibility increased by 4.7%, creating the need for further improvement of administrative control activities.

Therefore, significant changes were observed in our national legislation, including in the normative legal framework regulating social relations in the field of prevention and elimination of criminal and administrative offenses. The adoption of the law "On administrative control over certain categories of persons released from penal institutions" dated April 2, 2019 became the basis for the creation of new legal mechanisms to combat recidivism.

According to it, administrative control: implies preventive influence on individuals under control in order to prevent them from committing crimes and other offenses. In this regard, it is important to apply and enforce the restrictions provided for by law in relation to those under control. Violation of these legal restrictions will cause liability in the prescribed manner.

From this point of view, there is a great need to eliminate existing legal gaps and collisions in the national legislation defining liability for violation of administrative control rules. First of all, a scientific analysis of the administrative and legal means of combating the violation of administrative rules is required.

The analysis of the cases of the offense provided for in Article 206 of the Criminal Code of the Republic of Uzbekistan (violation of the rules of administrative control) shows that the rate of this type of crime has increased significantly in recent years. In particular, 1,642 cases were detected in our republic in 2016, 1,808 in 2017, 3,414 in 2018, and 3,972 in 2019. In 2020, this figure was □ 5116. That is, in the last four years, the crime rate has increased by an average of 23.2 percent.

The analysis of the results of the study of practice and experts' opinion shows that the following are the main reasons for this: firstly, the level of legal impact measures in relation to the committed act is low, that is, the amount of the fine stipulated in the article is relatively small; secondly, taking into account that the act can be committed only intentionally, the necessity and possibility of applying administrative imprisonment, which is a type of punishment related to the separation of a person from society, albeit for a certain period, was not taken into account; thirdly, the state of preventive work with persons under administrative control is not satisfactory; fourthly, the methods and means of ensuring administrative control do not meet today's requirements, that is, modern information-communication and management tools are not implemented in the system.

It is known from the analysis that the problems of legal provision of administrative responsibility for the act under consideration remain the primary issue. The object of the offense provided for in Article 206 of the Code of Criminal Procedure of the Republic of Uzbekistan is the established procedure of management, including social relations related to the implementation of administrative control over persons released from penal institutions.

In order to study the objective aspect of this offense, it is necessary to determine the range of actions prohibited by the law or obligations imposed on the person. If we look at our national legislation, Article 206 of the Criminal Code of the Republic of Uzbekistan does not clearly define the scope of socially dangerous acts (acts or inactions) that give rise to liability. That is, according to him, "violation of the rules of such control by a person over whom administrative control is established □ causes a fine of one to three times the amount of the basic calculation".

It can be seen that the legal norm is expressed in the following form, and it is not explained exactly which actions (actions or inactions) can cause liability. The norms of the Law of the Republic of Uzbekistan dated

April 2, 2019 "On the Administrative Control of Certain Categories of Persons Released from Penitentiary Institutions" defining the rules of administrative control, a number of obligations and administrative restrictions that must be fulfilled by the person under control is presented, and the question arises as to whether their violation in all cases gives rise to appropriate liability.

Article 15 of this law stipulates that the person under control has the following obligations:

after release from the penal institution, to arrive at the place of residence of his choice within the period determined by the court;

after release from the penal institution, as well as after changing the place of residence, to come to the internal affairs body performing administrative control for registration within three days from the day of arrival at the place of residence of his choice;

comply with the administrative restrictions set for him;

in case of obtaining a permission from the internal affairs body performing administrative control to stay outside the place of residence and/or to go outside the territory determined by the court for a short period of time, to inform the internal affairs body of the territory of the short-term departure;

notify the internal affairs body of the place of permanent residence upon returning from the place of departure for a short period of time;

to inform the internal affairs body performing administrative control about employment, change of place of residence, work, study or service or termination of employment contract within three days;

to go to the internal affairs body at the place of residence on the basis of a summons within the period determined by this body;

to give oral and written explanations on the issues related to compliance with the administrative restrictions set for him and the fulfillment of the duties assigned to him.

From the analysis of this norm, it is known that administrative restrictions established by the court are among the obligations of persons under administrative control. At this point, a controversial issue arises as to whether the failure to fulfill all the above-mentioned obligations is a reason to be held liable. In addition, Article 21 of the law states that "persons guilty of violating legal documents on administrative control shall be held responsible in accordance with the established procedure" and there is no explanation as to where this procedure is defined and which provisions are reflected in it (although the legal document representing the enforcement mechanisms of the law has not been adopted).

At this point, it is possible to observe the situation of cross-referencing in Article 206 of the Criminal Code of the Republic of Uzbekistan and Article 21 of the Law "On Administrative Control over Certain Categories of Persons Released from Penitentiary Institutions". This cannot serve as a solution to the problem.

In comparison, Article 20 of the previous version of the law stipulated that persons under administrative control may be held administratively or criminally liable only if they violate administrative restrictions.

The analyzed situation causes the following: firstly, it complicates the activities of the authorized persons of law enforcement bodies and does not allow to implement a uniform practice in the evaluation of these acts; secondly, the fact that acts are not classified according to the level of social danger creates the need for differentiation and individualization of measures of responsibility.

A.O. Astakhova, O.B. Gulyaeva and K.M. According to the Alievas, when solving the issue of the guilt of persons under administrative control, the level of social danger of the acts that create administrative responsibility against them can be qualified by dividing them into three different categories: 1) non-

observance of established administrative restrictions; 2) failure to fulfill administrative obligations; 3) repeated non-observance of established restrictions during the year. In our opinion, the guarantee of the fulfillment of the above obligations established by law is a threat of liability for their non-fulfillment. It is from this point of view that this view can be supported.

Therefore, non-fulfillment of these obligations: firstly, seriously affects the effectiveness of implementation of established administrative control; secondly, it reduces the quality of individual preventive work with supervised persons; thirdly, it creates distrust in the power of state coercion. This in itself clearly confirms the need for differentiation and individualization of responsibility for violation of administrative control rules.

If we pay attention to the naming of the legal norms determining liability for violation of the rules of direct administrative control, it is possible to observe their different naming status in the legislation of the CIS countries.

For example, in Russia (Article 19.24) □ "Failure to comply with administrative restrictions and obligations during administrative control", in Belarus (Article 25.11) □ "Failure to comply with the requirements of preventive control or preventive monitoring", in Kazakhstan (Article 480) "Kazakhstan Violation of the legislation of the Republic of Uzbekistan on administrative control", in Uzbekistan (Article 206), Ukraine (Article 187), Kyrgyzstan (Article 373), Tajikistan (Article 485) and Turkmenistan (Article 379) □ as "Violation of the rules of administrative control" is called. As you can see, the approaches are different. This, of course, is directly related to the structure and characteristics of the norms determining responsibility. However, in our opinion, the name of the substance gives an idea about its composition. With this and a number of reasons given below, it is required to revise Article 206 of the Criminal Code of the Republic of Uzbekistan.

Firstly, it is necessary to categorize (differentiate) the acts that imply responsibility for violating the rules of administrative control according to the level of social danger and set a separate punishment for each act (individualization of the punishment);

Secondly, the possibility of decriminalization of the act provided for in part 1 of Article 226 of the Criminal Code of the Republic of Uzbekistan (repeated violation of the rules of administrative control during the year after the application of an administrative penalty for such an act) has not been studied in a situation where the trend of liberalization is a priority in our country. This, in turn, naturally serves to increase the rate of committed crimes.

Thirdly, the types of punishments used for the offense provided for in Article 206 of the Criminal Code of the Republic of Uzbekistan and their effectiveness are insufficient.

With the above grounds, in our opinion, the following should be taken into account in the norms of our current legislation, which prescribes criminal and administrative liability for violation of control rules:

- 1) to reveal its composition and features in the naming of Article 206 of the Criminal Code of the Republic of Uzbekistan;
- 2) Article 206 of the Criminal Code of the Republic of Uzbekistan establishes separate liability for non-fulfillment of obligations established by law by persons under administrative control and non-compliance with administrative or other restrictions imposed by the court, including non-compliance with administrative or other restrictions imposed by the court as an aggravating factor;
- 3) decriminalization of part 1 of Article 226 of the Criminal Code of the Republic of Uzbekistan by defining the repeated commission of these offenses during the year after the administrative punishment has been applied in Article 206 of the Criminal Code of the Republic of Uzbekistan as a separate aggravating element of responsibility;

For this type of offense, Russia (Article 19.24, Part 3), Belarus (Article 24.12, Part 2), Kazakhstan (Article 480, Part 2), Ukraine (Article 187, Part 2), Kyrgyzstan (Article 373, Part 2 -part), the legislation of Tajikistan (Article 485, Part 2) and Turkmenistan (Article 379, Part 2) provides for administrative responsibility.

- 4) Expanding the range of punishments specified in Article 206 of the Criminal Code of the Republic of Uzbekistan, including providing effective punishments especially in cases of repeated offenses during the year;

At this point, according to the analysis, the laws of the CIS countries set the following punishments for the above-mentioned acts:

- a) in Russia (Part 3 of Article 19.24) □ forced labor for up to 40 hours or administrative imprisonment from ten to fifteen days;
 - b) in Belarus (Part 2 of Article 24.12) □ a fine in the amount of eight to fifty times the BHM or administrative imprisonment;
 - c) v) in Kazakhstan (Part 2 of Article 480) □ a fine in the amount of twenty times the monthly calculation index or administrative imprisonment for up to fifteen days;
 - d) in Ukraine (Part 2 of Article 187) □ fine or correctional work in the amount of ten to fifteen times the minimum wage for a period of one to two months, with twenty percent of the income withheld. Administrative imprisonment when the application of these measures is considered insufficient;
 - e) in Kyrgyzstan (Part 2 of Article 373) □ administrative imprisonment up to fifteen days;
 - f) in Tajikistan (Part 2 of Article 485) □ a fine in the amount of five to seven times the monthly calculation indicator;
- or) in Turkmenistan (Part 2 of Article 379) □ a fine of up to five times the amount of the basic calculation or administrative imprisonment for up to fifteen days.

It can be seen that in our national legislation, there is a high need to study and implement the possibilities of wide application of administrative punishment measures in the form of "compulsory labor", "corrective work" and "administrative imprisonment" in case of repeated violations of the rules of administrative control throughout the year.

Based on the above analysis, in our opinion, it is appropriate to state Article 206 of the Criminal Code of the Republic of Uzbekistan in the following version:

Article 206. Non-observance of established restrictions and (or) non-fulfillment of obligations established by law by persons under administrative control

Failure of persons under administrative control to fulfill their obligations established by law, if this action (inaction) does not lead to criminal prosecution, - shall result in a fine of one to five times the base calculation amount.

Failure to comply with administrative or other restrictions imposed by the court by persons under administrative control, if this action (inaction) does not lead to criminal prosecution, — causes a fine of five to ten times the amount of the basic calculation or administrative imprisonment for a period of up to fifteen days.

If the same offense is repeated within a year after the administrative penalty was applied, - causes forced labor for up to forty hours or administrative detention for ten to fifteen days.

According to the requirements of this code, a fine of ten to twenty times the base calculation amount is imposed on persons who cannot be forced to work or put into administrative detention.

We think that the reflection of this proposal in the legislation will serve to further improve the norms of the national legislation determining responsibility for the violation of the rules of administrative control.

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