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PROBLEMS OF FORCED EXECUTION OF RESOLUTION TO IMPOSE FINE IN THE REPUBLIC OF LITHUANIA

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Summary. Legal state is coherent with legal order observance security in the state. While seeking to prevent illegal acts not always is purposeful to criminalize some actions and recognize it as crimes and impose criminal sanctions. Commitment of some law violations can be prevented with different measures, unrelated with imposition of criminal sanctions, also with administrative sanctions.

The insecurity of administrative law violations and criminal actions is different, differs consequences of subjection to administrative and criminal responsibility. Different legal consequences are caused by penalties and administrative sanctions noncompliance. For this reason the legal position of person who is subjected to administrative responsibility cannot be worse for person, who is convicted in criminal case.

Administrative penalty is the measure of responsibility which is imposed for administrative law violation committed person‘s punishment and seeking to educate that they would follow legal acts, would respect common life rules; also for the prevention of further violations. Very important preventive and educative function of administrative responsibility imposed to minors. Considering to social, psychological peculiarities of minor personality there is limited number of administrative violations for which 14-16 years aged minors can be subjected to administrative responsibility and set general administrative responsibilities peculiarities (limitation of penalties imposed to a child, kinds of penalties and their amount).

This article analysis forced administrative fine’s recovery problems, related with fine’s recovery from minor administrative violators and administrative fine forced execution limits application; also discussed legal importance of prompt’s to execute resolution for administrative fine’s imposition in goodwill. Forced administrative fines recovery process begins with the transmission of administrative fine recovery resolution to bailiff and his acceptance to execute it. The requirements for administrative fine imposition resolution’s content and form, resolutions adoption and general administrative fine imposition resolution’s executions order are regulated by ATPK. But resolution to impose an administrative fine (executive document) is implemented by force according to the IV chapter rules of the Civil Code of the Republic of Lithuania[1] (further in text CPK). Persons subjected to administrative responsibility can apply procedural and other guarantees fixed in ATPK, CPK and other legal acts. So this article analyses questions which arise in practice while implementing ATPK and CPK provisions in solving legal regulating gaps filling questions.

Keywords: administrative responsibility, resolution to impose a fine, enforcement procedure.

PREFACE

Legal state is coherent with legal order observance security in the state. In democratic legal state legislator has the right and the same the duty with help of laws to consolidate prohibition of some actions, which makes damage for persons, communities and state‘s interest or arises danger for such damage to cause in the future. While seeking to prevent illegal acts not always is purposeful to criminalize some actions and recognize it as crimes and impose criminal sanctions.

[1] Lietuvos Respublikos civilinio proceso kodeksas. Valstybės Žinios, 2002.04.06, Nr.: 36, Publikacijos Nr.: 1340; Valstybės Žinios, 2002.04.24, Nr.: 42.

Commitment of some law violations can be prevented with different measures, unrelated with imposition of criminal sanctions, also with administrative sanctions.

The insecurity of administrative law violations and criminal actions is different, differs consequences of subjection to administrative and criminal responsibility. Different legal consequences are caused by penalties and administrative sanctions noncompliance. For this reason the legal position of person who is subjected to administrative responsibility cannot be worse for person, who is convicted in criminal case. Since the Administrative Law Violations Code of the Republic of Lithuania (further in text ATPK) doesn‘t set administrative penalties execution‘s limits, except in case, when was imposed an administrative arrest (ATPK 308 article‘s 2 part), in administrative law violation cases according to analogy is guiding rules, fixed in the Criminal Code of the Republic of Lithuania.

Administrative penalty is the measure of responsibility which is imposed for administrative law violation committed person‘s punishment and seeking to educate that they would follow legal acts, would respect common life rules; also for the prevention of further violations. Very important preventive and educative function of administrative responsibility imposed to minors. In the 1 article of Convention on the Rights of the Child and in the 1 article of Child‘s fundamental rights protection law of the Republic of Lithuania, child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. General provisions of child’s legal responsibility are set in 50 article of Child‘s fundamental rights protection law of the Republic of Lithuania and in 13 article of ATPK. Considering to social, psychological peculiarities of minor personality there is limited number of administrative violations for which 14-16 years aged minors can be subjected to administrative responsibility and set general administrative responsibilities peculiarities (limitation of penalties imposed to a child, kinds of penalties and their amount). These peculiarities are related with widely applicable administrative sanction – administrative fine. Sanctions and punishments amount has to be less than for adult and its nature (type) – correspond to child‘s age. No more than a half of the fine for administrative law violations can be imposed for a minor set in ATPK (ATPK 4 article‘s, 4 part). Hearing administrative law violation case court must comply with all procedural rules and characteristics according to child‘s age. Imposing punishment or sanction to a child must be taken into account his age, personality’s peculiarities, living and education conditions and other circumstances set in legal acts. However, these features do not exclude the child's responsibility for committed administrative law violations. Child is a member of society and in exercising his rights has to follow established

behavior norms, Constitution of the Republic of Lithuania and other legal acts provisions, to respect rights of other humans.

This article analysis forced administrative fine's recovery problems, related with fine's recovery from minor administrative violators and administrative fine forced execution limits application; also discussed legal importance of prompt's to execute resolution for administrative fine's imposition in goodwill. Forced administrative fines recovery process begins with the transmission of administrative fine recovery resolution to bailiff and his acceptance to execute it. The requirements for administrative fine imposition resolution's content and form, resolutions adoption and general administrative fine imposition resolution's executions order are regulated by ATPK. But resolution to impose an administrative fine (executive document) is implemented by force according to the IV chapter rules of the Civil Code of the Republic of Lithuania[2] (further in text CPK). Persons subjected to administrative responsibility can apply procedural and other guarantees fixed in ATPK, CPK and other legal acts.

Still, main part of fines recovery process proceeds in CPK regulated Executive procedure frames. Executive process is important link in human rights protection system. By the European Court's of Human Rights decisions[3] executive process is appreciable as integral part of right to fair trial.

Researches related with administrative fines forced recovery in-between Lithuanian scholars are few. Some of the administrative penalties enforcement problems were analyzed by D. Raižys, V. Višinskis[4]. Some discussed legal regulation perfection recommendations were taken into account. General execution process questions were also analyzed in mentioned authors and other scholar's works[5].

[2] Lietuvos Respublikos civilinio proceso kodeksas. Valstybės Žinios, 2002.04.06, Nr.: 36, Publikacijos Nr.: 1340; Valstybės Žinios, 2002.04.24, Nr.: 42.

[3] HORNSBY v GREECE (Art 50), Judgment of the ECtHR, 1 April 1998 [1998] IIHRL 32 (1 April 1998). http://www.worldlii.org/int/cases/IIHRL/1998/32.html, žiūrėta 2010 06 21; JASIUNIENE v. LITHUANIA - 41510/98 [2003] ECHR 122 (6 March 2003). http://www.worldlii.org/eu/cases/ECHR/2003/122.html, žiūrėta 2010 06 21.

[4] D. Raižys, V. Višinskis. Kai kurios administracinių nuobaudų vykdymo problemos // Jurisprudencija : mokslo darbai. T. 53(45). ISSN 1392-6195. Vilnius : LTU Leidybos centras. 2004, T. 53(45).

[5] Некрошюс В. Гражданско - процессуальная реформа в Литве. Российский ежегодник гражданского и арбитражного процесса. № 2, 2002-2003, под редакцией В.В.Яркова - СПБ: Издательский дом Санкт-Петербургского государственного института,2004; E.Stauskienė. Skubiai vykdytinų teismo sprendimų instituto taikymo problemos. Jurisprudencija 69(61) 2005; Stauskienė, E. Teismas – teisinių santykių vykdymo procese subjektas. Mokslinės praktinės konferencijos „Teisė į teisminę gynybą bei jos realizavimo praktiniai aspektai" mokslinių pranešimų rinkinys. Vilnius: Mykolo Romerio universitetas, 2006; Stauskienė, E. Teismo sprendimų įvykdymo atgręžimas. Jurisprudencija, 2006, t. 4 (82); S.Vėlyvis, V.Višinskis, I.Žalėnienė. Antstolio veiksmų apskundimas// Jurisprudencija, 1 2007 (91); S.Vėlyvis, E.Stauskienė, V.Višinskis. Pagrindinės teismo sprendimų vykdymo taisyklės romėnų teisėje // Jurisprudencija, 2 2007 (92); В. Вишинскис, С. Веливис. Реформа исполнительного процесса в Литве// Теоретические и практические проблемы гражданского, арбитражного процесса и исполнительного производства. Сборник научных статей. Краснодар-Санкт-Петербург, изд. Юридический центр Пресс, 2005, с.444-453, ISBN 5-94201-454-X; V. Višinskis. Turto pardavimo iš varžytynių

The object of the research – separate forced resolutions to impose administrative fines execution's problems, related with fines recovery from minors, prompt to execute such resolutions legal importance and resolution's to impose administrative fine enforcement limitation period's application issues.

The purpose of this article is to analyze main forced resolution to impose administrative fine execution's problems. By author's opinion, main problems of such resolutions, reflected in bailiff's activity and court's practice are related to fine's recovery from minor law violators. In this article also discussed prompt's importance and purpose in forced recovery of administrative fines process, also analyzed link between caused consequences of administrative legal responsibility and criminal responsibility in application of limitation periods in execution of forced resolution to impose a fine case.

Legal system, especially Lithuanian one, is characterized by continuous development of legal regulation. It depends on the current social, economical and other changes in society, and therefore there is need to regulate both new and old social relations. In the preamble of The Constitution of the Republic of Lithuania is set open, just, and harmonious civil society goal. ATPK was adopted in 1984 that is why its norms concurrence is unavoidable with in 2002 adopted CPK, based on social civil procedure schools ideas. That is why the analysis of problems related to one of administrative sanctions – administrative fines recovery is important not only theoretically but also practically. Discussed problems, given recommendations in this article can be valuable for legal regulation's perfection.

Research was made applying comparative, inventory, data analysis and other methods.

DEBTORS RECOGNITIONS PROBLEM'S IN EXECUTING RESOLUTION TO IMPOSE ADMINISTRATIVE FINE WHEN LAW VIOLATION IS COMMITTED BY MINORS AGED FROM SIXTEEN TILL EIGHTEEN YEARS WHOSE HAVE NO AUTONOMOUS FINANCIAL INCOMES OR PROPERTY

In the 1 article of Convention on the Rights of the Child and in the 1 article of Child's fundamental rights protection law of the Republic of Lithuania child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. General provisions of child's legal responsibility are set in 50 article of Child's fundamental

problemos //Jurisprudencija, 1999, t. 13(5);V. Višinskis. Išieškojimo iš fizinių asmenų problemos //Jurisprudencija, 1999, t. 14(6); V. Višinskis. Vykdymo procesas Lietuvoje: esama padėtis ir reformavimo kryptys //Jurisprudencija, 2002, t. 28(20); V. Višinskis. Teismo sprendimo vykdymo vieta// Jurisprudencija, 1 2006, (79); V.Višinskis, D.Ambrasienė. Teismo vykdomųjų dokumentų išdavimo tvarka// Jurisprudencija: mokslo darbai. ISSN 1392-6195. Mykolo Romerio universiteto Leidybos centras. 2008, Nr. 2(104).

rights protection law of the Republic of Lithuania and in 13 article of ATPK. Considering to social, psychological peculiarities of minor personality there is limited number of administrative violations for which 14-16 years aged minors can be subjected to administrative responsibility and set general administrative responsibilities peculiarities (limitation of penalties imposed to a child, kinds of penalties and their size). These peculiarities are related with widely applicable administrative sanction – administrative fine. Sanctions and punishments size has to be less than for adult and its nature (type) – correspond to child‘s age. No more than a half of the fine for administrative law violations can be imposed for a minor set in ATPK (ATPK 4 article‘s, 4 part). Hearing administrative law violation case court must comply with all procedural rules and characteristics according to child‘s age. Imposing punishment or sanction to a child must be taken account to his age, personality’s peculiarities, living and education conditions and other circumstances set in legal acts. However, these features do not exclude the child's responsibility for committed administrative law violations. Child is a member of society and in exercising his rights has to follow established behavior norms, Constitution of the Republic of Lithuania and other legal acts provisions, rights of other humans.

Person, subjected to administrative responsibility and for administrative law violation punished minor from sixteen till eighteen years should pay the fine himself if he/she has own autonomous financial income source. Under ATPK 314 article‘s 3 part if violator doesn‘t pay fine during term set in this Code‘s 313 article, body (official) who established the resolution to impose a fine sends this resolution to bailiff for execution. So, when law violation committed minors from sixteen till eighteen years don‘t pay imposed fine, it must be executed by bailiff. But when law violation committed minors from sixteen till eighteen years don‘t have autonomous financial incomes, the fine is recovered from parents or their legal representatives under in ATPK 314 article set order (ATPK 313 article‘s 2 part), and if minor has no own property or part in common property, the fine shall be recovered from parents or guardians (caretakers) (ATPK 314 article‘s 2 part). Parents‘ duty to pay fine ends when person, whose actions caused damage, becomes adult, also when minor before reaching full age acquires property or earnings, which is enough for fine‘s payment.

As ATPK sets duty for the punished person to pay a fine himself and doesn’t set duty for body (official) who imposed a fine to take his own actions for fines recovery, so in all cases when violator is not paying fine it is recovered by bailiff.

VI chapter of CPK regulating execution process sets provisions that recovery is executed from debtor’s property. In discussed case it is important to determine who is debtor. In resolution to

impose a fine, when law violation is committed by minor from sixteen till eighteen years, as punished person is specified minor. He has the duty to pay fine and when fine is unpaid it shall be recovered by bailiff. But when in execution process the fact that minor debtor has no incomes or property is set, the fine has to be recovered from parents or representatives. For this reason arises question, does the bailiff have the right to deal by oneself for the executions actions termination against minor and to start fines recovery from parents or representatives.

As mentioned above, according to CPK 586 article the basis of execution action is executive document sent for execution. Without executive document to perform executions actions is forbidden. Such imperative regulation is set because of fact that in executive process is used force and any illegal forced actions executed against person or his property is impermissible. Before accepting executive document for execution bailiff has to check its content but has no right to have doubts about recoverer's demands or debtor's duties validity[6]. CPK doesn't give the right to bailiff to ascertain the execution process subjects or execution process amount.

CPK doesn't set any specific procedure how bailiff oneself could change the debtor in execution process. It is the competence of court or bodies (officials) whose decisions are executed by force.

Even if bailiff oneself could change the debtor the question about the kind of minors' from sixteen till eighteen years old parents or their representatives responsibility (subsidiary or joint) in carrying out a duty to pay a fine would arise. This question stays unsolved in ATPK.

If different bailiffs had to perform executive actions against both minor's parents, then must arise question: under what order have to be issued two resolutions to impose a fine.

During bailiffs forced recovery from debtors, in discussed case for minor's from sixteen till eighteen years old parents or their representatives arise duty to pay execution's expenditures. Typically, these expenditures are relatively high compared with the recovered fine. But even in such executive cases parents or their representatives can become debtors only when it's clear that minor debtor has no incomes or property, from which the fine could be recovered. So parents or their representatives have no legal opportunity to pay fine till forced execution beginning and in such way to avoid expenditures. According to existing court practice[7], when debtor fulfills the decision after term set in prompt to implement decision, all execution expenditures are recovered from debtor. Accordingly occurs bailiff's right to get salary set in Decisions execution's instruction.

[6] Lietuvos Aukščiausiojo Teismo 2002-09-16 nutartimi civilinėje byloje Nr. 3K-3-992/2002, S. Karosaitė v. Teismo antstolių kontora prie Vilniaus m. 3-ojo apylinkės teismo, bylų kategorija 120.
[7] LAT civ. byla Nr. 3K-7-5/2007, Teismų praktika, Nr. 27; LAT Civilinė byla Nr. 3K-3-377/2005;Procesinio sprendimo kategorija 129.4 ; LAT Civilinė byla Nr. 3K-3-448/2007; Procesinio sprendimo kategorija 129.4 (S), Vilniaus apygardos teismo civilinė byla Civilinė byla Nr. 2S-610-56/2010.

Such gaps of forced execution of resolution to impose administrative fine legal regulation, when law violation is committed by minors from sixteen till eighteen years old who have no autonomous financial incomes only impedes fine's recovery and has to be fixed.

A PROMPT TO IMPLEMENT DECISION EXECUTING RESOLUTION TO IMPOSE ADMINISTRATIVE FINE BY FORCE

When bailiff accepts executive document for execution, he must begin implementation actions (in quick execution cases – not later than next day after executive document was accepted for execution, in other cases – not later than in five days from executive document was accepted for execution (LR CPK 653 article)). The forced execution preparation bailiff implements in accordance to case category. Forced execution measure's content and nature are determined in accordance with executive document's content. Executive document determines bailiff's actions purposes and their content, forced execution's measures and also possible execution process participants circle. In this preparation for forced execution stage are performed preparative actions, which secure operative and effective recovery.

The purpose of execution process - as soon as possible, cost-effective, by manner prescribed in legal acts to enforce the decision. For this purpose, bailiff has to carry out a very important procedural step – to deliver the prompt to execute decision for debtor. With the prompt the debtor gets assumptions to execute decision in non-forced way. This way the decision can be executed quickly with lowest debtors' economical waste and depart from CPK set procedures, because decisions executions order in goodwill is not regulated by legal acts. Goodwill decision in executed with active debtor's actions, transferring money to recoverer, concrete things in implementing some actions determined in decision or abstaining from active actions.

On the 1st of January of 2003 adopted CPK legal norms, regulating prompt to execute decision, have fundamentally changed. Was refused in 1964 years CPK[8] redaction existed provision, that prompt to execute decision is sent every time, when executive document is received to execute in courts bailiffs office. Under requirements of valid CPK, prompt is sent only first time when executive document is received to execute, except cases, when executive document is returned back to recoverer on his own request (CPK 631 article's 1 part's 1 subdivision) and again submitted for execution. Also the provision that prompt must be sent in all categories cases was refused.

[8] Civilinio proceso kodeksas.V, 1998.

The 661 article of valid CPK fixes attitude that prompt to execute decision is not sent and after specified decision‘s execution term the bailiff immediately begins forced executions actions if execution‘s terms are set in legal acts and executive document, also in quick execution cases, cases for periodical payments recovery and confiscation of property, executing preliminary court’s decisions, courts orders and mortgage judges resolutions for debtors property realization.

ATPK 313 article‘s 1 part determines that person subjected to administrative responsibility must pay fine not later than in forty days from the day of a resolution to impose a fine delivery to him, and in appealing such resolutions case – not lately than in forty days from a report about appeal dissatisfy day. So, code sets execution’s terms and for this reason implementing forced fine’s recovery the prompt is not sent.

The validity of legislative regulation that prompt to execute decision is not sent to debtor is debatable. As mentioned, in sending prompt debtor is informed about throated forced execution‘s process. Apply to bailiff for court‘s decision execution is recoverer’s rights, but not the duty. For this reason, even if there is a term set in court‘s decision or legal act, in which debtor has to execute decision, debtor cannot be completely sure when revoverer will begin executive process if at all will begin.

In practice appear cases, when executions process itself begins illegally, i.e. when debtor already provides performance (already paid administrative fine) or the limitation period of executive document presentation for execution is expired. Besides, without knowing about started execution process, debtor cannot use his procedural rights, which restricts recovery from debtors property, for example, inform bailiff about opportunity to make recovery form salary (CPK 663 article‘s 1 part), determine first degree property, from which must be recovered (CPK 664, 665 articles).

The existence of problem shows the attempt to solve it by lower juridical power legal acts. According to Decisions execution instruction’s[9] 5 subdivisions if prompt to execute decision is not sent to debtor, then bailiff in recovery till 200 litas sent prompt to pay debt and executive expenditures. Prompt is sent to debtor by registered letter, which is considered delivered under CPK 604 article’s set rules. Prompt to pay administrative fine in 5 days gives opportunity to person to avoid bigger decisions executions expenditures.

We are of the opinion that valid CPK 661 article have to be changed with the provision that prompt to execute decision is not sent only in cases when implemented courts decisions for property arrest and in quickly executed courts decisions.

[9] Lietuvos Respublikos teisingumo ministro 2005 m. spalio 27 d. įsakymas Nr. 1r-352 Dėl sprendimų vykdymo instrukcijos patvirtinimo. Valstybės žinios, 2005-11-03, Nr. 130-4682.

FOR ADMINISTRATIVE FINE'S FORCED EXECUTION LIMITATION

In the 312 article[10] of ATPK set that resolution to impose a fine implements commissioned body (official) under this code and other legal acts of the Republic of Lithuania. This article was changed by 13th of December of 2007 law number X-1365, with provision that resolution to impose a fine executes bailiff under this code and other legal acts of the Republic of Lithuania.

According to CPK 584 article's 2 part institutions and officials resolutions in administrative law violation cases is so far as related with property nature recoveries are executed by CPK VI chapters determined order. CPK sets general execution limitations; BK accordingly regulates conviction execution limitations. While in the Civil Procedure Code are not stated administrative penalties – fine's - executive limitations; such limitations are either not stated in Administrative Law Violations Code.

Though criminal and administrative law belongs to public law and according to it regulation content and methods have many general features, but also have essential differences. Administrative law violation's and crimes conceptions are similar, but they differ according to: a) committed action insecurity, b) opposite to law, c) legal consequences. Administrative law violation and crime are definable as dangerous actions, because with it commitment are violated some kind of values. Law doctrine generally recognizes that insecurity of administrative law violation and crimes is different. Higher crimes insecurity determines not only object but also other objective and subjective features unit. One of differences between administrative law violation and crime is the legal consequences which arise to subject. After crime commitment can be imposed strictest compulsory measure – penalty set in criminal legal acts. Applying administrative responsibility can be imposed sanctions, similar to criminal penalties (fine, administrative arrest till 30 days, penitentiary works till 2 months and other). Essentially administrative sanctions are milder, because leaves no conviction record.

Under Administrative proceedings law[11] 13 article's 1 part, the interpretation of uniform administrative court's practice and application of statutes and other legal acts is developed by the Supreme Administrative Court of Lithuania. In its statements about administrative sanctions – fines – limitations, The Supreme Administrative Court of Lithuania is pointed out[12] that resolution to impose a fine is delivered for execution in accordance with ATPK 308 article's 1 part set term and has to be implemented under ATPK 312-316 articles, which regulates the executive process of

[10] 1992 m. gegužės 26 d. įstatymo Nr. I-2589 redakcija
[11] Administracinių bylų teisenos įstatymas.V., 2002.
[12] Lietuvos vyriausiojo administracinio teismo 2003 m. sausio 22 d. konsultacija Nr.26.1-K http://lvat.lt/konslook.asp?id=40, žiūrėta 2008 03 30.

resolution to impose a fine. However the legal position of person who is subjected to administrative responsibility cannot be worse of persons' convicted in criminal case.

BK 96 article's 1 part set provision that convictional resolution is not executed if it wasn't implemented in two years from penalty for criminal action imposition. In 96 articles' 3 part of BK fixed statement that if convicted person after judgment's validation avoids executing penalty, the limitation period stops. In this case limitation course recommence from day when convicted person comes to execute penalty or was arrested. Analogical rules must be followed in execution of administrative penalty imposition resolution[13].

Deciding about resolution's to impose administrative fine limitation periods validity, must be analyzed if the period of 3 months to deliver executive document between penalty implementing or other authorities institutions is not missed according to basis stated in legal acts (ATPK 308 article's 1 part); and during execution time there is no 2 years period when authority institutions' for negligence or other reasons haven't started any actions about penalty implementation[14]. Also must be discussed was the person avoiding to implement imposed penalty – to pay or not to interferred in recovery process, i.e. if there is no basis to recognize that fine execution limitation period is stopped[15]. If in two years from resolution to impose a fine in administrative law violation case, the fine is not recovered. If there cannot be stated that person subjected to administrative responsibility performed any actions seeking to avoid fines payment, and then executions process in administrative law violation case must be terminated because the limitation period passed[16].

Must be noted, that mentioned legal acts norms application is related with many considered criterions (does the person who was subjected to administrative responsibility started any kind of actions for seeking to avoid the fine payment, is during execution period there is no 2 years period when authority institution's for negligence or other reasons haven't started any actions about penalty implementation and other), that is why its hard for bailiff to apply such provisions. Examination of such kind of questions is certainly the competence of court.

[13] Lietuvos Vyriausiojo Administracinio Teismo 2010 m. rugsėjo mėn. 3 d. administracinėje nutartis byloje Nr. N-662-1140/2010; Lietuvos vyriausiojo administracinio teismo 2004 m. spalio 12 d. nutartis administracinėje byloje Nr. N^{3}-904-04; 2009 m. rugsėjo 18 d. nutartis, priimta administracinėje byloje Nr. N-261-7199/2009.

[14] Lietuvos vyriausiojo administracinio teismo 2007 m. lapkričio 15 d. nutartis, priimta administracinėje byloje Nr. N^{3}-1859/2007; 2009 m. gruodžio 22 d. nutartis, priimta administracinėje byloje Nr. N^{575}-4150/2009.

[15] Lietuvos vyriausiojo administracinio teismo 2007 m spalio 4 d. nutartis, priimta administracinėje byloje Nr. N^{18}-1653/2007

[16] Lietuvos vyriausiojo administracinio teismo 2007 m. gegužės 31 d. nutartis, priimta administracinėje byloje Nr. N(9)-1105/2007.

CONCLUSIONS AND RECOMMENDATIONS

CPK doesn‘t give the right to bailiff to determine the execution process subjects and execution process amount and doesn‘t set any specific procedure how bailiff oneself could change the debtor in execution process. This legal regulation gap has to be fixed will new ATPK add, that all questions, arising in execution process while implementing forced resolution to impose a fine, are not included to bailiff‘s competence and are dealed by the provision of first instance general competence court‘s bailiff or official, by whose resolution the fine is imposed.

The debtor with the prompt to implement decision is informed about imminent forced executive process beginning and from it arising possible negative consequences. So prompt to implement decision has important preventive meaning and stimulates debtor to implement courts decision. CPK settled cases, when prompt is not sent to debtor violates debtor‘s rights, that is why CPK 661 article should be changed with the constriction of cases when prompt is not send leaving such order only for quickly executed courts decisions and court decisions for property arrests cases.

By changing mentioned law provision, prompt to execute decision should be send and in forced implementation to impose a fine cases.

The legal position of person who is subjected to administrative responsibility cannot be worse than person’s convicted in criminal case; that is why Administrative Law Violations Code has to regulate administrative sanctions execution’s limitations and it pass legal consequences, which shouldn’t be worse than applying criminal responsibility.

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ADMINISTRACINIŲ BAUDŲ PRIVERSTINIO IŠIEŠKOJIMO LIETUVOJE ROBLEMOS

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Santrauka

Teisinė valstybė neatsiejama nuo teisinės tvarkos laikymosi užtikrinimo valstybėje. Demokratinėje teisinėje valstybėje įstatymų leidėjas turi teisę, o kartu ir pareigą įstatymais įtvirtinti tam tikrų veikų, kuriomis daroma žala asmenų, visuomenės ar valstybės interesams arba kyla grėsmė tokios žalos atsiradimui ateityje, draudimus. Siekiant užkirsti kelią neteisėtoms veikoms ne visuomet yra tikslinga atitinkamas veikas kriminalizuoti ir pripažinti nusikaltimais bei taikyti už jas kriminalines bausmes. Tam tikrų teisės pažeidimų darymas gali būti užkardytas kitomis, nesusijusiomis su kriminalinių bausmių taikymu priemonėmis, taip pat ir administracinėmis sankcijomis. Administraciniu teisės pažeidimu (nusižengimu) laikomas priešingas teisei, kaltas (tyčinis arba neatsargus) veikimas arba neveikimas, kuriuo kėsinamasi į valstybinę arba viešąją tvarką, nuosavybę, piliečių teises ir laisves, nustatytą valdymo tvarką, už kurį įstatymai numato administracinę atsakomybę. Valstybės prievartos taikymo mechanizmas yra būtinas teisinės tvarkos palaikymui valstybėje. Pasak R. Zippelius teisiniai paliepimai yra ginami visuomenės, centralizuotai nustatant ir taikant prievartos priemones“[17]

Administracinių teisės pažeidimų ir nusikalstamų veikų pavojingumas yra skirtingas, skiriasi ir patraukimo administracinėn arba baudžiamojon atsakomybėn padariniai. Skirtingus teisinius padarinius sukelia ir bausmių bei administracinių sankcijų nevykdymas. Todėl administracinėn atsakomybėn patraukto asmens teisinė padėtis negali būti blogesnė už padėtį asmens, kurio atžvilgiu buvo priimtas apkaltinamasis nuosprendis baudžiamojoje byloje. Kadangi Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas (toliau tekste ATPK) nenustato administracinės nuobaudos vykdymo senaties terminų, išskyrus atvejį, kai buvo paskirtas administracinis areštas (ATPK 308 str. 2 d.), administracinių teisės pažeidimų bylose pagal analogiją pagrįstai vadovaujamasi Lietuvos Respublikos baudžiamajame kodekse numatytomis taisyklėmis.

Administracinė nuobauda yra atsakomybės priemonė, skiriama administracinį teisės pažeidimą padariusiems asmenims nubausti ir siekiant auklėti, kad jie laikytųsi įstatymų, gerbtų bendro gyvenimo taisykles, taip pat kad tiek pats teisės pažeidėjas, tiek kiti asmenys nepadarytų naujų teisės pažeidimų. Ypač svarbi administracinės atsakomybės, taikomos nepilnamečiams asmenims, preventyvinė ir auklėjamoji funkcijos. Vaiko teisių konvencijos 1 straipsnyje bei Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymo 1 straipsnyje vaikas apibūdintas kaip žmogus, neturintis 18 metų, išskyrus atvejus, kai įstatymai numato kitaip. Vaiko teisinės atsakomybės bendrosios nuostatos yra įtvirtintos LR Vaiko teisių pasaugos pagrindų įstatymo 50 straipsnyje bei ATPK 13 straipsnyje. Atsižvelgiant į nepilnamečio asmenybės socialinius, psichologinius ypatumus, yra ribojamas administracinių teisės pažeidimų, už kuriuos administracinėn atsakomybėn gali būti patraukti 14-16 metų paaugliai, skaičius, nustatyti bendros administracinės atsakomybės ypatumai (vaikui skiriamų nuobaudų, bausmių rūšių bei dydžio ribojimas). Šie ypatumai susiję ir su plačiausiai taikoma administracine sankcija – administracine bauda. Nuobaudos ir bausmės dydis vaikui turi būti mažesnis negu suaugusiajam, o jos pobūdis (rūšis) – atitikti vaiko amžių. Už administracinės teisės pažeidimus nepilnamečiui gali būti skiriama ne daugiau kaip pusė baudos, numatytos ATPK (ATPK 24 str. 4 d.). Nagrinėdamas vaiko teisės pažeidimų bylas, teismas turi laikytis visų procesinių taisyklių bei ypatumų vaiko atžvilgiu. Skiriant bausmę ar nuobaudą vaikui, būtina atsižvelgti į jo amžių, asmenybės ypatumus, gyvenimo bei auklėjimo sąlygas, kitas įstatymų numatytas aplinkybes. Tačiau šie ypatumai nepanaikina vaiko pareigos atsakyti už padarytus administracinės teisės pažeidimus. Vaikas yra visuomenės narys ir naudodamasis savo teisėmis turi laikytis nustatytų elgesio normų, Lietuvos Respublikos Konstitucijos, įstatymų bei kitų teisės aktų nuostatų, gerbti kitų žmonių teises.

[17] Zippelius R. *Das Wesen des Rechts. Eine Einführung in die Rechsphilosophie*– München: Beck, 1997, S. 41.

Šiame straipsnyje nagrinėjamas priverstinio administracinių baudų išieškojimo problemos, susijusios baudų su išieškojimu iš nepilnamečių teisės pažeidėjų bei administracinės baudos priverstinio vykdymo senaties terminų taikymu, taip pat aptariama raginimo įvykdyti nutarimą dėl administracinės baudos skyrimo geruoju teisinė reikšmė. Priverstinis administracinių baudų išieškojimo procesas prasideda nutarimą dėl administracinės baudos išieškojimo perdavus vykdyti antstoliui ir pastarajam priėmus jį vykdyti. Nutarimo skirti administracinę baudą turinio ir formos reikalavimai, nutarimo įsiteisėjimas ir bendroji nutarimų skirti administracines nuobaudas vykdymo tvarka reglamentuoti ATPK. Tačiau nutarimas skirti administracinę baudą (vykdomasis dokumentas) priverstinai vykdomas pagal Lietuvos Respublikos Civilinio proceso kodekse[18] (toliau tekste – CPK) VI dalies taisykles. Asmenys, patraukti administracinėn atsakomybėn gali naudotis procesinėmis ir kitomis garantijomis, kurias numato ATPK, CPK, kiti įstatymai. Todėl šiame straipsnyje analizuojami praktikoje kylantys klausimai, taikant ATPK bei CPK nuostatas, sprendžiant teisinio reglamentavimo spragų užpildymo klausimus.

Pagrindinės sąvokos: administracinė atsakomybė, nutarimas skirti baudą, vykdymo procesas.

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[18] Lietuvos Respublikos civilinio proceso kodeksas. Valstybės Žinios, 2002.04.06, Nr.: 36, Publikacijos Nr.: 1340; Valstybės Žinios, 2002.04.24, Nr.: 42.