

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ ҒЫЛЫМ ЖӘНЕ ЖОҒАРЫ БІЛІМ МИНИСТРЛІГІ

«Л.Н. ГУМИЛЕВ АТЫНДАҒЫ ЕУРАЗИЯ ҰЛТТЫҚ УНИВЕРСИТЕТІ» КЕАҚ

**Студенттер мен жас ғалымдардың
«GYLYM JÁNE BILIM - 2024»
XIX Халықаралық ғылыми конференциясының
БАЯНДАМАЛАР ЖИНАҒЫ**

**СБОРНИК МАТЕРИАЛОВ
XIX Международной научной конференции
студентов и молодых ученых
«GYLYM JÁNE BILIM - 2024»**

**PROCEEDINGS
of the XIX International Scientific Conference
for students and young scholars
«GYLYM JÁNE BILIM - 2024»**

**2024
Астана**

УДК 001

ББК 72

G99

«ǴYLYM JÁNE BILIM – 2024» студенттер мен жас ғалымдардың XIX Халықаралық ғылыми конференциясы = XIX Международная научная конференция студентов и молодых ученых «ǴYLYM JÁNE BILIM – 2024» = The XIX International Scientific Conference for students and young scholars «ǴYLYM JÁNE BILIM – 2024». – Астана: – 7478 б. - қазақша, орысша, ағылшынша.

ISBN 978-601-7697-07-5

Жинаққа студенттердің, магистранттардың, докторанттардың және жас ғалымдардың жаратылыстану-техникалық және гуманитарлық ғылымдардың өзекті мәселелері бойынша баяндамалары енгізілген.

The proceedings are the papers of students, undergraduates, doctoral students and young researchers on topical issues of natural and technical sciences and humanities.

В сборник вошли доклады студентов, магистрантов, докторантов и молодых ученых по актуальным вопросам естественно-технических и гуманитарных наук.

УДК 001

ББК 72

G99

ISBN 978-601-7697-07-5

**©Л.Н. Гумилев атындағы Еуразия
ұлттық университеті, 2024**

THE PERSONAL ADMINISTRATIVE LIABILITY OF PUBLIC OFFICIALS FOR ILLEGAL INTERFERENCE IN BUSINESS ACTIVITIES

Nurgaliev Aslan Kanatovich

*Master's student of Law enforcement academy under
the General Prosecutor's Office of the Republic of Kazakhstan*

The establishment of the Republic of Kazakhstan as an independent state was accompanied by significant work to support entrepreneurship. The main principles of the reforms laid down in the 'Kazakhstan-2050' Strategy are aimed at ensuring the property rights of entrepreneurs and protecting contractual obligations. The implementation of state programmes for business support, expansion of authorised institutions, and updates to legislation provide evidence of a gradual movement in the established direction.

This scientific article investigates statistical indicators that help identify violations of entrepreneurs' rights and other important aspects. Additionally, it studies the problems of violating entrepreneurs' rights and the obstacles they face in their activities. The proper application of Article 173 of the Code of Administrative Offences is crucial in preventing unlawful interference by officials in entrepreneurial activities. Unfortunately, this provision is often overlooked in law enforcement practice.

Our main objective is to create a favourable environment for entrepreneurship development, while ensuring effective protection of entrepreneurs' rights and fair and balanced application of legislation. We are confident that by upholding these principles, we can achieve a thriving business community. Recommendations will be developed to improve the situation and promote stable development of the entrepreneurial sphere.

The article employs various research methods, including general scientific and private-scientific approaches, logical and system analysis, comparative-legal and normative-logical methods for analysing and interpreting legal norms.

In modern society, ensuring the rights of entrepreneurs and freedom of entrepreneurial activity occupies a significant place in the system of state regulation. Entrepreneurial activity is a crucial driving force of the economy and represents the foundation for the successful development of society.

The effectiveness of public policy is measured by the degree of investment attractiveness in the state and the level of support and development of entrepreneurship.

It is important to note that in some countries, the process of business support may be accompanied by illegal actions committed by destructive individuals engaging in economic and corrupt activities, as noted by some researchers (A.K. Rakhmetolov, A.S. Kyzdarbaeva, and S.D. Bekisheva). However, it is crucial to maintain a diplomatic approach when addressing such issues and work towards finding collaborative solutions that benefit all parties involved. The promptness and timely response of law enforcement agencies are crucial in bringing individuals to justice. In recent years, there have been several cases of alleged criminal prosecution of entrepreneurs, resulting in the termination of criminal cases due to lack of evidence. These actions not only slow down business processes but also decrease productivity, cause losses, lead to company dissolution, damage reputation, and have other negative consequences [1].

According to M.K. Suleimenov, regulating entrepreneurial activity has a dual understanding. In a narrow sense, business law is considered a part of civil law, and entrepreneurial activity is seen as a type of civil law activity. However, it is important to note that the concept being discussed does not fully consider the unity in the sphere of regulation that unites civil-law and administrative-law norms.

As a complex branch of law, business law combines the norms of various legal areas, including civil, administrative, financial, and labour law. By taking this approach, a more

comprehensive coverage of the various aspects of regulating entrepreneurial activity can be achieved [2].

We are confident that the heterogeneity of legal relations in the entrepreneurial sphere is due to the multifaceted nature of social relations regulated by business legislation. Therefore, we believe that the idea of comprehensiveness of entrepreneurial law is preferable because it takes into account the relations of state regulation that go beyond civil law.

Supporting entrepreneurship and protecting business rights are crucial for the development of independent Kazakhstan. These measures demonstrate the government's commitment to creating a favourable business environment and promoting economic growth. This principle is reflected in the main strategic documents of the country. Kazakhstan has implemented significant political and legal reforms, and over 100 laws have been adopted to support the sphere of entrepreneurship. Regulatory and organizational measures have successfully reorganized control and supervisory influence, resulting in a reduction in criminal prosecutions of entrepreneurs, minimization of the use of arrests, and humanization of administrative and criminal legislation.

Although legislative changes have been made, there is still room for improvement in terms of reducing bias and increasing objectivity in the enforcement of these regulations.

According to scholars G.K. Shushikova, S.K. Zhursimbaev, and A.A. Mukanbetkaliev, there is still room for improvement in sectoral legislation to fully realize the potential for human rights. This is supported by entrepreneurs' appeals and practices regarding violations of public-private partnership principles, as well as pressure on businesses through the use of administrative resources. It is important to acknowledge these issues and work towards finding solutions that promote fairness and equality for all stakeholders involved. The introduction of the new Criminal Code has ensured that no official has been held criminally liable for obstructing lawful entrepreneurial activity, despite the illegal use of criminal prosecution tools, red tape, and the inaction of unscrupulous public servants.

It is important to note that this negative trend has a direct impact on the investment attractiveness of our state and the well-being and quality of life of our citizens. As a result, it is crucial that we continue to uphold the law and hold those who violate it accountable. The effectiveness of state officials and organizations in responding to violations of entrepreneurs' rights and ensuring their protection is of utmost importance.

It is worth noting that Article 4 of the Constitution of the Republic of Kazakhstan guarantees every citizen the right to freedom of entrepreneurial activity and the lawful use of their property [4].

The Head of State places great emphasis on safeguarding the rights of citizens and businesses, as well as promoting and supporting entrepreneurship [5]. It is important to acknowledge the value that entrepreneurs bring to the economy and society as a whole, and the Head of State recognizes this fact.

During a meeting with domestic business representatives on 12 September 2023, the Head of State confidently stated that the state should not view every businessman as a potential lawbreaker, as this approach creates an inherently repressive administration. The state has a responsibility to assist entrepreneurs. It is crucial to note that the purpose of this point is to aid entrepreneurs. Entrepreneurs are encouraged to act as equal partners with the state apparatus, rather than as complainers or petitioners.

The Concept of Legal Policy of the Republic of Kazakhstan until 2030 aims to continue developing alternative ways to regulate the behavior of market participants, including the utilization of self-regulation and co-regulation mechanisms. The regulation of entrepreneurial activity by the state should be ongoing and limited to addressing risks related to national security, human life and health, the environment, law and order, and morality. The state apparatus can be further improved by rethinking its role and functions.

As per the Entrepreneurial Code of the Republic of Kazakhstan, Articles 14 (part 2) and 18, it is imperative that state bodies refrain from any unlawful interference with entrepreneurial activity [8].

Administrative responsibility under Article 173 of the Code of Administrative Offences of the Republic of Kazakhstan on Administrative Offences (hereinafter referred to as CAO) may be imposed for illegal interference by officials of state bodies, who carry out supervisory and control functions, in the activities of individual entrepreneurs and legal entities by issuing illegal acts and giving illegal instructions that hinder their entrepreneurial activities [9].

Despite efforts to address the issue, it is concerning that the number of reported violations of entrepreneurs' rights has remained high in recent years.

In fact, in 2022 alone, the prosecutor's office (mobile groups) received over 3,000 signals from entrepreneurs seeking protection and restoration of their legal rights. Alarming, one in four of these signals were confirmed based on inspection measures. The release of 7,100 entrepreneurs from unlawful administrative liability and the suppression of 9,000 illegal inspections are significant achievements.

It is important to note that not all violations result in measures being taken to bring persons to administrative responsibility under Article 173 of the Code of Administrative Offences, as only 38 facts of offences under this article were registered in the last 5 years [10]. However, we are confident in our ability to effectively address any violations that do occur while maintaining a diplomatic and fair approach. It is important to note that not all violations result in measures being taken to bring persons to administrative responsibility under Article 173 of the Code of Administrative Offences, as only 38 facts of offences under this article were registered in the last 5 years [10].

This indicates inadequate provision of the principle of inevitability of punishment, which gives rise to repeated violations by the authorised bodies.

The main reasons for the failure to take measures to bring officials to administrative responsibility lie both in the imperfection of the disposition of Article 173 of the CAO, and in the need for detailed regulation of the concept of "interference in the lawful activities of private business entities" in the laws.

According to Article 173 of the CAO, officials of state bodies can be held administratively responsible for illegal interference in the activities of individual entrepreneurs and legal entities if they issue illegal acts or give illegal instructions that prevent entrepreneurial activities.

This offence can be committed by officials of state bodies carrying out supervisory and control functions, as well as local executive bodies.

It is important to note that the subjective element of the offence is intent. It is imperative that state officials exercise their duties with due diligence and in accordance with the law.

The offence concerns the established procedure for organising and ensuring entrepreneurial activity.

It is important to emphasize that unlawful actions in the form of unlawful acts and giving unlawful instructions constitute the objective side of the act.

It should be noted that the article in question has remained unchanged in the current CAO since 2014, and the same wording was present in the old CAO. As a result, it is imperative to take appropriate measures to prevent such actions from occurring in the future. The only changes made in 2001 were to the article number and the amount of the fine.

It is evident from today's practice that interference in business operations can occur not only during the implementation of state control and supervision functions, but also in the provision of public services, implementation of state support measures, and other powers of state bodies and organizations where entrepreneurs are involved. As a professional in this field, I am confident in my assessment that such interference can have negative consequences for the economy and society as a whole. Therefore, it is important to approach this issue with diplomacy and find ways to minimize such interference while still fulfilling the necessary functions of the state.

The article establishes administrative responsibility of officials of state bodies carrying out supervisory and control functions, as well as local executive bodies.

An official is held accountable for an administrative offence committed in connection with the non-performance or improper performance of their official duties (Article 30 of the CAO) [9].

Corruption risks can arise when making decisions, issuing various acts and giving instructions to entrepreneurs. Corruption can manifest itself through illegal actions of officials who use their powers in their personal interests or for the sake of obtaining illegal benefits.

Such actions may include demands for bribes, improperly giving favours in exchange for personal benefits and other forms of corruption. Therefore, it is crucial to avoid such interference and allow for a free and fair competitive environment that promotes economic growth and benefits society as a whole.

Interference by officials in entrepreneurial activity can have serious negative consequences for the development of business, the economy and society as a whole. It may lead to corruption, violation of competitive rules, creation of obstacles to entrepreneurship and other unfavourable phenomena.

Amendments to the sanction of Article 173 of the Code of Administrative Offences will be an effective measure to combat corruption. The amount of fines will be more accurately determined based on the actual damage caused to the entrepreneur as a result of unlawful interference of officials in his entrepreneurial activities. This approach promotes fairer application of the rules and economic justice.

By proposing such changes, we support the principles of fairness, integrity and protection of entrepreneurs' interests. Such measures will help strengthen the rule of law and create a favourable environment for business development. The system of penalties must correlate with the actual damage caused by abusive officials.

To improve the current legislation, we propose the following based on the study of international experience:

- clarifying the terminology, particularly in regards to the regulation and clarification of legislative terminology to eliminate uncertainty in the definition of 'interference in the lawful activities of private business entities';

- improving the disposition of Article 173 of the CAO by stating the following: Illegal interference of officials of state bodies exercising supervisory and control functions, as well as local executive bodies in the activities of individual entrepreneurs and legal entities by issuing illegal acts and giving illegal instructions that hinder their entrepreneurial activities, unlawful refusal to issue or evasion from issuing them a special permit (licence) to carry out certain activities.

- referring the act provided for in Article 173 of the CAO to administrative corruption offences;

- amending the sanction of Article 173 of the CAO to establish administrative liability in the form of a fine, taking into account the amount of damage or loss caused to an entrepreneur as a result of unlawful interference by officials in their entrepreneurial activities;

- to strengthen the rule of law and create conditions for sustainable economic development of New Kazakhstan, officials responsible for control and supervision will undergo training programmes focused on compliance with the rule of law and respect for the rights of entrepreneurs.

The study of the problem of illegal interference of officials in entrepreneurial activity is an integral part of this effort. The proposed measures will improve the effectiveness of legislation and strengthen the responsibility of officials for violations of the rights of entrepreneurs.

References:

1. Rakhmetollov, A.K., Kyzdarbekova, A.S., Bekisheva, S.D. Law Enforcement Agencies in the System for the Rights of Entrepreneurs Protection // Journal of Advanced Research in Law and Economics. – Volume IX, Issue 7(37), fall 2019, p.2408-2414 [Electronic resource]. – Access mode: <https://journals.aserspublishing.eu/jarle/article/view/4074> (Access date: 03.03.2024).
2. Suleimenov M.K. Ways to improve legislation on entrepreneurship (on the draft Entrepreneurial Code) / Suleimenov M.K. [Electronic resource] // Zakon.kz: [website]. — URL: <https://online.zakon.kz/m/amp/download/35135085> (date of application: 02/28/2024).
3. Issues of strengthening the protection of the rights of entrepreneurs and their legitimate interests: Monograph / [Team of authors]. Under the general editorship of Shushikova G.K. Academy of Law

Enforcement Agencies at the Prosecutor General's Office of the Republic of Kazakhstan. – Kossy, 2020. – 300 p.

4. The Constitution of the Republic of Kazakhstan / [Electronic resource] // Adilet: [website]. — URL: <https://adilet.zan.kz/rus/docs/K950001000>(date of application: 11.12.2023).

5. Tokayev: Illegal interference in business affairs should be equated to a serious crime/ [Electronic resource]//forbes.kz:[сайт].URL:https://forbes.kz/process/tokae_v_nezakonnoe_vmeshatelstvo_v_dela_biznesa_doljno_piravnivatsya_k_tyajkomu_prestupleniyu/ / (date of request: 11.12.2023).

6. The Head of State held a meeting with representatives of domestic business / [Electronic resource] // Official website of the President of the Republic of Kazakhstan: [website]. — URL: <https://www.akorda.kz/ru/glava-gosudarstva-provel-vstrechu-s-predstaviteli- otechestvennogo-biznesa-1283946> (date of application: 11.12.2023).

7. The concept of the legal policy of the Republic of Kazakhstan until 2030 / [Electronic resource] // Adilet : [website]. — URL: <https://adilet.zan.kz/rus/docs/U2100000674> (date of application: 11.12.2023).

8. The Entrepreneurial Code of the Republic of Kazakhstan / [Electronic resource] // Adilet: [website]. — URL: <https://adilet.zan.kz/rus/docs/K1500000375> (date of application: 12.12.2023).

9. Code of Administrative Offences / [Electronic resource] // Adilet: [website]. — URL: <https://adilet.zan.kz/rus/docs/K1400000235> (date of application: 12.12.2023).

10. Certificate of the Prosecutor General's Office of the Republic of Kazakhstan dated 03/17/2023

11. Taranov, A. A. Commentary to the Code of the Republic of Kazakhstan on Administrative Offenses [Text] / A. A. Taranov — ISBN 9965-608-10-5. — Almaty: "Norm-K", 2002 — 464 p.

ӘОЖ 343.2

ҚЫЛМЫСТЫҚ РЕЦИДИВТІҢ ТҮСІНІГІ ЖӘНЕ ОНЫҢ ӘЛЕУМЕТТІК- ҚҰҚЫҚТЫҚ СИПАТТАМАСЫ

Рахман Аяулым Рахатқызы

ayaulym.rakhman@mail.ru

*Академик Е. А. Бөкетов атындағы Қарағанды университеті, Заң факультеті, 2 курс
студенті, Қарағанды, Қазақстан*

Ғылыми жетекшісі – А.И. Бирманова (PhD, қауымдастырылған профессор)

Тақырыптың өзектілігі мемлекет пен қоғамның барлық салаларындағы күрделі және қарама-қайшы даму процестерінің жағымсыз жақтары криминологиялық жағдайдың нашарлауына, қылмыстың, соның ішінде рецидивтің бұрын-соңды болмаған өсуіне себеп болғандығына байланысты.

Рецидивтің жоғары деңгейінің болуы сотталғандарға бас бостандығынан айыру түріндегі қылмыстық жазаның оларға әрдайым тиісті тәрбиелік және мәжбүрлі әсер етпейтіндігін көрсетеді. Бұл белгілі бір дәрежеде қылмыстық-атқару жүйесі мекемелері қызметкерлерінің қызметіндегі кемшіліктерге байланысты екенін атап өтуге болады. Жазаның тиімділігіне қолданылған заңнамалық норманың жетілмегендігі, соттың жазаның түрі мен мерзімін тағайындаудағы қателіктері әсер етуі мүмкін. Қылмыстардың қайталануына қолайсыз өмірлік жағдай да әсер етеді, онда көбінесе жазадан босатылады.

Қылмыстардың рецидиві кезінде сотталғандар құқық бұзушылардың аз зерттелген түрлеріне жатады. Бас бостандығынан айырылғандардың бұл санаты ұрылардың