GALAXY INTERNATIONAL INTERDISCIPLINARY RESEARCH JOURNAL (GIIRJ)
ISSN (E): 2347-6915
Vol. 12, Issue 8 August (2024)

SUBJECTIVE SIGNS OF VIOLATION OF CUSTOMS LEGISLATION

Kholikov Farhod Uktamovich,
Lecturer at the Department of Criminal Law, Criminology and
Fight Against Corruption of Tashkent State University of Law
E-mail: fxolikov@internet.ru

ABSTRACT

The article presents some of the author's considerations on the participation of the norms of individual institutions of criminal law in the qualification of crimes of administrative prejudice. The author also notes that according to the theory of national criminal law, the requirement that the act subject to criminal prosecution be committed after the imposition of an administrative penalty is considered a necessary sign of the objective side of the composition of this crime. However, some scientists argue that in some norms of criminal law, the reflection of administrative prejudice does not fully comply with the principles of humanity and justice, the repeated commission of an administrative offense during the year does not increase both the qualitative indicator of the crime and the level of public danger, the consequences of responsibility should also be stopped after bringing a person to criminal responsibility, therefore, scientific study the issue of qualification of the composition of crimes of administrative prejudice is of urgent importance. The norms of some institutions of criminal law occupy a special place in the qualification of crimes of administrative prejudice. This is manifested in the fact that the criminal law operates in time, complicity, joint application of the norms defining responsibility for several crimes, with the qualification of acts that have administrative priority. In particular, the author paid special attention to the use of the institution of complicity, the fact that crimes of administrative prejudice provided for by the Code are not committed by any entity, the objective side of such crimes is that they should be committed only by a person who has the status of a person subject to administrative punishment, as well as the organizer and other accomplices who have not previously been brought to administrative responsibility for committing exactly the same violation, are not subject to criminal liability for crimes of administrative prejudice.

Keywords: Legal liability, criminal liability, administrative liability, administrative prejudice, degree of public danger, criminal classification, public danger.

INTRODUCTION

Criminal responsibility is a criminal-legal relationship that arises between a person and the state for committing an act prohibited by the Criminal Code.

The content of the main institutions in criminal law is reflected in the following triple system: crime - criminal liability - punishment. These concepts are considered fundamental to the theory of criminal law, institutions that illuminate the content of criminal law [1].

In some cases, it is necessary to apply administrative prejudice in the implementation of criminal responsibility, in particular, in the qualification of the act. Administrative prejudice is understood as the fact that in order to declare an act a crime, an administrative punishment has been applied to the person who committed it for the same act before, and this condition is

defined in the relevant article of the Special Part of the Criminal Law [2] . In this case, it should be noted that in accordance with Article 37 of the Code of Administrative Responsibility of the Republic of Uzbekistan, a person sentenced to an administrative penalty shall be if he has not committed a new administrative offense within a year, this person is not subject to administrative punishment . It is necessary to take this rule into account during the application of the rule of administrative prejudice.

It is known that in accordance with the law on administrative responsibility, if a person who has been subject to administrative punishment has not committed a new administrative offense within one year from the date of the end of the term of serving this punishment [3], this person is considered not to have been subject to administrative punishment. From the moment a decision is made on the application of an administrative penalty against a person, it is recognized that he has been subject to an administrative penalty. According to the content of Article 37 of the Criminal Code, if a person does not commit a new administrative offense, he will be in a state of punishment for one year from the day of the start of the punishment [4]. This period is the end of the administrative penalty. In the event that a person commits a new administrative offense, the period of invalidity begins on the day of the expiration of the penalty for the new offense. A one-year term for completing an administrative penalty is set for all administrative penalties, regardless of their types. The starting point of the one-year period for serving the administrative penalty is the day of completion of the imposed penalty measure. If the guilty person has been subjected to the main and additional punishment measures, then the one-year period is counted from the date of completion of the last sentence. When administrative detention or deprivation of special rights is used, the expiration date of the punishment actually coincides with the expiration of the administrative detention period or the expiration of the period during which the citizen was deprived of special rights. The termination of the administrative penalty is not formalized by any special document. It begins after a one-year period has passed and in the event that a new administrative offense has not been committed during this year, if there are certain conditions established by law.

It should be noted that, according to the theory of national criminal law, the requirement that the act be committed after the application of an administrative penalty is considered a necessary sign of the objective aspect of this crime. However, some scholars believe that the reflection of administrative prejudice in some norms of the criminal law does not fully meet the principles of humanity and justice, the repeated commission of an administrative offense within a year does not increase the quality indicator of the crime and the level of social danger, and the consequences of responsibility are terminated after a person is held responsible for the act he committed. emphasizes the necessity [5] .

Therefore, it is of great importance to study the issue of qualification of administrative prejudicial crime components from a scientific point of view. The rules of some institutes of criminal law have a special place in the qualification of administrative prejudicial crimes.

In particular, depending on the stages of crime commission in the qualification of administrative prejudicial crimes, administrative prejudicial crimes may or may not be finished crimes, depending on the specific characteristics of the act. It should be noted that Article 25 of the Criminal Code defines the norms of non-committed crimes (preparation for crime and attempt to commit crime). In the Criminal Code, there are no provisions on the

stages of committing an offense, i.e. completed or incomplete offenses. The decision No. 35 of November 30, 2018 of the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of application of the laws regulating administrative offense cases by the courts" does not mention this. In our opinion, responsibility for committing an administrative offense arises only for completed offenses. From this point of view, it is appropriate to add the following explanation to the above decision of the Plenum: "The Code of Administrative Responsibility of the Republic of Uzbekistan provides for the possibility of bringing administrative responsibility only for completed violations. An administrative offense is considered complete from the moment when all the signs of the composition of an administrative offense provided for by law are present in the offender's act."

Yu.E. Pudovochkin expressed the following opinion from the point of view of the existence of stages of crime in administrative prejudicial crimes: "committing a crime again (more than once) is no longer an administrative offense, but a crime, which means that all institutions of criminal law against him, including the norms of the incomplete criminal institution are also applied" [6] . In our opinion, we cannot agree with this opinion, that is, the provisions on non-exhaustive crimes cannot be applied to administrative prejudicial crimes. Because the objective aspect of the administrative prejudicial crime includes an act that is exactly similar to the previously committed administrative offense, and such an act is recognized as an administrative offense only when it is completed. Therefore, in this case, if the re-committed act is not completed, the administrative prejudicial crime cannot be considered incomplete either. Based on the above, it can be said that there is no stage of unfinished crime in administrative prejudicial crimes.

It is also important to apply the rules of the criminal law in time for administrative prejudicial crimes .

According to the Law of the Republic of Uzbekistan No. ORQ-526 dated March 4, 2019, JK 229 was supplemented by Article ^{4} [7] . According to it, if the violation of the land allocation procedure is committed after the administrative punishment for such an action has been applied, a fine in the amount of one hundred and fifty times to three hundred times the minimum monthly salary, or correctional work for up to two years, or deprivation of certain rights, and imprisonment from one to three years. shall be punished by restriction or imprisonment for up to three years. It seems that a new administrative prejudicial offense has been criminalized, which did not exist before.

Until this crime was included in the Criminal Code, violation of the procedure for granting land in Article 66 of the Civil Code, as well as for preventing the granting of land to citizens for the purpose of running a farmer or peasant farm, individual construction of a house and maintenance of a residential building, community gardening and policing administrative responsibility was assumed [8] .

Therefore, a legitimate question arises: if a person commits an offense provided for in Article 66 of the Civil Code (violation of the procedure for granting land) within a year before the entry into force of Law No. if committed after the entry into force of the law, is a person subject to criminal liability or administrative liability for committing a new administrative prejudicial crime? If a person is held criminally liable in this case, isn't the rule considered in Article 13

of the Criminal Code, that is, the rule that the law that criminalizes the act, increases the punishment, or otherwise worsens the situation of the person, is not retroactive?

In our opinion, in such a case, a person can be held criminally liable and the provisions stipulated in Article 13 of the Criminal Code are not considered violated. Because the introduction of administrative prejudicial crime into the criminal justice system is related to the purpose of increasing the responsibility for those who have not received the necessary results from the application of administrative sanctions. By providing the composition of the crime of administrative bias in the criminal law, a person who has been charged with an administrative offense is warned that if he commits an offense that is exactly similar to the offense he committed before, he will face more serious legal consequences compared to the first offense [9] .

Therefore, if a person commits an offense that is exactly similar to the one he committed before after the new criminal law comes into force, he will be held criminally responsible, because the criminal liability arises for the second act and that act is committed during the period of the new criminal law [10] . This situation corresponds to the general rule stipulated in Part 1 of Article 13 of the Civil Code. The new criminal law is applied to subjects who, in addition to general subject marks, have a special mark - a mark of being held administratively liable for a previously committed administrative offense. This means that since the objective side of the crime with administrative bias, i.e., the second act was committed during the period when the new criminal law was in force, the new law will be applied regardless of what it is.

Yu.E. Pudovochkin is of the same opinion, and he says that before the implementation of the law on administrative prejudicial crime, a person who has committed an administrative offense understands the danger of such an offense and his unique legal status in the form of being subject to administrative punishment. After the entry into force of the relevant provisions of the Criminal Code, such a person should understand the legal consequences of committing a similar administrative offense by him, fulfilling the constitutional obligation to comply with the law adopted and promulgated accordingly. Therefore, he always has the opportunity to consciously choose one or another option of behavior, so if a person commits the first administrative offense before the introduction of administrative prejudicial norms into the criminal code, and the second after it, the principles of legality and responsibility for guilt will not be violated. [7] .

In the qualification of administrative prejudicial crimes, the consideration of administrative offenses committed by a person before the entry into force of the provisions of the new criminal law, in our opinion, is related to the fact that the sign of "administrative punishment" applies to the subject of the crime, not the objective side of the crime.

The application of the norms of several crimes in relation to administrative prejudicial crimes creates problems related to qualification in cases of repetition and relapse of administrative prejudicial crimes [11] .

According to part 1 of Article 32 of the Criminal Code, if a person has committed two or more crimes provided for in exactly one article, part, different articles of the Criminal Code (in the cases specified separately in the Code) at different times, but has not been convicted for any of them, it is a repeated crime is considered to be achieved.

According to part 2 of Article 34 of the Criminal Code, the intentional commission of a new crime by a person who has committed a crime similar to the previously convicted crime, and in the cases specified in this Code, has also been convicted by other articles of the Special Part, is considered a dangerous recidivist crime.

The following articles of the Criminal Code, which provide for administrative prejudicial crimes, include the aggravating factors "repeatedly", "repeatedly or by a dangerous recidivist": "Repeat": Article 184 (Evasion of Taxes or Duties) Part 2 Clause "a", Article 197 [1] (Failure to Take Measures to Prevent Arbitrary Acquisition of Irrigated Lands) Part 2 Clause "a", Article 229 [4] (Violation of the procedure for granting land) Part 2 Clause "a";

"By a repeated or dangerous recidivist": Article 122 [1] (Leaving a child unattended in the territory of a foreign country) Part 2, paragraph "a", Article 126 [1] (Family (domestic) violence) Part 5, paragraph "e", 8 -part "b"-paragraph, Article 127 [1] -paragraph (Begging) Part 3 "a"-paragraph, Article 130 (Preparation, import, distribution, advertising, display of pornographic products) Part 2 "a" -paragraph Article 130 [1] (Manufacturing, importing, distribution, advertising, display of a product promoting oppression, violence or cruelty) Part 2, Paragraph "a", Article 141 [2] (Breach of the law on personal data) Part 2, paragraph "b", Article 177 (Illegal acquisition or transfer of currency values) Part 3, paragraph "a", Article 185 [1] (Preparation, acquisition, use of non-ferrous metals, their scrap and scraps) and violating the rules of their transfer) Part 2, Clause "a", Article 186 [1] (Illegal production or circulation of ethyl alcohol, alcoholic products and tobacco products) Part 2, Clause "v", Article 186 [3] (Production, preparation, acquisition, storage, transportation or transfer of low-quality or counterfeit drugs or medical products for the purpose of transfer, sale of drugs or medical products outside of pharmacies and their branches, as well as prescription retail of drugs containing strong active substances violation of the implementation procedure) part 2, point "v", Article 213 (abduction of an employee of a state body, state-participated organization or citizen self-government body for a bribe) part 3, point "a", Article 214 (State body, an organization with state participation, or an employee of a self-government body of citizens illegally receiving material values or having a property interest) part 3, item "a", Article 244 [6] (Dissemination of false information) part 3, item "a", Article 250 [1] (Illegal handling of pyrotechnic articles) Part 2 Clause "v", Article 278 (Organization and conduct of gambling and other games based on risk) Part 2 Clause "a" [12] .

This causes some problems in the qualification of a criminal act in practice. For example, in the Criminal Code, which consists of only one part of the administrative prejudice (for example, Article 143,148-1 of the Criminal Code), will a person be administratively responsible or criminally responsible if he commits the same act again after being convicted with this article? Different opinions can be expressed on this issue. For example, if a person commits the same act after being convicted under Article 143 of the Criminal Code, an administrative penalty is initially provided for this act.

In conclusion, taking into account the above circumstances, it is appropriate to subject a person to administrative punishment. But at the same time, after a person has been convicted under Article 143 of the Criminal Code, he will be prosecuted under Article 143 of the Criminal Code as a dangerous recidivist crime for having committed the act provided for in Article 143 of the Criminal Code, because this article is not directly aggravating. it is also possible to express an

opinion that it is appropriate to take into account when imposing punishment as an aggravating circumstance [13]. We have discussed two possible approaches above. In our opinion, among these approaches, we consider the second approach to be the correct one, and in order to prevent these possible problems, we believe that it is appropriate to introduce the following relevant amendments to the Criminal Code regarding the classification of crimes with administrative prejudice and crimes with administrative prejudice: Crime with administrative prejudice - this Code Crimes for which an administrative penalty is imposed upon the first commission of the offense provided for in the special part. Criminal liability for a crime with an administrative prejudice occurs when such an act is repeatedly committed within a year after the decision to impose an administrative penalty for this act comes into force. When the crime is committed for the first time, in the qualification of crimes for which an administrative punishment is provided, in the special part of the Criminal Code, the circumstances aggravating the said crime are the basis of the qualification, and it is not required to be subjected to an administrative punishment. After a person has been convicted of a crime with administrative prejudice, if he commits such an act again, the person will be held criminally liable and it is not required to have been subjected to an administrative penalty. We believe that the introduction of the above changes is important to ensure the inevitability of liability for crimes with administrative bias in the criminal law.

Administrative prejudicial crimes are not committed by any entity. The objective side of such crimes is committed only by a person who has the status of a person subject to administrative punishment. Therefore, participation in the form of joint execution is possible if the criminal subjects have a sign of administrative punishment. In addition, organizers, exponents, and assistants who have not been held administratively liable for committing a similar crime before will not be held criminally liable for administrative prejudicial crimes.

REFERENCES

1. Расулев А.А. Жиноятларни квалификация қилишда жиноят қонунининг аҳамияти. // Жиноят қонунчилигини такомиллаштириш муаммолари мавзусидаги илмий-амалий конференция материаллари тўплами. – Тошкент: ТДЮИ, 2010. – Б. 126.
2. Кудрявцев В.Н. Общая теория квалификации преступлений. – М., 1998. – С. 8.
3. Гаухман Л.Д. Квалификация преступлений: закон, теория, практика. – М., 2005. – С. 3.; Герцензон А.А. Квалификация преступлений. – М., 2007.; Андреев И.В. Теоретико-правовые основы квалификации преступлении: Автореф. дисс... канд. юрид. наук. – Омск, 2000. – С. 21.
4. Коржанский М.И. Квалификация преступлений. – Киев, 2000. – С. 10-11.; Левицкий А.Г. Квалификация преступлений. – М., 2001. – С. 140.;
5. Ўзбекистон Республикасининг Маъмурий жавобгарлик тўғрисидаги кодекси. Қонунчилик маълумотлари миллий базаси, 03/22/810/1095-сон. https://lex.uz/docs/97664#4775713
6. Пудовочкин Ю.Е. Квалификация преступлений с административной преюдицией // Библиотека криминалиста. 2017. № 2 (31). С. 31.
7. Ўзбекистон Республикасининг “Ер тўғрисидаги қонун ҳужжатларини бузганлик учун жавобгарлик чоралари кучайтирилиши муносабати билан Ўзбекистон

Республикасининг айрим қонун ҳужжатларига ўзгартиш ва қўшимчалар киритиш тўғрисида” Қонуни. https://lex.uz/docs/4224500

8. М.Х.Рустамбаев, Қ.Р.Абдурасулова, Б.Ж.Ахраров. Ўзбекистон Республикаси Жиноят ҳуқуқи Концепцияси ва доктринасини ривожлантириш муаммолари. БВ-Ф7-007-016 рақамли давлат гранти асосида чоп этилган.–Т.: ТДЮИ нашриёти, 2011. -166 бет. – Б.92.
9. Усмоналиев М. Жиноят ҳуқуқи. Умумий қисм. Олий ўқув юртлари учун дарслик.—Т., «Янги аср авлоди», –Б.16.
10. Махкамов О.М. Солиқ ёки бошқа мажбурий тўловларни тўлашдан бўйин товлашнинг жиноят-ҳуқуқий ва криминологик жиҳатлари: юрид.фанлар доктори илмий дар. олиш учун дисс. автореферати. –Т:, 2015. –Б.15.
11. Усмоналиев М. Жиноят ҳуқуқи. Умумий қисм. Олий ўқув юртлари учун дарслик.–Т., «Янги аср авлоди», –Б.111.
12. Каримов Х. (2020). Некоторые проблемы квалификации существующих преступлений института административной ответственности. Обзор законодательства Узбекистана, (3), 67–71. извлечено от https://inlibrary.uz/index.php/uzbek_law_review/article/view/1838
13. Uktamovich, Kholikov Farhod. "TYPES AND CRIMINAL LEGAL ASPECTS OF THEFT OF PROPERTY USING BANK PLASTIC CARDS." European International Journal of Multidisciplinary Research and Management Studies 2.08 (2022): 7-10.