

## The proceeding mechanism on cases of administrative offences: administrative investigation

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**Abstract.** Except a problem of unification and specification of base theoretical aspects of administrative investigation now for the Kazakhstan legislation question of the resolution of existing collisions and gaps in regulation of the specified activity is actual. One of the major problems of our state is formation of weighed and proved administratively - jurisdictional policy of the state, making essential impact on a considerable circle of public relations. The actuality of the problem of legality and rule of law strengthening, safety insurance of the person, society and state is increasing. It is necessary to generate effectively working mechanism of dispute resolution between the citizen and the state at the expense of perfection of administrative procedures and judicial mechanisms. Performance of these tasks in many respects depends and is connected with proceeding perfection on cases of administrative offences. Rapid and large-scale changes in political, economic and social spheres of life of Kazakhstan and other states dictate new requirements to the administrative law theory.

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### Introduction

The important transformations, which are carried out in the Republic of Kazakhstan, are reflected in many fields of activity of our society and the state. The legal system of the country where the administrative legislation is constantly updated, supplemented is also reformed. Problems of perfection and even deep reforming of the basic procedural branches of the law, and also proceeding on cases of administrative offences, as one of administrative law institutes, including the proceedings carried out in the form of administrative investigation are discussed. Administrative investigation as the proceeding component on cases of administrative offences affects interests of persons participating in it. When constructing in our country democratic, lawful state appropriate realization of the rights and freedom, guarantees of administrative investigation participants is important.

It causes special attention to working out of the theory of administrative investigation, the mechanism of its administrative-legal regulation.

In sphere of administrative-legal regulation and action of administrative institutes, there are many conflict situations in which all subjects of law are involved, as a matter of fact: citizens, state and municipal bodies, enterprises and organizations.

**The aim of the research** is complex studying of legal regulation of administrative investigation in the proceeding mechanism on cases of administrative offences, and as development of

ways, a scientific substantiation of offers and working out of the theoretical and practical recommendations directed on perfection of administrative investigation as a form of proceeding on cases of administrative offences.

### The methods of the research

Dialectic, logic, historical, deductive, comperative - legal, partial-sociological, system and statistical methods.

### The main part

The difficulties occurring at administrative investigation are also determined by relative novelty of the form of proceeding on cases of administrative offences, and therefore, absence of law-enforcement officers' necessary experience, and also complexity of objective and subjective characteristics of committed offences on which administrative investigation and their legislative structure is carried out[1].

The theoretical substantiation of administrative investigation, and perfection of administrative-procedural legislation, undoubtedly, will positively be reflected in proceeding on cases of administrative offences, including, practice of its application by law-enforcement bodies.

Administrative investigation has no own theoretical base till now. Despite high degree of a demand of administrative investigation potential, study of its theoretical questions it is possible to characterize as insufficiently studied.

Till now, a subject of scientific dispute is not only separate elements of the theory of administrative investigation, but also a place and its role in proceeding on cases of administrative offences. The stage of administrative investigation is base for all proceeding. A whole further course of jurisdictional application and, finally, legality and justice of the made decision depends on quality of initial administrative-procedural actions, i.e. conducted investigation, completeness of the gathered evidence [2].

The initial stage of proceeding on cases of administrative offences should be called a stage of administrative investigation.

For the purpose of requirements of practice in conformity with the legislation on administrative responsibility, it would be expedient to make changes in the Code of the Republic of Kazakhstan on Administrative Violations[3]. According to them, we suggest to determine as the first stage of proceeding on cases of administrative offences, a stage «administrative investigation» which does not need to be confused with similar name, form of proceeding on cases of administrative offences.

Such interpretation of administrative investigation will allow most objectively and in full to reflect procedural activity of bodies, officials carrying out proceeding on case of administrative offence.

Administrative investigation is conducted when case of an administrative offence is instituted, differently gathering and reception of additional materials is illegal and out of proceeding limits on cases of administrative offences[4].

The scientists investigating problems of proceeding on cases of administrative offences, considering administrative investigation as the first stage of proceeding on cases of administrative offences, give various concepts of the given stage, but all of them have no basic distinction.

Importance of administrative investigation consists that necessary preconditions for application to guilty measures of administrative coercion are created at this stage. At the given stage many questions, including refusal of application of administrative punishment, are solved.

Proceeding on cases of administrative offences is carried out in view of offences in various areas of vital activity of our society.

The large versatility of encroachments on the public relations protected by the state, does not allow to carry out the same set of procedural actions during proceeding realization on cases of administrative offences as each case is individual even if the public relations providing responsibility under same article because circumstances of the

offence are various, persons committed such and many other conditions [5].

Proceeding on cases of administrative offences, in the essence, is versatile proceeding, covering an order of activity of not only jurisdictional bodies, on the same case, but also activity of other competent officials on offence detection, detention of the offender, compilation of protocol, order execution on case etc.

The administrative jurisdiction has certain distinctions as the disposition that testifies to riches and variety of the procedural form of considered activity.

The point of view on quantity of proceedings on cases of administrative offences in an administrative law science does not exist till now [6].

The various understanding and allocation of forms of proceedings is connected with legislation development, along with an administrative law science, its perfection.

The retrospective analysis shows, that in connection with huge set and versatility of public relations protected by the administrative legislation, the person, the body which is carrying out proceeding on cases of administrative offences including court, frequently faced a number of difficulties of procedural character. The Code of administrative offences did not give the appropriate answer as more difficult character of realization of procedural actions with a view of an objective truth establishment on case was required.

Thereupon, the legislator accepted the separate regulatory legal acts, allowing carrying out more difficult proceeding on case of an administrative offence, in comparison with the basic set of cases, which provided all-round, full and objective inquiry, for the purpose of fulfillment of proceeding tasks.

Administrative investigation represents one of forms of proceeding on case of an administrative offence [7].

It consists in detailed, all-round and exhaustive inquiry by person, body so that on the basis of the evidence gathered and checked up on case the court could make the legal decision.

Carrying out tasks of full and comprehensive inquiry, administrative investigation provides for court possibility to resolve case, to make the legal and correct order and at the same time interferes with the unreasonable prosecution of perpetrators.

Administrative investigation, being a form of proceeding on cases of administrative offences, corresponds with proceeding as the general and especial or whole and private.

It directed on fulfillment of the proceeding on cases of the administrative offences fixed in Article 577 of the Code of the Republic of Kazakhstan on Administrative Violations to which concern: “timely, all-round, full and objective inquiry, resolution of it according to the Code, execution of the made order, and also revealing of the reasons and conditions promoting commitment of administrative offences” [8].

Administrative investigation as the form of proceeding on cases of administrative offences has also private problems.

It is possible to refer to them: establishment of factual circumstances, detection and procedural fastening of evidence for the subsequent correct decision-making on case, legality, preventive influence on the offender and a number of other, more subjects, following from the listed tasks.

Having found out tasks of administrative investigation as forms of proceeding on cases of administrative offences, it is necessary to solve, what initial beginnings should be at the heart of administrative-procedural activity that is to establish its principles.

Importance of principles of administrative investigation is caused by that they are display and fastening of laws of the given form of proceeding on cases of administrative offences. They determine whole character of procedural activity, promote realization of norms of substantive and procedural law, and in a case of instability or insufficient accurate regulation of this or that question in the legislation, allow making the correct decision, proceeding from the general spirit of the law [8].

The legislator differently fixes proceeding principles on cases of administrative offences [9].

In some cases this or that principle can be expressed in separate norm of the law.

Proceeding stage on cases of administrative offences is administrative investigation as in the stage there are united the actions directed on an establishment of circumstances, their fixation and qualification, that is not that other, as investigation of administrative infringement.

For the purpose of requirements of practice in conformity with the legislation on administrative responsibility, it would be expedient to make changes in the Code of the Republic of Kazakhstan on Administrative Violations [10]. According to them, we suggest to determine as the first stage of proceeding on cases of administrative offences, a stage «administrative investigation» which does not need to be confused with similar name, form of proceeding on cases of administrative offences.

Such interpretation of administrative investigation will allow most objectively and in full

to reflect procedural activity of bodies, officials carrying out proceeding on case of administrative offence.

The current legislation analysis in which administrative investigation is not determined and studying of the special literature on administrative offences, allows us to make definition of this concept.

In our opinion, administrative investigation is an independent, objectively necessary form of proceeding on cases of the administrative offences, carried out on certain according to the law categories of cases. It represents the imperious activity of competent officials and state bodies regulated with administrative-procedural norms according to examination or other demanding considerable expenses of procedural actions. They are directed on an establishment of factual circumstances of an offence, their fixing and legal qualification for the purpose of accountability of those who responsible for offence, with application in necessary cases of measures of coercion, and realization of other procedural tasks, come to the end with compilation of protocol or resolution on the termination of case of an administrative offence [11].

Definition of the concept of administrative investigation and opening of the essence of administrative investigation, in certain degree, will help to resolve problems available today in interpretation of the given form of proceeding on cases of administrative offences [12].

Consideration of administrative investigation as forms of proceeding on cases of administrative offences, allows asserting, that the given specific form of proceeding has a number of the features inherent in it distinguishing it from other forms of proceeding to which, in our opinion it is possible to refer [13]:

- Administrative investigation has the most durable period of proceeding on cases of administrative offences: till 2 months, and on cases of custom offences can be prolonged up to 6 months, unlike other forms of proceeding on cases of administrative offences.

- Proceeding in the form of administrative investigation is characterized by suit complexity, that is connected with examination or performance of other procedural actions.

- Necessity of special knowledge for these spheres of the administrative legislation.

## Conclusion

Administrative-legal regulation of proceeding on cases of administrative offences in the form of administrative investigation in full does not correspond to real public relations now. In the Code

of the Republic of Kazakhstan on Administrative Violations it is necessary to regulate in more details the bases of administrative investigation, to concretize articles, and not only directions, order of some procedural actions, order and periods of materials of case for examination to the court, order and bases for additional administrative investigation.

With a view of a uniform order of administrative investigation in departments of internal affairs and registration of procedural documents, unification of administrative-legal regulation of administrative investigation, creation of the uniform regulatory legal act regulating the mechanism of proceeding of administrative investigation is necessary.

On the basis of the conducted research we come to conclusion that the administrative legislation and practice of its application by law-enforcement bodies take the important place in system of measures on protection of constitutional rights and freedom of citizens, protection of a public order and struggle against criminality.

#### Resume

The results of studying of law enforcement practice show, that struggle against administrative offences and crimes cannot be effective if institutes of administrative responsibility are not developed in a sufficient measure, in particular administrative investigation, prevention and suppression of administrative offences is not conducted.

Thus, there is a further necessity of deepening of theoretical researches of administrative investigation as forms of proceeding on cases of administrative offences, studying of its legal nature and practice of application taking into account of new, constantly developing and varying social, economic, legal and political conditions of a life of a society.

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