ISSN: 2582-4686 SJIF 2021-3.261,SJIF 2022-2.889
ResearchBib Impact Factor: 8.848 / 2023

THE MULTIDISCIPLINARY JOURNAL OF SCIENCE AND TECHNOLOGY

VOLUME-3, ISSUE-3

SOME QUESTION ABOUT ADMINISTRATIVE PREJUDICE

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Abstract: The legislative consolidation of the institution of administrative prejudice is inconsistent. This creates difficulties in defining its boundaries in the understanding and application of the relevant rules. Itself administrative collateral estoppel deserves a critical eye. It violates the principle of non bis in idem; shifts the basis of criminal responsibility towards the personality of the offender; blurs the boundaries between crime and administrative offence. Its existence is actually allocated among administrative offences special group of torts, which occupies its public danger an intermediate position between administrative great-wonarishinani and crimes. This result unnecessarily complicates the system of public offences.

Keywords: administrative prejudice, repeatability, non bis in idem, danger of personality, crime, administrative offence.

Administrative prejudice is one of the most debated problems in criminal law. Critical remarks concern both the technical implementation of the norms with administrative prejudice, and the very fact of its existence. Thus, the circle of criminal law norms fixing administrative prejudice is not clearly defined. Without a doubt, it includes provisions where the legislator directly indicates that the subject is brought to administrative responsibility or the imposition of administrative punishment on him as a condition for bringing to criminal responsibility.

In the criminal law of the Republic of Uzbekistan, one of the important tools for ensuring justice and legality is the concept of administrative prejudice. An administrative prejudice is a document that contains information about previously prosecuted persons and provides information for decision–making by courts and law enforcement agencies.

The concept of administrative prejudice in the criminal law of Uzbekistan was introduced in order to ensure legality and fairness in criminal proceedings. It allows you to evaluate previously committed offenses of a person and make more informed decisions about punishment or a measure of restraint.

As A.G. Bezverkhov points out: "the essence of administrative prejudice consists in the recognition of administrative offenses repeatedly committed by the guilty person within a certain period of time after the imposition of administrative responsibility for the first (first) of them by a legal fact that generates criminal consequences. These consequences consist in assessing the last of the criminally non-punishable offenses as a crime and, accordingly, imposing criminal responsibility on the offender" [1].

An administrative prejudice is a document that contains information about previously convicted persons, including information about the crimes for which they were convicted, the terms of punishment, as well as court decisions and decisions on early release. This document is created and maintained by law enforcement agencies, and it can be used when making decisions on the admissibility of commutation of punishment or on the application of additional preventive measures.

Administrative prejudice plays an important role in the implementation of the principle of justice in criminal justice. It allows courts and law enforcement agencies to take into account

ISSN: 2582-4686 SJIF 2021-3.261,SJIF 2022-2.889
ResearchBib Impact Factor: 8.848 / 2023

previously committed crimes when imposing punishment and determining a preventive measure. This helps to prevent the recurrence of crimes and provides more effective rehabilitation of convicts.

However, it should be noted that administrative prejudice should be used with caution and in compliance with legal norms. Its use should not lead to arbitrary decisions or violation of the rights of the accused. It is important that judicial and law enforcement agencies observe the principles of justice, legality and equality before the law when making decisions based on administrative prejudice.

It should be noted that the return of the institute of administrative prejudice to the criminal law among the scientific community has found many opponents. In general, their comments boil down to the following.

First of all, opponents of administrative prejudice note that the commission of two or more administrative offenses are not able to change their social essence and transform into a crime. Thus, D.S.Chikin notes: "an administrative offense, no matter how many times it is repeated, does not acquire the essential, material properties of a crime" [2].

In this regard, I would like to note that an act constructed with the help of an administrative prejudice is not equal in terms of the level of public danger to the preceding offense, since the crime is a unity of objective and subjective signs. The subject of an administrative offense, after bringing him to administrative responsibility, being warned about possible criminal consequences in case of repeated commission of the same violation, demonstrates not only a more persistent antisocial orientation, but also subjectively evaluates the act committed repeatedly as a crime, realizing its criminal wrongfulness.

Another argument of the opponents of administrative prejudice is the assertion that the use of this construction leads to the artificial unification into a single crime of independent administrative offenses that are not related to each other, do not have meaningful unity, and, accordingly, are not able to act as a single crime [3].

The next position of opponents of the introduction of crimes with administrative prejudice is that this construction violates the principle of "non bis in idem", since an administrative offense for which a person has already been brought to administrative responsibility receives a double legal assessment and entails repeated criminal liability [4].

For example, A.V. Ivanchin notes: "The reflection in the criminal law of the properties of the increased danger of the individual during the construction of basic or undifferentiated structures (primarily with administrative prejudice) should occur in cases where such an engineering solution is necessary and sufficient to reflect the public danger of prohibited behavior [5].

It seems to us that the fact that administrative offenses do not have a public danger is not a generally accepted opinion that does not require proof. The authors-lawyers refer to the concept of an administrative offense in the legislation to justify the fact that administrative offenses do not carry social risk [6]. Taking into account article 10 of the Code of the Republic of Uzbekistan on Administrative Responsibility, which gives the concept of an administrative offense, an administrative offense is defined as an act or omission committed in accordance with the law that encroaches on the person, on the rights and freedoms of citizens, on property, on state and public order, on the natural environment [7].

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If we analyze the established norms of the Code of the Republic of Uzbekistan on administrative responsibility for offenses, it will become known how correct this opinion is. In this context, we can say that administrative offenses will also be considered socially dangerous and have a lower social risk in relation to crimes [8].

Moreover, the public danger of an act is determined not only by the consequences in the form of harm, but also by other symptoms. The social danger is repeatedly influenced by the object of aggression, the constant negative influence of transmission, time, place, method of aggression, form, motive and purpose of guilt. In some cases, public danger will depend on the special characteristics of the subject, such as the commission of a crime by officials.

Thus, the intellectual element of the guilty person's consciousness when committing a crime consisting of violating special rules, along with awareness of the public danger of the act, should include awareness of its illegality. In such a case, the use of the construction of administrative prejudice in compositions with a blank disposition in criminal legislation will ensure full compliance with the principle of guilt, since, having committed an administrative offense, and having been subjected to administrative punishment, the person will know for certain about the nature of the ban and the negative criminal consequences of its repeated violation.

We also believe that the legislator, when constructing norms with administrative prejudice, needs to uniformly determine the multiplicity of administrative offenses underlying criminal liability. It seems that the construction of a single administrative prejudice should be used in the Criminal Code of Uzbekistan, since in the case of multiple prejudice, indeed, it becomes unclear what lies at the basis of criminalization of the act. As already mentioned earlier, the construction of the administrative prejudice does not represent a mechanical outgrowth of the number of offenses into a new quality, but assumes the acquisition of the essential property of the crime from the repeated, i.e. the second offense, due to the manifestation of a more persistent antisocial orientation by the offender, and changes in the subjective component of the act committed by him.

Summing up, it can be summarized that the use of constructions of crimes with administrative prejudice as a means of criminalizing acts seems justified, especially with regard to compositions with a blank disposition, but at the same time the legislator needs to abandon the use of double prejudice, and develop a unified approach to determining the time interval for preserving the legal force of the constituent offenses.

In conclusion, administrative prejudice in the criminal law of the Republic of Uzbekistan plays an important role in ensuring justice and legality. It allows you to take into account previously committed crimes when assigning punishment and determining a preventive measure, which contributes to a more effective fight against crime and law enforcement. It is important that the use of administrative prejudice is carried out in accordance with the law and with respect for the rights of the accused in order to prevent violations of their constitutional rights.

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ResearchBib Impact Factor: 8.848 / 2023

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