Conceptually New Administrative Offence Code of Turkmenistan:
General Analysis of its Structure and Some Author's Reflections

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Abstract: The problems of formation of administrative-procedural legislation in CIS countries, in conditions of administrative legislation reform, carried out at present in these countries, are extremely urgent. The annihilation process of administrative responsibility legislation, which remained in force in the USSR and acceptance of conceptually new codified acts, require their scientific interpretation. In this publication, the administrative researchers from Russia carried out general structural analysis of conceptually new Administrative Offence Code of Turkmenistan, passed in August of 2013 and came into effect from January 1, 2014. The authors investigate the preconditions of creation, orientation, main peculiarities of this codified act, as well as its value for the administrative justice of Turkmenistan. The article presents different author's reflections and wishes on this issue. Here is also presented a rather-legal analysis of legal regulation of the administrative procedure and administrative liability of some CIS countries and some foreign countries.

Key words: Administrative-delictual legislation %Administrative liability %Administrative Offence Code of Turkmen SSR %Turkmenistan Administrative Offence Code

INTRODUCTION

In the first part of publication, we set a task to acquaint the interested reader with the main provisions and content of conceptually new Administrative Offence Code of Turkmenistan and with those amendments and additions, which appeared in this Administrative Offence Code in November of 2013. In the next parts of scientific articles, we analyze main sections in particular and details, as well as separate chapters and some articles, being the significant amendments of this codified act.

Thus, the conceptually new Administrative Offence Code of Turkmenistan was adopted on the twenty first session of Turkmenistan Majlis [1]. On August 29, 2013, the President of Turkmenistan Gurbanguly Berdymukhamedov signed a Law of Turkmenistan "About Approval and Implementation of Administrative Offence Code of Turkmenistan" from January 1, 2014. The article # 1 of this Law approves the conceptually new text of the Turkmenistan Administrative Offence Code. As per article 2 of the Law, a new Turkmenistan Administrative Offence Code took effect from January 1, 2014. Simultaneously, the Administrative Offence Code of Turkmenistan SSR, which was in force during almost 20 years, became invalid, as well as "all other amended laws or their relevant sections and parts". Let us remind that the Administrative Offence Code, which was in force, was adopted by the Law of Turkmen Soviet Socialist Republic, dated December 17, 1984 [2].

On December 18, 2013, A Turkmenistan Law "About Usage Procedure of the Turkmenistan Administrative Offence Code", where, first of all, the order of its application was explained to its law enforcements. Thus, in particular, in the article # 1 the legislator stated that, if a decision about the imposition of administrative penalty, as per the Administrative Offence Code of the Turkmen SSR, approved by the Law of Turkmen SSR, dated December 17, 1984, for the actions, disclaimed as administrative offences, as per the Turkmenistan Administrative Offence Code, approved by the Turkmenistan Law, dated August 29, 2013, would not be fulfilled by January 1, 2014, then the person, who has this
administrative penalty, imposed as per this decision, shall be released from this administrative penalty and the administrative proceeding, not considered in the same period, shall be stopped.

According to the article # 2, not fulfilled administrative nonpunitive measures, imposed on individuals in compliance with the Administrative Offence Code of the Turkmen SSR, approved by the Law of Turkmen SSR, dated December 17, 1984, are brought into line with the Turkmenistan Administrative Offence Code, approved by the Turkmenistan Law, dated August 29, 2013, only in those cases, when the imposed administrative penalty is more strict, than it is provided by the relevant articles of the last Code [3].

In the 3rd article of this Law, it was mentioned separately, that the article # 321 of the Turkmenistan Administrative Offence Code, approved by the Turkmenistan Law, dated August 29, 2013, comes into effect only from January 1, 2016. Let us clarify, that it refers to the article, placed in special part of the new Administrative Offence Code, providing the liability for "the violation of payment cards acceptance order \(\)", i.e. the refusal to accept bank cards by the workers of commercial enterprises, catering trade and other services, irrespective of the form of ownership and also by the individuals, who are in business. We will try to analyze the content of this article in more details in the next parts of our publication.

Then, we would like to pay briefly the reader's attention to one more Law of the country, which amended and added the new Turkmenistan Administrative Offence Code, which has not entered into legal force yet.

The legislators in this case reflexively followed the way of Belorussian legislators, who, after the adoption of new Administrative Offence Code of the Belorussian Republic (BR) in 2003 and till its coming into effect simultaneously with the Administrative Offence Code of Execution Procedure (AOC of EP of BR) (which was adopted even after 3.5 years, i.e. in the end of 2006), "contrived" to accept 24 Laws of the BR, by means of which they "polished" the significant number of articles, included in 2003 to the conceptually new, but not becoming final AOC of EP of BR [4]. Later, it allowed using not so excessively "the reforming" of the abovementioned codified act, implemented together with the AOC of EP of BR on March 1, 2007 [5].

By the way, Russian legislators, undoubtedly, are the champions in the quantity of Federal Laws, amended and added significantly the Administrative Offence Code of the Russian Federation for the 12 years of its existence. As of the middle of February of 2014, they managed to pass 341 Federal Law [5]. At that, the total number of articles in the Administrative Offence Code of the Russian Federation increased significantly (let us remind, that there were only 599 articles on the date of its acceptance) and, at present, taking into consideration more than 50 articles, being in force previously, approaches to 950. It is not including the independent articles, providing the administrative liability in compliance with the Administrative Offence Codes and Laws of 83 constituents of the RF. Thus, for instance, the Administrative Offence Code of Moscow, as of the date of its acceptance in 2007, included more than 200 articles [6].

That fact that the Turkmenistan legislators did not accept western ideas of construction of administrative liability legislation shall be evaluated positively, in our opinion. The legislation on administrative liability of many western countries is not codified; it represents a body of laws about administrative procedures [7] and penal laws; it does not know the notion of administrative offence, perceiving these deeds as minor offences, involving the use of simplified procedure of legal liability [8]. In Anglo-Saxon legal system, all offences are divided into three types, according to the degree of their seriousness: treason, felony and misdemeanor. The last type involves de minimis infractions, which, in their character, closely adjoin to the delinquencies of administrative offence type [9] and also can be classified. For instance, such delinquencies in the New York Penal Law are subdivided into classes: A, B and unclassified [10].

Let us come back to the analysis of new Turkmenistan Administrative Offence Code. Let us briefly clarify, that the Turkmenistan Law, adopted on November 9, 2013 "About Implementation of Amendments and Additions to the Turkmenistan Administrative Offence Code" made some amendments and additions to the Turkmenistan Administrative Offence Code, not entered into force. They mainly deal with "modernization" of dispositions and sizes of sanctions of articles of the Code Special part, namely, the articles No. 223, 283, 285, 305, 312, 351, 356. The last two articles in this list got new edition. The changes were also concerned with the 4th Section - "Administrative Procedure", were the articles No. 448, 451, 467 and 482 were modified.

Thus, structurally new Turkmenistan Administrative Offence Code, as of February 1, 2014, contains 592, placed to 33 chapters of 4 Code Sections.

For comparison, let us note that, at present, the
Tadzhikistan colleagues have two independent codes - Administrative Offence Code and PROCESSUAL Administrative Offence Code of the RT, which, as of February 1, 2014, contain 706 and 248 articles, respectively and their total number is 854 articles. This is a peculiar record of legislation among the legislators of CIS countries [11].

The first Section of the new Turkmenistan Administrative Offence Code, called "General Provisions" contains 6 chapters, which, as of today, contain 58 articles. The Chapter No. 1 "Turkmenistan Administrative Offence Legislation, its tasks and principles" is the most volume. It has 19 articles (Articles from 1 to 19). It is notable, that the legislator included to this article, obviously, using the legislative experience of other CIS countries, not only traditional articles: # 1 "Turkmenistan Administrative Offence Legislation" and # 2 "The tasks of Turkmenistan Administrative Offence Legislation", but also rather significant quantity of articles, where he determined the main principles of the abovementioned legislation, trying, if not to catch, but to keep pace with Kazakhstan legislators, who have nearly 20 articles in the Administrative Offence Code of the RK, each of which considers the independent principle of administrative offence legislation of the RK [12]. Turkmen legislators in the article # 3 "The Value of Principles of Turkmenistan Administrative Offence Legislation" clearly defined, that the breach of the established principles can and shall "result in recognition of administrative proceedings invalid" and consequently, "the delay of decisions, rendered as a result of such proceedings and also the acknowledgement of collected materials as the ones, deprived of evidential force". Two chapters of the 1st Section have 11 articles each: chapter # 3 - "Administrative Offences and Administrative Liability" (Articles from 22 to 32) and chapter # 5 - "Administrative Penalty" (Articles from 40 to 50). Let us note here briefly, that, unfortunately, the legislators did not dare to introduce a new term "administrative penalty". The subject and object of administrative offence are also mixed. Concerning such types of penalty, as "compensated withdrawal of subject, being a tool of commission or direct object of administrative offence" (Article 46), the first should not be introduced to the code at all and the second is better to call confiscation. As the object of administrative offence is not a material substance, it cannot be lost, stolen, damaged etc, as it is a complex of close social relations, developed, for instance, in the sphere of state administration.

Then we would like to remind, that in the Administrative Offence Code of Turkmen SSR (1984) in the 1st Section - "General Provisions", consisted of 1 chapter -"General Provisions", had 8 articles. The 2nd Section consisted from the General and Special parts, the General part of the 2nd Section - "Administrative Offences and Administrative Liability" had 32 articles, included to three chapters.

Ten chapters of Special part of the 2nd Section of the Administrative Offence Code of Turkmen SSR initially included 164 articles and then 28 articles additionally, what constituted 192 articles. In total, the 2nd Section had 226 articles, as of 2013.

Concerning the 3rd Section - "Bodies, Authorized to Examine the Cases of Administrative Offences", two chapters (# 15 and 16) initially had 31 article and then, 6 articles were included to the 16th chapter; there were 37 articles in total. The Section # 4 - "Administrative Proceedings", consisted of 6 chapters, had 52 articles.

The 5th Section of the Administrative Offence Code of Turkmen SSR had only 30 articles in 8 chapters. By the way, according to our data, for the whole time of operation of this Code, no one new article was introduced to the 5th Section. Thus, the Administrative Offence Code of Turkmen SSR, as of the time of its annihilation, had 353 articles, placed in 33 chapters.

We would like to mention separately, that many articles of some chapters, especially the chapters of the 1st, 2nd and 3rd Sections as of the time of termination of their existence, had the significant number of obsolete terms and definitions, which were relevant only in the Soviet code validity period. We will speak about them in our next publications. Here we would like only to mention the following: socialist legality, Soviet legal order, legislation of the USSR, social structure of the USSR, Ministries of the USSR and other legal anachronisms.

Let us come back to the analysis of structure of the new Turkmenistan Administrative Offence Code. Section # 2 - "Special Part" - includes 16 chapters, where now 372 articles are located. From the abovementioned list of chapters, the articles # 7, 15, 17, 21, 22 are of particular interest. In the number of articles in the chapters of this section, the leading ones, are, undoubtedly, the chapter # 17 - "Administrative Offences in the Sphere of Economic Activity", where the legislator placed 52 articles and the chapter # 21 - "Administrative Offences, Trenching on Management Order" with 57 articles in it.

The Section # 3 is also of great interest; the legislator called it "Administrative Procedure", as distinct from the administrative Offences Code of RF, RK and some other CIS countries. This section # 3 includes 9 chapters.
(from 23 to 31), where the articles from # 431 through # 564 are placed. The chapters # 23 - "General Provisions of Administrative Procedure", # 25 - "Jurisdiction over the Cases about Administrative Offence", # 26 - "Individuals, Participating in the Administrative process, their Rights and Liabilities", No. 28 - "The Appliance of Measures of Administrative Procedure", # 31 - "Reconsideration of Administrative Rulings" are of particular interest both in title and content. We see, that the legislator overcame the old Soviet terminology. Although, using the modern scientific developments, he could name his Code as Administrative-delictual; and the variant of separate codification of material and procedural administrative-delictual norms would be more advanced. It refers to the development of independent administrative-delictual code of practice. Let us remind, that there are the examples. The Belorussian colleagues have the Procedural-Executive Administrative Offence Code of RB, the Tadzhik colleagues have the Procedural Administrative Offence Code, which was also adopted in 2013.

The final section of the Turkmenistan Administrative Offence Code is the Section # 4 - "Fulfillment of Administrative Ruling". It included two chapters: # 32 - "General Provisions on the Cases of Administrative Offences" (Articles from 565 to 575) and # 33 "The Procedure for Exercise the Decisions per the Types of Administrative Penalties" (Articles from 576 to 591). Thus, as of the date of Code adoption, there were 27 articles.

In conclusion, we would like to note, that thanks to the development and adoption of the Code, Turkmenistan, although with great delay, but came into the group of countries of Post-Soviet space, which have modern and administrative-delictual legislation. The time will show how effective it will be.

REFERENCES

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