

Specific aspects of cassation proceedings in administrative offence cases in Ukraine and the Republic of Kazakhstan



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Abstract *This article analyzes the norms of Ukrainian and Kazakh administrative law, regarding the possibility of cassation appeal of administrative offenses. A conclusion is drawn about the difference in the regulation of this issue in Kazakhstan and in Ukraine. It is found that the Ukrainian rule of law does not comply with the rule of law principle. There is a need for a scientific and legal study of this issue in order to bring domestic legislation into conformity with the legal acts of European countries.*

Key words: *Administrative liability, case about administrative offense, cassation examination, submission of cassation protest, review of a judicial act, Code of Ukraine on Administrative Offenses, Code of the Republic of Kazakhstan on Administrative Offenses, Supreme Court of the Republic of Kazakhstan.*

Problem statement

There have been material changes in administrative law in Ukraine and in the Republic of Kazakhstan lately. According to article 8 of the Constitution of Ukraine, the principle of supremacy of law is recognized and is in effect, the Constitution of Ukraine has supreme legal force, and laws and other regulatory legal acts are adopted based on the Constitution of Ukraine and shall conform thereto.

Based on the fundamental principles governing legal proceedings and according to clause 8 of part 1 of article 129 of the Constitution of Ukraine, the right for cassation appeal of a judgment is provided only in cases determined by the law, which fully complies with requirements of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and practice of the European Court of Human Rights, as regards the government's power to set certain restrictions of the right to review of the judgment by higher courts.

Also, it should be noted that the right to judicial protection provided by the Constitution of Ukraine and the right to a fair trial provided by the European Convention on Human Rights and Fundamental Freedoms are not violated by absence of a procedural mechanism of admission to cassation review.

The Code of Ukraine on Administrative Offenses (hereinafter referred to as the CUAO) does not provide for the possibility of cassation appeal of an appellate court judgment in an administrative offense case.

Rules detailing provisions of the Constitution of Ukraine on restriction of the possibility of cassation appeal of judgments are defined in the CUAO as well. So, according to article 294 of the CUAO, the decree of judge in an administrative offense case may be appealed in an appellate court; in this case, a judgment of an appellate court acquires legal force immediately after delivery thereof, is final and is not subject to appeal.

Considering the abovementioned, being guided by the principle of supremacy of law in administration of justice, based on the fundamental principles governing legal proceedings, which, according to clause 8 of

part 1 of article 129 of the Constitution of Ukraine, are provision of the right to cassation appeal of the judgment only in the cases determined by the law, and taking into account that a cassation appeal is provided on a judgment that is not subject to appeal in cassation, in such cases the court refuses to initiate cassation proceedings.

Analyzing information of the legal department of the Supreme Court of Ukraine, it may be concluded that the latter has persistently maintained a position as to the necessity of provision of legislative framework for the procedure of cassation appeal of judgments of appellate courts in administrative offense cases. In particular, if the penal clause of the article of the CUAO provides for the possibility to set administrative punishment in the form of arrest (regardless of existence of other alternative penalties), the guilty person or other concerned parties shall be granted the right of cassation appeal of a judgment of an appeal court by the law.

So, article 48 of the Law of Ukraine "On the judicial system and status of judges" determines that the judge shall administer justice on the grounds of the Constitution and laws of Ukraine, being guided by the principle of supremacy of law.

It should be noted that the Supreme Court of Ukraine, in the context of case No. 520/13175/17 (No. in the Unified State Register of Court Decisions (USRCD) 71469796) of 03.01.2018, case No. 221/3363/17 (USRCD No. 71511099) of 09.01.2018 and in case No. 509/2186/17 (USRCD No. 71540754) of 12.01.2018, has finally specified that appeals in administrative offense cases are not subject to cassation appeal.

Article 4 of the Constitution of the Republic of Kazakhstan sets the following: "The Constitution has supreme legal force and direct effect throughout the territory of the Republic".

International agreements ratified by the Republic have precedence over laws of the Republic. The procedure and conditions of effect in the territory of the Republic of Kazakhstan are established as well.

On July 25, 2017, the Law of the Republic of Kazakhstan No. 91-VI "On amendments and additions to some legal acts of the Republic of Kazakhstan as to bringing them into compliance with regulations of the Constitution

of the Republic of Kazakhstan" providing essential innovations in the Code of the Republic of Kazakhstan on Administrative Offences (hereinafter referred to as the CRKAO) came into force.

The new procedure of consideration of administrative cases in cassation instance is legislated.

While, before adoption of this law, judgments in administrative cases that took legal effect could be reviewed in the Supreme Court of the Republic of Kazakhstan only by protest of the Prosecutor General and deputies other latter; now, other persons, with compliance to requirements of regulations the Administrative Code of the Republic of Kazakhstan, may at their discretion file a petition to cassation instance to make representation for review of a court order that was passed in an administrative case.

According to part 4 to article 851 of the CRKAO, together with the prosecutor and persons having the right to cassation protest, the following persons have the right to file a petition to make representation for review of a court order that acquired legal force in an administrative case:

- the person brought to administrative responsibility;
- the injured person;
- legal representatives, defenders thereof;
- representatives of legal entities;
- authorized bodies (officials) that carried out proceedings on the case, through their central bodies.

A representation, protest, together with the case, shall be sent for consideration to the specialized judicial board of the Supreme Court of the Republic of Kazakhstan.

According to part 5 of article 851 of the CRKAO, exceptional grounds for review in cassation of judgments on administrative cases are cases when:

- fulfillment of the delivered judgment may lead to serious irreversible consequences for life or health of people or for economy and safety of the Republic of Kazakhstan;
- the delivered judgment violates rights and legal interests of the general public or other public interests;
- the judgment violates consistency of interpretation and application of legal norms by courts or authorized bodies (officials).

Based on the content of this regulation, a petition must obligatorily specify:

- what serious irreversible consequences for life or health of people, economy and safety of the republic may fulfillment of the judgment entail;
- what rights and legal interests of the general public or other public interests are violated by the judgment;
- in what way the delivered judgment violates consistency of interpretation and application of legal norms by courts or authorized bodies (officials).

In case of failure to specify and absence of those grounds and other data set forth in part 8 of article 848 of the CRKAO (name of the official to whom the petition is addressed; name of the person filing a petition, his/her place or residence or place of stay and procedural capacity in the case; indication of courts that considered the case in the first instance and appeal instance, and contents of judgments made thereby; the court order for which the petition is filed) in the petition, the petition shall be returned to the person who filed it, without consideration.

In case of remedial actions, the person has the right to reapply to the Supreme Court of the Republic of Kazakhstan.

A petition to make representation towards worsening of the situation of the person brought to administrative responsibility or to person concerning whom administrative proceedings are closed may be filed within a

year from the date of the judgment coming into legal force.

No deadlines are set for representation towards improvement of the situation of the person.

According to part 7 of article 848 of the CRKAO, in case of certiorari, a petition to make representation for review of a court order that took legal effect in an administrative case is subject to consideration within thirty working days from the date of receipt of the case.

According to part 9 of article 848 of the CRKAO, a petition to make representation in administrative cases shall be signed by the persons specified in clause 1 of these explanations.

The petition filed by a representative shall be accompanied by the power of attorney or another document certifying the powers of the representative.

The petition to make representation or to lodge a protest shall be filed in writing or in electronic form, certified with a digital signature.

According to part 11 of article 848 of the CRKAO, the person who filed the petition has the right to withdraw it by submitting an application to the Supreme Court for consideration of the petition.

Conclusion

Having analyzed norms of Ukrainian and Kazakh administrative law, it may be reasonably concluded that a judgment delivered in accordance with the procedure established by the Code of Ukraine on Administrative Offenses in an administrative offense case is not subject to cassation consideration as administrative legal proceedings, as distinct from the possibility of cassation appeal of similar judgments in the Republic of Kazakhstan.

Thus, there is a need for further search of an optimum form of legal framework governing human rights, taking into account a tendency to humanization of administrative responsibility, compliance with recommendations of international regulatory acts and positive experience of foreign countries.

It should be noted that the need for scientific and legal examination of this issue in order to bring Ukrainian legislation to compliance with regulatory legal acts of European countries is crucial. I am convinced that further research in this area will lead to amendments to the administrative legislation of Ukraine.

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