

The annotation
of the dissertation for the degree of Doctor of Philosophy (PhD) on the topic
"Police Activity in Handling Cases of Administrative Offenses: Issues of Theory
and Practice"

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General Overview of the Work. The dissertation is dedicated to the exploration of theoretical and practical issues related to the stage of the administrative process associated with the consideration of cases of administrative offenses by law enforcement officers (police). The content offers its own perspective on addressing issues related to the essence and peculiarities of decision-making during the consideration of cases by police officers.

The relevance of the research topic is determined by the issues surrounding the exercise of administrative jurisdiction powers by police officers, who are authorized to consider cases of administrative offenses. Recently, there has been an increase in the volume of administrative offenses for which police officers handle cases, necessitating a scientific evaluation and justification of the effectiveness of the examined stage of the administrative process.

Furthermore, the relevance of the topic is confirmed by the priority direction of police activities outlined in programmatic documents: the Roadmap for the Development of Internal Affairs Bodies of the Republic of Kazakhstan for 2022-2024 and the Concept of Legal Policy of the Republic of Kazakhstan until 2030.

Surveys and interviews conducted with police officers endowed with jurisdictional powers to impose administrative penalties on problematic issues regarding the application of administrative penalties have affirmed the need for improvement in the examined stage of the administrative procedure. The absence of a comprehensive independent study on the topic in Kazakhstan also served as one of the reasons for its selection as the subject of research.

The aim and objectives of the dissertation research aim to reduce the level of legality violations in the procedural activities of law enforcement agencies, as well as to develop key theoretical and practical directions for ensuring the effectiveness of the examined stage of the administrative process.

Taking this into account, specific research tasks are determined:

- To conduct a retrospective or historical analysis of the development of the examined social relations in order to determine the optimal volume of administrative penalties applied by the police;
- To identify the main cases of legality violations in the activities of law enforcement agencies at the stage of considering cases of administrative offenses;
- To provide a legal characterization for each type of administrative penalty applied by police officers;
- To formulate conclusions and justify proposals for improving the mechanism of legality compliance when police officers apply administrative penalty measures;

- To conduct a comparative analysis of domestic and foreign legislation in the field of considering cases of administrative offenses by law enforcement officers;
- To analyze the procedure for conducting expedited proceedings on cases of administrative offenses;
- To study the institution of releasing offenders from administrative liability and administrative penalties by police officers;
- To identify problems in bringing to administrative responsibility individuals evading administrative penalties and formulate proposals for their resolution;
- To conduct research on the principles and methods of legality compliance by police officers when considering cases of administrative offenses;
- To consider measures aimed at eliminating the causes and conditions contributing to the commission of administrative offenses by police officers when considering cases of administrative offenses.

The object of the dissertation research is the social relations formed in the process of considering cases of administrative offenses by police officers endowed with jurisdictional powers to impose administrative penalties.

The subject of the research will consist of the norms of administrative procedural legislation, law enforcement activities of police officers aimed at preventing and stopping administrative offenses, as well as the legality of imposing administrative penalties and the application of procedural enforcement measures.

The theoretical and methodological framework of the research includes fundamental humanistic ideas and traditions of human and citizen development, law methods for improving the activities of law enforcement agencies, as well as a set of scientific methods of cognition (comparative legal studies, specifically historical, sociological, and others), scientific works of individual scholars researching issues related to the stage of the administrative process concerning the consideration of cases of administrative offenses.

During the preparation of the dissertation, the author utilized numerous publications on administrative law, administrative activities of law enforcement agencies, analyzed a large number of legislative and sub-legislative acts in force, legal literature from the Soviet period, Eastern European and Central Asian countries, examined published and draft legal acts of various statuses, reports of monitoring by individual states where specialized laws related to the administrative-procedural activities of the police exist.

Particular attention was paid to constructive-critical analysis of normative legal norms, scientific speeches, and publications on the state of administrative-procedural activities of police officers endowed with powers to apply various administrative penalty measures and exemptions from them.

The research information base comprised the law enforcement activities of internal affairs agencies, archival materials, analytical statistics, reports from the General Prosecutor's Office of the Republic of Kazakhstan, the Supreme Court of the Republic of Kazakhstan, the Ministry of Internal Affairs of the Republic of Kazakhstan, as well as materials from surveys and interviews with police officers. Surveys were primarily conducted among police officers endowed with powers to

impose administrative penalties and apply enforcement measures in cases of administrative offenses.

The scientific novelty of the dissertation research lies in the comprehensive examination of the main theoretical aspects of the process of considering cases of administrative offenses and the experience of its practical application. For the first time, a creative attempt has been made to conduct a comprehensive study of these issues in the context of the possibilities of administrative law and the established system of activities of police officers authorized to impose administrative penalties. Additionally, particular innovation in improving the examined social relations involves conditions for reorienting the activities of internal affairs agencies toward a service-oriented model of police work.

However, specific aspects of the stated problems have been explored in the works of scholars such as A.P. Korenev, E.T. Zhalburov, E.O. Tuzelbayev, B.A. Zhetpisbayev, M.A. Verbickaya, A.S. Smyshlyaev, A. Kenzhebek, T.D. Daubekov, O.T. Seitzdhanov, A.T. Bayzhanova, M.A. Kyzyllov, A.A. Taranov, E.M. Toktabekov, A.T. Nurtakhbatov, and several other authors.

Among the dissertations addressing various aspects of the consideration and resolution of cases of administrative offenses, it is worth highlighting the scholarly works of researchers such as A.Zh. Dyusembin, Yu.P. Solovey, M.S. Studenikina, A.B. Gabbasov, D.A. Kim, V.I. Mayorov, M.A. Yakimov, Ts.A. Yampolskaya, D.K. Smagulov, A.A. Salmagambetova, E.M. Khakimov, and others.

However, a comprehensive theoretical development of all material-procedural aspects of considering cases of administrative offenses in the science of administrative law has been lacking to date. Against the backdrop of minimal intensity of scientific publications on the stated issues, combined with the high dynamics of changes in Kazakhstan's legislation, the scientific novelty of the research appears evident.

Positions to be defended:

Since not all officials of the internal affairs agencies (police), holding special ranks, make decisions on imposing administrative penalties, it is necessary to enumerate a specific list of officials of the internal affairs agencies (police) endowed with powers to consider cases of administrative offenses in paragraph 4 of part 2 of Article 685 of the Code of Administrative Offenses.

The broad involvement of citizens in the process of resolving cases of administrative offenses corresponds to the modern goals of Kazakhstan's state policy on transitioning to a service-oriented model of police work, which we are currently striving for. Therefore, we believe that collegiate public formations with a law enforcement focus should be empowered to independently consider cases of administrative offenses.

Part 2 of Article 819 of the Code of Administrative Offenses should be presented in the following wording: "2. Taking into account the establishment of circumstances mitigating liability, as well as the absence of circumstances aggravating liability, the authority (official) reduces the amount of the administrative fine imposed on the person against whom a case of administrative

offense has been initiated, but not more than thirty percent of the total amount of the fine."

The application of a new measure to secure proceedings in cases of administrative offenses in the form of a penalty is justified to increase the percentage of recovery of administrative fines. Therefore, it is advisable to consider the possibility of supplementing subparagraph 12 of Part 1 of Article 785 of the Code of Administrative Offenses with the following content: "penalty in cases of untimely payment of an administrative fine." The Code of Administrative Offenses should be supplemented with a new Article 801-1 of the following content:

Article 801-1. Penalty

The penalty is a monetary payment calculated as a percentage of the amount of the administrative fine for each day of delay in payment, equal to 0.5 percent.

The maximum amount of the penalty cannot exceed the amount of the fine imposed on the offender."

5. Based on the results of the research on the theory and practice of applying the institute of exemption of offenders from administrative responsibility by police officers, the following conclusions have been substantiated:

1. The legal basis for terminating proceedings in cases of administrative offenses where the offender could not be identified should be not the fact of the statute of limitations for bringing administrative liability, but the actual failure to identify the person subject to administrative liability. Therefore, Part 1 of Article 741 of the Code of Administrative Offenses should be supplemented with item 6-1 as follows: "if the offender could not be identified within 10 days from the commission of the offense";

2. In subparagraph 2 of Article 77 of the Constitution of the Republic of Kazakhstan, the word "or" should be replaced with "and (or)". Therefore, the use of the new conjunction "and" will exclude double liability of the offender under both criminal and administrative codified legislation at the constitutional level.

3. Based on the goals of reconciliation, the list of articles listed in Part 1 of Article 64 of the Code of Administrative Offenses is unreasonably narrowed, as reconciliation should be carried out based on many substantive norms of the Special Part of the Code of Administrative Offenses, if the offender has compensated the victim for material or moral damage or harm to health through active repentance.

4. The note to Article 64-1 of the Code of Administrative Offenses should be presented in the following wording: "Minor administrative offenses are actions provided for in the Special Part of this Code, for which the administrative penalty in the form of a fine does not exceed five monthly calculation indicators." In addition, Article 64-1 of the Code of Administrative Offenses should be supplemented with the following second part: "The provision on insignificance does not apply to actions in circumstances aggravating liability for administrative offenses."

5. A review of the norms of the Code of Administrative Offenses should be conducted with the aim of eliminating or reducing administrative discretion to

eliminate corruption risks and protect the rights and legitimate interests of citizens of Kazakhstan from the arbitrariness of state bodies in the exercise of their jurisdictional powers by officials.

6. The analysis of the principles and methods of ensuring legality by law enforcement officers (police) in the consideration of cases of administrative offenses allows the following conclusions to be drawn:

1) To enhance the effectiveness of ensuring the principle of legality in the field of administrative procedural activities of law enforcement agencies, it is necessary to develop and approve departmental instructions for the application of the Administrative Offenses Code of the Republic of Kazakhstan by law enforcement officers (police).

2) If the court finds that a police officer committed gross violations of procedural norms of the Code of Administrative Offenses in the consideration of an administrative offense case, then a mandatory internal investigation should be conducted against him to decide on bringing him to disciplinary responsibility.

3) Since law enforcement and special agency personnel often bear dual legal responsibility (administrative and disciplinary) for the same act in law enforcement activities, we propose to abolish their liability under the Administrative Offenses Code and only hold them accountable for disciplinary offenses.

4) In order to ensure the principle of providing citizens with qualified legal assistance, it is justified to:

a) formulate a new version of Part 3 of Article 748 of the Administrative Offenses Code: "3. A defender is allowed to participate in the case from the moment the administrative offense case is initiated, as well as at any stage of the administrative offense case proceedings";

b) revise paragraph 2 of Part 4 of Article 802 of the Administrative Offenses Code as follows: "In case the administrative offense is recorded by certified special control and measuring technical means and devices operating automatically, the administrative offense case is considered initiated from the moment of proper notification delivery."

8. The analysis of the legal grounds regulating the process of law enforcement officers issuing private submissions on the causes and conditions contributing to offenses requires further improvement, namely:

1) the title and disposition of Part 1 of Article 26 of the Law of the Republic of Kazakhstan "On Crime Prevention" should be amended as follows: "Article 26. Private Submission on Eliminating the Causes and Conditions Contributing to Offenses. 1. In case the causes and conditions contributing to offenses are identified, state authorities submit a private submission on their elimination to the head or authorized person of the respective organization.";

2) Article 1 of the Law of the Republic of Kazakhstan dated April 29, 2010, "On Crime Prevention" should be supplemented with paragraph 7) as follows: "Monitoring in the field of crime prevention - a system of observations on the state of crime prevention, analysis, and forecasting of the causes and conditions contributing to offenses.";

3) In order to create legal grounds for departmental regulation of the mechanism for law enforcement officers issuing private submissions, empowered to resolve administrative offenses, Article 826 of the Administrative Offenses Code should be supplemented with Part 1-1 as follows: "1-1. The procedure for submitting private submissions on the elimination of the causes and conditions contributing to offenses, as well as the lists of categories of officials authorized to submit such submissions, shall be established by regulatory legal acts of the respective subject empowered to resolve administrative offense cases."

4) Part 3 of Article 826 of the Administrative Offenses Code should be amended as follows: "A private submission on eliminating the causes and conditions contributing to an administrative offense shall be submitted by the person who issued the resolution on the administrative offense within three working days after the resolution on the administrative offense has entered into legal force."

The theoretical and practical significance of the research results is determined by the volume of theoretical and legislative material subjected to analysis, systematized within the framework of the researched problem, which allowed the author of the dissertation to conduct a comprehensive study of the issue that had not been previously addressed at the monographic level. Considering the scale of the application of administrative-offense legislation, which relates to general administrative-jurisdictional practice, it is reasonable to assume the demand for the conducted theoretical research in subsequent scientific and applied developments on similar issues.

The validation of the main results of the work implies their use in the preparation of codified and other legislation regulating issues of administrative jurisdictional activity when making decisions on cases of administrative offenses. Many conclusions and proposals can be utilized in the scientific research of graduate and postgraduate students in the investigated field of social relations. The dissertation itself, monograph, and publications of the doctoral candidate can be used in the educational process of higher educational institutions specializing in law.

The results of the dissertation work have been used in scientific research and projects:

1) Some conclusions of this dissertation were utilized in the formulation of proposals for the Concept of Public Safety of the Republic of Kazakhstan for the years 2024-2028.

2) In the dissertation by Mayshina A.I. on the topic "Administrative Jurisdictional Activity of District Police Inspectors in Cases Involving Minors," there is a reference to an article prepared by Omarov A.S. titled "On the Improvement of Administrative Jurisdictional Activity of the Service of District Police Inspectors in Cases Involving Minors."

3) In the dissertation by Smagulov D.K. on the topic "Features of Administrative Liability for Corruption Offenses," there is a reference to an article prepared by Omarov A.S. titled "The Influence of Discretion on the Growth of Corruption Risks in the Process of Resolving Cases of Administrative Offenses."

Publications of research results:

1. Improving legal compliance in police activities: ensuring sustainable public safety in kazakhstan. Journal of lifestyle & sdgs review 2025. – V.5.Iss. - P. 01-18. DOI: 10.47172/2965-730X. SDGsReview.v5. n01.pe03780.

2. The legal basis of shortened proceedings in cases of administrative offenses. International Scientific Journal "Gylym-Nauka", No. 2(73), Kostanay, 2022, pp.84-90 (200c.).

3. On the powers of police officers when releasing persons who have committed administrative offenses from administrative responsibility and administrative penalties. International Scientific Journal "Scientific Works" No. 2 (75), Almaty, 2023, pp. 17-25 (433c.).

4. Improvement of the mechanism for the implementation of reduced proceedings in cases of administrative offenses. International Scientific Journal "Gylym-Nauka", No. 2 (77), Kostanay, 2023. – Pp. 128-133(200s.).

5. On administrative responsibility for the intentional destruction or damage of other people's property. The international scientific journal "Khabarshy-Vestnik", No. 3 (81), Karaganda, 2023 – From 187-192(212c.).

6. The influence of discretion on the growth of corruption risks in the process of resolving cases of administrative offenses. Materials of the IPCC of young scientists, undergraduates and doctoral students, dedicated to the 30th anniversary of the internal affairs bodies of the Republic of Kazakhstan on March 18, 2022. Kostanay: Kostanay Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Sh. Kabyrbayev, 2022. pp.342-347 (483 pp.).

7. On the issue of improving the administrative jurisdiction of the service of district police inspectors in cases of minors. Materials of the MNPC "Protection of children's rights: Police and Civil Society cooperation", May 13-14, 2022 Kostanay Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Sh. Kabyrbayev, Kostanay, 2022 - pp.153-159 (476c.).

8. On the issue of making a private presentation on the elimination of the causes and conditions conducive to the commission of offenses by police officers. Materials of the MNPC "Organization and activity of internal affairs bodies at the present stage: problems and solutions", October 27, 2023 Kostanay Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Sh. Kabyrbayev, Kostanay, 2023 – pp.58-62 (600s.).

9. The specifics of making private representations by police officers about eliminating the causes and conditions that contribute to the commission of offenses. Materials of the MNPC dated December 14, 23 on the topic "Justice, stability and public security - the main guidelines for building a democratic and social state based on the rule of law." Almaty: Turan University, 2023 – From 161-166 (443s.).

10. Specifics of the appointment of administrative penalties by police officers for violation of migration legislation. Materials of the MNPC "Organization and activity of internal affairs bodies at the present stage: problems and solutions" on October 24, 2024. Kostanay: Kostanay Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Sh. Kabyrbayev,

2024 – From 48-52 (505c.).

11. Jurisdictional powers of employees of internal affairs bodies (police) to consider cases of administrative offenses. Kostanay Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Shrakbek Kabylbayev Kostanay, 2023 – 96c.

The structure of the dissertation is determined by the goal, objectives, and logical sequence of the conducted research. The structural elements of the work include an introduction; three sections, comprising nine subsections; conclusion; list of references; and appendices.