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SIGNIFICANT AMENDMENTS IN THE ADMINISTRATIVE OFFENSES AND PETALTIES ACT

A special issue of the State Gazette (issue 109, dated 22.12.2020) promulgated the Law for amendment and supplement of the Administrative Offenses and Penalties Act ("AOPA", "the law"), which will enter into force on December 23, 2021. It introduces significant changes in AOPA, as well as new institutes.

1. Voluntary labor for benefit of the society

1.1. Definition

With a new paragraph 2 of Art. 13 in AOPA a new punishment was introduced, apart from the public reprimand, the fine and the temporary deprivation of the right to exercise a certain profession or activity, namely – voluntary labor for the benefit of the society. In Art. 16a it is defined as work done for the benefit of society without restricting other rights of the punished person.

1.2. Prerequisites

The penalty will be able to be imposed only in case of an administrative violation, which has been committed repeatedly or on a systematic basis. The court practice defines the systematic basis as not less than 3 acts, as between them there is stability and permanence, and according to §1, para. 2 of the Additional Provisions of the Law, the envisaged penalty for repeated violation by a natural person or non-fulfillment of an obligation by a sole trader or legal entity to the state or municipality shall be imposed when the violation by the natural person or non-fulfillment of an obligation by a sole trader or legal entity to the state or municipality is committed within one year from the entry into force of an act imposing an administrative penalty for a violation of the same type or a pecuniary sanction for non-performance of an obligation of the same type, unless otherwise provided by a special law. The punishment may be imposed independently or simultaneously with another punishment from those provided in art. 13, para 1.

1.3. Duration

The duration of the punishment may not be less than 40 hours and more than 200 hours per year for not more than two consecutive years. (Article 16a, paragraph 2).

1.4. Proceedings and competent authority

According to a new art. 47a “The administrative penalty under Art. 13, para. 2 (voluntary labor for benefit of the society) shall be imposed by the district court in the region where the administrative violation has been committed or completed, for which the respective punishment is provided, and for the violations committed abroad - by the Sofia District Court. ”

The district court hears the case in a panel only by a judge and in open court. The decision imposing a penalty of voluntary labor for the benefit of society is subject to cassation appeal before the administrative court on the grounds provided for in the Code of Criminal Procedure and under Chapter Twelve of the Administrative Procedure Code, unless otherwise provided by law. The Administrative Court hears the case in a panel of three judges, and its decision is final.

1.5. Performance

It is envisaged that the voluntary labor will be performed by the probation service at the current address of punished person. The voluntary work is performed on sites of the State Enterprise "Prison Fund" and sites approved by the respective probation council. The punished person is assigned to work up to three hours a day after working hours or for a full working day on one of the holidays or weekends, when the convicted person works under an employment or official legal relationship. If after the expiration of the calendar term for performing voluntary work for the benefit of the society a certain number of hours have not been worked, the obligation of penalties for their working shall be extinguished.

2. Written warning, settlement and short court proceedings

2.1. Written warning and insignificant case

2.1.1. Definition

Art. 28 of the law defines in detail the term written warning (before the change it was written only that in minor cases, the sanctioning body may not impose a penalty by warning the offender orally or in writing) - its legal consequences, its imposition and its details. It is provided that, when the violation is minor, the sanctioning body not to impose a penalty, but to warn the perpetrator in writing that in case of committing another administrative violation of the same type, representing a minor case, within one year from the entry into force of the warning, an administrative penalty will be imposed on him for the another violation.

The definitions of "minor case", "manifestly minor case" and "violation of the same kind by a natural person or non-performance by a sole trader or legal person to the state or municipality of the same kind" have been introduced with new §§ 4, 5 and 6 in Additional provisions of the law.

The regulation of the powers of the sanctioning body in minor cases of administrative violation and non-fulfillment of the obligations of sole traders and legal entities to the state or municipality in this general administrative law is provided as subsidiary. In this sense, the existing rules in the special administrative laws for assessment and sanctioning of a minor case of violation will be preserved, and those regulated in the general administrative law will find application only in case of lack of regulation in a special law.

2.1.2. Inapplicability

The institute of the insignificant case cannot be applied for violations related to traffic safety for all types of transport, committed after use of alcohol, narcotic substances or their analogues - art. 29.

2.1.3. Warning, imposed by court
With a change of art. 63 the powers of the court in the procedure for appealing the penal decree are regulated in detail. One of them is to annul the penal decree and to warn the offender that in case of committing another administrative violation of the same type, representing a minor case, within one year from the entry into force of the judicial act, an administrative penalty will be imposed for this other violation (Article 63, paragraph 2, item 2).

2.1.4. Opportunity to appeal

For the first time, the law stipulates that the warning imposed by the sanctioning body to the offender can be subject to appeal and protest, as well as the possibility that the proceedings, which ended with a warning, may be resumed. The judgment of the sanctioning authority in this sense should be subject to judicial review, not only when the sanctioning authority has determined that the act is not a minor case and has sanctioned the offender with a penal decree, but also when it has considered the act to be a minor case and acquitted the offender from criminal liability.

2.2. Settlement

2.2.1. Definition and prerequisites

The amendments of the law provide for the possibility for the administrative penal proceedings to end with an agreement between the penal authority and the offender. According to Article 43, paragraph 5, upon service of a transcript of the act for establishing an administrative violation, the violator should be notified in writing of his right within 14 days to make a proposal to the sanctioning body to conclude an agreement to end the administrative penal proceedings. The sanctioning authority will also have the right to propose an agreement. Further, in Art. 53 it is added that the sanctioning body issues a penal decree, by which it imposes an appropriate administrative penalty on the offender, when it establishes in an unequivocal way the fact of the committed violation, the identity of the person who committed it and his guilt, if there are no grounds for termination of the proceedings, for the application of art. 28 or no agreement has been concluded with the infringer.

2.2.2. Inapplicability

According to para 2 of art. 58d, conclusion of an agreement is not allowed in the cases of: repeated violation; for a violation committed within one year from the entry into force of an act by which the violator has been imposed an administrative penalty outside the cases under item 1 (repeated violation), or a warning for a violation of the same type has been issued; when the act, for which an act for establishing an administrative violation is issued, constitutes a crime; an agreement is allowed in case the proceedings before the sanctioning body are instituted by the order of art. 36, para. 2 ("Without an attached act, an administrative penal file shall not be opened except in the cases when the proceedings have been terminated by the court or the prosecutor or the prosecutor has refused to initiate criminal proceedings and has been referred to the penal body"); when the confession of the offender is not supported by the evidence gathered in the file.

2.2.3. Requisites of the settlement

The agreement, according to Art. 58d, shall be prepared in writing and shall contain the consent of the parties on the issues whether an act has been committed, whether the act constitutes a violation and its legal qualification, whether it has been committed by the person against whom the act for establishing an administrative violation has been drawn up and whether it has been committed guilty. The same article also lists the details that must be contained in the agreement - date, names of the parties, date of the act on the basis of which the proceedings were instituted and the name, position and place of service

of the drafter, description of the violation, date and place, where it was committed, the circumstances in which it was committed, as well as the evidence confirming it, the legal provisions that were violated guilty, the type and amount of the administrative penalty, the things that are confiscated in favor of the state, the disposal of material evidence , a bank account to pay the due fine.

2.2.4. Other features

When an act for establishing an administrative violation has been drawn up for several violations, an agreement may be concluded only for one of the violations. The settlement enters into force from the date of its signing, and when it imposes a fine – from the date of payment of the fine. The agreement is final and has the consequences of an effective penal decree.

When the agreement imposes an administrative penalty fine - alone or with another penalty, the sanctioning body determines the fine in the amount of 70 percent of the minimum or of the specified amount provided for the violation, and when the law does not provide a minimum, the sanctioning body determines the amount of the fine in the amount of not more than 70 percent of half of the maximum. The other types of administrative penalties are determined by the rules of art. 27, para. 1 - 4.

A new art. 79b provides for another "relief" for violators - the possibility of fast payment of the fine, a 20% "discount" to be used: “In case that the violator does not intend to appeal the penal decree in the part about the imposed fine, he can pay in 14-days term from the service of the penal decree 80 per cent of its amount, unless a special law provides for a reduced amount of the fine. " Thus, the penal decree enters into force in the part concerning the fine imposed from the date of payment. In case the violator has appealed the penal decree and within the term under par. 1 has paid the fine, the proceedings for examination of the appeal in this part shall be terminated on the grounds of art. 63d. According to paragraph 3 of the same article: “When the penal decree imposes another type of administrative penalty, along with the fine, or items are confiscated in favor of the state, it is subject to appeal only in the part regarding the amount of the cumulative penalty, the disposal of the material evidence, the confiscation of property in favor of the state and the awarded compensation by the order of art. 63b ”.
The penal decree, according to art. 53, shall be issued only if there are no grounds for termination of the proceedings, for the application of art. 28 (minor case) or no settlement has

been concluded with the infringer.

2.3. Short court proceeding

According to the new art. 63b, the district court may conduct short court proceedings in two cases:

2.3.1. When the penal decree is appealed only in the part for the type or amount of the administrative penalty or the amount of the financial sanction, or for the things confiscated in favor of the state or the disposal of the material evidence, or for the amount of the awarded compensation and the offender, the sole trader or legal entity admits the facts set out in the circumstantial part of the penal decree and agrees not to collect evidence of these facts. In these cases, the court declares by ruling that in rendering the decision it will use the confession without collecting evidence for the facts set forth in the circumstantial part of the penal decree. The court in the reasons of the decision accepts as established the facts set forth in the circumstantial part of the penal decree, referring to the confession made and to the evidences supporting it.

2.3.2. In the cases under Art. 79b, para. 3 (discussed above). The court then declares with a ruling that in rendering the decision it will accept as established the facts set forth in the circumstantial part of the penal decree. The court in the reasons of the decision accepts as established the facts set forth in the circumstantial part of the penal decree, referring to the evidences that support it.

3. Electronic delivery

The changes are in line with the latest amendments to the Civil Procedure Code and the Criminal Procedure Code, aimed at the introduction of e-justice.

According to a new paragraph 2 of Art. 42, “In the act for establishing an administrative violation the infringer may indicate that he wishes the penal decree to be served on him by sending a message to a personal profile registered in the information system for secure electronic receive as a module of the Single portal for access to electronic administrative services within the meaning of the Electronic Government Act ”.
Art. 58, para 1 states that “A transcript of the penal decree shall be served against the signature of the infringer and the claimant, unless the infringer has requested to be served by sending a message to a personal profile registered in the information system for secure electronic receive as a module of the Single portal for access to electronic administrative services within

the meaning of the Electronic Government Act ".

Regarding the procedure for appealing the penal decrees before the court, it is provided that "The penal body or the institution or the organization, whose body has issued the act under Art. 58e, item 4, may be summoned through the e-mail address indicated in the case. The electronic message shall be deemed to have been served when the addressee sends an acknowledgment of receipt by means of a return electronic message, activation of an electronic reference or its download from the information system of the competent administration.

4. Violations related to the submission of information

The law also regulates the territorial competence of penal authorities for violations committed in cyberspace.

4.1. When the violation is related to the submission of information electronically, the sanctioning body, in whose region is the seat of the body to which the information was submitted or should have been submitted, is competent to consider the file (Art. 48, para 2).

4.2. When the violation is related to information processing in a computer network or is committed in cyberspace, except in the cases under para. 2, competent to consider the file is the sanctioning body, in whose region is the permanent address of the infringer or the address of management of the sole trader or the legal entity, in carrying out the activity of which non-fulfillment of obligation to the state or municipality is allowed. When the offender does not have a permanent address in the country or the sole trader or the legal entity does not have an address of management in the country, the sanctioning body with territorial competence - Sofia is competent to consider the file (art. 48, para 3).

5. Regulation of the procedure for recusal

The changes in the law have supplemented in detail the rules and the procedure for withdrawal.

According to Art. 37, para. 3 an act for establishing an administrative violation cannot be drawn up by a person who has suffered from the violation or is a spouse or relative of the offender or the victim in the direct line without restriction and in the collateral line - up to the fourth degree; a person with interest in the proceedings or which has with the offender or the victim special relations that raise reasonable doubts about his impartiality.

Further, Article 51, which in turn determines which officials may not participate in the examination of the administrative penal file and in the issuance of a penal decree, para 3 specifies the circle of persons who may request recusal of the penal body - the person against which the act for establishing an administrative violation has been drawn up; the sole trader or the legal entity against which the act for establishing an administrative violation has been drawn up; the victim of the violation.

6. Other amendments

6.1. Some of the deadlines in the proceedings before the control bodies have been extended - for example, the violator already has 7 days to submit written objections to the act, instead of the current 3-day one. According to Art. 59, para. 2, the infringer, the one who has requested compensation and the owner of the things, with which an order has been made or have been confiscated in favor of the state, if he is not an infringer, may appeal the acts under art. 58e within 14 days from their delivery. (the period before the change was 7 days).

6.2. The regulation of the termination of the proceedings by the sanctioning body with a motivated resolution in art. 54 is supplemented- the grounds for termination of the proceedings, details of the resolution, the possibility for appeal and protest, the application to the sole trader or the legal entity, respectively, are exhaustively stated.

6.3. The institute of resumption of proceedings has also been changed - the acts subject to resumption have been specified, the circle of persons who may request resumption has been expanded, the grounds and deadlines for this have been added, as well as the powers of the administrative court in the resumption proceedings (Art. 70 - Article 73 of AOPA).

6.4. Effective legal guarantees have been created for the right to protection of citizens in the out-of-court phase of the proceedings - appealability of all acts that may affect the rights and interests of infringers, providing an opportunity for owners (that are not infringers) of property to appeal of the penal body, with which the property has been disposed or the same have been confiscated in favor of the state and other.

6.5. With the amendments to the acts, which are subject to judicial control (the penal decree and the resolution for termination of the administrative proceedings), the written warning and the electronic form are added.

If you have additional questions or a similar situation, you can contact us for legal advices.

**This statement is not a legal advice and is not detailed. It only represents author's opinion on the issue.*