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THE ESSENCE OF ADMINISTRATIVE PREJUDICE IN CRIMINAL LAW (IN THE EXAMPLE OF THE CRIMINAL LEGISLATION OF THE REPUBLIC OF UZBEKISTAN)

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Abstract: In this article, the author has highlighted the concepts, content and features of criminal liability and administrative prejudice according to the Criminal Code of the Republic of Uzbekistan.
The author notes that in the first part of article 16 of the current Criminal Code of the Republic of Uzbekistan, the definition of responsibility for a crime is a legal consequence of the commission of a crime, which is expressed in the application of a court verdict, punishment or other measure of legal influence against a person guilty of committing a crime.
Criminal liability is a criminal legal relationship that arises between a person and the State for committing an act prohibited by the Criminal Code of a person.
In fact, criminal liability is one of the central issues studied in the theory of criminal law, and the articles of the special part of the Criminal Code form its basis. In recent years, this issue has become more relevant due to the liberalization of criminal legislation.
The article states that in some cases there is a need to apply administrative prejudice in the exercise of criminal responsibility, in particular, in the qualification of the act. Administrative prejudice refers to the fact that in order to recognize an act as a crime, an administrative penalty was imposed on the person who committed it earlier for such an act, and this condition is fixed in the article relating to the special part of the criminal law. 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 administrative punishment has not committed a new administrative offense within a year from the date of expiration of this punishment, this person is considered not subject to administrative punishment. In the process of applying the rule of administrative prejudice, it is noted that it is necessary to take this rule into account.
Also included are the views of scientists on administrative prejudice, scientific and theoretical views on whether it should be in criminal law, as well as the position of the author.
Keywords: legal liability, criminal liability, administrative liability, administrative prejudice, degree of public danger, criminal classification, public danger.

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Introduction

Legal liability, including criminal liability, is mainly considered as a consequence of the fact that the actions of an individual do not comply with the requirements of the norms of criminal law. More precisely, criminal liability carries out the punitive function of the law as an institution of coercion of the state. Obviously, negative legal consequences for a person arising as a result of violation of the requirements of the norms of criminal law are a variable, permanent nature of liability. Also, without legal responsibility being universal, it will be specific to a specific space and time. This indicates only its specificity to a particular state or society. In this regard, in criminal prosecution, the Institute of administrative prepositions is considered one of the most important conditions for bringing to justice for certain acts.

In this regard, the liberalization and improvement of criminal law in order to ensure the reliable protection of the rights and freedoms, legitimate interests of the individual is one of the priority tasks in Criminal Legal Policy. The reforms in our country today are of great importance for raising human dignity, protecting human rights and freedoms through criminal legal means.

Also in the development strategy of New Uzbekistan for 2022-2026 "...it was established that the further increase in the effectiveness of the protection of dignity and freedom of citizens in the processes of combating crimes will be consistently continued as a priority task **[1]**.

It should be noted that in the context of judicial and legal reforms, the issue of carrying out inventory on the unification and coordination of current criminal legislation with international standards and ensuring the inevitability of responsibility is important. In this case, one of the aspects that should undoubtedly be investigated and improved is the issue of Criminal Law responsibility as well as the application of administrative precedence. Therefore, much less research has been carried out by Uzbek legal scholars on these topics.

Results

The essence of administrative prejudice is ambiguously interpreted by scientists. There are various concepts of administrative prejudice in the scientific literature: some scientists call it a legal category, others – a technique of legal technique, others use the term "legal means", and others – "legal construction". It is not uncommon to use the term "institute of criminal law".

To the question of what is ultimately an administrative prejudice, it is necessary to answer that both, and the other, and the third, depending on the use of this term in a particular context.

Legal categories in the theory of law are the most general, fundamental and profound legal concepts **[2]**. Administrative prejudice, without entering into the meaning of the system of other more general concepts in criminal law, can be called a legal category, if we are talking about its essence, legal content.

If we are talking about criminalization, decriminalization of acts and the role of administrative prejudice in these processes, it is more appropriate to call administrative prejudice a legal means.

A.V.Kozlov called administrative prejudice a rule of legal technique **[3]**. And he is right when it comes to expressing the will of the legislator to decriminalize any crime or criminalize the repeated commission of identical offenses with the help of administrative prejudice.

In the event that administrative prejudice is used as a technique of legal technique, with the help of which, in particular, a certain corpus delicti is formulated, it is preferable, in our opinion, to use the term "legal construction",

since it reflects the structural feature of administrative prejudice.

In some cases, there is a need to apply an administrative preposition in the implementation of criminal liability, in particular, in the qualification of the act. Administrative preposition refers to the fact that, in order to find an act as a crime, an administrative penalty was imposed on the person who committed it for such an act before, and this condition is fixed in the article belonging to a special part of the criminal law. 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 who is subject to administrative punishment is considered not subject to administrative punishment if he has not committed a new administrative offense within a year from the date of the expiration of this punishment **[4]**. In the process of applying the rule of administrative precedence, it will be necessary to take this rule into account **[5]**.

We believe that N.A. Lopashenko somewhat narrowed the content of the object under study, calling the administrative prejudice artificially created by the legislator a legal construct based on the repeatability of administrative offenses, since she determined the legal essence of the disclosed concept only from the point of view of the legislator constructing the corpus delicti with administrative prejudice **[6]**.

If we talk, for example, about the objective side of the corpus delicti with administrative prejudice, then it is quite appropriate to call the object under study a legal construction, in our opinion.

The Soviet researcher of administrative prejudice I.O. Gruntov defined its essence as a preconditional connection between several similar administrative offenses fixed by a special construction of the corpus delicti **[7]**. However, it is not entirely clear from this definition what exactly this connection is expressed in and whether the direct facts of committing administrative offenses are sufficient for its formation.

In his dissertation on administrative prejudice in Soviet criminal law, Ch.F.Mustafayev came to a more balanced conclusion that this term should be understood as giving the criminal law norm to the fact of lawful and justified application of administrative penalties for misconduct the meaning of the necessary precondition for recognizing the same or similar act committed after that as a crime on the objective side [8]. This definition reasonably includes not only the connection between the administrative offenses actually committed, but also contains an indication of the administrative penalty applied to the person, which is a necessary condition for recognizing a repeated offense as criminal. However, the concept proposed by the scientist does not cover the sign of repetition found both in the Soviet and in the current Uzbek criminal law. In addition, it is not entirely

clear for how long the first administrative penalty will be the above-mentioned condition, and whether it is a condition. However, despite the questions that arise, the definition of the administrative prejudice of Ch.F.Mustafayev seems to be successful today, since it reflects not only the mechanism of constructing a criminal law norm with administrative prejudice, but also determines the legal nature of the disclosed term.

Modern authors, on the contrary, propose definitions of administrative prejudice, in which one-sidedly, without due attention to the essence of the analyzed concept, one or another function or feature of administrative prejudice is revealed.

Thus, E.V.Yamasheva reduces the content of the administrative prejudice to criminal prosecution if the act was committed within a certain period of time after the imposition of one or two administrative penalties for the same offense [9].

V.I.Kolosova calls administrative prejudice a provision in which an act is considered a crime only if the person who committed it was previously brought to administrative responsibility for such an offense [10].

P.P.Bobrovich understands administrative prejudice as a way to establish one of the main qualifying features of the legal composition of offenses (crimes) [11].

A.M.Prosochkin notes that 'sometimes preliminary bringing to administrative responsibility is a necessary and obligatory condition for the onset of criminal responsibility', which, in his opinion, is the essence of administrative prejudice [12].

In addition to resolving the issue of the correct use of terms characterizing one or another side of the object under study, attention should also be paid to the origin of the term 'administrative prejudice'.

And we consider that, administrative prejudice in criminal law refers to the bias or partiality that may exist within the administrative or executive branch of government in the handling of criminal cases. This can include actions such as selective enforcement of laws, unequal treatment of defendants, or political influence on the outcome of criminal proceedings. This prejudice can result in violation of due process rights and can undermine the integrity of the criminal justice system.

Prejudice translated from Latin *praejudicium* means:

1) a prejudgment of the issue, a preliminary verdict; 2) a circumstance that allows us to judge the consequences [13]. This term includes two elements: prae – ahead, forward, before, and judicialis – judicial. When synthesizing morpheme values, we obtain a pseudicium, which means "a new legal decision based on an identical previous decision that came into force" [14].

Traditionally, the terms "prejudice", "prejudice", "prejudice" are used to characterize certain provisions of procedural legislation, and therefore, at first

glance, their use in relation to the legal category under consideration, which lies in the plane of substantive law, is puzzling.

Uzbek scientist M.Usmonaliev explains that if administrative law regulates relations arising from an administrative offense, criminal law regulates relations arising from violation of criminal law.In several articles of the special part of the Criminal Code of Uzbekistan, a person who has been brought to administrative responsibility for a particular act shall again commit such an act shall be deemed to have grown into a crime, and the person shall be prosecuted [15].

Administrative precedence is also provided for by the Criminal Code of the Uzbek SSR in 1959.In particular, the criminal law

Acts provided for in Article 113 (insult)-insulting someone by action, by word or letter, that is, intentionally hitting a person's respect and dignity on the ground, if committed repeatedly after taking action by public or administrative means, have caused criminal liability [16].

In the current Criminal Code of the Republic of Uzbekistan, only an act is considered a crime if it is committed after the application of administrative punishment in relation to a person for committing a criminal offense in the composition of 66 crimes [17].

For example, in Article 122 of the Criminal Code of the Republic of Uzbekistan (material security evasion of minors or incapacitated persons), material evasion of a minor or incapacitated person in need of material assistance, that is, to provide them financially, a socially dangerous act, which is expressed in the non-payment of the funds that must be collected by decision of the court or by order of the court for more than two months in total, is subject to criminal liability if the person committed the same act after the application of administrative punishment for the act.

It should be noted that, according to the theory of National Criminal Law, the requirement that an act in criminal liability be committed after the application of administrative punishment is a necessary sign of the objective side of the composition of this crime.

However, some scientists believe that the reflection of administrative preudy in some norms of criminal law does not fully meet the principles of humanism and justice, that repeated committing an administrative offense within a year does not increase the quality indicator of the crime nor the level of social danger, it states that the consequences of liability should also be terminated after the person is brought to justice for the act committed [18].

Meanwhile, it is quite obvious that the listed compositions of administrative offenses contain a prejudice, since their design assumes that the decision on the imposition of administrative punishment for the commission of a homogeneous

offense will be crucial to strengthen administrative responsibility in the event of its repeated commission. However, this term has not been developed in administrative law.

In our opinion, to call administrative prejudice in criminal law and administrative-legal recidivism, as proposed by E.A.Zharkikh [19]. This term, despite its reflection of the connection with administrative law, does not contain an indication of one of the main signs of prejudice – the similarity of the acts committed by a person.

The most suitable terms for prejudice in administrative and criminal law are, in our opinion, the terms "administrative prejudice" and "administrative-criminal prejudice", the latter of which organically contains all the features reflecting the essence of the criminal category under consideration:

1) the repetition of similar acts committed by a person;

2) the connection of the last act with the decision on the imposition of administrative punishment for the previous act (or several decisions on the imposition of penalties for the committed acts);

3) transformation of the type of legal responsibility.

The first sign of administrative prejudice that we have identified is the repetition of similar acts committed by a person. This feature is named the first not by chance, since it largely explains the significance of the legal institution under study.

If, in a number of articles of the special part of the Criminal Code of Uzbekistan, an administrative penalty for the same act is committed after its application, then the difference in acts with similar administrative liability and criminal liability provided for by liability as a criminal act is the degree of social danger, especially such similarities are clearly manifested in offenses directed against the Disciplinary liability and criminal liability are very similar, especially in offenses related to service duty attitudes or military service, and their difference is also determined by the degree of social danger [20].

X.Karimov also spoke about this in accordance with the requirements of Article 37 of the code of administrative responsibility of the Republic of Uzbekistan ‘a person who has been sentenced to administrative punishment is considered not subject to administrative punishment if he has not committed a new administrative offense within a year from the date of the expiration of this punishment’.

Here the author tries to explain on the example of the decision of the plenum of the Supreme Court of the Republic of Uzbekistan on June 27, 2007 "on judicial practice on cases of intentional injury to the body", noting that the concept of "from the date of entry into force of the decision on the application of administrative punishment" presented in the Plenum

He noted that according to the requirements of Article 37 of the Code of administrative responsibility in the explanations for the occurrence of criminal liability for criminal content with administrative prepositions, it is advisable to provide an explanation that a person who has been subjected to administrative punishment comes only when it has been committed repeatedly within a year from the date of In this case, the fact that it will be committed after a year will be the basis for the qualification of an act not as a crime, but as an administrative offense [21].

However, the Institute of administrative prepositions is not found in the criminal legislation of most foreign countries. In particular, the newly adopted Criminal Code of the neighboring Kyrgyz Republic and the criminal legislation of the Republic of Kazakhstan do not provide for administrative precedence.

However, the sign of the repetition of similar acts should be distinguished from other concepts used in criminal law: the repetition of crimes and systematic.

The main difference between systematicity and repetitiveness is the internal inseparable connection between systematic acts, the conclusion about the existence of which is made based on the philosophical definition of the concept of a system, according to which it is a set of interrelated and interacting elements that make up a certain integral formation [22]. The internal connection between the acts that form systematicity is expressed in the unity of the perpetrator's intent, as well as in the orientation of the perpetrator to the realization of a goal [23].

With the repetition of similar acts, the last of which forms a crime with an administrative prejudice, there is no internal connection between the acts. However, there is a connection between the last act and the decision to impose an administrative penalty.

The second sign of administrative prejudice – the connection of the last act with the decision to impose an administrative penalty for a previous similar act (or several decisions on the imposition of penalties for committed acts) – is expressed in the legal force that, thanks to the criminal law, the decision to impose an administrative penalty on a person for a previous illegal behavior, extending to subsequent similar illegal behavior, acquires. However, this relationship only matters if there are three conditions.

Firstly, for the commission of the first act (or several previous acts), the person must be lawfully and reasonably brought to administrative responsibility; secondly, the procedural decision(s) on the appointment of an administrative penalty for this act (a number of acts) must enter into force; thirdly, subsequent acts must be committed not ever, but within a period determined by law.

Recognizing the existence of different views on the exclusion of administrative Prelude from criminal law, X.Karimov professor N.A.Lopashenko advocates the

removal of administrative Prelude from Criminal Law [24], professor V.P.Malkov is a supporter of leaving this institute [25]. V.V.Valjenkin and M.I.Kovalevs point out that the existence of an administrative precedent in criminal law is contrary to the non bis in idem principle [26].

The above-mentioned scientists believe that a person is held accountable for his act, therefore, for the next similar act, he believes that there is no basis for bringing him to justice as a master crime. A.G.Bezverkhov, on the other hand, argues that administrative preudy leads not only to the designation of an act as a crime, but also to the partial decriminalization of crimes [27]. Professor N.A.Lopashenko argues that a person's mark as the basis for removing an administrative Prelude from criminal law should not be the basis for defining an act as a crime [28].

In the current conditions of improvement of criminal and Criminal Procedure legislation in Uzbekistan, M.Rustambaev proposes that, according to the degree of social danger, liability is established within the framework of criminal law for an inappropriate criminal behavior (ugolovny Prostupok), which stands between an administrative offense and a crime. He noted that adverse criminal behavior (ugolovny Prostupok) is less significant in terms of social danger, as well as a separate regime of responsibility for committing it should be followed [29]. In our view, this opinion makes it somewhat easier to clarify the criteria for the social danger of an act in the context of improving criminal law.

Conclusions

The term ‘prejudice’ reflects the first two of the above features, and the phrase ‘administrative-criminal’ makes it clear that the term lies behind the escalation of administrative responsibility into criminal responsibility.

In addition, the use of the term ‘administrative prejudice’ in administrative law, and ‘administrative–criminal prejudice’ in criminal law, will most accurately reflect the legal categories defined with their help.

Thus, in the case of using the above terminology, the strengthening of administrative responsibility for the repeated commission of similar administrative offenses will receive a capacious concept corresponding to its meaning, which it lost 37 years ago; and the transformation of an administrative offense into a criminally punishable crime due to its repeated commission is a comprehensive, intuitive term, the name of which expresses not only the prejudicial meaning of a legal decision to impose punishment on a person for an initially committed act, but also the idea of transition from one quality to another.

However, due to the stability and long-term use of the term ‘administrative prejudice’ in the theory of criminal law, as well as in order to avoid criticism of the creation of the argot style, this familiar concept will be used in this study.

Summing up the analysis of the essence of the object under study, we propose the author's definition of administrative prejudice as a legal category.

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