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Grounds for Applying Administrative Detention

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Abstract:

In this article, the principles of applying the administrative detention penalty are revealed with scientific grounds.

Keywords: Administrative, coercion, person, include, employees.

Administrative punishment is a type of administrative coercive measures according to its purpose. Administrative punishment, unlike other types of administrative coercion, is a punishment sanction with a specific purpose, which is used when an offender attacks social relations protected by administrative legislation, that is, when an administrative offense is committed. Administrative punishment is regulated by the Code of Administrative Responsibility of the Republic of Uzbekistan, and other measures of administrative coercion are regulated by various normative legal documents.

Although administrative punishment is a coercive measure applied by an authorized body, an official on behalf of the state to a person found guilty of committing an offense based on administrative legislation, and consists of depriving the offender of certain rights and freedoms provided for by law or temporarily restricting them, torture, violence, does not aim to inflict cruel or degrading treatment.

Administrative detention is one of the most severe administrative punishments, which consists of keeping a person in conditions of temporary isolation from society and is used for a period of three to fifteen days, and in the case of a state of emergency, for a period of up to thirty days for violation of public order.

The analysis of the practice of handling administrative offense cases by the courts shows that 248,137 administrative offense cases were heard during the 6 months of 2022. Administrative sanctions were applied to 65.4 percent of cases, and administrative proceedings were terminated in 34.6 percent. 23.2 percent of the applied administrative punishments are administrative imprisonment. As can be seen from the analysis, the place and importance of administrative detention in the penal system is great. Therefore, it is important to study the problems arising on the basis and procedure of its application.

The primary issue in the application of administrative detention is to determine the range of persons to whom this type of punishment can be applied. The analysis of legal documents shows that the scope of persons to whom administrative detention can be applied is not fully reflected in our national legislation. In particular, in Article 16 of the Code of Administrative Responsibility of the Republic of Uzbekistan, it is noted that measures of administrative detention cannot be applied to military personnel and conscripts, as well as to persons belonging to the internal affairs bodies and the members of the National Guard of the Republic of Uzbekistan.

The above-mentioned list does not include employees of state customs bodies, and whether the type of punishment under analysis can be applied or not is not legally established. Also, in the second part of this article, "Other persons who are not included in the list of persons specified in the first

part of this article, to whom disciplinary charters or special rules on discipline are applied, shall be disciplinary responsible for committing an administrative offense in the cases directly provided for in this charter or rules, other in other cases, they will be administratively responsible on general grounds.

Article 36 of the Law of the Republic of Uzbekistan "On the State Customs Service" states the responsibility of the employees of the customs authorities, and the relevant norm is also expressed in it. According to it, it is determined that the employees of the customs authorities are responsible for violating the service discipline in accordance with the Disciplinary Charter.

At the same time, according to Clause 44 of the Disciplinary Charter of the State Customs Bodies of the Republic of Uzbekistan, approved by Annex 10 to the Decision of the President of the Republic of Uzbekistan No. PQ-3665 dated April 12, 2018, disciplinary punishment for the actions of the employees of the customs bodies that led to the imposition of an administrative penalty it is stipulated that it will not be used.

From the analysis of this norm, it is known that the employees of the customs authorities are administratively responsible for committing an administrative offense on general grounds. However, administrative detention measures are not included in the category of persons who cannot be applied. However, according to the legal status, the employees of the customs bodies are also equal to the employees of the internal affairs bodies (that is, they have a special title).

The analysis of the legislation of the CIS countries shows that this issue is more clearly resolved in them. In particular, the countries of Russia (3.9-m. 2nd q.), Kazakhstan (32-m. 2-q.), Tajikistan (30-m. 2-q.), Turkmenistan (29-m. 1-q.) the legislation stipulates that administrative detention cannot be applied to employees of customs authorities.

Taking into account the above, in our opinion, in Article 16 of the Code of Administrative Responsibility of the Republic of Uzbekistan, it is necessary to legally strengthen the impossibility of applying the punishment of administrative detention for the commission of an administrative offense by employees of state customs bodies.

In addition, part 2 of Article 29 of the Code of Administrative Responsibility of the Republic of Uzbekistan provides for a number of categories of persons who cannot be sentenced to administrative detention, including: pregnant women, women with children under the age of three, those who are alone with their children under the age of fourteen persons who are raising children, persons under the age of eighteen, persons with disabilities of the first and second groups.

Under the mentioned conditions, persons raising a child under the age of fourteen on their own are also included in the circle of persons who cannot be sentenced to administrative detention. Male or female parenting person is not decisive.

If we make a comparative legal analysis, in the administrative legislation of the Republic of Kazakhstan (Article 50, Clause 2), the fact that a woman has a child under the age of fourteen is the basis for not applying administrative imprisonment without other additional legal conditions. In the administrative legislation of the Republic of Ukraine (Article 32, Clause 2), the fact that a woman has a child under the age of twelve is the basis for not applying administrative imprisonment without other additional legal conditions. It can be seen that the norms of our national legislation have a relatively imperative nature in this matter. It contains a condition related to the parenting of a child under the age of fourteen. At the same time, our national legislation provides a privilege to any person (male or female) who fulfills such a condition.

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The experience of foreign countries shows that today there are cases where the issue of administrative detention is decided on the basis of age.

For example, in Article 50, part 2 of the Code of Administrative Offenses of the Republic of Kazakhstan, women over 58 years old and men over 63 years old are subject to administrative imprisonment, in Article 30, Part 2 of the Code of Administrative Offenses of the Republic of Azerbaijan, in relation to women over 60 years old and men over 65 years old. it is implied that it is not possible.

This issue is one of the controversial issues today. The reason is that the above countries have included special conditions in their national legislation, taking into account the physiological condition related to human age. In our opinion, in the context of the current administrative and legal reforms, recognizing that human value is above all else, it is appropriate to consider the possibility of not applying administrative imprisonment to women over 60 and men over 65 in our national legislation.

After all, this preferential condition serves to fully realize the priority principle of "for human dignity", the main criterion aimed at continuing the path of democratic reforms started by the President.

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